



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

1. INSPECTION/ACCEPTANCE

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

2. WARRANTY

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

- a. A verbatim extract from Praxis' license agreement, with respect to the warranty, is stated below:

***Praxis Engineering Product License Agreement
(Rev. 1.4; April 5, 2007)***

7.0 LIMITED WARRANTIES. Praxis warrants the media on which the Product is furnished to Licensee to be free of defects in materials and workmanship and that the Product will substantially operate according to specifications published by Praxis for a period of ninety (90) days from the date of purchase.

Praxis' sole liability and Licensee's exclusive remedy for breach of any warranties shall be, at Praxis' option: (a) to repair or replace Licensee's defective media or Product or; (b) to refund the license fee paid for the Product and cancel this Agreement. Any modification of the Product by any party other than Praxis except in accordance with Praxis' instructions, or use of said Product other than as specified in relevant Praxis publications, shall void this warranty.

PRAXIS DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PRODUCT WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE PRODUCT WILL BE ERROR-FREE. EXCEPT TO THE EXTENT PROHIBITED BY LAW, PRAXIS EXPRESSLY DISCLAIMS ALL WARRANTIES (OTHER THAN THOSE WARRANTIES STATED IN THIS SECTION 7.0), EXPRESS OR IMPLIED, WITH RESPECT TO THE MEDIA AND PRODUCT, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, AND ANY WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S QUIET ENJOYMENT OF THE PRODUCT. IN THE EVENT THAT PRODUCT LICENSED AND PROVIDED UNDER THIS AGREEMENT IS MODIFIED BY LICENSEE (WHICH MODIFICATION SHALL INCLUDE, WITHOUT LIMITATION, THE CREATION OF OBJECT CODE), THE WARRANTIES AS PROVIDED IN THIS SECTION 7.0 ARE VOID AS TO SUCH PRODUCT, AND SUCH PRODUCT IS THEN



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8.0 INDEMNIFICATION. Praxis shall, except as otherwise provided below, defend or settle any claim made or any suit or proceeding brought against Licensee so far as it is based on an allegation that any Product furnished hereunder infringes any patent, copyright, trademark, trade secret or other intellectual property right, if Praxis is notified promptly in writing and given reasonable information and assistance, and Praxis is given the sole authority to defend or settle same at Praxis's expense. Praxis shall pay all damages and costs (other than costs of Licensee's retained counsel or the value of the services of Licensee's employees) finally awarded therein against Licensee. In case the Product in such suit is held to infringe and the use of the Product is enjoined, or in the case of a settlement as referred to above, Licensee will permit Praxis, at its own option and expense, to: (a) procure for Licensee the right to continue using the Product; (b) replace the Product with a noninfringing Product without degradation in performance; (c) modify the Product so it becomes noninfringing without degradation in performance; or, (d) if none of the foregoing is practicable in the reasonable judgment of Praxis, Praxis will refund the price paid for the Product. If Praxis refunds the price paid for the Product, the Product license under this Agreement shall immediately terminate. Praxis shall have no liability for any infringement of patents, copyrights, or other intellectual property rights, trademarks or trade secret resulting from: (1) compliance with Licensee's designs, specifications, or instructions; (2) modifications of the Product by any party other than Praxis other than in accordance with Praxis's instructions; (3) use of the Product other than as specified in relevant Praxis publications; (4) use of the Product by Licensee after Praxis has made available to Licensee a non-infringing version of the Product or has refunded to Licensee the price paid for the Product; or (5) use of the Product with infringing software or data. THIS SECTION 8.0 STATES PRAXIS'S AND LICENSEE'S ENTIRE LIABILITY FOR COPYRIGHT, TRADE SECRET, PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT INFRINGEMENT BY THE PRODUCT FURNISHED HEREUNDER.

- 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.
- c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

3. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide Hot Line technical support via email at gsasupport@praxiseng.com or by phone at (301) 490-4299 Ext. # 1300, for providing user assistance and guidance in the implementation of the software. Technical support is provided per our software maintenance agreement below.



4. SOFTWARE MAINTENANCE

- a. Praxis Engineering Products, LLC, software maintenance service includes the following:

***Praxis Engineering Product Maintenance Agreement
(Rev. 1.4; April 5, 2007)***

IMPORTANT! THIS MAINTENANCE AGREEMENT (HEREAFTER “AGREEMENT”) OUTLINES THE TERMS OF THE AGREEMENT BETWEEN PRAXIS ENGINEERING PRODUCTS, LLC (HEREAFTER “PRAXIS”) AND PURCHASER (HEREAFTER “CUSTOMER”) AND THE RESPONSIBILITIES OF BOTH PRAXIS AND THE CUSTOMER REGARDING MAINTENANCE OF THE SOFTWARE (HEREAFTER “PRODUCT”).

1.0 **TERM.** This agreement becomes effective on the first day of Praxis delivery of Product to customer for the period purchased by the customer.

2.0 **TECHNICAL SUPPORT.** Praxis will use commercially reasonable efforts to assist the Customer to resolve problems in the use of the Product when hosted on a supported platform. Praxis makes no guarantee that it can, or will, solve any, and all, problems with respect to the Product. Praxis will provide technical support during normal business hours unless otherwise specified.

2.1 **CONTACTING TECHNICAL SUPPORT.** Praxis will provide the Customer with a Technical Support email address upon receipt of a valid purchase order for Product maintenance. Customer shall use this email address to report issues to Praxis technical support unless otherwise directed by Praxis. When contacting technical support, Customer shall: (a) describe the nature of the problem; (b) provide purchase order number(s) for Product and maintenance; (c) provide the Product name (d) provide the Product version (e) provide complete contact information, to include telephone and email address, of the individual that Praxis will work with for problem resolution.

3.0 **PRODUCT UPDATES.** During the term of this Agreement, Praxis will provide Customer with Product updates which include: (a) Product patches, (b) general Product updates, (c) bug fixes, and (d) other updates at the sole discretion of Praxis. Praxis makes no guarantee: (a) as to the time of release of its Product updates or (b) that Product updates will become available during the term of this agreement. Product updates do not include (a) newly created add-on Product modules that provide extended functionality to the Product under maintenance, (b) major Product releases, or (c) upgrades to any third party software. Major product releases are determined solely by Praxis.

4.0 **CUSTOMER RESPONSIBILITIES.** Unless otherwise specified, Customer is responsible for: (a) hardware, (b) operating systems, (c) network setup and maintenance, (d) setup and use of any access control systems external to the Product (e) ensuring its personnel have access to the Product documentation and (f) ensuring its personnel have sufficient training to be competent in the operation of the Product.

5.0 **PRODUCT MAINTENANCE REINSTATEMENT POLICY.** If the Customer discontinues maintenance and at a future period wishes to reinstate maintenance, Customer shall pay Praxis the then-current maintenance fee for the lapsed maintenance period and renew the maintenance agreement for an additional term. In addition, Customer shall pay Praxis an administrative reinstatement fee equal to 50% of the lapsed maintenance fees. The lapsed maintenance period



defined as the period of time when the Customer discontinued maintenance and did not have a maintenance agreement in force for its eligible Product(s).

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 lesser period of time.
- b. Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar day's 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 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

Note: *Praxis does not offer conversions from Term License to Perpetual License at this time.*

- 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 (10) 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 0 % of all term license payments during the period that the software was under a term license within the ordering activity.

7. TERM LICENSE CESSATION



Note: Praxis does not offer conversions from Term License to Perpetual License at this time.

a. After a software product has been on a continuous term license for a period of **0** 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 132-34, 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, unless otherwise specified.
- (2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present 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.



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- (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.

Note: *Praxis does not allow software modifications to its product as specified by the Software License and Maintenance Agreement.*

- (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. SOFTWARE CONVERSIONS - (132-32 AND 132-33)

Note: *Software conversions, per this section, are not offered at this time.*

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.

10. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

Praxis provides below a complete description of our software products and a list of equipment on which the software can be used.

Praxis Engineering's Field Agent's Survey, Targeting, Reconstruction, and Analysis Kit (**FASTRAK**TM) is laptop-based software developed for the government and law enforcement communities. The **FASTRAK** is also valuable in network security and computer forensic applications. **FASTRAK**TM provides a platform that allows users in the field to perform a wide range of location, collection, and analysis functions locally. In addition to complete collection capabilities, **FASTRAK**TM enables the creation of actual intelligence in the field. **FASTRAK**TM delivers to the end-user a mobile computing platform that provides the capability to detect and identify 802.11 wireless local area networks (LAN) and acquire associated packets in transit, in support of communication session reconstruction and analysis.

PRODUCT NUMBER	PRODUCT NAME OR DESCRIPTION
PEP-001003001	<i>FASTRAK Multichannel-16 Software License</i>
PEP-001002001	<i>FASTRAK Laptop Software License</i>
PEP-001019001	<i>FASTRAK Handheld Software License</i>

FASTRAKTM software can be hosted on various platforms, which include rack mount computer configurations, PC (laptop), and handheld devices. Specific platform information is as follows:

- Rack mount Computer Configurations - Call for details;
- Laptop - Dell M65 Notebook, 15" display, mini-pci slot, PCMCIA slot, Bluetooth, CD-RW, 1GB RAM, 80GB hard drive, auto power adaptor, Bluetooth GPS unit, Mini-PCI a/b/g WLAN card or equivalent, call for details; or



- Handheld - Samsung Q1 Ultra-mobile PC, 1 GHz Pentium M, 1GB memory, 60GB HD, built-in Atheros b/g, keyboard, external DVD RW drive, Bluetooth GPS unit or equivalent, call for details.

Complete product documentation is included with the product in electronic format (PDF) and includes an introduction to the product, installation instructions, a complete user manual and a quick start guide.

Other platforms may also be supported and available. Call for details: 301-490-4299.

11. RIGHT-TO-COPY PRICING

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