



## SAS Evaluation Terms

These SAS Evaluation Terms will be incorporated into an Order Form, app store or other ordering mechanism (an “**Order**”) between Customer and SAS to allow Customer to evaluate the SAS offering identified on the Order (the “**Offering**”) at no charge. “**SAS**” means the SAS entity identified on the Order Form. “**Agreement**” means these Evaluation Terms together with the Order.

### 1. Permitted Use

1.1 **Software.** If the Offering is SAS software (“**Software**”) not hosted by SAS, SAS grants Customer a license to use the Software during the Evaluation Period for Customer’s evaluation purposes only.

1.2. **Hosted Offerings.** If the Offering is hosted by SAS in a SAS cloud offering or a subscription service, Customer may access the Offering during the Evaluation Period for Customer’s evaluation purposes only.

1.3 **Documentation.** Customer may use the Offering and any related on-line documentation made available by SAS (“**Documentation**”) during the Evaluation Period for Customer’s evaluation purposes only.

1.4 **Users.** Only persons authorized by Customer (“**Users**”) may access the Offering. Customer will inform Users of the relevant terms of the Agreement and be responsible for their compliance with those terms.

1.5 **Restrictions.** Customer and Users will not use the Offering or Documentation to: (a) bring an intellectual property infringement claim against SAS; or (b) create any offering that competes with SAS. The Order may include additional terms or license scope restrictions. Customer’s license or right to use the Offering is nonexclusive, nonassignable and nontransferable.

### 2. Agreement Length

2.1 **Term.** The Agreement is effective for the time period set forth on the Order (the “**Evaluation Period**”).

2.2 **Termination.** Either party may terminate the Agreement at any time. Obligations in the Agreement that by their nature are continuing survive expiration or termination.

### 3. Installation

3.1 Customer will provide reasonable information requested by SAS to enable SAS to administer the Offering.

3.2 If the Offering is Software, Customer may install the Software on physical hardware, a virtual machine, or a public or private cloud account controlled by Customer or its contractors. SAS will provide a product authorization code to allow the Software to operate for the Evaluation Period.

3.3 If the Offering will be installed in a SAS hosted environment, Attachment A applies to the Offering together with the SAS hosted environment (the “**System**”).

### 4. Consulting Services

If SAS elects to provide free services (“**Consulting Services**”) to assist Customer with its Offering evaluation, SAS grants Customer a nonexclusive, nontransferable, non-assignable, royalty-free license to use any computer code and/or documentation delivered as part of the Consulting Services (“**Work Product**”) during the Evaluation Period. Customer will use the Work Product only to evaluate the Offering.

### 5. Preproduction Offering

This Section applies only if SAS has not released the Offering as generally available. SAS may: (a) change the Offering before releasing it as a production product or (b) choose not to release the Offering. Upon request, Customer will provide feedback to SAS. SAS may use all feedback in any format and any ideas, concepts, know-how, formulas, designs, improvements, inventions, techniques or processes contained in that feedback, whether or not patentable.

### 6. No Warranty

SAS PROVIDES THE OFFERING AND, IF APPLICABLE, THE SYSTEM, CONSULTING SERVICES AND/OR WORK PRODUCT “AS IS.” SAS DISCLAIMS ALL 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.

## 7. Liability Disclaimers

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

7.2 **Applicability.** This section does not apply to Customer’s violation of SAS’ intellectual property rights or to Customer’s indemnification obligations in Attachment A. Some jurisdictions do not allow limitations of liability or exclusions for incidental or consequential damages, so certain provisions of this section may not apply; however, they apply to the greatest extent permitted by applicable law.

## 8. Intellectual Property

SAS and its licensors retain title to the Offering, the System, its source code, Documentation, Work Product and any techniques, skills, concepts or know-how SAS utilizes or develops while performing the Agreement. The Agreement does not transfer any ownership rights. SAS source code is a SAS trade secret. Customer and its Users will not access source code or attempt to reverse engineer, reverse assemble or decompile the Offering or System to recreate source code. Because monetary damages are inadequate to remedy a breach of SAS’ or its licensors’ intellectual property rights, SAS may protect those intellectual property rights through temporary restraining orders or injunctions without posting bond.

## 9. Applicable Law and Arbitration

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

9.2 **Arbitration.** All disputes arising out of or in connection with this 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 (1) one 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 this 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. 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.

9.3 **China.** This subsection applies only to Customers located in China. If the parties’ agreement to adopt New York governing law is unenforceable, then the Agreement will be governed by the laws of the People’s Republic of China. Notwithstanding anything contained in the Arbitration subsection of above to the contrary, any dispute arising from or in connection with the Agreement will be submitted to the China International Economic and Trade Arbitration Commission for arbitration which will be conducted in accordance with the Commission’s arbitration rules in force when the Notice of Arbitration is submitted. The arbitration will be conducted in Chinese. The seat of arbitration will be in Beijing.

9.4 **Enforceability.** Except as set forth in Section 9.2, if the parties’ agreement to adopt New York governing law is unenforceable, then the Agreement will be governed by the laws of the country where the SAS entity entering the Order Form is organized. If the parties’ agreement that the seat of arbitration will be New York, New York is unenforceable, then the seat of arbitration will be the city where SAS is located. If the parties’ agreement to arbitrate disputes is unenforceable, then the parties agree that the exclusive forum for any litigation relating to the Agreement will be in the courts located in the city where SAS is located. In such event, the parties agree to submit to the personal jurisdiction of those courts.

9.5 **Export and Import Restrictions.** The Offering and System originate from the United States (“US”). US

export laws and regulations apply to the Offering, Documentation, System and any Work Product. Both parties agree to comply with these and other applicable export and import laws and regulations (“**Trade Laws**”). Customer warrants that Customer and its Users are not Restricted Parties. “**Restricted Party**” means a person or entity: (a) prohibited by US 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 US Trade Laws; 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.

## 10. Confidential Information

Each party acknowledges that it may have access to 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**”). The recipient will use the discloser’s Confidential Information only to perform its obligations under the Agreement. Recipient will not disclose discloser’s Confidential Information received in connection with the Agreement to any third parties without recipient’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 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. 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. For the purpose of this section, SAS’ affiliates and subcontractors are not “third parties.” Unless specifically authorized in the Order, neither party will disclose source code or personal data relating to an identified or identifiable natural person.

## 11. General

Customer may not assign the Agreement or any of its rights or obligations. 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. 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. The parties enter into the Agreement in English. SAS may make the Agreement available in other languages for Customer’s convenience. However, the English language version controls.

## 12. SAS Customer Intelligence 360 Additional Terms

The following terms apply if the Hosting Offering being evaluated includes SAS 360 Engage:

**SAS 360 Engage: Digital Usage Scope** - Customer agrees that the amount of data downloaded per unit of displayed content will not exceed, on average, two hundred (200) kilobytes measured in a calendar month.

**SAS 360 Engage: Digital Tracking Technologies** - Customer acknowledges that SAS 360 Engage: Digital may use tracking technologies on Customer’s websites and mobile applications that collect information with respect to visitors to Customer’s websites and users of Customer’s mobile applications (“**Tracking Technologies**”). Customer agrees that it is solely responsible for determining whether such Tracking Technologies can be used in compliance with applicable legal requirements and for providing notice and/or obtaining consent, as may be required by such legal requirements, for use of such Tracking Technologies on its websites and mobile applications. Customer acknowledges that certain third-party software or blocking technologies utilized by visitors to Customer’s websites may interfere with the Tracking Technologies and agrees that SAS is not responsible for any resulting Tracking Technologies performance issues.

**Personal information.** Notwithstanding anything in this Agreement to the contrary, Customer may disclose personal information relating to an identified or identifiable natural person (“**Personal Data**”) to SAS during the Evaluation Period for the purposes of the evaluation only. Customer may not disclose Sensitive Information to SAS, as described in Sections 2.2 (b) through (g) of Attachment A this Agreement to SAS. SAS Data Processing Addendum available at <https://www.sas.com/dpa> will apply to SAS’ processing of Personal Data.

## 13. Complete Agreement; Modifications

The Agreement is the parties' complete statement relating to its subject matter. If there is a conflict between the terms of the Agreement, the order of precedence is: (1) the Order, (2) Attachment A, and (3) the SAS Evaluation Terms. SAS rejects any additional or conflicting terms on purchase orders or other purchasing documents.

## Attachment A SAS Hosted Environment

This attachment applies only if Customer will access the Offering in a hosted environment provided by SAS.

### 1. System Access

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

### 2. Materials Used within the System

**2.1 Customer Materials.** "Customer Materials" means any materials Customer uses or directs SAS to use with the System. Customer grants SAS a nonexclusive, nonassignable, nontransferable and royalty-free license to use the Customer Materials solely to perform the Agreement. If SAS believes that 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 or remove the Customer Materials.

**2.2 No Sensitive Information.** Customer will not place the following "Sensitive Information" on the System: (a) personal information relating to an identified or identifiable person; (b) credit or debit card numbers, personal identification numbers (PIN), passwords or other similar information used for payment or to access personal or financial information; (c) patient, medical or other protected health information; (d) genetic data, biometric data, or data about an individual's criminal history; (e) government-issued personal identification numbers (such as social security numbers, driver's license numbers, or passport numbers) or (f) classified or technical data controlled by the US International Traffic in Arms Regulations; or (g) materials that require a United States export license, license exception or other United States government authorization. If Customer places any Sensitive Information on the System in violation of this section, Customer will reimburse SAS for any costs associated with its removal.

### 3. Customer Responsibilities

**3.1 Necessary Rights.** Customer will obtain all necessary rights to provide the Customer Materials to SAS. Customer will comply with any third-party usage rights and applicable laws related to the Customer Materials.

**3.2 Data Transmission.** Before providing any Customer Materials to SAS, Customer will complete any data classification form(s) requested by SAS. Customer will only transmit Customer Materials to SAS using methods approved by SAS.

**3.3 Back-Up.** Customer is solely responsible for backing up all Customer Materials and mitigating the risks inherent in storing or transmitting the Customer Materials via the System, including the risk of data loss.

**3.4 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 Offering, software or data made available by SAS via the System; (g) impair the functionality of the System; (h) violate any applicable laws or regulations; or (i) violate the rules of any other service provider engaged by or for the benefit of Customer. Customer and 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. Customer will promptly notify SAS and use best efforts to remedy any violations of this section by Users. SAS may suspend Customer's or any User's access to the System if Customer violates this section.

### 4. Indemnification

Customer will indemnify SAS for any claim made against SAS relating to (a) the Customer Materials or (b) Customer's violation of its obligations in the *Customer Responsibilities* sections. 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.

### 5. Third-Party 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/microsoftproductsenglish.pdf>.

LGL5491 v4

Last Revised: 15JAN2024