

MASTER AGREEMENT
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
SAS INSTITUTE, INC.
EFFECTIVE JULY 1, 2023, through JUNE 30, 2026

THIS AGREEMENT, and amendments and supplements thereto, is made between the Midwestern Higher Education Commission (hereinafter MHEC) located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, for the benefit of the Eligible Organizations located in the MHEC member states, and SAS Institute, Inc. (hereafter SAS or Vendor) 100 SAS Campus Drive Cary, NC 27515-2414. For purposes of this Master Agreement (hereafter Agreement) MHEC and SAS are referred to collectively as the “Parties” or individually as “Party”.

Whereas, the Midwestern Higher Education Compact (Compact) is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Member States); and MHEC, a nonprofit 501(c) (3), is a statutorily created governing body of the Compact established for the purposes, in part, of determining, negotiating and providing quality and affordable services for the Member States, the entities in those Member States, and the citizens residing in those Member States; and

Whereas, MHEC has established a Technology Initiative for the purpose of which is to determine, negotiate and make available quality and affordable technology products and services to the Eligible Organizations (defined below) in the MHEC Member States; and

Whereas, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE) and the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NEBHE Member States, SREB Member States, and the WICHE Member States access MHEC’s Technology Initiative contracts, including this Agreement; and

Whereas, NEBHE Member States refers to any state that is a member, or affiliate member of NEBHE. Current NEBHE Member States are: Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont; and

Whereas, SREB Member States refers to any state that is a member or an affiliate member of SREB. Current SREB Member States are: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

Whereas, WICHE Member States refers to any state that is a member or an affiliate member of WICHE. Current WICHE Member States are: Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and U.S. Pacific Territories and Freely Associated States; and

Whereas, SAS offers certain quality technology related products and services; and

Whereas, MHEC conducted a competitive sourcing event for Data Analytics for Student Success, Institutional Efficiencies, and Integration MHEC-RFP-08152022, dated August 15, 2022, and upon completion of the competitive process SAS received an award; and

Therefore, in consideration of mutual covenants, conditions, and promises contained herein, MHEC and SAS agree as follows:

1. DEFINITIONS

A. **DOCUMENTATION**: Refers to the Software documentation made available by Vendor to Procuring Eligible Organization upon licensing software.

B. **ELIGIBLE ORGANIZATIONS**: This Agreement shall be the framework under which Eligible Organizations can acquire solution offerings consisting of Products and Services from Vendor. Eligible Organizations shall include:

- i. All not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions, and equivalent institutions;
- ii. All K-12 schools and school districts;
- iii. All city, county, and other local governments; and
- iv. All state governments and their departments.

Eligible Organizations shall also include all not-for-profit private and public institutions and/or systems of higher education; K-12 schools and districts; city, county, and other local governments; and state governments and their departments located within the following other education Compacts in the country; the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE).

C. **ORDER**: Refers to a SAS Order Form and all Required Contract Documents (as defined below) that will be executed by SAS and each Eligible Organization. The Order will specify the SAS offering to be licensed, the applicable usage and pricing metric, and fees. Purchasing documents of Eligible Organizations are expressly rejected, unless mutually agreed upon by SAS and such Eligible Organization.

D. **REQUIRED CONTRACTING DOCUMENTS**: This Agreement is a price Agreement. Accordingly, Vendor shall provide Software and Services at the pricing set forth in this Agreement upon execution of all Required Contracting Documents and SAS Order Form between Vendor and Eligible Organizations and its associated addenda, and these documents shall be hereinafter referred to as the "Required Contract Documents". Forms of the Required Contracting Documents are attached hereto as Exhibit B.

- i. SAS Sample Order Form

- ii. SAS Universal Terms;
 - iii. SAS Software License Addendum;
 - iv. SAS Consulting Services Addendum;
 - v. SAS Hosting Managed Services (HMS) Addendum; and
 - vi. SAS Hosting Managed Services (HMS) Service Level Warranty Addendum
 - vii. SAS Training Points Addendum
- E. **PROCURING ELIGIBLE ORGANIZATION:** Refers to an Eligible Organization which desires to purchase under this Agreement and has executed an Order Form and all Required Contracting Documents with Vendor as described below and in Exhibit B. May also be referred to as Customer in Required Contracting Documents.
- F. **PRODUCTS:** Refers to Vendor's full line of data analytics solutions for a) student success, b) institutional efficiencies, and c) integration made available for sale by Vendor to Eligible Organizations under this Agreement. Vendor may incorporate changes to their Product offerings from time to time in accordance with the terms and conditions of this Agreement. Any changes must be within the scope of the Data Analytics for Student Success, Institutional Efficiencies, and Integration MHEC-RFP-08152022 award.
- G. **PRODUCT LIST:** Refers to the complete list of Software and the corresponding prices for such Software made available to Eligible Organizations under this Agreement. The Product List is set forth as Exhibit A and may be modified from time to time, at Vendor's discretion, by providing written notice to MHEC with an updated Exhibit A.
- h. **PURCHASE ORDER:** Procuring Eligible Organization Purchase Order may incorporate only the Products and Services specified in the Order, and no other terms or conditions shall be deemed to be a part of this Agreement and are expressly rejected, unless mutually agreed upon by SAS and such Procuring Eligible Organization.
- i. **SERVICES:** Refers to Vendor's full line of data analytics solutions for a) student success, b) institutional efficiencies, and c) integration made available for sale by Vendor to Eligible Organizations under this Agreement. Services offered under this Agreement including but not limited to: pre-sales assessment, installation and implementation assistance, and training. Vendor may incorporate changes to their Services offerings from time to time in accordance with the terms and conditions of this Agreement. Any changes must be within the scope of the Data Analytics for Student Success, Institutional Efficiencies, and Integration MHEC-RFP-08152022 award.
- J. **SERVICES LIST:** Refers to the complete list of Services and the corresponding prices for those Services made available for purchase by Eligible Organization under this Agreement. The Services List contains an item number, item description and maximum price for each Services. Where travel is necessary to perform the Services, additional reasonable costs may be levied with prior written approval from Procuring Eligible Organization's authorized representative. The Services List is set forth as Exhibit A and

may be modified from time to time, at Vendor's discretion, by providing written notice to MHEC with an updated Exhibit A.

- K. **SOFTWARE:** Refers to SAS Institute Inc. Software Vendor makes available for license to Eligible Organizations at the pricing set forth in this Agreement as described on the Product List on Exhibit A.
- L. **HOSTED MANAGED SERVICES:** Refers to the provision of the SAS Institute, Inc., Software deployed within the system in a SAS-managed cloud environment and the managed services, which include, but are not limited to the provision, installation, management, monitoring, security and support of the hosted environment.

2. MASTER AGREEMENT TERM

The MHEC Master Agreement (Agreement) shall be effective on July 1, 2023, and shall remain in effect until June 30, 2026, (Term Ending Date). This Agreement may be mutually renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the Term Ending Date anniversary. Eligible Organizations may procure products and services from Vendor under the terms of this Agreement at any time during the duration of this Agreement.

3. LICENSE

Procuring Eligible Organization shall use all licensed Software in accordance with terms of the Required Contracting Documents. Vendor and Procuring Eligible Organization shall enter into Required Contracting Documents in substantially the forms attached hereto, subject to the mutual agreement of the parties.

4. DUE DILIGENCE

Notwithstanding MHEC's role in entering into this Agreement and any additional efforts by MHEC, Eligible Organization acknowledges and agrees that:

- A. Eligible Organization is solely responsible for its own due diligence regarding any Agreement;
- B. MHEC is not responsible for, and makes no representation or warranty, regarding the appropriateness of any Agreement for the Eligible Organization specifically;
- C. MHEC has not made any legally binding representations regarding Vendor's Products, or Services and that MHEC does not guarantee or warrant the Products or Services of Vendor; and
- D. MHEC is not responsible for the actions or omissions of Vendor.

Issues of interpretation and eligibility for participation are solely within the authority of the procurement and statutory rules and regulations applicable to the Eligible Organization. The Eligible Organization is responsible for assuring it has the authority to place Orders under this Agreement.

5. QUANTITY GUARANTEE

This Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. MHEC is not obligated to make any affirmative efforts to induce any purchases. The quantity of products and services that may be purchased is undetermined. An estimate quantity based on history or other means may be used as a guide but shall not be a representation by MHEC or any Eligible

Organization. This Agreement is not an exclusive agreement. MHEC and Eligible Organizations may obtain products and services from other sources during the term of this Agreement.

6. MHEC NOT LIABLE FOR ELIGIBLE ORGANIZATION

MHEC is not liable to Vendor for the failure of any Procuring Eligible Organization to make any payment or to otherwise perform fully pursuant to the terms and conditions of an Order and/or this Agreement. Vendor, in its sole discretion, may discontinue selling products or services to any Eligible Organization who fails to make payments or otherwise fully performs pursuant to the terms and conditions of this Agreement. MHEC does not guarantee that any Eligible Organization will utilize or make any purchase under this Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Agreement.

7. ORDER OF PRECEDENT

Where the terms and conditions of this Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and Vendor may enter into a written addendum with Vendor to amend the terms and conditions of this Agreement to conform to the Eligible Organization's state and/or institutional laws and regulations. Similarly, the Eligible Organization participating in this Agreement may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract (e.g., invoice requirements, ordering requirements, specialized delivery, etc.). Any addendum or supplemental agreement is exclusively between the participating Eligible Organization and Vendor, and subject to mutual negotiation between Eligible Organization and Vendor. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Addendum between Eligible Organization and Vendor
- B. The terms and conditions of this Agreement
- C. Exhibits to this Agreement
- D. The list of Products and Services contained in the Order

8. PURCHASING UNDER MASTER AGREEMENT

- A. **Products:** Procuring Eligible Organization shall acquire license(s) from Vendor for the Software listed in the Product List at the pricing available under this Agreement by delivering to Vendor an Order and executing the Required Contracting Documents. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Product in accordance with this Agreement; (iv) the "bill-to" address; (v) the "ship-to" address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference to this Agreement. Upon receipt of the Order, Vendor will provide Procuring Eligible Organization with the Required Contracting Documents. The Software will be licensed to the Procuring Eligible Organization upon execution of the Required Contracting Documents, in a form mutually agreed to by the Vendor and the Procuring Eligible Organization.
- B. **Services:** Procuring Eligible Organization shall purchase Services from Vendor at the prices available under this Agreement by delivering to Vendor an Order executing the Required Contracting Documents. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service(s); (iii) the price of the Service in accordance with

this Agreement; (iv) the “bill-to” address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Agreement. Upon receipt of the Order, Vendor will provide Procuring Eligible Organization with the Required Contracting Documents. The Services will be provided to the Procuring Eligible Organization upon execution of the Required Contracting Documents in a form mutually agreed to by the Vendor and the Procuring Eligible Organization.

- C. Vendor will accept a purchasing card for order placement in addition to accepting a purchase order. In addition, nothing in this section precludes any agreements for the use of electronic purchase orders and Vendor will provide reasonable electronic commerce assistance to Eligible Organization, if desired, for the electronic submission of purchase orders, purchase order tracking and reporting. The use of any purchasing card or electronic purchase orders may be subject to limitations and/or additional fees set forth by Vendor and agreed to by Procuring Eligible Organization.

9. PAYMENT PROVISIONS

- A. **Acceptance.** Except as may be provided in any warranty including in the Required Contracting Documents, Software may not be returned by a Procuring Eligible Organizations following receipt, and Software shall be deemed accepted upon delivery of a product authorization code to the Procuring Eligible Organization. Payments for any SAS offering will be made in accordance with each Order. SAS Software licenses and Hosted Managed Services (HMS) offerings (as defined in Required Contracting Documents) are payable in full at the start of each annual period and are not subject to further acceptance by Procuring Eligible Organizations unless expressly permitted in an Order. SAS Consulting Services will be paid in accordance with the schedule set forth in each Order.
- B. **Payment of Invoice.** Invoices shall be submitted to the Procuring Eligible Organization. Payments shall be remitted to Vendor at the address shown on the invoice. Payment shall be tendered to Vendor within thirty (30) days of the date of the invoice unless there exists a good faith dispute. In the absence of a good faith dispute and after the thirtieth (30th) day from the date of the invoice, unless mutually agreed to, interest shall be paid on the unpaid balance due to Vendor at the rate of one and one-half percent (1½%) per month or the maximum rate allowed by the applicable state laws of Procuring Eligible Organization. The Procuring Eligible Organization shall make a good faith effort to pay within thirty (30) days after the date of the invoice.
- C. **Dispute Notice.** Procuring Eligible Organization shall make a good faith effort to notify Vendor of any billing discrepancies or disputes about an invoice within ten (10) business days after receiving it, specifying with particularity the basis of any such dispute (“Dispute Notice”) or in accordance with the applicable state laws of the Procuring Eligible Organization. Tender of a Dispute Notice does not relieve Procuring Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Vendor will be subject to interest charges accruing from the original due date.
- D. **Payment of Taxes.** The Prices List under this Agreement do not include, and Procuring Eligible Organization shall reimburse Vendor for, any and all taxes and/or duties assessed against or payable by Vendor in connection with the sale of Products and Services except for taxes imposed upon Vendor’s net income. Unless the Procuring Eligible Organization provides proof of tax exemption, taxes will be additive to the contracted price.

10. REIMBURSEMENTS

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Vendor in performance of this Agreement may be reimbursed with prior written approval from Procuring Eligible Organization's authorized representative. Provided that Vendor shall be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided for in the current U.S. General Services Administration "GSA" Per Diem Rates or pursuant to Procuring Eligible Organization reimbursement policies.

11. SHIPPING

Vendor will ship products physically or virtual F.O.B. destination. Title to Software shall at all times remain with the Vendor. Risk of loss or damage to Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization.

12. PRODUCT DELIVERY

- A. Unless otherwise agreed to by Procuring Eligible Organization and Vendor, Vendor agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid Order or in accordance with the Required Contracting Documents. Vendor acknowledges that all locations of any particular Eligible Organization may not be within the MHEC region. When SAS receives the applicable fee for each license period, SAS will provide the Eligible Organization with a product authorization code which will enable the Software to operate for one (1) year.
- B. Vendors may choose to deliver Products electronically where practicable.

13. WARRANTIES

- A. Software: Vendor will provide the warranty for the Software as described in the Required Contracting Documents attached hereto.
- B. Services: Vendor will provide warranty for its Services as described in the Required Contracting Documents attached hereto.

14. TERMINATION

This Agreement may be canceled with or without cause by either the Vendor or MHEC at any time during its term upon ninety (90) days written notice to the other party; provided however, neither MHEC nor Procuring Eligible Organization has the right to terminate a specific Order for convenience after it has been issued. Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other Party, provided that the non-breaching Party shall give the breaching Party written notice specifying the breach and shall afford the breaching Party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching Party has not corrected the breach or in the case of a breach that cannot be corrected in thirty (30) days, begun, and proceeded in good faith to correct the breach, the non-breaching Party may declare the breaching party in default and terminate this Agreement immediately. Termination of an Order between Procuring Eligible Organization and SAS shall be set forth in the Required Contracting Documents. MHEC also reserves the right to remove from participation in Services associated with this Agreement any Vendor's employee and/or subcontractor whose conduct is deemed unsatisfactory by MHEC. Termination of this Agreement shall in no way limit either parties' remedies at law and equity.

Except as authorized in Required Contracting Documents, no refunds are available for product authorization codes previously delivered to a Procuring Eligible Organization. Except as authorized in Required Contracting Documents, Procuring Eligible Organizations may not terminate Orders for a Committed Term as defined in Required Contracting Documents. Refunds for HMS as defined in Required Contracting Documents are not available if MHEC or a Procuring Eligible Organization terminates an Order or this Agreement for convenience. In the event of termination for Services, Procuring Eligible Organizations must pay Vendor for work delivered prior to such date of termination.

In the event this Agreement expires or is terminated for any reason, a Procuring Eligible Organization shall retain its rights to continue to license the Software in accordance with the Required Contracting Documents provided the pricing for any subsequent renewal period following expiration or termination of this Agreement will be subject to the mutual agreement of the parties. In the event this Agreement expires or is terminated for any reason, Vendor will continue to provide Services pursuant to Required Contracting Documents executed prior to the termination.

15. NON-APPROPRIATIONS

This provision applies only to publicly funded Eligible Organizations. The terms of this Agreement and any resultant Order is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, Procuring Eligible Organization may terminate its Services or license to the Software if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Procuring Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by Vendor and shall be final and binding. A Procuring Eligible Organization shall send to Vendor a notice of its governing body's decision not to appropriate funds for the fees for the subsequent fiscal year. The notice shall also include a statement that the Software or Service will not be replaced by a similar product during the ensuing fiscal year. Such termination shall relieve the Procuring Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future fees related to the license or Services following termination. However, all outstanding invoices from Vendor will be paid by the Procuring Eligible Organization. This Section shall survive termination or expiration of this Agreement, regardless of the reason, and shall be construed for the benefit of the Procuring Eligible Organization.

16. PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INDEMNIFICATION:

Vendor will indemnify and defend a Procuring Eligible Organization from a claim of copyright, patent, trade secret or other intellectual property rights violation relating to the Software in accordance with the terms of the Required Contract Documents, a form of which is attached here as Exhibit B.

Vendor will indemnify and defend MHEC, as described below, with respect to any claim made against MHEC for copyright, patent, trade secret or other intellectual property rights violation relating to the Software. MHEC agrees to promptly notify Vendor in writing of any such claim, to allow Vendor to control the litigation or settlement of any such claim and to cooperate with Vendor in the investigation, defense, and settlement thereof. Vendor shall indemnify MHEC by paying for the costs and reasonable attorneys'

fee MHEC incurs at Vendor's direction and any judgement finally awarded against MHEC or settlement approved by Vendor. MHEC may participate at MHEC's own expense.

17. INDEMNIFICATION

Vendor will indemnify and defend Procuring Eligible Organizations, with respect to claims related to bodily injury, death, or damage to tangible property in accordance with the terms of the Required Contracting Documents, form of which are attached here as Exhibit B.

Vendor will defend and indemnify MHEC, as described below, with respect to any claim made against MHEC for bodily injury, death, or damage to tangible property, excluding loss or damage to software or data, arising solely from the acts or omissions of Vendor is legally responsible. MHEC agrees to promptly notify Vendor in writing of any such claim, to allow Vendor to control the litigation or settlement of any such claim and to cooperate with Vendor in the investigation, defense, and settlement thereof. Vendor shall indemnify MHEC by paying for the costs and attorneys' fees MHEC incurs at Vendor's direction and any judgment finally awarded against MHEC or settlement approved by MHEC. MHEC may participate at MHEC's own expense.

18. LIMITATION OF LIABILITY

Vendor liability for damages related to the license of Software or provision of Services to a Procuring Eligible Organization shall be limited as agreed to in the Required Contracting Documents, forms of which are attached as Exhibit B hereto. Vendor shall not be liable to MHEC for any damages related to this Agreement in excess of \$500,000. The foregoing limitation does not apply to any indemnification obligations under this Agreement or to damages resulting from personal injury or tangible property damage. Neither Vendor, MHEC nor any Procuring Eligible Organization shall be liable for any special, indirect, incidental, consequential, punitive or reliance damages arising out of or relating to this Agreement, whether the claim alleges tortuous conduct (including negligence) or any other legal theory.

19. BACKGROUND CHECKS

At the sole discretion of the Procuring Eligible Organizations, Vendor may be requested to provide user background checks, depending on the information systems Vendor accesses or types of data Procuring Eligible Organization provides. Vendor then must submit the required background check information to Procuring Eligible Organization in a timely manner. Vendor will perform background investigations within the scope of the Vendors current standard policies and practices for any Vendor employees or subcontractors entering upon a Procuring Eligible Organization premise, where legally acceptable and culturally permissible.

20. INSURANCE

Vendor, at its own expense, shall maintain appropriate levels of insurance as required by the Procuring Eligible Organization and if requested, certificates of insurance shall be delivered to Procuring Eligible Organization prior to commencement of any work. The insurance company shall be licensed or authorized to do business in the applicable state in which work is being conducted. Vendor shall give the Procuring Eligible Organization a minimum of thirty (30) days' notice prior to any material modifications or cancellation of policies. Unless otherwise agreed to between Procuring Eligible Organization and Vendor, Vendor will maintain the following insurance limits while performing any services under this Agreement:

(a) Workers' Compensation Insurance for Contractor employees, including coverage required under the Eligible Organization's State and Federal Laws; (b) Employer's Liability Insurance with limits of a minimum of: (i) \$1,000,000 for each accident for bodily injury by accident, (ii) \$1,000,000 for bodily injury by disease, and (c) General Liability Insurance with limits of: (i) \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 aggregate, (d) Cyber Insurance: In the event Vendor will host data, or provide for the hosting of data through a third-party entity, Vendor shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000 per claim and aggregate including third party coverage for expenses incurred by Eligible Organization for response in the event of a data breach, including notification expenses and credit monitoring for any affected individual for a minimum period of one year. Vendor shall provide copies of certificates of insurance to Procuring Eligible Organization if requested.

Procuring Eligible Organization is responsible for managing compliance with the requirements of this Section 20. Insurance and/or their institutional requirements, and may require additional coverage consistent with applicable law, regulation, or policy. Vendor shall require all subcontractors performing any work to maintain coverage as specified.

21. CONFIDENTIALITY

Vendor and Procuring Eligible Organizations may include mutually agreeable confidentiality provisions in the Required Contracting Documents related to the performance of Services. In the event Procuring Eligible Organization requires additional terms and conditions related to confidentiality of data that is required by law, Procuring Eligible Organization and Vendor shall review and mutually negotiate any modification to the Required Contracting Documents.

22. USE OF FEDERAL CONTRACTS OR GRANTS

Where Federal Contracts or Grants provide funding to Eligible Organizations, the Procuring Eligible Organization and Vendor agree to comply with all applicable Federal Acquisition Regulations (FAR) applicable laws and regulations by completing any certifications and disclosures and any other requirements. When Federal Contract or Grant funds are used by Procuring Eligible Organization purchases under this Agreement, which exceed \$25,000, certification must be provided to Procuring Eligible Organization in writing that the Vendor is not debarred, suspended, or proposed for debarment by the Federal Government.

23. COMPLIANCE WITH APPLICABLE LAWS

Vendor shall comply with applicable federal laws, rules and regulations including those relating to equal employment opportunity and affirmative action in the employment of minorities (Executive Order 11246), women (Executive Order 11375), persons with disabilities (29 USC 706 and Executive Order 11758), and certain veterans (38 USC 4212 formerly [2012]) contracting with business concerns with small disadvantaged business concerns (Publication L. 95-507). Vendor warrants and agrees to abide by all applicable Federal and state laws, regulations and Executive Orders pertaining to equal opportunity. In accordance with such laws, regulations, and executive orders, Vendor agrees that it does not discriminate on the grounds of race, color, religion, national origin, sex, age, veteran status, or handicap. If Vendor is found to be not in compliance with applicable Federal or state requirements during the life of this Agreement, Vendor agrees to take appropriate steps to correct these deficiencies. The parties will comply

with all applicable Federal, state, and local laws, regulations, rules, and/or ordinances, which by their terms, apply to their performance pursuant to this Agreement.

The sole warranty law remedy available for Vendor's breach of the warranties under this Section 23 shall be termination of this Agreement. The warranties provided in this Section 23 and in the Required Contracting Documents are the sole warranties provided by SAS under this Agreement.

24. FERPA AND OTHER PRIVACY LAWS

Where applicable to the scope of Services Vendor is providing, and only to the extent directly applicable to Vendor and its Services, Vendor agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA) and all other applicable state and federal privacy laws to the extent applicable to any Product or Services performed by Vendor. Procuring Eligible Organization and Vendor shall review and mutually agree to any additional requirements. To the extent a Procuring Eligible Organization discloses any information to Vendor subject to the aforementioned privacy laws, Procuring Eligible Organization agrees to advise Vendor of the disclosure of such information; and Procuring Eligible Organization represents and warrants to Vendor that it has obtained any required consents to disclose such information. In addition, to the extent that Vendor becomes a Business Associate as defined in HIPAA, both Vendor and Procuring Eligible Organization acknowledge that a separate mutually agreeable Business Associate Agreement may be required and will govern according to its terms.

25. ACCESSIBILITY

The SAS R&D Accessibility Standard governs the conformance of SAS products, documentation, training, and support materials with level AA of the Web Content Accessibility Guidelines version 2.1 (WCAG 2.1) as defined by the World Wide Web Consortium and included by reference in the Revised Section 508 Information and Communication Technology Standards. The extent to which the proposed solution conforms with WCAG 2.1 AA varies by product. Accessibility conformance reports for SAS products are available on the SAS Disability Support Center at <https://support.sas.com/accessibility/conformance/>. Those conformance reports use the Voluntary Product Accessibility Template® (VPAT) as defined by the Information Technology Industry Council. SAS' sole responsibility with respect to accessibility under this agreement is to publish accessibility conformance reports for SAS products. Please send questions about accessibility to accessibility@sas.com.

26. DATA OWNERSHIP

Procuring Eligible Organization's data shall remain the exclusive property of Eligible Organization and Procuring Eligible Organization shall retain all rights, including intellectual property rights in and to such data. As further described in the Required Contracting Documents, Vendor will use Procuring Eligible Organization's data only for the purpose of fulfilling its duties under an Order, and for Procuring Eligible Organization's sole benefit, and will not share such data with or disclose it to any third party without the prior written consent of Procuring Eligible Organization or as otherwise required by law.

27. DEBARMENT AND SUSPENSION

Vendor represents and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction (contract), by any government department or agency. If the Vendor cannot certify this statement, such Vendor must submit a written explanation. Furthermore, Vendor shall provide notice to MHEC if it becomes debarred or suspended at any point during the duration of this Agreement.

28. RECORDS AND AUDIT

Vendor shall retain and maintain all records and documents relating to this Agreement for six (6) years after final payment under an Order made by the Procuring Eligible Organization, and shall make them available for inspection and audit by authorized representatives of MHEC, Procuring Eligible Organization, (including the procurement officer or designee), and appropriate governmental authorities with Procuring Eligible Organization's state at all reasonable times.

29. FORCE MAJEURE

Neither Vendor nor MHEC nor Procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the party unable to perform shall undertake reasonable action to notify the other parties of the same.

30. EXPORT LAW

Vendor and Procuring Eligible Organization acknowledge that any software, technical information, products, or other deliverables provided to Procuring Eligible Organization via this Agreement may be subject to the U.S. Export Administration Regulations. Vendor and Procuring Eligible Organization agree to comply with all applicable United States export control laws, and regulations, as from time to time amended, including without limitation, the laws and regulations administered by the United States Department of Commerce and the United States Department of State.

31. CONFLICT OF INTEREST

Vendor warrants to the best of its knowledge and belief that it presently has no interest direct or indirect, which would give rise to organizational conflicts of interest. Vendor agrees that if an organizational conflict of interest is discovered during the term of this Agreement, it will provide disclosure to MHEC that shall include a description of the action Vendor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and is not timely resolved by Vendor, MHEC may, at its sole discretion, cancel this Agreement.

32. SUBCONTRACTORS

Vendor shall have the right to use Subcontractors to provide the Services described in this Agreement. If Vendor elects to use Subcontractors in the performance of custom professional Services under this Agreement, upon written request of the Procuring Eligible Organization, Vendor will provide a list of such

Subcontractors in the associated Statement of Work (SOW). Notwithstanding the foregoing, the use of such Subcontractors shall not release Vendor from performing its obligations under this Agreement.

Vendor shall be liable for any damage or loss resulting from personal injury or damage to tangible property arising from the acts or omissions of its subcontractor while performing services pursuant to this Agreement.

33. ASSIGNMENT

Neither party will assign its rights or delegate its obligations under this Agreement, in whole or in part, without the other party's prior written consent, and, absent such consent, any purported assignment or delegation by that party will be null, void and of no effect; provided, however, that either party may upon written notice assign this Agreement to another successor company pursuant to a corporate merger or reorganization or the sale or transfer of all or substantially all of its stock or assets. This Agreement will be binding upon and inure to the benefit of Vendor and MHEC and their successors and permitted assigns. Nothing in this Section 33 shall preclude Vendor from employing a Subcontractor in carrying out its obligations under this Agreement. Vendor use of such Subcontractors will not release Vendor from its obligations under this Agreement.

34. INDEPENDENT CONTRACTORS

MHEC and Vendor acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the parties are acting as independent contractors in making and performing this Agreement. Vendor and its agents and employees are independent contractors and are not employees of MHEC or any Procuring Eligible Organization. Vendor has no authorization, express or implied to bind MHEC or any Procuring Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Procuring Eligible Organization, except as expressly set forth herein.

35. VENDOR REPRESENTATIVE

Vendor shall assign a senior level representative who shall be the primary MHEC contact for all matters related to all sales and marketing efforts of this Agreement.

36. NOTIFICATION

Between the parties: Whenever under the terms of this Agreement any notice is required or permitted to be given by one party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile, email, or mail, postage prepaid, to the parties at the addresses set forth below, or at such other address as the parties may direct in writing from time to time:

To MHEC:	To Vendor:
105 Fifth Avenue South	100 SAS Campus Drive
Suite 450	
Minneapolis, Minnesota 55401	Cary, NC 2
Attn: Nathan Sorensen, Director of government contracts Email: nathans@mhec.org	Attn: Alyssa Brinkley, Account Executive Email: alyssa.brinkley@sas.com
Fax: 612-767-3353	Fax: N/A

Changes in the above information will be given to the other party in a timely fashion.

Between Eligible Organization: Notices shall be sent to Eligible Organization's business address. The term "business address" shall mean the "Bill to" address set forth in an invoice to Eligible Organization.

37. MARKETING

Vendor will assist MHEC in the development and implementation of appropriate marketing strategies including seminars, printed material, and a full service, online MHEC-specific website to receive information on products, supplies, services, and prices, and to place orders. Mutual review and evaluation of the marketing plans will be done, at a minimum, during annual reviews. Vendor should exhibit the willingness to develop marketing materials and participate in opportunities that are available. Vendor will make reasonable efforts to assist MHEC with the marketing targets stated herein. Vendor will not be required to maintain, monitor, or create a website on behalf of MHEC.

38. ANNOUNCEMENTS AND PUBLICITY

No Vendor providing services to MHEC, or to the Eligible Organizations, shall appropriate or make use of the name or other identifying marks or property in its advertising or marketing without the prior written consent of MHEC or Eligible Organization.

39. OVERSIGHT COMMITTEE

An oversight committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Vendor in developing and refining the implementation of this Agreement in the Compact member states. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise the successful Vendor on the effectiveness of its implementation progression. There will be an annual meeting between successful Vendor and MHEC (and perhaps members of the oversight committee) to perform a business review. In addition, Vendor must attend on-site meetings on an ad hoc basis if requested by the contract manager to address contract performance issues.

40. CONTRACT ADMINISTRATION FEE (CAF)

MHEC has incurred, and will continue to incur, costs and expenses in the development, implementation, administration, and marketing of this program. All Vendors shall include a Contract Administrative Fee (CAF) of one-and-one half percent (1.5%). The CAF shall not reduce the discount or rebates offered to the Eligible Organizations. The Vendor will be responsible for submitting the CAF with the quarterly report as described in Section 50.

41. QUARTERLY REPORT

Vendor must submit business activity reports each quarter. The Quarterly Report must include, at the minimum, the following information:

- Quarter number and year
- MHEC contract number
- Vendor name
- Name, phone number and email address of person who may be contacted for questions about the report
- Customer Name
- Customer Type (Higher Education, K-12, state agencies, cities, counties, local subdivisions)
- Address
- City
- State
- Zip Code
- Purchase Order Number
- Product Description
- Date Shipped or Delivered to End User
- Quantity
- List Price
- Sale Price
- Administration Fee
- % Discount
- \$ Savings
- Reseller (if applicable)

Quarterly Reports and Contract Administration Fees shall be submitted by end of the preceding month after the end of March, June, September, and December of each calendar year.

Calendar Quarter 1	(January 1 March 31)	Due April 30
Calendar Quarter 2	(April 1 to June 30)	Due July 31
Calendar Quarter 3	(July 1 to September 30)	Due October 31
Calendar Quarter 4	(October 1 to December 31)	Due January 31

42. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the party granting such waiver in any other respect or at any other time. Any delay or forbearance by either party in exercising any right hereunder will not be deemed a waiver of that right.

43. SEVERABILITY

If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance, or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

44. GOVERNING LAW

- A. As between MHEC and Vendor, this Agreement will be construed in accordance with, and its performance governed by the laws of the state of Minnesota. Venue for all legal proceedings arising out of this Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.
- B. As between Procuring Eligible Organization and Vendor, applicable governing law will be specified on each Order entered into by an Eligible Organization and SAS. In the absence of any specific identification, the governing law set forth in the SAS Agreement shall apply.

45. SOVEREIGN IMMUNITY

Notwithstanding anything to the contrary in this Agreement or Order under this Agreement, this Agreement shall not be construed to deprive an Eligible Organization of its applicable sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applying to this Agreement or afforded by Eligible Organizations' state laws applicable to Eligible Organization.

46. SURVIVAL

Software license, warranty and service agreements, and non-disclosure agreements that were entered into under terms and conditions of this Agreement shall survive this Agreement.

47. AMENDMENTS

Except as provided in Section 7. Order of Precedent; this Agreement between Vendor and MHEC shall only be amended by written instrument executed by the parties.

48. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement, and all prior agreements have been merged into this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

49. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

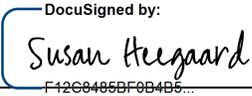
50. MISCELLANEOUS

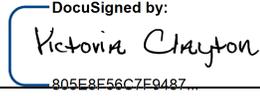
All Parties to this Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Agreement that shall be considered an original and shall be admissible in any action to enforce this Agreement. Except as provided for in this Agreement, all changes to this Agreement must be made in writing signed by both Parties; accordingly, any additional terms on the Procuring Eligible Organization’s ordering documents shall be of no force or effect.

The Parties, by their representatives signing below, agree with the terms of this Agreement and further certify that their respective signatories are duly authorized to execute this Agreement.

Midwestern Higher Education Commission

SAS Institute Inc.

Signature:  F42C8485BF0B4B5...

Signature:  805E8F56C7E9487...



Name: **Susan Heegaard**

Victoria Clayton

Title: **President**

Director, Licensing Operations

Address: **105 Fifth Avenue South Suite 450**

Minneapolis, Minnesota, 554401

Date: **July 31, 2023 | 4:02 PM PDT**

July 27, 2023 | 4:12 PM EDT

Exhibit A**Professional Services Rates**

Role	Description	2022	2023	2024	2025	2026	2027	2028
Expert Consultant	Expert knowledge of SAS products and the proven ability to create solutions in complex environments. Provides global counsel on the application of SAS products into a customer environment. Vast knowledge of open and proprietary systems aids in the selection, design, and implementation of a complete SAS software solution. Minimum years of experience for performance of this service is 12 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$301.88	\$316.97	\$332.82	\$349.46	\$366.94	\$385.28	\$404.55
Principal Solutions Architect	Provides senior leadership and consulting for SAS technical, architectural, analytical, government, and business solutions. May provide senior program and project management or subject matter expertise. Provides strategic SAS consulting services, including assessment, solution development, and implementation. Minimum 10 years of experience for performance of these services. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$272.36	\$285.98	\$300.28	\$315.29	\$331.06	\$347.61	\$364.99

Principal Consultant	Provides specialized subject matter expertise, guidance, and project direction in one or more of the following areas: compliance consultation and legislative and regulatory issues; review and improvement to planning and budget submission processes; Congressional consultation in support of agency strategic and performance plans; data warehousing and data mining including predictive modeling; and decision technology application at the enterprise and group level. Minimum years of experience for performance of this service is 10 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$241.49	\$253.56	\$266.24	\$279.55	\$293.53	\$308.21	\$323.62
Managing Consultant	Provides project management and high level technical direction. Supports the definition and implementation of planning processes and systems at the enterprise or group level including both strategic and operational activities. Manages and coordinates project activities and serves as the technical lead and liaison for the client. Minimum years of experience for performance of this service is 8 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$211.28	\$221.84	\$232.94	\$244.58	\$256.81	\$269.65	\$283.14
Senior Systems Consultant	Provides direction, facilitation, planning analysis, performance measurement analysis, and technical analysis and design for executive information and decision support technologies in support of enterprise or group level planning. Serves as the technical and team lead for the project. Minimum years of experience for performance of this service is 4 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$181.13	\$190.19	\$199.70	\$209.68	\$220.16	\$231.17	\$242.73

Years 4-7 are optional. The initial term of the contract is three years.

Software Rates

(FTE) Student Enrollment Tier	Small University		Medium University		Large University	
(per install, based on Student Enrollment)	1-4,500	4,501-9,999	10,000-17,000	17,001-25,000	25,001-34,999	35,000+
SAS Offering						
SAS Visual Analytics (on SAS Viya)	\$ 20,772	\$ 21,816	\$ 22,230	\$ 23,346	\$ 24,507	\$ 25,740
SAS Visual Machine Learning (on SAS Viya)	\$ 58,284	\$ 61,191	\$ 64,251	\$ 67,464	\$ 70,830	\$ 74,376
SAS Visual Data Science (on SAS Viya)	\$ 70,524	\$ 74,043	\$ 77,742	\$ 81,630	\$ 85,716	\$ 90,000
SAS Data Management Advanced	\$ 28,908	\$ 29,763	\$ 30,627	\$ 31,581	\$ 32,481	\$ 33,453
SAS Analytics Pro, Server	\$ 2,709	\$ 2,808	\$ 2,889	\$ 2,970	\$ 3,078	\$ 3,186
SAS Office Analytics	\$ 4,896	\$ 5,049	\$ 5,175	\$ 5,337	\$ 5,499	\$ 5,661
*Other Add-On Technology for Servers (each)	\$ 1,557	\$ 1,620	\$ 1,674	\$ 1,728	\$ 1,782	\$ 1,836

Desktop Offerings (per install)	Annual Fee
SAS Analytics Pro, Desktop	\$ 1,359
*Other Add-On Technology for Desktops (each)	\$ 657

*Other Add-On Technology: SAS/ACCESS, SAS/CONNECT, SAS/ETS, SAS/GRAPH, SAS/IML, SAS/OR, SAS/QC, SAS/STAT

Hosting Rates

Viya Packages	Size	Concurrent Users (includes SSO)	Data Size on Disc	Data size into Memory (CAS)	Cores	Memory (GB)	Storage (TB)	Year 1 Price	Renewal Price	FedRAMP:	Year 1 Price	Renewal Price
SAS Visual Analytics	Small	3	50GB	10GB	108	736	8	\$268,000	\$189,000		\$375,200.00	\$264,600.00
SAS Visual Analytics	Medium	10	1TB	200GB	154	1104	8	\$286,000	\$206,000		\$400,400.00	\$288,400.00
SAS Visual Analytics	Large	16	3TB	650GB	548	4240	10	\$445,000	\$366,000		\$623,000.00	\$512,400.00
SAS Visual Statistics	Small	3	50GB	25GB	120	832	8	\$274,000	\$195,000		\$273,000.00	\$193,000.00
SAS Visual Statistics	Medium	10	500GB	150GB	216	1584	9	\$315,000	\$235,000		\$441,000.00	\$329,000.00
SAS Visual Statistics	Large	12	3.5TB	400GB	348	2656	11	\$376,000	\$296,000		\$526,400.00	\$414,400.00
SAS Visual Data Mining and Machine Learning	Small	3	200GB	100GB	132	928	8	\$277,000	\$198,000		\$387,800.00	\$277,200.00
SAS Visual Data Mining and Machine Learning	Medium	7	750GB	250GB	292	2208	8.5	\$340,000	\$260,000		\$476,000.00	\$364,000.00
SAS Visual Data Mining and Machine Learning	Large	10	5TB	1TB	436	3360	14	\$427,000	\$348,000		\$597,800.00	\$487,200.00
SAS Visual Data Science	Small	11	400GB	150GB	324	2464	8	\$349,000	\$270,000		n/a	n/a
SAS Visual Data Science	Medium	20	3.5TB	1TB	548	4240	11	\$451,000	\$372,000		n/a	n/a
SAS Visual Data Science	Large	155	15TB	2.5TB	1252	9872	34	\$865,000	\$790,000		n/a	n/a
Office Analytics Packages												
Office Analytics Small	Small	5			8	32	1.5	\$76,676.57	\$44,161.87		n/a	n/a
Office Analytics Medium 1	Medium 1	10			16	128	2.4	\$99,554.82	\$62,722.59		n/a	n/a
Office Analytics Medium 2	Medium 2	10			16	128	4.8	\$114,742.76	\$77,628.62		n/a	n/a
Office Analytics Large 1	Large 1	20			32	256	7.2	\$147,291.72	\$106,354.14		n/a	n/a
Office Analytics Large 2	Large 2	20			32	256	12	\$177,286.38	\$126,356.81		n/a	n/a

Training Points

Training Points – Purchase Levels	Annual Fee
7,500 (minimum)	\$3,750
15,300	\$7,650
30,800	\$15,400
45,240	\$22,620
61,200	\$30,600
79,560	\$39,780
172,380	\$86,190
255,000	\$127,500

Exhibit B: Required Contracting Documents

Vendor shall provide Software and Services at the pricing set forth in this Agreement upon execution of all Required Contracting Documents and SAS Order Form referencing the MHEC-07012023 cooperative Agreement between Vendor and Eligible Organizations and its associated addenda. Samples of the Required Contracting Documents are attached hereto as Exhibit B.

- i. SAS Sample Order Form
- ii. SAS Universal Terms;
- iii. SAS Software License Addendum;
- iv. SAS Consulting Services Addendum;
- v. SAS Hosting Managed Services (HMS) Addendum; and
- vi. SAS Hosting Managed Services (HMS) Service Level Warranty Addendum
- vii. SAS Training Points Addendum



This is a Sample Order Form to be modified by SAS depending on Customer Offerings.

Order Form

SAMPLE	Customer: (" Customer ")	
	Address:	
	Taxpayer ID/VAT/GST Number:	Currency:

Software

The effective date will be the earlier of the 15th or the last date of the month immediately following Customer's acceptance or signature.

Offering	Pricing Metrics, Quantity and Other Usage Parameters	Operating System	Initial Fees

Term and Fees

Multi-Year Term:

License Period	Fee	Committed Period or Option Period
License Period 1		Committed Period
License Period 2		
License Period 3		
License Period 4		

License Period 5		
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Invoicing

SAS will invoice all Fees in advance of each License Period.

SAS will invoice all Fees listed above upon execution of this Order Form.

Pricing Metrics and Additional Usage Parameters

- Enterprise Use** - For this Order Form, the Territory is global. Users may use the Offering for the benefit of Customer and its Related Entities. Unless the Pricing Metric is based on the processing capacity of the Authorized Environment, the Pricing Metric quantity is determined by combining the quantity associated with Customer and its Related Entities benefitting from the use of the Offering. If Customer expands the use of the Offering to benefit additional Related Entities, Customer will notify SAS of any increase to the Pricing Metric quantity and pay any applicable additional Fees. If the Pricing Metric is based on the processing capacity of the Authorized Environment, the Pricing Metric quantity is calculated separately for each Authorized Environment used for production purposes based on the processing capacity of the Authorized Environment.

SAS Cloud Services

The Subscription Period will begin on the date that SAS notifies the Customer that the System is available for access. However, if this Order Form is for a renewal of a SAS Cloud Offering for which Customer has access to an existing System, the effective date is the day following the end of the prior Subscription Period.

Offering		Pricing Metrics, Quantity and Other Usage Parameters	System Infrastructure
Hosted Managed Services	SAS will provide the HMS in a System that includes the Software listed below and other Software as determined by SAS.	HMS Storage (<quantity> GB) HMS Retention Period (2 months) Production Environments (<quantity> Non-Production Environments (<quantity> HMS Total User (<quantity> HMS Concurrent Users (<quantity>	

Term and Fees

Term	Fee	Committed Period	Option Period
Subscription Period 1	\$		
Subscription Period 2	\$		
Subscription Period 3	\$		

Invoicing

Fees will be invoiced in advance of each Period.

Pricing Metrics and Additional Usage Parameters

- **HMS Concurrent Users** – The System infrastructure sizing is based on the maximum number of HMS Total Users who may access the System at any given time during the applicable HMS Period.
- **HMS Retention Period** - The period for which the back-up data will be stored in a single production environment.
- **HMS Storage** - The Fees are based on the amount of data storage for all System environments combined.
- **HMS Total Users** - The System infrastructure sizing is based on the number of Users (not concurrent) who may access the System during the applicable HMS Period.
- **"Non-Production Environment"** means a System environment that Customer may use solely for non-production purposes.
- **"Production Environment"** means a System environment that Customer may use solely for production purposes.
- **Enterprise Use** - For this Order Form, the Territory is global. Users may use the Offering for the benefit of Customer and its Related Entities. Unless the Pricing Metric is based on the processing capacity of the Authorized Environment, the Pricing Metric quantity is determined by combining the quantity associated with Customer and its Related Entities benefitting from the use of the Offering. If Customer expands the use of the Offering to benefit additional Related Entities, Customer will notify SAS of any increase to the Pricing Metric quantity and pay any applicable additional Fees. If the Pricing Metric is based on the processing capacity of the Authorized Environment, the Pricing Metric quantity is calculated separately for each Authorized Environment used for production purposes based on the processing capacity of the Authorized Environment.

Consulting Services – Fixed Price

Description of Consulting Services:

Deliverables:

Assumptions:

Fee:

Payment Schedule:

Deliverable	Progress Payment	Invoice Date (If no date is listed, SAS will invoice Customer when the Deliverable is accepted)
1.	1.	
2.	2.	
3.	3.	

Prepaid Fee. Customer has elected to pre-pay the Consulting Services Fee. The Consulting Services Fee may only be used toward labor for Consulting Services under this Order Form. Except as otherwise set forth in the Agreement, pre-paid Consulting Services Fees are nonrefundable and must be used within twelve (12) months from acceptance of this Order Form.

Consulting Services – Time & Materials

Description of Consulting Services: SAS will provide Consulting Services directed towards:

Assumptions:

Customer Budget:

How this Order Form Works

This Order Form is governed by and incorporates the following documents. All documents are listed in order of precedence, and are collectively referred to as the “**Agreement**”:

Document	Location*
This Order Form	Not Applicable
Software Addendum	
Training Points Guidelines	
Consulting Services Addendum	
Hosted Managed Services Addendum	
Hosted Managed Services Service Level Warranty Addendum	
SAS Universal Terms	

The individual signing or accepting this Order Form must have the authority to bind Customer to the Agreement.

Customer

Authorized Signature:

Name:

SAS

Authorized Signature:

Name: /sign_name

Title: /title

Date: /date

/clickdec

/data

SAMPLE

SAS INTERNAL USE:

COMIT

LGL5723

Last Revised: Apr2023



SAS Universal Terms

[中文](#) [Français](#) [Deutsch](#) [Italiano](#) [日本語](#) [한국어](#) [Español](#) [Polski](#) [Türkçe](#) [Português](#)

These Universal Terms apply to all Offerings. To order an Offering, Customer will enter into an Order Form with SAS that incorporates these Universal Terms and other Offering-specific addenda. [Definitions](#)

1. Permitted Use

1.1 Usage Rights. This section describes the standard usage or access rights for Offerings. The Order Form may contain additional or different usage or access rights.

1.1.1 For any SAS Cloud Offering, Customer may access the System during the Term.

1.1.2 For any Software Offering installed outside of a System, SAS grants Customer a license to use the Software during the Term.

1.1.3 If the Offering includes Work Product, SAS grants Customer a royalty-free license to use the Work Product. If the Work Product relates to Software or a System, Customer will use the Work Product only in connection with the applicable Software or System and during the Term of the Agreement for the Software or System.

1.2 Benefit. Customer will use the Offering solely for the benefit of its operations in the Territory. If the Territory is global or includes more than one country, then Customer's Related Entities may also benefit from use of or access to the Offering.

1.3 Restrictions.

1.3.1 All license grants and usage rights are nonexclusive, nonassignable and nontransferable.

1.3.2 Customer will not use any Offering or Documentation to: (a) bring an intellectual property infringement claim against SAS; or (b) create or assist a third party in creating an offering that competes with SAS.

1.3.3 Customer may use any Documentation only to support Customer's use of the related Software.

1.3.4 Customer will not use any Offering in a time-sharing or service provider arrangement.

1.4 Users. This Permitted Use section extends to Users.

2. Agreement Term

2.1 Effective Date; Term. The Agreement is effective upon the last date of signature or acceptance of the Order Form and will remain in effect for the Term.

2.2 Termination. If a party breaches the Agreement, the other party may terminate the Agreement if the breach has not been cured after thirty (30) days' written notice. SAS may terminate

the Agreement immediately if Customer violates SAS' intellectual property rights. Obligations in the Agreement that by their nature are continuing survive expiration or termination. In addition, the terms of the Agreement will continue to apply if SAS continues to provide an Offering to Customer while the parties are in good faith negotiations to renew the Offering. SAS' provision of the Offering during any such negotiation is not fee waived.

If the Agreement terminates or expires, Customer will stop using the Offering and delete any media, Product Authorization Codes, or Documentation provided by SAS.

3. Fees

3.1 Fees. Fees are listed in the Order Form.

3.2 Payment. Payments are due net thirty (30) days. Refunds are not available unless specifically stated in the Agreement. SAS may designate an affiliate or a third party to invoice and/or collect payment on its behalf.

3.3 Upgrades. Customer must contact SAS to change any factor impacting the Pricing Metric or applicable usage or access rights. These changes may result in additional Fees calculated and invoiced based on the date of the change.

3.4 Taxes. Customer is responsible for any applicable taxes, except for taxes based on SAS' income. Unless otherwise stated in the Order Form, Fees do not include taxes. Customer may provide a tax exemption certificate to SAS. SAS will use reasonable efforts to include applicable taxes on SAS' invoice. Customer will self-assess and pay any VAT, GST or sales tax applicable to Customer's use of the Offering outside of the US and not included on SAS' invoice.

3.5 Third Party Payments. Customer may designate a third party to receive invoices and make payments on Customer's behalf. Customer will be responsible for any related charges assessed by the third party. Payment of all Fees remains Customer's ultimate responsibility.

4. Technical Support

4.1 General. Technical support for the Software or System is included during the Term as documented in SAS' technical support policies at <https://support.sas.com/en/technical-support/services-policies.html>, which may be

updated from time to time. Customer may obtain additional support services from SAS by executing an Order Form and paying additional Fees to SAS.

Technical support also includes access to all new releases, updates, bug-fixes, security patches and other corrective code that SAS makes generally available. Customer agrees to use reasonable efforts to install such content for Software not hosted by SAS. If Customer chooses not to install the current release of the Software or instructs SAS not to install the current release of the Software in a System, the level of technical support will diminish over time. During ongoing development, SAS may rename Offerings or add, change or delete individual components or functionality in new releases of the Software or System.

4.2 Customer Contacts and Notification.

Customer must establish knowledgeable technical contacts who are qualified to provide SAS with information necessary for SAS to diagnose and remedy any problems. When requesting technical support, Customer will notify SAS of any modifications to the Software or System not made by SAS. Failure to comply with these terms may result in longer response and resolution times.

5. Intellectual Property

The Agreement does not transfer any ownership rights. SAS and its licensors retain title to the Offering, any Documentation, source code, and any techniques, skills, concepts or know-how SAS utilizes or develops while performing the Agreement. Customer retains ownership to Customer Materials and any data Customer derives from using an Offering. The Software source code is a SAS trade secret. Customer and Users will not access source code or attempt to reverse engineer, reverse assemble or decompile the Software or System. Customer and Users will not remove any copyright or proprietary rights notice from any Offering. The Agreement does not limit any rights Customer may have under any open-source license covering any open-source component included in the Offering.

Use of any online training provided with an Offering but not separately listed on the Order Form is governed by the terms of the Agreement.

6. Customer Materials

6.1 Usage Rights. Customer grants SAS a nonexclusive, nonassignable, nontransferable and royalty-free license to use the Customer Materials solely to perform the Agreement.

6.2 Data Classification Forms. Before providing any Customer Materials to SAS, Customer will complete any data classification forms that SAS requests. Customer will only

transmit Customer Materials to SAS using SAS-approved methods.

6.3 Format and Protection. Customer's failure to provide any required Customer Materials in a mutually agreed upon format and timeframe, and in a usable condition, may delay SAS' performance of the Agreement. The parties will manage any resulting schedule changes through a change control process, and additional Fees may apply.

Customer is responsible for: (a) the integrity of the Customer Materials; (b) backing up the Customer Materials, and (c) mitigating the risks inherent in storing or transmitting the Customer Materials via the System, including the risk of data loss.

6.4 Exclusions. SAS' warranties, indemnities and technical support set forth in the Agreement do not apply to Customer Materials.

6.5 Customer Materials Used in a System.

6.5.1 Customer must obtain SAS' prior written approval before using Customer Materials owned by a third-party data provider in the System. If any third-party data provider requires that SAS sign a separate data use agreement in order to use such data to perform the Agreement, then Customer, SAS and the provider will sign a three-party agreement. Notwithstanding the terms of any such data use agreement, the data provided by the third party will be deemed Customer Materials, and the Customer warranties and indemnification applicable to Customer Materials in the Agreement will apply.

6.5.2 If SAS believes the Customer Materials violate applicable law or third-party rights, SAS may either: (a) require Customer to remove the Customer Materials from the System; or (b) disable the Customer Materials.

6.5.3 Customer is responsible for: (a) providing or arranging for the provision of all support, maintenance, and upgrades for Customer Materials, including up-to-date virus protections; and (b) coordinating the timing of such activities with SAS. Customer may direct the Customer Materials provider to contact SAS on Customer's behalf for technical support issues if the provider believes the issue is connected to the System.

6.5.4 SAS may disable or remove Customer Materials in the event of any emergency situation or any threat or perceived threat to the System related to the Customer Materials. SAS will not be responsible for any adverse performance impact to the System or Downtime attributable to Customer Materials or to any such disengagement. In addition, SAS is not responsible for any compromises to the confidentiality, integrity, or availability of the System or Customer Materials that are attributable in whole or in part to Customer's use of Customer Materials.

7. Preproduction Offerings

7.1 Preproduction Offerings. During the Term, SAS may give Customer the opportunity to preview Preproduction Offerings at no cost to Customer so that Customer may provide feedback to SAS. No additional Order Form is required for Customer to preview a Preproduction Offering, regardless of whether the Preproduction Offering is a version of a production Offering that Customer has ordered via an Order Form or separate technology. Customer will not use Preproduction Offerings for production purposes.

7.2 No Warranty. SAS PROVIDES PREPRODUCTION OFFERINGS “AS IS.” SAS’ warranties and indemnification obligations set forth in the Agreement do not apply to Preproduction Offerings. SAS does not guarantee that any Preproduction Offering or functionality will be made generally available.

7.3 Disclaimers. NEITHER CUSTOMER, SAS, NOR SAS’ THIRD-PARTY LICENSORS ARE LIABLE FOR DIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR RELIANCE DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE) RELATED TO THE PREPRODUCTION OFFERING, EVEN IF THEY HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SAS AND SAS’ THIRD-PARTY LICENSORS ARE NOT LIABLE FOR ANY THIRD-PARTY CLAIMS AGAINST CUSTOMER RELATED TO A PREPRODUCTION OFFERING. THE PARTIES MAKE THESE EXCLUSIONS IN CONSIDERATION OF THE LICENSES GRANTED UNDER THE AGREEMENT.

7.4 Hosted Preproduction Offering. If SAS makes the Preproduction Offering available via a hosted environment, Customer will comply with the terms of use that SAS specifies in writing.

8. SAS Warranties and Disclaimers

8.1 Intellectual Property Warranty. SAS warrants it has the right to license the Software or Work Product or provide the Offering to Customer. Customer’s exclusive remedy for SAS’ breach of this warranty is set forth in the *Indemnification by SAS* section.

8.2 Virus Warranty; Conformance with Documentation Warranty. SAS warrants that when delivered, each commercially available release of the Software will not contain a virus and will substantially conform to its Documentation. As Customer’s exclusive remedy for breach of this warranty, SAS, at its option, will: (a) repair the Software; (b) replace the Software; or (c) terminate the applicable Order Form and refund the Fees paid for the Software during the then-current annual period or any prepaid Fees under the Order Form.

8.3 Skilled Personnel Warranty. SAS warrants that the Consulting Services will be performed by skilled personnel. As Customer’s exclusive remedy for breach of this warranty, SAS will refund the Fees paid for the Consulting Services at issue.

8.4 WARRANTY DISCLAIMERS. SAS AND ITS THIRD-PARTY LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. SAS MAKES NO WARRANTY THAT THE SOFTWARE OR THE SYSTEM WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION OR THAT ANY DATA TRANSMISSIONS TO, FROM, OR THROUGH THE SYSTEM WILL BE COMPLETELY SECURE. SAS DOES NOT WARRANT OR REPRESENT THAT CUSTOMER’S USE OF THE OFFERING ALONE WILL RESULT IN CUSTOMER’S COMPLIANCE WITH ANY APPLICABLE LAW.

9. Customer Warranties

9.1 Intellectual Property Warranty. Customer warrants that: (a) it has the right to provide the Customer Materials to SAS; and (b) Customer and Users will comply with any third-party usage rights and applicable laws related to the Customer Materials. The exclusive remedy for breach of these warranties is set forth in the *Indemnification by Customer* section.

9.2 Compliance Warranty. Customer warrants that the publication, transmission and receipt of all Customer Materials complies with all applicable laws including, without limitation, laws relating to trademarks, copyrights, defamation, consumer protection, personal privacy and false or deceptive trade practices.

10. Exclusions of Damages; Limitation of Liability

10.1 Exclusion of Damages. Neither Customer, SAS, nor SAS’ third-party licensors are liable for special, incidental, indirect, consequential, punitive, or reliance damages (arising in contract, tort or otherwise) even if they have been informed of the possibility of such damages. Neither SAS nor SAS’ third-party licensors are liable for any third-party claim against Customer. SAS’ third-party licensors are not liable for any direct damages.

10.2 Limitation of Liability. THE TOTAL AMOUNT CUSTOMER MAY RECOVER FROM SAS FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT IS LIMITED IN THE AGGREGATE TO THE FEES CUSTOMER

HAS PAID FOR THE OFFERING AT ISSUE DURING THE APPLICABLE ANNUAL PERIOD IN WHICH THE CLAIM AROSE.

10.3 **Applicability.** This section does not apply to the *Indemnification by SAS* section, the *Indemnification by Customer* section, or to either party's violation of the other's intellectual property rights. The limitations in this section will apply even if any of the remedies provided in the *SAS Warranties and Disclaimers* section fail of their essential purpose. Some jurisdictions do not allow limitations of liability or exclusions of certain types of damages so certain provisions of this section may not apply to Customer. However, the provisions apply to the greatest extent permitted by applicable law.

11. Indemnification by SAS

Provided Customer complies with the Agreement, SAS will defend and indemnify Customer for any third-party claim against Customer for: (a) any copyright, patent, trade secret or other intellectual property rights violation relating to the Software, Work Product, or any Software or Work Product included in a SAS Cloud Offering; or (b) bodily injury, death or damage to tangible property, arising solely from actions for which SAS is legally responsible. Tangible property does not include software or data. Customer will promptly notify SAS in writing of any such claim. Customer will allow SAS to control the litigation or settlement of any such claim and will cooperate with SAS in the investigation, defense and settlement. SAS will indemnify Customer by paying for the costs and attorneys' fees Customer incurs at SAS' direction and any judgment finally awarded against Customer or settlement approved by SAS. Customer may participate at Customer's own expense.

If any intellectual property claim is made or, in SAS' opinion, is likely to be made, SAS may: (i) modify the Software or Work Product; (ii) obtain rights for Customer to continue using the Software or Work Product; or (iii) terminate Customer's license to use the Software or Work Product and refund any Fees paid by Customer for the then-current annual period or for the Work Product at issue. Customer will abide by SAS' decision.

SAS' indemnification obligation does not apply to claims based on: (1) Customer's combination of the Software or Work Product with other software or materials; (2) Customer's modification to the Software or Work Product; (3) prior versions of the Software if Customer had not installed the latest version or updates to the Software prior to the date the claim arose as instructed by SAS; or (4) Customer's unique specifications for the Work Product.

12. Indemnification by Customer

Customer will indemnify SAS for any claim made against SAS arising from or relating to: (a) the Customer Materials; (b) Customer's violation of its obligations in the *Customer Warranties* and *Customer Responsibilities* sections of these Universal Terms; or (c) violations of the *Prohibited Activities* section included in an Addendum for any System. SAS will promptly notify Customer in writing of any such claim. SAS will allow Customer to control the litigation or settlement of any such claim and will cooperate with Customer in the investigation, defense and settlement. Customer will indemnify SAS by paying for the costs and attorneys' fees SAS incurs at Customer's direction and any judgment finally awarded against SAS or settlement approved by Customer. SAS may participate at SAS' own expense.

13. Confidential Information

Each party acknowledges that it may have access to certain Confidential Information. The recipient will use the discloser's Confidential Information only to perform its obligations under the Agreement. SAS may also use Customer's Confidential Information to provide Customer sample analysis for other SAS Offerings or Preproduction Offerings. Recipient will not disclose discloser's Confidential Information received in connection with the Agreement to any third parties without Discloser's prior written approval. 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. SAS may also: (a) report the terms of the Agreement to SAS' third-party licensors and partners solely as required by agreements between SAS and its third-party licensors and partners; and (b) list Customer as a SAS customer in SAS' annual report or other materials. Recipient's obligations of confidentiality for each item of discloser's Confidential Information will continue for five (5) years from the date of initial disclosure. However, confidentiality obligations for Personal Data or source code will not expire. For the purpose of this section, SAS' affiliates and subcontractors are not "third parties." Unless specifically authorized in the Order Form, neither party will disclose source code.

14. Data Protection and Personal Data

Customer will not disclose or transmit Personal Data to SAS unless: (a) specifically authorized under the

Order Form; (b) authorized by an Addendum incorporated into the Order Form; or (c) required for technical support. In such event, the SAS Data Processing Addendum available at <https://www.sas.com/dpa> will apply to SAS' processing of Personal Data. If the Personal Data contains Protected Health Information as defined by and subject to the US Health Insurance Portability and Accountability Act, the Business Associate Addendum available at [sas.com/baa](https://www.sas.com/baa) is incorporated into the Agreement with respect to such disclosure.

To the extent applicable, SAS will also comply with the SAS Business Customer Privacy Policy available at https://www.sas.com/en_us/legal/privacy.html, which is subject to change at SAS' reasonable discretion. Changes will not result in a material reduction to the level of protection provided by SAS for any Personal Data during the Term.

15. Insurance

During the Term, SAS Institute Inc. will keep the following insurance policies in force:

- (a) Workers Compensation – Statutory (in the amounts required by applicable law);
- (b) Employer's Liability – USD \$1,000,000 per occurrence; bodily injury by accident or disease, including death;
- (c) Commercial General Liability – USD \$1,000,000 combined limit per occurrence and USD \$2,000,000 aggregate; bodily injury, personal injury and property damage, including blanket contractual liability; and
- (d) Automobile Liability (if vehicles are brought on Customer's premises) – USD \$1,000,000 combined limit per occurrence; bodily injury and property damage covering owned, non-owned and hired vehicles.

Evidence of coverage is available at: https://www.sas.com/en_us/legal/evidence-of-insurance.html.

16. Applicable Law

16.1 Governing Law. The laws of New York, excluding choice of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods, govern the Agreement.

16.2 Arbitration. All disputes arising out of or in connection with the Agreement, including any dispute as to the validity and enforceability of this arbitration clause, will be finally settled under the Rules of Arbitration of the International Chamber of Commerce (“**Rules**”) by three (3) arbitrators. Each party will appoint one (1) arbitrator and the third arbitrator will be appointed by the first two (2) arbitrators. The tribunal will not award any punitive

or exemplary damages or any remedies greater than those allowed by the Agreement. Notwithstanding Article 38 of the Rules, each party will bear its own costs. The parties will share equally in the compensation and expenses of the arbitrators and the ICC administrative fees. The seat of the arbitration will be New York, New York, and the arbitration will be conducted in English. For clarification, the Governing Law section of this Agreement establishes the substantive law applicable to the Agreement. The terms in this Arbitration section will be interpreted and enforced in accordance with the U.S. Federal Arbitration Act as long as New York law or other U.S. state law governs the Agreement. This section does not prevent the parties from applying to a court of competent jurisdiction for temporary or preliminary injunctive relief, without breach or waiver of this section and without abridging the powers of the tribunal.

16.3 Export and Import Restrictions. US export laws and regulations apply to the Offering and any other SAS-provided technology (“**Controlled Material**”). The Controlled Material originates from the United States. Both parties agree to comply with these and other applicable export and import laws and regulations, except as prohibited or penalized by law (“**Trade Law**”). Customer warrants that Customer and its Users are not: (a) prohibited by Trade Law from accessing Controlled Material without US government approval; (b) located in or under control of any country or other territory subject to general export or trade embargo under Trade Law; or (c) engaged in any of the following end-uses: nuclear, chemical or biological weapons; nuclear facilities not under International Atomic Energy Agency safeguards; missiles or unmanned aerial vehicles capable of long-range use or weapons delivery, military training or assistance, military or intelligence end-use in Russia or in any country in Country Group D:5 of the United States Export Administration Regulations; deep water, Arctic offshore or shale oil or gas exploration involving Russia or Russian companies, or Russian energy export pipelines. Customer will not import or use any data within the System that is subject to the US International Traffic in Arms Regulations. United States export classification information for SAS software is available at <http://support.sas.com/adminservices/export.html>.

16.4 Additional Terms. If the Order Form is entered between Customer and a SAS affiliate located outside of the US, any applicable provisions of the Country-Specific Terms available at <https://www.sas.com/country-specific-terms> will apply. In the event of a conflict between the Country-Specific Terms and these Universal Terms, the Country-Specific Terms apply.

17. General

17.1 Subcontracting. SAS may subcontract its performance under the Agreement. However, such subcontracting arrangement does not relieve SAS of its obligations to Customer under the Agreement.

17.2 Customer Responsibilities. Customer will: (a) verify the accuracy of its data input and output while using the Offering; (b) duplicate, document and protect all data and software Customer uses with the Offering; (c) for SAS Cloud Offerings, assume responsibility for any damages resulting from Customer's decision to continue running a prior version of the Software in the System that SAS has informed Customer is no longer eligible for SAS' standard technical support; (d) inform all Users of the relevant terms of the Agreement and be responsible for their adherence to such terms; (e) keep records of where any Software is installed and used; (f) keep records of the extent of usage of the Software or System relative to the applicable Pricing Metrics and usage rights and provide a copy of such records to SAS upon request; (g) designate a single delivery contact for Product Authorization Codes and installation media and a single billing contact for invoices; and (h) use the Offering consistent with the SAS Responsible Use Policy, available at www.sas.com/responsibleuse.

17.3 Customer Feedback. SAS may use any feedback related to any Offering or Preproduction Offering in any format and any ideas, concepts, know-how, formulas, designs, improvements, inventions, techniques or processes contained in that feedback, whether or not patentable.

17.4 Severability. If a court of competent jurisdiction finds any part of the Agreement unenforceable, that part is excluded, but the remainder remains in full force and effect.

17.5 No Waiver. Failure to require compliance with a part of the Agreement is not a waiver of that part. Nothing in the Agreement waives any remedy SAS may have under the Agreement at law, in equity, or otherwise.

17.6 Non-Assignment. Customer will not assign the Agreement or any of its rights or obligations without SAS' written permission, which will not be unreasonably withheld. If Customer attempts to assign the Agreement in violation of this subsection, that assignment is void and is a material breach of the Agreement. However, SAS may assign the Agreement to any affiliate or in connection with a merger, acquisition or asset sale by notice to Customer.

17.7 Audit. Upon thirty (30) business days' notice to Customer, SAS may conduct an audit during Customer's normal business hours to verify Customer's compliance with an Order Form. If the

audit reveals that Customer owes additional fees, Customer will pay the amounts owed.

17.8 Injunctive Relief. Because monetary damages are inadequate to remedy a breach of SAS' or its third-party licensors' intellectual property rights, SAS may protect those intellectual property rights through temporary restraining orders or injunctions without posting bond.

17.9 Force Majeure. Except for Customer's obligations to pay the Fee, neither party will be liable to the other party for any failure or delay in performance caused by factors beyond its reasonable control including, but not limited to, restrictions of applicable law, epidemics or pandemics, 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, cyber-attacks, storms or any other event that prevents performance.

17.10 Independent Contractors. SAS, its employees, and subcontractors are acting as independent contractors and not as employees or agents of Customer. Neither party has the authority to bind the other party.

17.11 Third Party Rights; No Lease. Unless specifically stated in the Order Form, the Agreement does not confer any rights upon any third parties. This Agreement does not lease any interest in real property to Customer.

17.12 Non-Solicitation. For twelve (12) months after the completion of the applicable Order Form, Customer will not solicit for hire any individual who provides Consulting Services. This section does not prevent Customer from hiring any individual who applies through a public job posting.

17.13 Updates to Terms. SAS may change the terms set forth in the URLs listed in the Order Form or incorporated into the Agreement from time to time. However, if the change results in a material degradation of the Customer's rights under the Agreement, SAS will provide Customer with written notice of the change by posting the notice on www.sas.com/contract-with-sas-archive.

17.14 Languages. The parties enter into the Agreement in English. However, Customer or SAS may enter into all or a portion of the Order Form in a non-English language. In that event, the Order Form will be binding as written but any addenda incorporated into the Order Form will be binding in English. SAS may make the Agreement available in other languages for Customer's convenience. However, the English language version controls

unless otherwise required by applicable law. SAS may invoice Customer in English.

17.15 Complete Agreement. If SAS provides an Order Form as a click agreement, the Agreement will be binding upon both parties upon Customer's acceptance. The Agreement is the parties' complete statement relating to its subject matter. SAS rejects any additional or conflicting terms on purchase orders or other purchasing documents. Except as set forth in the Updates to Terms section, the Agreement may not be modified by any side agreement or arrangement between SAS and Customer, written or oral, that purports to modify the Agreement and is not accepted in writing by an authorized representative of both parties.

Definitions

These defined terms are used in the Universal Terms, an Addendum and/or an Order Form. SAS may define additional terms in an Order Form or Addendum.

1. **“Addendum”** means any addendum incorporated into an Order Form.
2. **“Agreement”** means the collective set of terms identified in the Order Form. Invoices also form part of the Agreement.
3. **“Application Monitoring Software”** means software specified by SAS and required to collect data to verify the availability and performance of the Software.
4. **“Authorized Environment”** means the physical hardware, virtual machine, private cloud, public cloud account, or other environment where the Software is installed. If a pricing metric refers to “Authorized Hardware,” that term will be interpreted to mean “Authorized Environment.”
5. **“Committed Period”** means a period during which neither party may terminate an Order Form for convenience, except as set forth in the *Termination* section above.
6. **“Confidential Information”** means confidential information of the other party that is either marked as confidential or should be reasonably understood to be considered confidential due to its nature. Confidential Information includes source code, Customer Materials, Personal Data and the Product Authorization Code.
7. **“Connectivity Tool”** means individually assigned credentials which will enable access to Customer’s computing system via Customer’s VPN, Remote Desktop Protocol, or any other remote connection with multi-factor authentication and scoped access to data.
8. **“Consulting Services”** means SAS consulting services identified on an Order Form.
9. **“Customer”** means the customer entity identified on an Order Form.
10. **“Customer Budget”** means the amount of money Customer makes available for payment of Fees for the performance of Time and Materials Consulting Services. Applicable taxes and travel and living expenses are not included in Customer Budget.
11. **“Customer Materials”** means any materials that Customer provides to SAS or directs SAS to obtain.
12. **“Customer’s Infrastructure”** means Customer’s information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated by Customer or a third party.
13. **“Deliverable”** means the tangible or intangible items identified in an Order Form that SAS agrees to deliver as part of Fixed Price Consulting Services.
14. **“Documentation”** means the official user documentation that SAS may make available for Software at <https://support.sas.com/en/documentation.html>.
15. **“Fee”** means the fee that Customer will pay to SAS under the Order Form.
16. **“Fixed Price”** means a pre-defined project model where SAS provides Consulting Services for a set Fee.
17. **“Issue Tracking System”** means the system that SAS provides to report, track and monitor issues associated with the Software and/or System.
18. **“License Period”** means the period during which Customer is authorized to use the Software.
19. **“Offering”** means the SAS offering listed on the Order Form, which may include Software, Consulting Services, a SAS Cloud offering, or any other offering made available by SAS.
20. **“Option Period”** means any annual period following the initial term where Customer may agree to renew the Order Form for a renewal Fee specified in the Order Form.
21. **“Order Form”** means the electronic or written ordering document entered into between SAS and Customer that specifies the Offering, Fee and other commercial terms.
22. **“Personal Data”** means information relating to an identified or identifiable natural person.

23. **“Pre-Installation Requirements Document”** means a document that SAS provides to Customer detailing activities, specifications and other requirements Customer must complete in preparation for installation of Software and provision of the System.
24. **“Preproduction Offering”** means an offering that is not generally available.
25. **“Prerequisite Software”** means any third party software required for use with the Software as defined at <http://support.sas.com/resources/thirdpartysupport/index.html>.
26. **“Pricing Metric”** means the metric used to determine the Fee.
27. **“Product Authorization Code”** means a code that enables the Software to operate for the applicable License Period.
28. **“Related Entity”** means a separate legal entity that is controlled by, is under common control with, or controls Customer. The term "control" means: (a) for commercial entities, ownership of more than fifty percent (50%) of the voting stock or assets of an entity; or (b) for non-profit or governmental entities, statutory or other documented legal authority over the general budget and contracting rights of an entity.
29. **“RMS”** means remote managed services Offering identified on the Order Form.
30. **“SAS”** means SAS Institute Inc. unless another SAS entity is defined in the Order Form.
31. **“SAS Cloud”** means Hosted Managed Services, Subscription Services, XaaS, or other hosted Offerings made available by SAS.
32. **“Sensitive Information”** means (a) credit or debit card numbers, personal identification numbers (PIN), passwords or other similar information used for payment or to access personal or financial information; (b) patient, medical or other protected health information; (c) genetic data, biometric data, or data about an individual's criminal history; (d) government-issued personal identification numbers (such as social security numbers, driver's license numbers, or passport numbers); (e) classified or technical data controlled by the US International Traffic in Arms Regulations; or (f) materials that require a United States export license, license exception or other United States government authorization.
33. **“Software”** means SAS software, including its embedded subcomponents, licensed to Customer under an Order Form or accessed by Customer in a System.
34. **“Subscription Period”** means the period during which Customer is authorized to use the SAS Cloud Offering.
35. **“Subscription Service”** means the subscription service Offering identified on the Order Form.
36. **“System”** means any hosted environment provided in connection with a SAS Cloud Offering.
37. **“Term”** means twelve (12) months, or another initial time period if specified in the Order Form, and any subsequent renewal period.
38. **“Territory”** means global, unless otherwise set forth in the Order Form.
39. **“Time and Materials”** means a consultative model where (a) SAS provides Consulting Services at hourly or daily rates; and (b) the only Deliverables are SAS' time and a limited license to any Work Product resulting from the Consulting Services.
40. **“Universal Terms”** means the terms that apply to all Offerings.
41. **“User”** means any individual authorized by Customer to access an Offering.
42. **“Work Product”** means computer code or other materials delivered by SAS in connection with Consulting Services.



SAS Software License Addendum

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This Addendum applies only to Software licenses. To license Software, Customer will enter into an Order Form with SAS that incorporates the Universal Terms, this Addendum and any other Offering-specific terms.

1. Annual Licenses

License Periods are annual unless otherwise set forth in the Order Form.

2. License Renewal

The parties may agree to renew the Software license for additional License Periods. Renewal is accomplished by SAS sending an invoice for the applicable Fee and Customer paying the invoice.

3. Renewal Fees

The Order Form may specify renewal Fees for a multi-year Term or Option Period(s). If the Order Form does not specify the renewal Fee for the upcoming License Period, SAS will use reasonable efforts to provide Customer ninety (90) days' advance notice of the renewal Fee.

4. Invoicing

SAS will invoice Customer for the Fee for the first License Period when Customer executes the Order Form. SAS will invoice Customer for any renewal Fees annually in advance of each annual License Period.

5. Multi-Year Initial Term

The Order Form may specify a multi-year Term consisting of multiple annual License Periods and will set forth a payment schedule under which the multi-year Fee is paid upfront or on an installment basis. The multi-year Term may consist of a Committed Period and/or Option Periods. Customer will pay the Fee for the Committed Period even if Customer discontinues its use of the Software prior to the expiration of the Committed Period. However, either party may terminate the Agreement for cause according to the *Termination* section of the Universal Terms.

6. Product Authorization Code

When SAS receives the Fee for each License Period, SAS will provide Customer with a Product Authorization Code valid for that License Period. Customer may need to apply a new Product Authorization Code for changes to the Authorized Environment, operating system or Software version. SAS is not required to provide the Product Authorization Code if Customer is in breach of the Agreement or has not paid any undisputed Fees for the Software.

7. Authorized Environment

The Authorized Environment and any back-up environment must be controlled by Customer or its Related Entities, employees or contractors, including third party cloud providers. Customer will notify SAS of changes to the Authorized Environment. Some Software is not available for use on all types of Authorized Environments.

8. Installations

Except as otherwise set forth in the Order Form, the Software license entitles Customer to one (1) complete instance of the Software in a production environment. Processor cores or license capacity cannot be shared across or used to create multiple production environments. Customer may install the Software on an unlimited number of non-production environments unless the Pricing Metric for the Software is based on the number of installations or the Order Form otherwise limits the number of installations.

9. Pricing Metrics

Unless the Pricing Metric is based on the processing capacity of the Authorized Environment or the number of Users, the Pricing Metric quantity is determined by combining the quantity associated with Customer and Related Entities benefitting from the use of the Software.

If the Pricing Metric is based on the number of Users, the Pricing Metric quantity is determined by combining the quantity of Users authorized by Customer or Related Entities to access the Software.

If the Pricing Metric is based on the processing capacity of the Authorized Environment, the Pricing Metric quantity is calculated separately for each Authorized Environment used for production purposes based on the processing capacity of the Authorized Environment.

If Customer expands the use of the Software to benefit additional Related Entities and such use results in an increase to pricing metric quantities, Customer will notify SAS and pay any applicable additional Fees according to the *Upgrade* section of the Universal Terms.

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Consulting Services Addendum

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This Addendum applies only to Consulting Services. To purchase Consulting Services, Customer will enter into an Order Form with SAS that incorporates the Universal Terms, this Addendum and any other Offering-specific terms.

1. Consulting Services

SAS will provide the Consulting Services on either a Fixed Price basis or a Time and Materials basis as described in the Order Form. Consulting Services do not include continued support or maintenance of any Work Product, unless such continued support or maintenance is detailed in the Order Form.

2. Time and Materials Consulting Services

This section applies only to Time and Materials Consulting Services.

2.1 Invoicing. Unless Customer elects to pre-pay Fees as set forth in an Order Form, SAS will invoice Customer monthly for Fees due.

2.2 Customer Budget. If the Order Form sets forth a Customer Budget, SAS will not perform Services or charge Fees exceeding such Customer Budget without an amendment to the Order Form to increase the Customer Budget. Customer is not obligated to spend all of the Customer Budget.

3. Fixed Price Consulting Services

This section applies only to Fixed Price Consulting Services.

3.1 Invoicing. SAS will invoice Customer for the Fees according to the schedule in the Order Form.

3.2 Acceptance. Customer will accept or reject a Deliverable within ten (10) business days of delivery. If Customer does not reject a Deliverable within this timeframe, the Deliverable is deemed to have been accepted. Customer must notify SAS in writing to reject a Deliverable and must specify the nature and scope of the deficiencies.

If Customer rejects a Deliverable, the parties will use reasonable efforts to follow these timeframes. Within five (5) business days after receipt of the rejection notice, SAS will either correct the deficiencies or propose the manner and timeframe for correcting the deficiencies. Customer will accept or reject any proposal from SAS for correcting any deficiencies within five (5) business days after receipt of SAS' proposal. Customer will accept or reject the corrected Deliverable within five (5) business days of SAS' delivery.

If Customer rejects SAS' proposal for correcting any deficiencies or rejects the corrected Deliverable, SAS may terminate the Agreement for the Consulting Services and refund the Fees paid for the Deliverable. In such event, Customer will delete or destroy the Deliverable.

If the Order Form does not specify any Deliverables, then the Services are deemed accepted as they are performed.

4. Customer's Responsibilities

Customer will:

(a) provide accurate information and access to Customer personnel required for SAS to perform the Consulting Services;

(b) review any Work Product and Deliverables as SAS reasonably requests;

(c) back up all systems, data or software that SAS will access when performing the Consulting Services;

(d) implement reasonable measures to prevent SAS' inadvertent access to any Confidential Information not necessary for SAS' performance of the Consulting Services;

(e) make available facilities and equipment reasonably required for SAS to perform any on-site Consulting Services;

(f) provide any regulatory requirements to SAS for review in advance of the Consulting Services. Any regulatory requirements that impact the scope of the Consulting Services are subject to the *Change Management* section below; and

(g) provide and use a Connectivity Tool to limit and control SAS' access to the systems and data required for SAS to perform the Consulting Services. If individually assigned access is unavailable, Customer may permit SAS remote access via screen sharing applications (such as WebEx or Zoom). SAS will use the Connectivity Tool regardless of whether access occurs remotely, at Customer's facility, or using SAS' or Customer's laptops or other hardware.

SAS is not liable for any performance delays caused by Customer's failure or delay to perform these responsibilities.

5. Taxes, Travel and Living Expenses

Fees do not include applicable taxes or travel and living expenses. SAS will invoice Customer monthly for actual travel and living expenses SAS incurs while performing Consulting Services. Unless specifically stated in the Order Form or Agreement, any pre-paid Fees are non-refundable and cannot be applied to taxes or travel and living expenses.

6. Change Management

For any change to the scope of Consulting Services or the assumptions set forth in the Order Form, SAS will prepare a written change order describing: (a) the changes; (b) the impact of the changes on the Consulting Services and the project schedule; (c) the estimated timetable; and (d) any additional Fees and cost.

Customer's project manager will respond in writing to a change order within five (5) business days. If the change requires payment of additional Fees, SAS will provide a proposed amendment to the Order Form. Until the parties mutually agree on the change order and sign an amendment, if required, SAS will continue to perform the Consulting Services as if the change order does not apply.

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7. Customer Project Manager

Customer will designate one or more project managers to be Customer's primary contact(s) with SAS.

8. Time Limitations

Customer will not bring any claim against SAS related to the Work Product or Consulting Services more than one (1) year after the termination or completion of the Consulting Services under the applicable Order Form.



Hosted Managed Services Addendum

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This Addendum applies only to Hosted Managed Services (“HMS”). To order HMS, Customer will enter into an Order Form with SAS that incorporates the Universal Terms, this Addendum and other Offering-specific terms.

1. Hosted Managed Services

The HMS include provision of: (a) the Software deployed within the System in a SAS-managed cloud environment; and (b) the managed services, which include, but are not limited to the provision, installation, management, monitoring, security and support of the hosted environment.

A detailed description of the parties’ HMS activities is set forth in the RACI document found at <https://www.sas.com/raci>.

If the Order Form does not specify Fees for the installation of new Software releases, data migration, configuration, or customization services, Customer may purchase Consulting Services at an additional Fee for such tasks.

2. Subscription Periods

Subscription Periods are annual unless otherwise set forth in the Order Form.

3. Renewal

The parties may agree to renew the Subscription Service for additional Subscription Periods. Renewal is accomplished by SAS sending an invoice for the applicable Fee and Customer paying the invoice.

4. Renewal Fees

The Order Form may specify renewal Fees for a multi-year Term or Option Period(s). If the Order Form does not specify the renewal Fee for the upcoming Subscription Period, SAS will use reasonable efforts to provide Customer ninety (90) days’ advance notice of the renewal Fee.

5. Invoicing

SAS will invoice Customer for the Fee for the first Subscription Period when the Subscription Period begins. SAS will invoice Customer for any renewal Fee annually in advance of each annual Subscription Period.

6. System Infrastructure

The Order Form specifies the number of total Users that may access the System and the number of concurrent Users that may access the System at any one time, which is based on the initial System infrastructure and sizing determined from Customer’s input. Customer must sign off on the System infrastructure sizing recommendation and must agree to the number of total Users prior to entering the Order Form. Modifications to sizing input provided by Customer, any increases to the number of total Users, concurrent Users, any other upgrades under

the *Upgrade* section of the Universal Terms, the election of optional Services under the RACI or other requests by Customer may require changes to the System infrastructure subject to an additional Fee. SAS and Customer will enter into an amendment or Order Form documenting such Fee. SAS is not responsible for payment of any Service Credits in the event of System performance issues if Customer fails to inform SAS of increases to the authorized number of Concurrent Users or total Users.

7. Multi-Year Initial Term

The Order Form may specify a multi-year Term consisting of multiple annual Subscription Periods and will set forth a payment schedule under which the multi-year Fee is paid upfront or on an installment basis. The multi-year Term may consist of a Committed Period and/or subsequent Option Periods. Customer will pay the Fee for the Committed Period even if Customer discontinues its use of the Offering prior to the expiration of the Committed Period. However, either party may terminate the Agreement for cause according to the *Termination* section of the Universal Terms.

8. Access Credentials

SAS may require Users to register for a profile on SAS’ website to obtain confidential System access credentials.

9. Customer Responsibilities

Customer is responsible for: (a) Customer’s infrastructure, including communications link and any other technology or hardware required for the System to operate properly between Customer and SAS; (b) the security of access credentials, including ensuring only authorized Users have access to the System or their respective Passwords. Customer will notify SAS immediately upon becoming aware of any loss or theft of their Password or any unauthorized use of such Password; and (c) any virus Customer introduces into the System through Customer Materials or otherwise.

10. Personal Data

10.1 Personal Data. Customer may use Personal Data in the System. The *Confidential Information* and *Personal Data Protection* sections of the Universal Terms apply to Personal Data.

10.2 SAS Obligations. Upon expiration or termination of the Order Form, SAS will delete or render inaccessible all Personal Data in the

System, unless the Order Form specifies different retention practices. SAS may: (a) retain one copy of the Personal Data as necessary to comply with legal, audit or internal SAS requirements; and (b) defer the above activities to the extent and for the duration that SAS cannot reasonably and practically expunge Personal Data from the System. As long as SAS retains any Personal Data in the System, the *Security* section of this Addendum and the *Personal Data Protection* section of the Universal Terms will continue to apply to such Personal Data.

10.3 Sensitive Information. Unless authorized in the Order Form, Customer will not use Sensitive Information in the System or transmit Sensitive Information to SAS. If Customer uses or transmits any Sensitive Information in the System in violation of this section, Customer will reimburse SAS for any costs associated with its removal.

11. Prohibited Activities

Customer and Users will not use the System to: (a) send spam or other unsolicited marketing or communications; (b) infringe on any party's intellectual property or privacy rights; (c) send or store harassing, abusive, libelous, or obscene materials; (d) falsify or delete transmission information, including headers, return mailing, and Internet protocol addresses; (e) misuse or abuse passwords, confidential information, software, equipment, networks or network devices of SAS or any third party; (f) download the Software, other software, or data other than the Customer Materials made available by SAS via the System; (g) impair the functionality of the System; (h) violate any applicable laws or regulations; (i) violate the rules of any other service provider engaged by or for the benefit of Customer. Users will not use any open source software in connection with the System if the license to the open source software requires that any part of the System be disclosed or distributed in source code form, made available free of charge, or modifiable without restriction; or (j) perform, or cause to be performed, any type of penetration testing or similar external security attacks against the System. Customer will promptly notify SAS and use best efforts to remedy any violations of this section by Users. Upon notification to Customer, SAS may suspend access to the System if a Customer violates this section or if SAS reasonably suspects a Customer is violating this section.

12. Security

SAS will employ reasonable security measures designed to: (a) protect the System against unauthorized access, usage, or other threats; and (b) protect Confidential Information, including Personal Data, against unauthorized access, use, alteration, destruction, or disclosure. Such measures are set forth in SAS' Technical and Organizational Security Measures available at: <https://www.sas.com/TOMS>.

Except as expressly specified in the Agreement, SAS

does not represent or guarantee that the System complies with any applicable laws that impose specific data security obligations for the storage or processing of Customer Materials. Customer is solely responsible for determining the suitability of the System in light of any such applicable laws.

13. System Validation

If set forth in an Order Form, SAS will provide assistance with qualification or validation activities related to System use in certain regulated industries. Customer will provide the appropriate information to enable SAS to qualify or validate the System as integrated with the Customer Materials. Additional Fees may apply for any qualification or validation activities.

14. Security Audit

Upon thirty (30) days' written notice to SAS and at Customer's expense, Customer employees or a mutually acceptable independent third-party auditor may conduct one (1) off-site documentation audit or one (1) on-site audit to verify that SAS is in compliance with SAS' security and data protection obligations under the Agreement. Customer will conduct remote security audits during SAS' normal business hours. SAS will not be required to disclose any information relating to other customers or third parties. On-site security audits must not interfere with SAS' normal business operations and will not exceed three (3) SAS business days. The auditor must sign a confidentiality agreement with SAS prior to conducting the security audit and will comply at all times with SAS' security rules, policies and procedures. SAS will cooperate with the auditor by:

(a) making applicable records available; (b) providing copies of such records as requested for review by the auditor on SAS' premises; and (c) directing SAS employees to reasonably cooperate. Security audits will be limited to SAS' records, facilities and employees and will not include a review of any records, facilities, infrastructure, or technology owned or controlled by a third-party cloud provider. Neither Customer nor the auditor will access the internet data center or otherwise observe any physical security safeguards maintained by SAS or Microsoft. Customer may conduct one (1) security audit during any twelve (12) month period during the Term, unless applicable law or an order of a regulatory authority mandates otherwise.

15. Disclaimer of Third-Party Actions

SAS exercises no control over the flow of information to or from the System, SAS' network, or other portions of the internet. Such flow largely depends on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the System. SAS will use commercially reasonable efforts to take all actions it deems appropriate to avoid or remedy such events, but SAS cannot guarantee that such events will not occur. **SAS DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO INTERNET**

OR NETWORK FAILURES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, SAS DISCLAIMS ANY AND ALL LIABILITY ARISING FROM ACTIONS OR INACTIONS OF A THIRD PARTY.

16. Termination Rights

In addition to SAS' termination rights set forth in the Agreement, SAS may terminate the Order Form upon thirty (30) days' prior written notice if Customer fails to cure either of the following conditions: (a) Customer's use of the System or the Customer Materials poses a security risk to the System or any other SAS customer, may harm the System or any other SAS customer, or may subject SAS or any third party to liability; or (b) applicable law prohibits SAS from providing the System to Customer. SAS may terminate the Order Form upon five (5) days' written notice if Customer uses the System for fraudulent or illegal activities. If a cloud service provider terminates its agreement with SAS to provide their facilities for the System, SAS may, upon at least one hundred twenty (120) days' written notice to Customer, either (a) relocate the System to an alternate internet data center; or (b) if relocation is not commercially reasonable, terminate the Order Form and refund to Customer a pro rata portion of any Fees paid by Customer for the time remaining in the Term.

17. Microsoft Products

If the System includes any products owned by Microsoft Corporation, the Microsoft terms are available at:

<https://www.sas.com/content/dam/SAS/legal/microsofproductsenglish.pdf>

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Hosted Managed Services Service Level Warranty Addendum

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This Service Level Warranty Addendum describes SAS' Service Level Warranty for System availability and Customer's remedy for System Downtime for Hosted Managed Services or Managed Application Services, as applicable.

1. Service Level Warranty for Hosted Managed Services

1.1 Definitions.

1.1.1 **"Burn-in Period"** means a period of sixty (60) days following the date on which SAS declares the production System to be live.

1.1.2 **"Planned Outage"** means any scheduled outage resulting in unavailability of the System due to maintenance activities of the Internet data center or other reasons.

1.1.3 **"Service Credit"** means the credit provided to Customer for any calendar month in which System Availability is not achieved. Service Credits are calculated as set forth in the *Service Credits* section of this Addendum.

1.1.4 **"Service Level Warranty"** means the warranty that the production System will be available to Customer as described in the *Service Level Warranty* section of this Addendum.

1.1.5 **"System Availability"** means the percentage of time during each calendar month when the System is available to Customer, excluding any period of unavailability due to a Planned Outage, any outage due to Customer Materials or any outage beyond SAS' reasonable control.

1.1.6 If this Addendum is incorporated into an agreement for Managed Application Services, then Hosted Managed Services means Hosting Services for the purposes of interpreting this Addendum.

1.2 **Service Level Warranty.** SAS' Service Level Warranty applies to production Systems only and is dependent on Customer submitting all required Customer Materials to SAS in accordance with the Agreement. SAS will monitor the Hosted Managed Services and will determine System Availability. SAS will monitor the Service Level Warranty during the Burn-in Period but will not make Service Level Credits available until the end of the Burn-in Period.

1.3 Applicability.

1.3.1 The Service Level Warranty will not apply to: (a) any modification of the System by anyone other than SAS or SAS' representatives; (b) Consulting Services or technical support; or (c) telecommunications lines. The Service Level Warranty does not apply to any unavailability of the System or performance issues that result from or are related to: (a) a Force Majeure cause; (b)

actions or inactions of Customer or any third parties outside of SAS' control including, but not limited to third party provider(s); (c) Customer's equipment and/or third-party equipment not within the sole control of SAS or its representatives; (d) Customer's failure to comply with the System usage rules; (e) Customer Materials; (f) third party products; or (g) Customer's decision to utilize a prior Software version in the System that is no longer eligible for standard support under the *Technical Support* section of the Universal Terms; or (h) Customer's decision not to adopt System infrastructure sizing recommendations provided by SAS.

1.3.2 SAS' provision of the Hosted Managed Services or Additional Services depends on the timely availability of Customer Materials. If SAS is unable to perform any obligation under the Order Form due to unavailable or altered Customer Materials, SAS will notify Customer and Customer will provide the Customer Materials. SAS will process the Customer Materials or corrected Customer Materials as soon as commercially practicable after they become available. SAS will notify Customer once any delays in the availability of the System are resolved. Any delays in the availability of the System occurring as a result of the Customer Materials will not be deemed a breach of the Service Level Warranty and SAS will not be liable for providing Customer with any Service Credits pursuant to the *Service Credits* section.

1.3.3 Any unavailability of the System relating to the *Planned Outages* or *Temporary Service Suspensions* sections below are not a breach of the Service Level Warranties and SAS will not provide Customer with any Service Credits.

1.4 **Planned Outages.** SAS will use reasonable efforts to provide Customer with at least seven (7) days' notice prior to a Planned Outage.

1.5 **Temporary Service Suspensions.** SAS may temporarily suspend Customer's access to any portion or all of the System, including the Customer Materials, if SAS reasonably determines that:

(a) a threat, attack, denial of service attack, or other event creates a risk to the System, the internet data center, any party or a third party;

(b) Customer's use of the System or the Customer Materials creates a risk to the System, the internet data center, any party or third party, or may subject SAS or any third party to liability;

(c) Customer uses the System for fraudulent or illegal activities or any activity prohibited by the System usage rules;

(d) subject to applicable law, Customer ceases to continue its business in the ordinary course, attempts to make an assignment for the benefit of creditors or similar disposition of its assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding;

(e) Customer uses the System in breach of the Agreement;

(f) there is any unauthorized access to or use of the System;

(g) Customer is in default of its payment obligations;

(h) there is an unusual spike or increase in Customer's use of the System, which gives rise to a reasonable suspicion of unauthorized use of the System; or

(i) applicable law prohibits SAS from providing the System to Customer.

SAS will use commercially reasonable efforts to provide written notice of any service suspension to Customer and will provide updates regarding resumption of availability of the System following any service suspension. SAS will not provide any Service Credits and will have no liability for any damage, liabilities, losses (including any loss of data or profits) that Customer may incur as a result of any service suspension under this section.

2. Service Credits

2.1 Service Credit Availability. Service Credits will apply to Customer's production System(s) only. Customer will be entitled to request only one (1) Service Credit each month related to a particular event. Customer must request each Service Credit within seven (7) days of the end of such calendar month. Customer's failure to request a Service Credit within this timeframe will forfeit the Service Credit for that month. Any Service Credits received by Customer will be applied to the next invoice for Hosted Managed Services Fees under the Order Form. However, if the Service Credit is due in the final period of the Term, SAS will refund the Service Credit to Customer.

2.2 End-to-End Service Level Warranty. Service Credits available to Customer as a result of a breach of the End-to-End Service Level Warranty are calculated based on the System Availability as follows:

$$x = ((n-y)/n)*100$$

Where x = Average System Availability percentage;

n = the number of hours in a calendar month; and

y = the number of hours that the production System is not available in the same month.

Systems utilizing SAS Viya platform release 4.0 or later:

System Availability	Service Credit Calculation
> 99.5%	No Service Credit
99.49% - 98.5%	4% of the monthly Hosted Managed Services Fees (annual Fee divided by twelve)
< 98.49%	7% of the monthly Hosted Managed Services Fees (annual Fee divided by twelve)

All other Systems:

System Availability	Service Credit Calculation
> 99.0%	No Service Credit
98.99% - 98.5%	4% of the monthly Hosted Managed Services Fees (annual Fee divided by twelve)
< 98.49%	7% of the monthly Hosted Managed Services Fees (annual Fee divided by twelve)

3. Termination

Customer may terminate the Order Form for cause and without penalty if: (a) Customer receives a total of four (4) Service Credits during any annual period under the Order Form; and (b) SAS breaches the Service Level Warranty in any subsequent calendar month during such annual period. Customer must notify SAS of its intention to terminate within five days following the end of the calendar month in which the termination right arises.

4. Exclusive Remedies

The *Service Credits*, and *Termination* sections above state Customer's sole and exclusive remedy for any noncompliance with the Service Level Warranty. **SAS MAKES NO WARRANTY THAT THE SYSTEM WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION OR THAT ANY DATA TRANSMISSIONS TO, FROM, OR THROUGH THE SYSTEM WILL BE COMPLETELY SECURE; PROVIDED, HOWEVER, THAT SAS WILL UTILIZE THE SECURITY MEASURES DESCRIBED IN THE HOSTED MANAGED SERVICES ADDENDUM.**

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Training Points Guidelines

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These Guidelines apply to SAS Training Points and/or JMP Training Points (“**Training Points**”).

1. Redeeming Training Points

1.1 Eligible Uses. Customer may redeem Training Points to (a) register employees for public, live web or on-site courses; (b) pay SAS e-Learning or SAS Learning Subscription fees; (c) purchase virtual lab time or certification exam vouchers; (d) pay SAS training center rental fees; (e) register for selected conferences; or (f) pay for other eligible training Offerings approved by SAS (collectively “**Eligible Training**”). Class and conference sizes are limited, and space is not guaranteed. Unless approved by SAS, Customer may use: (a) SAS Training Points only for Eligible Trainings related to SAS software; and (b) JMP Training Points only for Eligible Trainings related to JMP software.

1.2 Quantity. The number of Training Points required for each Eligible Training varies by country.

1.3 Customer Representative. Customer will designate a representative to manage its Training Points account, authorize employee registrations, and coordinate the purchase of any products or services using Training Points.

1.4 Training Points Account. SAS will issue an account number to Customer’s representative upon receipt of the Order Form for the purchase of Training Points. Customer may begin using Training Points when it receives an account number.

1.5 Expiration. Training Points expire twelve (12) months following purchase.

2. Taxes; Discounts; Expenses

2.1 Taxes. Customer is responsible for any applicable taxes, except for taxes based on SAS’ income. Fees do not include taxes. SAS will use reasonable efforts to include applicable taxes on SAS’ invoice. Customer will self-assess and pay any VAT, GST or sales tax applicable to Customer’s use of the Training Points outside of the US and not included on SAS’ invoice. Additional taxes may apply for Training Points redeemed outside of the country where they are purchased.

2.2 Discounts. Any discount applicable to Training Points purchased from one SAS entity but redeemed with another SAS entity is capped at ten percent (10%). No other discounts apply.

2.3 Expenses. For on-site courses, SAS’ travel expenses are additional. Expenses include round-trip coach airfare; rental car (including gas) or local transportation, hotel, and per diem meals.

3. Cancellation Policy

3.1 Cancellation by SAS. SAS may cancel or

reschedule Eligible Trainings at its discretion. In such event, SAS will reinstate the applicable Training Points to Customer’s account. SAS is not responsible for any resulting airline or hotel penalties incurred by Customer. SAS reserves the right to deny training to any party prohibited by United States export laws or other applicable law.

3.2 Customer Cancellation of Public Courses. Customer must contact SAS in writing to cancel participation in a public course. SAS will reinstate 100% of the applicable Training Points to Customer’s account if SAS receives such written cancellation at least ten (10) days prior to the scheduled start of a public course. SAS will not reinstate Training Points for cancellations received less than ten (10) days prior to the scheduled start of a public course.

Customer may substitute its attendees at any time prior to the start of a public course.

SAS allows course transfers up to twenty-four (24) hours before a public course start date and students are allowed one transfer per registration.

3.3 Customer Cancellation of Onsite and Private Live Web Courses. Customer may cancel or reschedule an on-site course by notifying SAS in writing. SAS will draw down a change fee from Customer’s Training Points account as follows:

Notice Received By SAS	Change Fee (percentage of course fee)
At least 21 days prior to course start date	None
Less than 21 days prior to course start date	50%
Less than 10 days prior to course start day	100%

Customer is also responsible for any non-refundable travel expenses incurred by SAS.

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