TERMS AND CONDITIONS

All software, hardware and equipment sales made by DATASKILL Inc. ("DATASKILL") to its customers ("Purchaser") are subject to these terms and conditions. Purchaser's acceptance of these terms and conditions shall be made by either (i) Purchaser providing a purchase order number to DATASKILL or (ii) Purchaser's acceptance of any Product from DATASKILL, whichever occurs first. These terms and conditions shall apply to sales of all products including special order product except as otherwise noted below ("Product"). The term "Special Order Product" as used herein shall mean products that have been configured to Purchaser's specifications. Electronic Software Distribution (ESD) product sales are subject to additional terms.

1. ORDERING

(a) Prior to placing an order, Purchaser's account must be current and in good standing. Purchaser must provide DATASKILL with complete Product order information as required by DATASKILL.

(b) The Product order information will include without limitation the (i) Product description, (ii) unit quantity, (iii) DATASKILL SKU number and/or vendor part number, (iv) current unit price as provided by DATASKILL, and (v) correct shipping address. Purchaser personnel will identify, for each Product order, the ship-to destination as either Purchaser, Purchaser's customer, or to some other specified third party. DATASKILL reserves the right to require additional information based on the requirements of the manufacturer or publisher of the Product.

(c) Purchaser shall not disclose any confidential information when ordering from DATASKILL.

(d) Purchaser may place orders over telephone, via facsimile, and via DATASKILL- approved electronic ordering methods only through persons who identify themselves as Purchaser personnel and provide their DATASKILL customer number prior to placing the order. DATASKILL will have no obligation to confirm the validity of any order placed or the authority of the person placing an order in this manner.

(e) Purchaser will disclose its DATASKILL customer number only to its personnel with a need to know.

(f) DATASKILL's acceptance of any order from Purchaser is limited to these terms and conditions in their entirety without addition, modification, or exception. Any additional or different terms in Purchaser's purchase order or submitted by Purchaser in any form are hereby deemed to be material alterations hereto and notice of objection to them is hereby given.

(g) Orders for direct shipment or Special Order Products may require prepayment and may be subject to additional fees. DATASKILL will have no obligation to hold Product for future sale to Purchaser if Purchaser's order is incomplete, on hold, or if Purchaser does not confirm it within 48 hours of notification from DATASKILL that back-ordered Product is available for shipment.

2. PRICING

(a) All Product pricing, description and availability information ("Information") provided by DATASKILL, in any form, is the property of DATASKILL. DATASKILL hereby grants Purchaser a limited, non-exclusive, nontransferable license to use the Information for Purchaser's internal use only for purposes of Purchaser's sales and purchases of Products sold by DATASKILL. If DATASKILL provides Information to Purchaser electronically, Purchaser agrees to update such Information regularly to ensure its accuracy. Purchaser agrees to hold in confidence and not to directly or

indirectly use, reveal, report, publish, disclose or transfer to any other person or entity any of the Information or utilize the Information for any purpose except as permitted herein.

(b) DATASKILL MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED ON THE INFORMATION. ALL INFORMATION IS PROVIDED TO PURCHASER "AS IS." DATASKILL HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, RELATING TO INFORMATION INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

(c) All prices are subject to change without notice and will be established at time of order acceptance by DATASKILL. Order acceptance and sale by DATASKILL occurs at time of shipment. Prices for backordered Products are not guaranteed.

3. SHIPMENT AND DELIVERY

(a) All Product shipments will be made FOB origin. For Products owned by DATASKILL, title and risk of loss will transfer to Purchaser upon DATASKILL tendering the Product for delivery to the carrier. If Purchaser requests DATASKILL prepay and bill Purchaser for freight charges, Purchaser agrees that DATASKILL retains the right to choose the carrier. Notwithstanding anything to the contrary herein, additional charges may apply for unusually heavy or large items or for shipment of materials designated as hazardous in accordance with Federal and/or International Air Transportation regulations. COD and additional fees may also apply.

(b) Purchaser shall examine all Products upon receipt and shall notify DATASKILL, as specified herein, of all discrepancies and refusal to accept delivery of purchased Product. Such notice shall be reasonably detailed and explain the discrepancy or why the purchased Product was refused. If Purchaser does not give DATASKILL such notice as stated herein, Purchaser agrees that such Products have been accepted by Purchaser as of the date of shipment.

4. CREDIT AND PAYMENT TERMS

(a) Purchaser shall furnish to DATASKILL all financial information reasonably requested by DATASKILL from time to time for the purpose of establishing or continuing Purchaser's credit limit. Purchaser agrees that DATASKILL shall have the right to decline to extend credit to Purchaser and to require that the applicable purchase price be paid prior to shipment.

(b) Purchaser shall promptly notify DATASKILL of all changes to Purchaser's name, address, or of the sale of substantially all of its assets. DATASKILL shall have the right from time to time, without notice, to change or revoke Purchaser's credit limit on the basis of changes in DATASKILL's credit policies or Purchaser's financial condition and/or payment record.

(c) Purchaser shall not deduct any amounts owing from any DATASKILL invoice without DATASKILL's express written approval, which approval shall be contingent upon Purchaser providing all supporting documentation for such deduction as required by DATASKILL.

(d) A service charge of the lesser of two percent (2%) per month or the maximum amount allowed by law will be charged on all past due balances commencing on the date payment is due.

(e) DATASKILL retains (and Purchaser grants to DATASKILL by submitting a purchase order) a security interest in the Products to secure payment in full, and Purchaser agrees to execute any additional documents necessary to perfect such security interest.

(f) If Purchaser fails to make timely payment of any amount invoiced hereunder, DATASKILL shall have the right, in addition to any and all other rights and remedies available to DATASKILL at law or in equity, to immediately revoke any or all credit extended, to delay or cancel future deliveries and/or to reduce or cancel any or all quantity discounts extended to Purchaser. Purchaser shall pay all costs of collection including reasonable attorneys' fees. Any obligation of DATASKILL under these terms and conditions to deliver Products on credit terms shall terminate without notice if Purchaser files a voluntary petition under a bankruptcy statute, or

makes an assignment for the benefit of creditors, or if an involuntary petition under a bankruptcy statute is filed against Purchaser, or if a receiver or trustee is appointed to take possession of the assets of Purchaser.

5. TAXES

(a) Purchaser shall bear applicable federal, state, municipal, and other government taxes (such as sales, use, etc.).

(b) Unless otherwise specified, prices do not include such taxes.

(c) Exemption certificates, valid in the place of delivery, must be presented to DATASKILL prior to shipment if they are to be honored.

6. WARRANTY

(a) Product warranties, if any, are provided by the manufacturer or publisher of the Products. DATASKILL makes no warranties whatsoever. DATASKILL's sole obligation (and Purchaser's sole remedy) in the event of breach of any warranty shall be the repair or replacement of defective Products.

(b) IN NO EVENT SHALL DATASKILL BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. DATASKILL DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. DATASKILL MAKES NO WARRANTY, EXPRESS OR IMPLIED, OTHER THAN THOSE SPECIFICALL Y SET FORTH HEREIN.

7. PRODUCT RETURNS

(a) Requirements - Purchaser must obtain a valid Return Material Authorization ("RMA") number from DATASKILL for all returns. RMAs will be issued, at DATASKILL's sole discretion, in accordance with these terms and conditions. Purchaser must provide its account number and all other information as required by DATASKILL for all returns. RMAs are valid for fifteen (15) calendar days from the date of issuance. Purchaser must allow for in-transit time for Products to be returned to DATASKILL, as DATASKILL must physically receive Products within the fifteen (15). RMAs will be issued for authorized returns under one of the following categories: (i) defective Products, (ii) stock balancing, (iii) billing or shipping discrepancies, or (iv) damaged Product. Purchaser is responsible for ensuring that the RMA number is clearly visible on the address label of the Product packaging when it is returned to DATASKILL. DATASKILL will refuse delivery of any boxes without a valid, clearly visible RMA number as noted above. Overgoods are unauthorized returns. Any Products received by DATASKILL (i) without a valid RMA number, including Product shipments refused by Purchaser except those damaged in transit from DATASKILL to Purchaser, (ii) later than twenty calendar (20) days from the RMA date, or (iii) in a condition unsuitable for resale (excluding defective Products), will be considered Overgoods. DATASKILL will return Overgoods to Purchaser, and will charge Purchaser a $50 processing fee per shipment plus related freight charges. If Purchaser refuses the shipment of Overgoods from DATASKILL or returns the Overgoods to DATASKILL a second time without DATASKILL's prior authorization, Purchaser agrees to relinquish all right and title to and waives all claims against DATASKILL for credit related to such Products. Notwithstanding anything to the contrary, DATASKILL reserves the right not to authorize the return of Products that are no longer in production or are being produced or published by a manufacturer or publisher that (i) is insolvent, (ii) has declared bankruptcy, or (iii) will not accept returns from DATASKILL.

(b) Defective Product Returns -Defective returns are only for Products purchased from DATASKILL that are inoperable or do not function in accordance with the specifications published by the manufacturer or publisher and are covered under the manufacturer's or publisher's warranty. All defective returns are subject to more restrictive manufacturer or publisher policies. Purchaser may request an RMA for the return of defective Products, excluding Special Order

Products, within forty-five (45) calendar days of invoice date. Purchaser's defective returns will be limited to a maximum of 15% of the value of Purchaser's Product purchases within the same vendor code as the defective Product during the forty-five (45) calendar days prior to the RMA date, less any prior defective returns during that period. Upon receipt of the defective Product for which the RMA was issued, DATASKILL may test the Products and may return to Purchaser, at Purchaser's expense, any Products found not to be defective. Upon verification that the returned Product is defective, DATASKILL may, at DATASKILL's sole discretion, either (i) repair the defective Product, (ii) ship Purchaser a replacement Product, or (iii) provide Purchaser a credit equal to the lesser of the Product's invoice price or current replacement value less any applicable charges or fees. DATASKILL reserves the right to require Purchaser to return defective Products directly to the manufacturer or publisher for replacement according to its defective Products return policy. DATASKILL shall not be obligated to repair, replace, or issue credit to Purchaser for Products rendered defective, in whole or in part, by causes external to the Products, including, but not limited to, catastrophe, power failure or transients, overvoltage on interface, environment extremes, improper use, maintenance or application of the Products or use of unauthorized parts. Purchaser shall bear all risks of loss when returning defective Products.

(c) Damaged Product Returns - Damaged Product returns are only for Products purchased from DATASKILL and shipped via DATASKILL's carrier of choice that are damaged in transit from DATASKILL to the Purchaser. Purchaser shall refuse any Product delivered in damaged condition. If the Product is received in damaged condition, Purchaser shall notify DATASKILL and request an RMA within three (3) business days of receipt of such Product. Failure to notify DATASKILL and request an RMA within such time shall be deemed an acceptance of the Product as of the date of shipment.

8. BILLING AND SHIPPING DISCREPANCIES

(a) Billing and shipping discrepancies are for Products purchased from DATASKILL that were invoiced or shipped incorrectly. These include lost shipments, short shipments, wrong sales, wrong shipments and pricing/invoice errors. Purchaser may request an RMA for verified billing and shipping discrepancies within thirty (30) calendar days of invoice date.

(b) In addition, Purchaser must notify DATASKILL of any billing discrepancies related to Purchaser's authorized returns within ninety (90) calendar days of RMA date. Such notice shall be reasonably detailed and shall specify the discrepancy. Failure to give such notice within the time specified herein shall be deemed a waiver of Purchaser's rights to claim such discrepancy.

9. LIMITATION OF LIABILITY.
DATASKILL SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, OR HOLD HARMLESS PURCHASER FROM AND AGAINST ANY OR ALL DAMAGES AND COST INCURRED BY PURCHASER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY PRODUCTS. DATASKILL SHALL NOT BE LIABLE TO PURCHASER, OR ANY OTHER PARTY FOR ANY LOSS, DAMAGE, OR INJURY THAT RESULTS FROM THE USE OR APPLICATION BY PURCHASER, , OR ANY OTHER PARTY, OF PRODUCTS DELIVERED TO PURCHASER, UNLESS THE LOSS OR DAMAGE RESULTS DIRECTLY FROM THE INTENTIONALLY TORTIOUS OR FRAUDULENT ACTSOR OMISSIONS OF DATASKILL. IN NO EVENT SHALL DATASKILL BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR LOSS, DAMAGE, OR INJURY OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, OR ANY AGREEMENT INTO WHICH THEY ARE INCORPORATED, OR ANY PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS BY DATASKILL, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, IN EXCESS OF THE NET PURCHASE PRICE OF THE PRODUCTS OR SERVICES ACTUALLY DELIVERED TO AND PAID FOR BY PURCHASER HEREUNDER. IN NO EVENT SHALL DATASKILL BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH DATASKILL'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS AND CONDITIONS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY PRODUCTS OR INFORMATION DATASKILL SHALL PROVIDE HEREUNDER, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF

SUCH DAMAGES. PURCHASER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES. IN NO EVENT SHALL DATASKILL HAVE ANY LIABILITY FOR ANY PRODUCTS USED FOR AVIATION, MEDICAL, LIFESAVING, LIFE-SUSTAINING OR NUCLEAR APPLICATIONS.

10. **RELATIONSHIP OF THE PARTIES.** Purchaser's relationship with DATASKILL will be that of an independent contractor. Purchaser will not have, and will not represent that it has, any power, right or authority to bind DATASKILL, or to assume or create any obligation or responsibility, express, implied or by appearances, on behalf of DATASKILL or in DATASKILL's name, except as herein expressly provided. Nothing stated in these terms and conditions will be construed as constituting Purchaser and DATASKILL as partners or as creating the relationships of employer/employee, franchisor/franchisee, or principal/agent between the parties. Purchaser will make no warranty, guarantee or representation, whether written or oral, on DATASKILL's behalf.

11. **CHOICE OF LAW/CHOICE OF FORUM.** These terms and conditions (and any agreement into which they are incorporated) shall be construed, interpreted and enforced under and in accordance with the internal laws of the State of California, excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction. Purchaser agrees to exercise any right or remedy in connection with these terms and conditions exclusively in, and hereby submits to the jurisdiction of the State of California, Courts of San Diego County, California, or the United States District Court at San Diego, California The state and federal courts situated in San Diego County, California will have non-exclusive jurisdiction and venue over any dispute or controversy that arises out of these terms and conditions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.

12. **NOTICES.** All notices, requests, demands, and other communications that either party may desire to give the other party must be in writing and may be given by (i) personal delivery to an officer of the party, (ii) mailing the same by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth herein, at the official corporate address of such party, or such other address as the parties may hereinafter designate, or (iii) facsimile subsequently to be confirmed in writing pursuant to item (ii) above. Notices to DATASKILL shall be sent to: DATASKILL Inc., 12520 High Bluff Drive, Suite 300, San Diego, CA 92130, Attn: Legal Department.

13. **BINDING EFFECT/ASSIGNMENT.** These terms and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective representatives, successors and permitted assigns. Neither party may assign its rights and/or duties under these terms and conditions without the prior written consent of the other party given at the other party's sole option. Any such attempted assignment shall be void. Notwithstanding the foregoing, DATASKILL may assign any purchase order received from Purchaser to a subsidiary or affiliate upon notice to Purchaser.

14. **PARTIAL INVALIDITY.** If any provision of these terms and conditions shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15. **NO WAIVER.** Failure or delay of DATASKILL to exercise a right or power under these terms and conditions shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

16. **CAPTIONS.** The captions used herein are for reference purposes only and shall have no *effect* upon the construction or interpretation of any provisions herein.

17. **GENERAL.** These terms and conditions, as published on DATASKILL's Web site located at www.dataskill.com at the time of sale, are the official terms and conditions of sale between DATASKILL and Purchaser and may be amended from time to time without notice at DATASKILL's sole discretion.

# # #