



Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

# State of West Virginia Purchase Order

Order Date: 12-08-2021

CORRECT ORDER NUMBER MUST APPEAR  
ON ALL PACKAGES, INVOICES, AND  
SHIPPING PAPERS. QUESTIONS  
CONCERNING THIS ORDER SHOULD BE  
DIRECTED TO THE DEPARTMENT  
CONTACT.

Order Number:	CPO 0601 0601 MAP2200000002 1	Procurement Folder:	957034
Document Name:	Regional Information Sharing System Enabled on IIM	Reason for Modification:	
Document Description:	Intelligence/ Investigative Management System Updates		
Procurement Type:	Central Sole Source		
Buyer Name:	David H Pauline		
Telephone:	304-558-0067		
Email:	david.h.pauline@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000213810 SAS INSTITUTE INC SAS CAMPUS DRIVE  CARY NC 27513 US Vendor Contact Phone: 919-531-9405 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	Not Entered			#3	Not Entered			#4	Not Entered			Requestor Name: Larry D McDonnell Requestor Phone: 304-414-3422 Requestor Email: LARRY.MCDONNELL@WV.GOV  <b>22</b> FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	Not Entered																				
#3	Not Entered																				
#4	Not Entered																				

INVOICE TO	SHIP TO
PROCUREMENT OFFICER 304-558-2930 DEPARTMENT OF HOMELAND SECURITY BLDG 1 RM W400 1900 KANAWHA BLVD E CHARLESTON WV 25305 US	ADMINISTRATIVE SECRETARY 304-558-4831 FUSION CENTER 4TH FLOOR SOUTH WING 1700 MACCORKLE AVE SE CHARLESTON WV 25314 US

12-14-21  
BAT

Total Order Amount: \$31,725.00

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION DATE: <i>Tara</i> ELECTRONIC SIGNATURE ON FILE <i>12/10/21</i>	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: <i>John D. Graess</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION DATE: <i>12/15/2021</i> ELECTRONIC SIGNATURE ON FILE
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12/15/2021

**Extended Description:**

Direct Award

The Vendor, SAS Institute Inc., agrees to enter with the WV Fusion Center to upgrade their existing Intelligence and Investigative Management (IIM) Records Management System to enable the Regional Information Sharing System (RISS)., per the attached documentation.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81112202	1.00000	LS	31725.000000	31725.00
Service From	Service To	Manufacturer		Model No	

**Commodity Line Description:** IIM System Update to enable RISS

**Extended Description:**

	Document Phase	Document Description	Page 3
MAP2200000002	Draft	Intelligence/ Investigative Management System Updates	

**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

## **ORDER OF PRECEDENT AND MODIFICATION ADDENDUM**

**THIS ORDER OF PRECEDENT AND MODIFICATION ADDENDUM**, (hereinafter "Addendum") by and between, SAS Institute, Inc. ("SAS") and the State of West Virginia (hereinafter "State"), (both referred to as "Parties"), is intended to memorialize certain terms and conditions and to provide an order of precedent for all documents that comprise the contract resulting from the direct award solicitation for time and materials services directed towards deploying updates to Intelligence and Investigation Managed Software ("IIM") Server to enable a two-way interface with the Regional Information Sharing System ("RISS") to be utilized by the West Virginia Intelligence Fusion Center (the "Contract").

**NOW THEREFORE**, the Parties hereto hereby agree as follows:

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the Contract document in this section. In that way, any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

### **Contract Documents:**

- a. **Order of Precedence and Modification Addendum** (this document) – First Priority
- b. **WV-96 Agreement Addendum** (Attached as Exhibit A) – Second Priority
- c. **State of West Virginia General Terms and Conditions** (Attached as Exhibit B) – Third Priority
- d. **Master License Agreement #01330 and Amendment** (Attached as Exhibit C) – Fourth Priority
- e. **SAS Supplement** (Attached as Exhibit D) – Fifth Priority

2. **Modifications:** The documents listed below are modified as indicated below.

- a. **General Terms and Conditions:** The General Terms and Conditions (Exhibit B) are modified as shown below.
  - i. The term entitled "8. INSURANCE" is modified by limiting additional insured requirements to only Commercial General Liability and Automobile Liability Insurance.
  - ii. The term entitled "13. PRICING" is modified by removing the second sentence.
  - iii. The term entitled "14. PAYMENT IN ARREARS" is removed in its entirety.
  - iv. The term entitled "28. WARRANTY" is removed in its entirety.
  - v. The term entitled "36. INDEMNIFICATION" is removed in its entirety.

*(Signature page follows.)*

IN WITNESS WHEREOF, the Parties have entered into this Addendum as of the date of last signature below.

**STATE OF WEST VIRGINIA**

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

Name: Jack Linker

Its: Director WVFC

Date: 12-7-21

**SAS INSTITUTE, INC.**

By: Victoria Clayton

Name: Victoria Clayton

Its: Director, Licensing Operations

Date: October 27, 2021



**EXHIBIT A – WV-96 Agreement Addendum**

**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): West Virginia Intelligence Fusion Center

Vendor: SAS Institute, Inc.

Contract/Lease Number ("Contract"): *CSSX MAP22\*03 - CPO MAP 22\*02*

Commodity/Service: *Intelligence/Investigative Management System Updates*

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strike through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: West Virginia

By: [Signature]

Printed Name: Jack Lukert

Title: DIRECTOR WFC

Date: 12-7-21

Vendor: SAS Institute, Inc.

By: [Signature]

Printed Name: Victoria Clayton

Title: Director, Licensing Operations

Date: October 27, 2021





**Exhibit B – State of West Virginia General Terms and Conditions**

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☐ **Term Contract**

**Initial Contract Term:** This Contract becomes effective on \_\_\_\_\_ and the initial contract term extends until \_\_\_\_\_.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to \_\_\_\_\_ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for \_\_\_\_\_ year(s) thereafter.

☒ **One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** See attached \_\_\_\_\_  
Revised 07/01/2021

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☒ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☒ **Cyber Liability Insurance** in an amount of: \$3,000,000.00 per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

☐☐☐☐

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. [Reserved]**

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ \_\_\_\_\_ for \_\_\_\_\_.

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.



**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES** – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

Trenton Simonson, Sr. Account Executive  
(Name, Title)  
\_\_\_\_\_  
(Printed Name and Title)  
100 SAS Campus Dr. Cary, NC 27513  
(Address)  
919-531-0982  
(Phone Number) / (Fax Number)  
Trenton.Simonson@sas.com  
(email address)

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

SAS Institute, Inc.  
(Company)  
\_\_\_\_\_  
*Victoria Clayton*  
(Authorized Signature) (Representative Name, Title)



**sas** Victoria Clayton  
Director  
Licensing Operations  
SAS Institute Inc.

Victoria Clayton  
(Printed Name and Title of Authorized Representative)  
October 27, 2021  
(Date)  
919-531-7977  
(Phone Number) (Fax Number)

**Exhibit C – Master License Agreement #01330 and Amendment**





SAS Institute Inc.  
SAS Campus Drive  
Cary, NC 27513  
Phone (919) 677-8000 □ Fax (919) 677-4444  
<http://www.sas.com>

License Agreement Number 01330

## Master License Agreement

### For Institute Software

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This Master License Agreement ("Agreement") is entered in North Carolina and, along with the applicable Supplement, governs the license of software products ("Software") from SAS Institute Inc. ("Institute"). Each Supplement to this Agreement ("Supplement") identifies the specific company ("Customer") authorized to use the Software listed on that Supplement. Each Supplement is a separate agreement which incorporates the terms of this Agreement. Separate Customers, if they are related companies, may sign Supplements which reference this Agreement. One Customer may not access a different Customer's Software even though the Supplements reference this same Agreement.

#### 1. License Grant.

- 1.1 The Institute grants Customer a nonexclusive, nonassignable, and nontransferable license to use the Software with the operating system designated on the Supplement. Customer may install the Software only in the United States on hardware authorized under this Agreement ("Authorized Hardware"). If the Software license fee is based on the processing capacity of the hardware, Authorized Hardware is hardware located on Customer's premises which Customer identifies to the Institute by type and CPU number. If the Software license fee is based on the number of Users or workstations, Authorized Hardware is hardware owned or leased by Customer or Customer's employees.
- 1.2 The Software may only be accessed from the United States by Customer's employees and short term on site contractors ("Users") while doing work for Customer. Contractors may not use the Software for their own business operations or administrative processes. Unless this Agreement is amended and Customer pays the appropriate additional license fees, third parties may not access the Software under a facilities management, outsourcing, time-sharing or other such arrangement.
- 1.3 Customer may allow Users to access Software licensed to Customer for which Customer receives a product authorization code. Customer may not allow Users to install or attempt to use other products which may be contained on the media received from the Institute.
- 1.4 Title to the Software and its documentation remains with the Institute and its licensors at all times. Copyright notices and other proprietary rights notices in the Software may not be deleted or modified. This Agreement does not transfer any ownership rights. The license is an annual license renewed at the mutual agreement of the parties. Renewal is accomplished by Customer paying, and the Institute accepting, the license renewal fee, and any applicable taxes.
- 1.5 Source code from which the Software object code is derived ("Source Code") is not being provided and is an Institute trade secret to which access is not authorized. Except to the extent allowed by law, neither Customer nor any other User may reverse assemble or decompile the Software or otherwise attempt to recreate the Source Code.
- 1.6 Customer may copy the Software (1) for disaster recovery and back-up purposes, and (2) for installation of workstation or personal computer Software. All copies remain the property of the Institute. Customer may deliver a copy of the Software to a disaster recovery contractor. Customer must give the Institute the name and address of the disaster recovery contractor before delivery. The identical copyright notices and any other proprietary rights notices found on the original Software media must be reproduced on all copies authorized under this Section.

#### 2. Fees.

- 2.1 The Software is provided with a free thirty-day trial period. Cancelling Software may affect eligibility for discounts or other special pricing offers. Payments are due net thirty days. License fees do not include taxes, and Customer is responsible for payment of all applicable taxes. The product authorization code is a program which, when applied to the Software, allows the Software to operate for its designated term. After the product authorization code is provided, except as otherwise allowed herein, refunds are not available.

- 2.2 Customer may call or write the Institute to change operating system(s), Authorized Hardware, or number of Users or workstations. These changes may result in additional license fees which are effective and will be invoiced as of the time of the change. License fees for each renewal period may differ.
- 2.3 Customer may, by written notice to the Institute, designate third parties to pay license fees on Customer's behalf; however, payment of fees remains Customer's ultimate responsibility. Upon such designation, the Institute will send its standard notices regarding payment to the third party only. Authorization to pay fees creates no contractual relationship with the third party nor does it authorize access to or use of the Software by the third party.

**3. Technical Support.**

The Institute will use reasonable efforts, either by telephone or in writing, to help Customer solve specific problems with installation or use of the Software. It may not be possible to solve all problems or correct all errors in the Software. The Institute may, from time to time, send, and the Customer agrees to use reasonable efforts to install, new releases, updates, and corrective code. During ongoing Software development, the Institute may add, modify, or delete functionality in new releases. If the Customer chooses not to install the most current release of the Software, the level of technical support may diminish over time. Technical support will be provided only in the United States.

**4. Limited Warranty.**

- 4.1 The Institute warrants it has the right to license the Software to Customer. The exclusive remedy for breach of this warranty is set forth in Section 6. The Institute warrants that each production release of the Software will substantially conform to its user documentation including any updates thereto. If it does not, at the Institute's option, the Institute will either make it conform, replace it with conforming Software, or terminate the license and refund the license fee for the Software product at issue for the current period. This is the exclusive remedy for breach of this warranty.
- 4.2 The Institute warrants that the media on which the Software is received will be free of software viruses. THE INSTITUTE DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING.

**5. Limitations of Liability.**

- 5.1 The Institute is not liable for (1) special, incidental, indirect, consequential, punitive, or reliance damages (arising in contract or tort), or (2) any claim against the Customer by a third party. The Institute is not required to provide the product authorization code if Customer is in breach of this Agreement or if all amounts due under this Agreement are not paid and is not liable for damages caused by the resulting Software interruption. Customer is responsible for implementing procedures to verify accuracy of data input and output.
- 5.2 The Institute's total liability for any claim relating to matters covered by this Agreement or use of the Software is limited to the license fees received from Customer for the Software product(s) at issue during the then current license period.
- 5.3 The limitations in this Section do not apply to the Institute's indemnification obligations set forth in Section 6. Some states do not allow limitations of liability so certain of these limitations may not apply; however, they apply to the greatest extent permitted by law.

**6. Indemnification.**

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

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

**7. Termination and Expiration.**

Customer may terminate its license for any Software product at any time. The Institute may terminate the license for a breach of this Agreement if not cured within thirty days of written notice by the Institute. Obligations in this Agreement, which by their nature are continuing, survive termination or expiration. Upon termination or expiration of the license, or when a User is no longer authorized to access the Software, Customer agrees to reclaim, delete, and destroy the Software product at issue.

**8. U.S. Government Restricted Rights.**

Use, duplication, or disclosure of the Software and related documentation by the U.S. government is subject to this Agreement and the restrictions set forth in FAR 52.227-19, Commercial Computer Software - Restricted Rights (June 1987).

**9. Modifications and Amendments.**

This Agreement, its Supplements, including any Supplement Attachments, and invoices arising under it are the parties' complete and exclusive statement relating to their subject matter. Modifications must be in writing, signed by both parties, and specifically reference this Agreement. Additional or different terms on current or future Customer or third party purchasing documents are expressly objected to and rejected.

**10. Governing Law.**

North Carolina law, excluding choice of law provisions, and the laws of the United States of America govern this Agreement.

**11. General.**

Failure to require compliance with a part of this Agreement is not a waiver of that part. If a court of competent jurisdiction finds any part unenforceable, that part is excluded, but the rest of the Agreement stays in full force and effect. Any attempt by Customer to transfer or assign this Agreement is void. Breach of the Institute's intellectual property rights will lead to damages not adequately remedied by an award of money; therefore, the parties agree the Institute may protect those intellectual property rights through temporary restraining orders or injunctions, without the obligation of posting bond. The persons who sign below represent they have authority to bind the named parties to this Agreement.

Accepted by:

Customer: State of West Virginia

SAS Institute Inc.



By

*Brian Casto*  
Authorized signature

By

*E. B. Matthews*  
Authorized signature

*Brian Casto*  
Name (type or print)

E. B. Matthews

Name (type or print)

*Assistant General Counsel*  
Title

Manager, Contract Operations

Title

On

*June 23, 1999*  
Date

On

*June 2, 1999*  
Date



AMENDMENT NO. 1 TO THE  
SAS MASTER LICENSE AGREEMENT  
FOR INSTITUTE SOFTWARE  
BETWEEN  
SAS INSTITUTE INC.  
AND  
THE STATE OF WEST VIRGINIA

The SAS Master License agreement for Institute Software, 1g107.2 1/98, dated June 2, 1999 hereinafter referred to as "Agreement", between SAS Institute Inc., hereinafter referred to as "SAS" and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

1. Replace paragraph one with the following language:  
"This Master License Agreement ("Agreement") is entered in North Carolina and, along with the applicable Supplement, governs the license of software products ("Software") from SAS Institute Inc. ("Institute"). Each Supplement to this Agreement ("Supplement" means a form substantially like Attachment A) identifies the specific organization ("Customer") authorized to use the Software listed on that Supplement. Each Supplement is a separate agreement which incorporates the terms of this Agreement. This Agreement is considered a Master Agreement for use by State of West Virginia government organizations ("Spending Units", including "Customer") ordering through the Purchasing Division ("Purchasing Division") of the Department of Administration of the State of West Virginia. Separate Spending Units may sign Supplements which reference this Agreement. One Spending Unit may not access a different Spending Unit's Software unless access rights are requested by Customer. The conditions governing the use of the software by another Spending Unit are addressed in item 3 below.

"References to this Agreement and any Attachments or Supplements mean this agreement and any Attachments or Supplements as amended by this Addendum.

"This Agreement, including any attachments and Supplements issued pursuant to this Agreement, may be modified only by a written document signed by an authorized representative of each party and if required, authorized by the Purchasing Division and approved as to form by the office of the Attorney General of the State of West Virginia ("Attorney General").

"Spending units not utilizing the Purchasing Division may use this Agreement if agreeable to SAS and the appropriate authority for such Spending Unit. Each Spending Unit is responsible for determining which Products or Services it requires and paying its

own bills, subject to certain Purchasing Division and Division of Information Services and Communications ("IS&C") of the Department of Administration restrictions.

"Services or products provided under this Agreement may be continued for the term specified in the relevant, mutually acceptable signed Supplement and State purchase order incorporating this Agreement by reference, contingent upon funds being appropriated by the Legislature or otherwise being available on a spending unit by spending unit basis. In the event funds are not appropriated or otherwise available for continuation of the Services or products for a particular Spending Unit, that license shall terminate without penalty on June 30 as to that Spending Unit. After that date, the Supplement becomes of no effect and is null and void as to that Spending Unit. The Spending Unit agrees to use its best efforts to have the amounts contemplated under this Agreement that pertain to that Spending Unit included in its budget. Non-appropriation or non-funding shall not be considered an event of default."

2. Amend Section 1.1 by inserting the following at the end of the paragraph:

"In the event, however, that the operating system and hardware as identified on the Supplement is assigned or delegated to another Spending Unit of the State, the Institute grants Customer the right to assign this license to such Spending Unit, at no additional charge, upon written notice to the Institute, provided the Spending Unit agrees in the written notice to abide by the existing terms of the Agreement."

3. Amend Section 1.2 by inserting the following at the end of the paragraph:

"Customer, however, may provide access to Software licensed by mainframe or server to employees of other Spending Units of the State provided access rights are requested by Customer. To request access rights, Customer must complete and submit to SAS Attachment B ("WV Department Access Request Form") and maintain applicable licenses and pay applicable fees. Access for Spending Units shall be permitted for the period invoiced or otherwise authorized by SAS for Customer or identified Spending Unit.

"Customer shall pay an access fee equal to 40% of the SAS license fees for all Software accessed by more than one Spending Unit and licensed by mainframe or server as identified on Supplements. This access fee shall cover all Spending Units identified on copies of Attachment B. During the term of the license period, additional Spending Units may be added by submitting additional copies of

Attachment B. Adding additional Spending Units during the license period is at no additional cost to the Customer.

"Customer may designate only one representative from one Spending Unit as a contact person no matter how many Spending Units are designated on Attachment B. Customer must inform the Spending Units of the relevant terms of this Agreement and ensure their compliance. Customer shall notify SAS if access for a Spending Unit is terminated by submitting an amended Attachment B. No refund or credit will be granted for termination of a Spending Unit. Nothing in this Agreement shall be construed to give Spending Units any rights beyond those expressly provided in this Section."

4. Amend Section 1.4 by deleting the last 2 sentences and inserting in lieu thereof the following:

"This Agreement governs the annual license for the products identified on the Customer's Supplements. Each license may be renewed upon mutual agreement of both parties through the initiation of a new Supplement. The Customer is considered to have a valid license when a Supplement has been executed by the State, accepted by SAS, and the licence fees and, if applicable, access fees are paid."

5. Amend Section 2.1 by deleting the fourth sentence and inserting in lieu therefore the following:

"Provisions in the Agreement requiring Customer to pay taxes are deleted. Customer is exempt from Federal, State and local taxes and will not pay taxes for any Vendor including individuals, nor will the Customer file any tax returns or reports on behalf of the Vendor or any other party."

6. Amend Section 5.2 by deleting it in its entirety and inserting in lieu thereof the following:

"Except as otherwise provided herein, neither party shall be liable for any indirect, incidental, special or consequential damages, or damages for the loss of profits, or revenue, incurred by either party or any third party, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages. The Institute's liability for damages hereunder shall not exceed the amount of fees paid by the Customer under this Agreement for the software at issue for the license period at issue, unless such damages result from Customer's use of the software. In which case such liability shall not exceed one million dollars (\$1,000,000.00). Notwithstanding the foregoing, the limitations of liability in this section shall not apply to the following: (1) violations by Customer of the Institute's intellectual property

rights, (2) bodily injury and tangible personal property damages Customer suffers as a result of breach of this Agreement by an Institute employee acting within the scope of his or her employment, or (3) the Institute's indemnification obligation hereunder."

7. Amend Section 10 by deleting it in its entirety and inserting in lieu thereof the following:

"The Agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing laws."

8. Insert the following Section after Section 11:

"12. **Year 2000.** The latest release of SAS software for the OS, OS/2, Windows and Windows NT operating systems ("Software") will operate on and after January 1, 2000 in the same manner and with the same functionality as it operated before January 1, 2000. The Software has been designed to correctly process date values greater than or equal to January 1, 2000. The Software functionality includes the YEARCUTOFF option which determines the correct century to associate with two digit years and it is Customer's responsibility to ensure that the YEARCUTOFF option is used properly with the Software.

"Customer's Software applications may not correctly process date values greater than or equal to January 1, 2000 if the applications were designed to read, store, process or present calendar dates as two digit years in the 1900s. It is Customer's responsibility to ensure that the YEARCUTOFF option is used properly with Customer's Software applications so that the correct century is associated with two digit years.

"If the Software does not operate in accordance with the above warranty, the Institute shall, at its option, either (1) remedy the problem, or (2) replace the Software product at issue, or (3) terminate the license and refund to Customer the license fee for the Software product at issue for the current license period.

"The above warranty is effective until December 31, 2000. This warranty is subject to the requirements that: (1) Customer agrees to apply or install any corrective code, including but not limited to ZAPs, patches, fixes, modules, or maintenance releases that the Institute provides to Customer; and (2) all hardware and software products used with the Software correctly operate on and after January 1, 2000 with correct calendar dates, including correctly operating with date values greater than or equal to January 1, 2000."

9. Insert the following Section after Section 12:

"13. **Conflict of Terms.** In the event of conflict between this Amendment, the Agreement, the Attachments and/or Supplements, this Amendment shall prevail. Except as herein modified, all terms and conditions of the Agreement, Attachments and Supplements remain in full force and effect."

ACCEPTED BY:

STATE OF WEST VIRGINIA

Brian Casto  
Authorized Signature

Brian Casto  
Name (Type or Print)

Assistant General Counsel  
Title

August 3, 1999  
Date

SAS INSTITUTE INC.



E.B. Matthews  
Authorized Signature

Na  E.B. Matthews  
Manager  
Contract Operations  
SAS Institute Inc.

\_\_\_\_\_  
Title

June 2, 1999  
Date

APPROVED AS TO FORM THIS 23rd  
DAY OF September, 1999

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

BY: Dawne Wayfield  
DEPUTY ATTORNEY GENERAL



## **Exhibit D - SAS Supplement**



**Services Supplement Number \_\_\_\_\_ (“Services Supplement”)  
To Master License Agreement (“MLA”)  
Time and Materials Services**

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SAS Institute Inc. (“SAS”) World Headquarters SAS Campus Drive • Cary, North Carolina 27513 Tel: (919) 677 8000 • Fax: (919) 677 4444 <a href="http://www.sas.com">http://www.sas.com</a>	Customer Name: West Virginia Intelligence Fusion Center (“Customer”)
	Street Address: 1900 Kanawha Blvd E
	City, State, Country, Zip Code: Charleston, Kanawha WV, USA 5555
	Taxpayer ID Number:

1. **Introduction; Defined Terms.** In exchange for Customer paying the charges and any applicable taxes arising under this Services Supplement, SAS agrees to provide (a) the services described in Section 3.1 (Time and Materials Services) below (“**Services**”) related to Customer’s use of SAS software licensed under the MLA and applicable Software Supplement (“**Software**”) and (b) a license as described in Section 4.1 (Work Product Ownership and License Grant) below in relation to any documentation, computer code or other materials delivered by SAS in connection with the Services (collectively, “**Work Product**”). Any initially capitalized terms not defined herein will be as defined in the MLA or Software Supplement, as applicable.

2. **Term; Termination.**

2.1 **Term.** This Services Supplement is effective upon the last dated signature below (“**Effective Date**”) and will continue until completion of the Services (“**Term**”), unless terminated in accordance with Section 2.2 (Termination) below. Notwithstanding the foregoing, this Services Supplement governs any Services performed prior to the Effective Date.

2.2 **Termination.** Either party may terminate this Services Supplement on thirty (30) days’ written notice. If this Services Supplement is terminated, Customer will pay SAS all monies then due and owing for Services performed prior to the date of termination and, if applicable, for any travel and living expenses incurred by any SAS representatives for their return trip from Customer’s site.

3. **Services; Fees; Invoicing.** The Services do not include technical support, maintenance, migration or upgrade services for any Work Product unless specifically described below or in a separate agreement setting forth applicable fees for the performance of such activities.

3.1 **Time and Materials Services.**

3.1.1 **Description of the Services.** SAS will perform the following Services on a Time and Materials basis. “**Time and Materials**” means Services directed towards a particular goal, which are performed at the rate(s) set forth in this Section.

The Services will be directed toward the following tasks

1. Deploy Updates to IIM Server to enable a two-way interface with the Regional Information Sharing System (“RISS”)

SAS will deploy updates to the IIM server to enable IIM users to submit a search to RISS and to view the results of such searches from within the IIM interface. The deployed updates will additionally allow the Customer IIM system to respond to search requests received from external RISS connected agencies.

2. Interface Testing

SAS will work with RISS personnel to carry out final testing and to confirm correct deployment of the interface.

3. Interface Training

SAS will provide Customer personnel with training in the use of the deployed interface. Training will be conducted via Webex.

The following assumptions apply to the performance of the Services:

- If SAS will access Customer's computing environment to provide the Services, Customer will provide such access solely via Customer's VPN, Remote Desktop Protocol (RDP), Secures Shell (SSH) or any other remote connection with multi-factor authentication and scooped access to data (the "**Connectivity Tool**"). SAS will use the Connectivity tool regardless of whether such access occurs remotely, at Customer's facility, or using SAS' or Customer's laptops or hardware. Customer will use the Connectivity tool to limit and control SAS' access to the systems and data required for SAS to perform the Services.
- The updates required to implement the RISS interface will be deployed to the Customer's existing IIM server(s). It is not anticipated that the interface will impose additional load on the existing server(s) sufficient to require either an upgrade of the existing server specifications, or additional servers. However the specific load imposed by the interface will only be fully known once the interface is live. SAS personnel will with with Customer personnel during the initial go-live period of the interface deployment to monitor and assess the additional load being imposed. It is understood that if the realized load is higher than anticipated, upgrades to existing Customer servers and / or additional Customer servers may be required, and that the provisioning of such upgrades or servers shall be the responsibility of the Customer.
- The success and timely delivery of the Services is dependent upon the timely access to appropriate people, responsiveness of all parties and a shared understanding of the tasks
- As part of the tasks, remote access is required to Customer's servers.
- Customer is responsible for all necessary network configuration associated with the tasks and for any software installations not specifically described in this proposal.
- Customer is responsible for completing any documentation required by RISS to authorize the connection of IIM to RISS Intel, prior to the commencement of services by SAS.
- The estimated costs quoted in the previous sections assume SAS personnel will carry out work associated with the services via remote connections whenever possible. Any necessary and reasonable travel costs are additional not included in the price estimates above. These will be billed to Cusotmer as incurred. It is not anticipated that any travel will be necessary to complete the described tasks if remote access is granted to SAS personnel.

In the event such assumptions are not met, a Change Order may be required, and additional fees may apply.

3.1.2 Time and Materials Services Fees. The Time and Materials Services fees will be invoiced monthly and will be calculated using the following Services rates:

Resource	Hourly Rate
Consultant	\$235

3.1.3 Customer Funds. Customer has advised SAS that it has made available funds in the amount of Thirty One Thousand Seven Hundred Twenty Five Dollars (\$31,725) (U.S.) for Time and Materials Services fees due under this Services Supplement ("**Customer Funds**"). Travel and living expenses and applicable taxes are additional and are not reflected in the Customer Funds. Neither party will have any obligation with respect to the performance of, or payment for, Services beyond the depletion of the Customer Funds. Customer may make additional Customer Funds available for the performance of the Services by execution of a written amendment to this Services Supplement.

3.2 Travel and Living Expenses; Invoicing. Travel and living expenses, and any applicable taxes, are additional and are not reflected in the fees set forth above. SAS will invoice Customer for Services fees as set forth above. SAS will invoice Customer for travel and living expenses on a monthly basis. Payment will be due in accordance with the terms of the MLA.

#### 4. Work Product Ownership and License Grant; Related Entities and Contractors; Customer Materials

- 4.1 Work Product Ownership and License Grant. SAS grants Customer a nonexclusive, nontransferable, non-assignable, royalty-free license to use the Work Product subject to the following. Customer may use the Work Product only with the Software to which such Work Product relates and only for as long as Customer maintains a license for such Software. Additionally, Customer's use of the Work Product must be consistent with the scope of Customer's Software license under the MLA and applicable Software Supplement. However, if the Work Product is not computer code or documentation relating to a particular Software license (by way of example, and not by way of limitation, a report delivered as a result of a proof of concept Service), Customer's use of such Work Product is limited to Customer's internal business purposes. 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 SAS.
- 4.2 Related Entities and Contractors. Subject to the limitations set forth in Section 4.1 (Work Product Ownership and License Grant) above, Customer may also permit any Related Entities and contractors who are authorized to access and use the Software under the applicable Software Supplement to access and use the Work Product. Customer will inform such Related Entities and contractors of the applicable terms of this Services Supplement and will be responsible for their use of the Work Product to the same extent as Customer is responsible for their use of the Software under the MLA and Software Supplement.
- 4.3 Customer Materials. "**Customer Materials**" means materials, including, but not limited to data, computer code or software, that Customer provides to SAS or directs SAS to obtain in connection with SAS' performance of Services. Customer Materials will not be deemed to be Work Product even though they may be delivered with the Work Product. Customer grants SAS a nonexclusive, nontransferable, royalty-free license, or, as applicable, right to use the Customer Materials solely to perform the Services under this Services Supplement. Ownership of the Customer Materials, including any intellectual property embodied therein, remains with Customer or its applicable licensor.

## 5. Customer Responsibilities; Change Management

### 5.1 Customer Responsibilities. Customer will, at no cost to SAS:

- 5.1.1 make available facilities and equipment required for SAS to perform the Services, to the extent all or a part of the Services are to be performed on Customer's site;
- 5.1.2 provide accurate information and access to Customer personnel that are required in order for SAS to perform the Services;
- 5.1.3 review any Work Product according to the requirements of this Services Supplement;
- 5.1.4 back-up all systems containing data or software to which SAS will have access when performing the Services;
- 5.1.5 implement reasonable measures to prevent SAS' inadvertent access to any confidential computer records or data not necessary for SAS' performance of the Services; and
- 5.1.6 in the event that Customer is permitted pursuant to Section 4.1 (Work Product Ownership and License Grant) to use the Work Product for third parties, indemnify SAS for any claim made against SAS by a third party arising from or related to use of the Work Product, except as set forth in Section 7.1.1 (Intellectual Property Warranty).

Any delayed performance of these responsibilities by Customer may result in delays to SAS' performance of the Services for which SAS will not be liable.

### 5.2 Change Management. "**Change Management**" refers to a process by which the parties agree on a change or modification to the Work Product by SAS or to the scope of Services. "**Change Order**" refers to the document describing the change or modification agreed to pursuant to the Change Management process. Requests by Customer or SAS for such changes will be made in writing to the other party. SAS will prepare the Change Order which will contain, at a minimum, the following information:

- a. A description of any additional work to be performed and/or any changes to the Work Product or Services;
- b. A statement of the anticipated impact of the work or changes on the Services and the project schedule; and
- c. The estimated cost to complete the work specified in the Change Order.

SAS will provide the proposed Change Order to Customer's project manager for review and, if additional fees will be charged, SAS will provide a proposed amendment hereto. Customer'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 in order for it to become effective. Pending such written agreement (and if additional fees will be charged, execution of the associated amendment), SAS will continue to perform as if such Change Order had not been requested or recommended.

## 6. Confidential Information.

Each party acknowledges that it may have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, products, know-how and other information held in confidence by the other party (individually or collectively, "**Confidential Information**"). Confidential Information also will include the Customer Materials as well as all information of either party in tangible or intangible form that is marked or designated as confidential.

In no event will Customer provide to SAS any personally identifiable information or source code unless specifically authorized hereunder.

The receiving party ("**Recipient**") will use the disclosing party's ("**Discloser**") Confidential Information only in conjunction with performance of its obligations hereunder. Recipient will not disclose Discloser's Confidential Information received in connection with this Services Supplement to any third parties unless Discloser gives Recipient its advance written authorization to do so. This restriction does not apply to information that is: (a) generally available to the public; (b) released by Discloser without restriction; (c) independently developed or acquired by Recipient; (d) known to the Recipient prior to receipt from Discloser; or (e) revealed pursuant to court order or as required by applicable law, provided that Recipient uses reasonable efforts to promptly notify Discloser of such requirement prior to compliance in order to permit Discloser to seek protection against disclosure. Recipient's obligations of confidentiality hereunder with respect to each item of Discloser's Confidential Information will continue for a period of five (5) years from the date of initial disclosure. For the purpose of this Section, SAS' affiliates and subcontractors will not be deemed "third parties."

## **7. Warranties by SAS; Warranties by Customer.**

**7.1 Warranties by SAS.** Except as expressly provided in this Section 7.1, the warranty disclaimers set forth in the MLA shall apply to this Services Supplement.

**7.1.1 Intellectual Property Warranty.** SAS warrants that it has all necessary rights to license the Work Product to Customer. As the exclusive remedy for breach of this warranty, the indemnification obligations set forth in the MLA will apply to the Work Product, except that SAS will have no such obligations to the extent: (a) the claim is based on Customer's specifications; (b) the claim results from Customer's combination of the Work Product with software or materials other than the Software; or (c) the claim results from any other modification to the Work Product by Customer, its Related Entities or its representatives.

**7.1.2 Services Warranty.** SAS warrants that the Services will be performed by qualified personnel. Customer's exclusive remedy for breach of this warranty is for SAS to refund fees paid for the Services at issue.

**7.2 Warranties by Customer.** Customer warrants that (a) it has obtained from the applicable provider of the Customer Materials the right for SAS to use the Customer Materials in accordance with this Services Supplement; and (b) Customer's use of the Customer Materials complies with all applicable license terms, terms of use and other usage terms as set forth by the providers of such materials. As the exclusive remedy for breach of these warranties, Customer shall indemnify SAS for any claim made against SAS arising from or relating to the Customer Materials.

**8. Limitations of Liability.** SAS' limitations of liability and exclusions of damages set forth in the MLA with respect to Software will apply equally to this Services Supplement, including the Services and Work Product.

**9. Insurance.** During the Term of this Services Supplement, SAS will keep the following insurance policies in force:

9.1 Workers Compensation -- Statutory (in the amounts required by applicable state statutes);

9.2 Employer's Liability -- \$1,000,000 per occurrence; bodily injury by accident or disease, including death;

9.3 Commercial General Liability -- \$1,000,000 combined limit per occurrence, bodily injury, personal injury and property damage, including blanket contractual liability; and

9.4 Automobile Liability (if vehicles are brought on Customer's premises or used in performance of the Services) -- \$1,000,000 combined limit per occurrence; bodily injury and property damage covering owned, non-owned and hired vehicles.

SAS will provide a Memorandum of Insurance upon request as evidence of this coverage.

**10. Nonsolicitation.** Customer will not solicit for hire any individual who provides the Services to Customer under this Services Supplement within six (6) months after the Services are performed. Notwithstanding the foregoing, responses to general advertisements in the media or on the Internet or Customer's intranet will not be deemed to be a solicitation for hire under this Section.

**11. Force Majeure.** Except for Customer's obligations to pay the fees, neither party will be liable to the other party for any failure or delay in performance caused by reasons beyond its reasonable control, including, but not limited to, restrictions of law, regulations, orders or other governmental directives, cyber-attacks, labor disputes, acts of God, third-party mechanical or other equipment breakdowns, fire, explosions, fiber optic cable cuts, interruption or failure of telecommunication or digital transmission links, Internet failures or delays, storms or other similar events.

**12. Subcontractors; Independent Contractors.** SAS may subcontract all or portions of the Services. SAS will remain responsible for the performance of the Services by each such subcontractor to the same extent as if SAS were performing such Services. SAS and its employees or subcontractors are acting as employees or agents of an independent contractor and not as employees or agents of Customer.

**13. General.** This Services Supplement constitutes an agreement between Customer and SAS incorporating the terms of the MLA. This Services Supplement, the MLA and invoices arising under them are the parties' complete and exclusive statement relating to their subject matter. Any description of the Services set forth in a proposal or other sales or pre-sales communication will be for general descriptive purposes only and will not be deemed to be incorporated by reference herein.

Modifications must be in writing, signed by both parties, and specifically reference this Services Supplement. Obligations in the MLA or this Services Supplement that by their nature are continuing survive termination or expiration. Additional or different terms on current or future Customer or third party purchasing documents are expressly objected to and rejected. With respect to the Services provided hereunder, the terms of this Services Supplement add to the MLA and control over any conflicting or inconsistent terms in the MLA.

The individuals signing below represent they have authority to bind the named parties to this Services Supplement.

Accepted by:

**Customer:** State of West Virginia

**SAS Institute Inc.**

By \_\_\_\_\_  
Authorized signature

By Victoria Clayton  
Authorized signature

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

On \_\_\_\_\_  
Date

On October 27, 2021  
Date

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