> **TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

Definitions

"Affiliate" shall be defined as any company, corporation, partnership, joint venture, political sub-division, or other entity in which either party directly or indirectly controls at least fifty percent (50%) of the profits or voting rights or which is controlled by a common parent. For the purposes of this Contract, an Agency, as defined herein, shall be deemed an Affiliate.

"Derivative Work" shall mean a work that is based upon or incorporates the Product(s), in whole or in part, such as a revision, modification, translation, abridgment, condensation, expansion, compilation, or any other form in which the Product(s) may be recast, transformed, included, or adapted, and which if prepared without first obtaining Contractor's prior written authorization shall constitute an infringement of the intellectual property rights of Contractor or a relevant third party.

"Product(s)" shall mean the licensed software programs, applications, updates provided under Maintenance, and all associated documentation including but not limited to user manuals and instructional training course materials provided by Contractor to ordering activity under this Contract.   For purposes of this Contract, the license granted hereunder shall apply to the Product(s) in executable object code form only.

"Agency" is defined as a cabinet level or independent agency.

1.   Inspection/Acceptance

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2.   Guarantee/Warranty

a.   Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

LIMITED WARRANTY:

1)   Contractor represents and warrants to ordering activity that it has sufficient rights in and to the Product(s) to grant ordering activity the license granted under this Contract. Contractor further warrants that the Product(s) delivered to ordering activity under this Contract will substantially conform in all material respects with the published documentation delivered with the Product(s) for a period of one (1) year, and that any media on which the Product(s) are supplied is free from defects in materials and workmanship under normal use (the "Warranty"). In the event the Product(s) fails to perform as stated in the Warranty, and upon written notice to Contractor within the warranty period, Contractor shall either (1) use its reasonable commercial efforts to repair at Contractor's facilities the Product(s) to comply with the Warranty; or (2) replace the Product(s) to comply with the Warranty. If, in Contractor's sole discretion, Contractor is unable to correct the defect within a reasonable period or if in Contractor's opinion neither option 1 nor 2 is commercially feasible for Contractor, Contractor shall terminate this Contract and/or applicable Product Schedule(s) by notice to ordering activity and shall refund ordering activity the applicable license fees and the unused portion of the Maintenance fees whereupon ordering activity shall remove

the Product(s) from all installed CPU's and/or Network Servers and return the Product(s) and all copies thereof to Contractor. This Warranty is contingent upon proper use of the Product(s) in the operating environment specified in the Product Schedule(s). The foregoing states ordering activity's sole remedy under the Warranty in this Subsection 2(a)

2)　　　The Warranty does not cover any copy of the Product(s) that has been altered in any way by ordering activity or any third party, their employees or agents. Contractor is not responsible for problems that occur as a result of the use of the Product(s) in conjunction with other software or hardware that is incompatible with the operating system for which the Product(s) is being acquired or resulting from ordering activity's failure to maintain any equipment or operating system on or with which the Product(s) is installed. Contractor makes no representation or warranty and accepts no obligation in relation to any non-embedded third party software agreed to be supplied by Contractor to ordering activity pursuant to this Contract and all warranties, terms, conditions, undertakings and representations of any kind, express or implied, statutory or otherwise relating to such third party software including (without limitation) as to the condition, quality, performance, satisfactory quality or fitness for the purpose of the third party software or any part thereof, are hereby expressly excluded to the fullest extent permitted by law. Only the CFO or CEO of Contractor, or the President of one of Contractor's Affiliates may make modifications to the Warranty or additional warranties binding on Contractor, and such modifications or additional warranties must be in writing. Accordingly, additional statements such as those made in advertising or presentations, oral or written, do not constitute warranties by Contractor and should not be relied upon as such.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. Contractor grants no other warranties whatsoever, express or implied, oral or written, including, but not limited to, any implied warranties (i) of merchantability, (ii) of fitness for a particular purpose, (iii) of non-infringement, or (iv) arising from usage of trade or course of dealing or performance.

c.　　　Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items. In no event shall Contractor be liable in contract or tort for loss of revenues, profits, goodwill, lost computer time, damage or loss of data, or any indirect, incidental, punitive, or consequential damage suffered or incurred by ordering activity in connection with or arising from this Contract, including any Product(s) licensed hereunder or benefits provided under Maintenance. Contractor's liability for other damages resulting from or relating to a Product(s), or the use thereof, shall not exceed the amount paid by ordering activity under the applicable Product Schedule(s) for such Product(s) and Contractor's liability for other damages resulting from or relating to Maintenance including the benefits provided thereunder, shall not exceed the amounts paid by ordering activity during the previous twelve (12) month period for Maintenance or Hosting Services. Contractor's liability shall further be limited to direct damages suffered by ordering activity. Ordering activity shall be solely responsible for deciding whether or not the Product(s) are suitable for its purposes and for the consequences of any use of the Product(s). Contractor shall have no liability for any loss or damage suffered by ordering activity based on the reliance by ordering activity on any results or data obtained from the use of the Product(s). This Contract shall not be deemed or construed to create any enforceable right in any third person, firm, corporation, or other entity.

3.　　Technical Services

For the first 90 days following delivery of the product, the Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number for the purpose of providing user assistance and guidance in the implementation of the software.

The technical support number (732) 922-5300 ext 1 for the United States and Puerto Rico is available from Monday through Friday, 8:00 a.m. to 8:00 p.m Eastern Standard Time.

The technical support number +44 (0) 207 000 1019 for the European Community is available from Monday through Friday, 8:00 a.m. to 8:00 p.m. Greenwich Time.

4.　　Software Maintenance

a.　　Software maintenance service as it is defined:

　　　1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

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

Software maintenance as a product does <u>NOT</u> include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

1)   Contractor has established a support, maintenance, and enhancement program for the Product(s)("Maintenance"). If ordering activity is enrolled in Maintenance, and subject to the limitations set forth below, Contractor shall:

(i)   supply code corrections to ordering activity to correct Product malfunctions in order to bring the Product(s) into conformity with the then current published specifications as set out in the documentation for the most current edition of the Product(s) unless such malfunctions have been caused by modifications of the Product(s) made by ordering activity or a third party under the direction of ordering activity or unless ordering activity's modifications prohibit or hamper such corrections;

(ii)   provide ordering activity with technical support to answer operational questions and to report irregularities within the Product(s). Such services are available during the normal business hours for ordering activity's local Contractor support center, Monday through Friday, excluding regularly scheduled holidays of Contractor;

(iii)   supply, so long as commercially feasible, updated Product(s) as necessary to operate under new releases of the operating system or database for which the Product(s) was designed. Contractor shall provide ordering activity with twelve (12) months notification in the event support for a particular operating system or database will be terminated;

(iv)   supply all extensions, enhancements and other changes that Contractor deems to be logical improvements or extensions that are incorporated into the Product(s) and that Contractor elects to generally furnish without additional charge to all licensees enrolled in Maintenance for the particular Product(s). Ordering activity shall receive one (1) copy of each such extension, enhancement or other changes, at no additional charge. Contractor shall provide reasonable assistance with technical support issues that arise during the installation of each such extension, enhancement or other change; and

(v)   replace the Product(s) at no charge if the media becomes destroyed or damaged to such an extent that the Product(s) becomes unusable.

2)   The Maintenance program set forth in Subsection (a) above shall apply to the most recent generally available Release or Version of the Product(s) ("N") as well as the immediately preceding Release or Version ("N-1"). Ordering activity understands and agrees that Contractor's obligation to support the Release or Version immediately preceding N-1 ("N-2") shall be limited to technical support only (as set forth in Subsection (a)(ii) above) and that Contractor shall not be obligated to support any Release or Version of the Product(s) that is older than N-2. For purposes of this Subsection, the term "Release" shall be defined as a specific edition of the Product(s), designated by a number located to the left of the first decimal point (such as Release 1.x or Release 2.x), and the term "Version" shall be defined as a specific edition of the Product(s), designated by a number located to the right of the first decimal point (such as Version x.1 or Version x.2). For purposes of clarification, where a Product was originally released at 1.0 then went to Version 1.1, and then to Version 1.5, and then to Release 2.0, Contractor would provide full support for Release 2.0 and Version 1.5, limited technical support for Version 1.1 and no support for Release 1.0.

3)   Contractor shall have no support obligations under Maintenance with respect to (i) Product(s) which is modified by or on behalf of ordering activity; (ii) malfunctions caused by the use or operation of a Product(s) with any hardware, software or media not authorized by this Contract, the applicable Product Schedule(s), or the documentation delivered with the Product(s); (iii) malfunctions resulting from operator error or incorrect use of the Product(s); (v) malfunctions attributable to the equipment and programs used in conjunction with the Product(s) or

to any other reason external to the Product(s); or (vi) if any previous patches or error corrections of the Product(s) have not been implemented by ordering activity or the instructions of Contractor have not been followed.

4)   Ordering activity may cancel its enrollment in Maintenance by giving notice of such cancellation at least thirty (30) days prior to the anniversary date of Maintenance. Cancellation of Maintenance shall apply to an entire product suite only (Example: Service Center base system and all associated applications). Ordering activity may re-enroll in Maintenance by paying a reinstatement fee equal to the total Maintenance fees that would have been paid to Contractor had ordering activity not terminated Maintenance, or the then current license fee for the applicable Product(s), whichever is less. Termination of Maintenance will not terminate ordering activity's rights to continue to use the Product(s) under the provisions of Section 3 herein.

5)   Contractor reserves the right to discontinue Maintenance for a Product(s) if Contractor generally discontinues such services to all licensees of the applicable Product(s). Notwithstanding the foregoing, Contractor shall provide twelve (12) months notice to ordering agency of its intent to terminate such services.

6)   Contractor's obligation to provide Maintenance is dependent on the continued existence of the license to use the Product(s) and if the license is terminated for any reason, Contractor's obligations to provide Maintenance will cease automatically on the occurrence of such event.

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

5.   Periods of Term Licenses (132-32) and Maintenance (132-34)

a.   The Contractor shall honor orders for periods for the duration of the contract period or a lessor period of time.

b.   Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c.   Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.

d.   Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e.   Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of the term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

6.   Conversion from Term License to Perpetual License

a.   The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (l0) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.

b.   Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.

c.   The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.

d.   The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to _____60_____% of all term license payments during the period that the software was under a term license within the ordering activity.

7.   Term License Cessation

a.   After a software product has been on a continuous term license for a period of _____60_____ * months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

b.   The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number l32-34, if the licensee elects to order such services. Title to the software shall remain with the Contractor.

8.   Utilization Limitations - (132-32, 132-33 AND 132-34)

a.   Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b.   When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1)   Title to and ownership of the software and documentation shall remain with the Contractor.

Each license granted hereunder only grants ordering activity the right to use the specified Product(s) under the terms, conditions, and restrictions specified in this Contract. Ordering activity does not, and shall not, acquire any other right, title or interest in any Product(s), Derivative Works, copyrights or other intellectual property rights therein, which shall at all times remain the property of Contractor or a relevant third party. Ordering activity hereby acknowledges Contractor's claim that the Product(s), excluding any third party products, have been developed, acquired and maintained by Contractor on a confidential basis as Contractor's valuable trade secrets. Ordering activity agrees to preserve the confidential nature of these trade secrets and ordering activity will not permit the use or copying of the Product(s) by, or disclose any information relating to the Product(s) to any third party, except as set forth under Subsection 8.b(2) herein. Ordering activity shall not remove, suppress or modify in any way any proprietary marking, including, but not limited to, any trademark or copyright notice, on or in the Product(s), or which is visible during their operation or which is on any media supplied with the Product(s). Ordering activity shall incorporate such proprietary markings in any authorized back-up or disaster recovery copies made of the Product(s). Ordering activity acknowledges that Contractor's rights in and to the Product(s) are unique and that financial remedies will be insufficient to compensate Contractor for any infringement of such rights. Contractor shall be entitled to seek injunctive and other equitable relief to protect, maintain, defend, enforce, and preserve such rights, in addition to any other remedies that may be available.

(2)   GRANT:

(a) In consideration of the sums payable by ordering activity to Contractor, Contractor hereby grants to ordering activity a nonexclusive, nontransferable license to use the Product(s) identified in the Purchase Order, in perpetuity, in executable object code form only, in the country designated in the Ship To Address Section of the Purchase order, subject to the terms and conditions set forth in this Contract. Ordering activity agrees to use the Product(s) for its internal business purposes only, and ordering activity shall have no right to sublicense, resell, lease, rent, distribute, operate a software service bureau, operate as an outsourcer, use the Product(s) in a time-sharing arrangement, or except as otherwise set forth herein, transfer such Product(s). Ordering activity shall have no right

to, and agrees not to, disassemble, reverse compile, reverse engineer, create Derivative Works, create a patent based on the Product(s), any portion thereof or any Derivative Works, or attempt to discover or modify in any way the underlying source code of the Product(s). Ordering activity agrees to abide by the user limitations set forth in the applicable Product Schedule(s) regardless of whether the Product(s) is accessed via a client, direct database or any other application program interface. Additional Product specific licensing terms for each of the Product(s) licensed hereunder are set forth in paragraph 13 below.

(b)   In the event ordering activity contracts with a third party for product implementation, customization, consulting, or outsourcing services, such third party may have access to the Product(s) licensed herein provided (i) written approval is granted by Contractor (for implementation, customization or outsourcing services only); (ii) use by the third party is restricted to providing such implementation, customization, consulting or outsourcing services to ordering activity; and (iii) ordering activity ensures that such third party's use of the Product(s) is in compliance with the licensing terms set forth in this Contract. Ordering activity acknowledges and agrees that breaches by any such third parties shall be deemed to be breaches by ordering activity under this Contract.

For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3)   Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the   ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4)   The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5)   "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

9.   Termination by Contractor

a.   Contractor shall have the right to terminate any Purchase Order(s) thereto without further obligation or liability to ordering activity if (i) ordering activity is delinquent in making payments of any license fees due under this Contract and continues to be delinquent for a period of thirty (30) days after written notification of such delinquency; (ii) ordering activity commits any other material breach of this Contract and fails to remedy such breach within thirty (30) days after written notice by Contractor of such breach. Notwithstanding the foregoing, Contractor shall have the right to terminate any Purchase Order(s) thereto without further obligation or liability to ordering activity.

b.   Upon termination of this Contract and/or any Purchase Order(s) thereto for any reason, the license and all other rights granted to ordering activity hereunder shall immediately cease, and ordering activity shall immediately: (i) return the Product(s) to Contractor together with all reproductions of the Product(s) and all copies of documentation

and other materials associated with the Product(s); (ii) purge all copies of the Product(s) or any portion thereof from all CPU's and/or Network Servers and from any computer storage device or medium on which ordering activity has placed or permitted others to place the Product(s); (iii) pay Contractor all amounts due and payable up to the date of termination; and (iv) give Contractor a written certification that ordering activity has complied with all of its obligations under (i) and (ii) in this Subsection 9b. Contractor's termination of this Contract and/or repossession of the Product(s) shall be without prejudice to any other remedies that Contractor may lawfully have.

10.   Software Conversions - (132-32 and 132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license (132-32), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

11.   Descriptions and Equipment Compatibility

Please see attached Planet Associates Product Catalog for full descriptions of available Software Products.

12.   Right-To-Copy Pricing

The Contractor shall insert the discounted pricing for right-to-copy licenses.

None Offered