**Disclaimer: Please note that the following is only an example of an end user agreement and is provided solely for informational purposes. Neither Distributor nor SAS are requiring use of this form of end user agreement or providing legal, tax or any other advice as a result of providing this example agreement. Tier Two Reseller is solely responsible for obtaining any legal, tax or other advice it deems necessary to draft and enter into an end user agreement with an end user that is in compliance with Distributor’s or SAS’ agreement with Tier Two Reseller.**

|  |  |
| --- | --- |
| **Company: [Insert Details for T2 Reseller]****Address:x** | **End User: [Insert Details for End User]****Address:** |

**End User Agreement (“Agreement”) for SAS Software**

[This End User Agreement can be used only for SAS Software that a Tier Two Reseller is sublicensing to an End Customer. This End User Agreement may not be used for any Offerings hosted by SAS.]

1. **Scope, Contract Structure.** This End User Agreement and an executed Order by and between Company and End User govern End User´s license to Software. End User will be granted license to Software by execution of Orders between Company and the End User.
2. **License to Software.** Company grants End User a non-exclusive, non-assignable, non-transferable license to use the Software during the Term subject to the terms of the Agreement. Licenses to the Software are subject to the Required End User Agreement Terms – Software License.
3. **Effective Date; Term.** The Agreement is effective upon the date of signature of the Order and the EUVL if applicable. The Agreement will remain in effect for the Term provided in the Order and EUVL if applicable.
4. **Termination.**

**4.1 Termination for Breach**. 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. Company may terminate the Agreement immediately if End User violates intellectual property rights of Company or Company’s Licensors.

**4.2 Survival.** 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 Company decides, at its sole discretion and as authorized by the Company´s Licensors, to provide the Software to End User while the parties are in good faith negotiations to renew the Order. Company’s provision of the Software during any such negotiation is not fee waived.

**4.3 End of Usage Rights.** If the Agreement terminates or expires, End User will stop using the Software and delete any media, Product Authorization Codes, or Documentation.

1. **Fees**
	1. **Fees.** Fees are listed in the Order.
	2. **Payment.** Payments are due net …… (….) days. Refunds are not available unless specifically stated in the Agreement.
	3. **Upgrades.** End User must contact Company 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.
	4. **Taxes.** [Note: Please insert tax collection information based on advice from your tax counsel.]
2. **Technical Support.**  Technical support for the Software will be provided by the Company or any third party appointed by the Company on behalf of the Company including Company´s Licensors.

Technical support also includes access to all new releases, updates, bug-fixes, security patches and other corrective code that are made generally available to the End Users of the Software. End User agrees to use reasonable efforts to install such content for Software. If End User chooses not to install the current release of the Software, the level of technical support will diminish over time. During ongoing development, the Software may be renamed, changed or individual components or functionality may be deleted in new releases of the Software.

1. **Warranties and Disclaimers.**
	1. **Intellectual Property Warranty.** Company warrants it has the right to license the Software to End User. End User’s exclusive remedy for Company’s breach of this warranty is set forth in the Indemnification by Company section.
	2. **Virus Warranty; Conformance with Documentation Warranty.** Company warrants that when delivered, each commercially available release of the Software will not contain a virus and will substantially conform to its Documentation. As End User’s exclusive remedy for breach of this warranty, Company, at its option, will: (a) repair the Software; (b) replace the Software; or (c) terminate the Agreement and refund the Fees paid for the Software during the then-current annual period. End User acknowledges that Company may provide the remedies listed under (a), (b) or (c) directly or through Company´s Licensors.
	3. **WARRANTY DISCLAIMERS.** COMPANY DISCLAIMS 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. COMPANY MAKES NO WARRANTY THAT THE SOFTWARE WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION. COMPANY DOES NOT WARRANT OR REPRESENT THAT END USER’S USE OF THE SOFTWARE ALONE WILL RESULT IN END USER’S COMPLIANCE WITH ANY APPLICABLE LAW.
2. **Exclusions of Damages; Limitation of Liability.**
	1. **Exclusion of Damages.** Neither End User, Company, nor Company’s 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 Company nor Company´s Licensors are liable for any third-party claim against End User.
	2. **Limitation of Liability:** THE TOTAL AMOUNT END USER MAY RECOVER FROM COMPANY FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT IS LIMITED IN THE AGGREGATE TO THE FEES END USER HAS PAID FOR THE SOFTWARE AT ISSUE DURING THE APPLICABLE ANNUAL PERIOD IN WHICH THE CLAIM AROSE.
	3. **Applicability.** This section does not apply to the Indemnification by Company section or to End User´s violation of the intellectual property rights relating to Software. The limitations in this section will apply even if any of the remedies provided in the 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 End User. However, the provisions apply to the greatest extent permitted by applicable law.
3. **Indemnification by Company.** Provided End User complies with the Agreement, Company will defend and indemnify End User for any third-party claim against End User for any copyright, patent, trade secret or other intellectual property rights violation relating to the Software. End User will promptly notify Company in writing of any such claim. End User will allow Company to control the litigation or settlement of any such claim and will cooperate with Company in the investigation, defense, and settlement.

If any intellectual property claim is made or, in Company's opinion, is likely to be made, Company may: (a) modify the Software; (b) obtain rights for End User to continue using the Software; or (c) terminate End User’s license to use the Software and refund any Fees paid by End User for the then-current annual period. End User will abide by Company's decision. Company may provide the remedies listed under (a), (b) or (c) above directly or through Company´s Licensors

Company’s indemnification obligation does not apply to claims based on: (1) End User’s combination of the Software with other software or materials; (2) End User’s modification to the Software; (3) prior versions of the Software if End User had not installed the latest version or updates to the Software prior to the date the claim arose.

End User acknowledges that (1) Company may delegate the control of the litigation or settlement of the claim to Company´s Licensors or to any other third party and ask the End User to cooperate with such third party or Company´s Licensors as applicable, and (2) the delegation of control of the litigation or settlement mentioned above or the delivery of the applicable remedies through Company´s Licensors or any other third party do not i) relieve the Company from its indemnification obligations as provided herein, or ii) give any right to the End User to raise claims against Company´s Licensors or any other third party directly without regard to the prime contractor status of the Company.

1. **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. Company may also use End User’s Confidential Information to provide End User sample analysis for other 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. 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, Company´s Licensors, affiliates and subcontractors are not "third parties.” Neither party will disclose source code.
2. **Applicable Law.** [Note: This is provided for example purposes only. Please check with your legal advisors for any terms regarding applicable law, jurisdiction, arbitration, etc.]

* 1. **Governing Law.** The laws of [\_\_\_\_\_], excluding choice of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods, govern the Agreement.
1. **Commercial Terms for Software.**
	1. **Annual Licenses and Renewal.** License Periods are annual unless otherwise set forth in the Order. The parties may mutually agree to renew the End User Agreement for additional License Periods before each Annual License Renewal date. The Order may specify renewal Fees for a multi-year Term. If the Order does not specify the renewal Fee for the upcoming License Period, Company will use reasonable efforts to provide End User advance notice of the renewal Fee.
	2. **Invoicing.** Company will invoice End User for the Fee for the first License Period when End User executes the Agreement. Company will invoice End User for any renewal Fees annually in advance of each annual License Period. End User will submit an EUVL if requested by the Company.
	3. **Multi-Year Initial Term.** The Order may specify a multi-year Committed Period 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. End User will pay the Fee for the Committed Period even if End User discontinues its use of the Software prior to the expiration of the Committed Period. However, either party may terminate the Agreement according to the Termination section of this Agreement and the Required End User Agreement Terms – Software License.
	4. **Product Authorization Code.** End User will be provided with a Product Authorization Code valid for the applicable annual License Period. End User may need to apply a new Product Authorization Code for changes to the Authorized Environment, operating system or Software version. Company is not required to provide the Product Authorization Code if End User is in breach of the Agreement or has not paid any undisputed Fees for the Software.
	5. **Authorized Environment.** The Authorized Environment and any back-up environment must be controlled by End User or its Related Entities, employees or contractors, including third party cloud providers. End User will notify Company of changes to the Authorized Environment. Some Software is not available for use on all types of Authorized Environments.
	6. **Installations.** Except as otherwise set forth in the Order, the Software license entitles End User 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. End User 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 otherwise limits the number of installations.
2. **General.**
	1. **Subcontracting.** Company may subcontract its performance under the Agreement. However, subcontracting does not relieve Company of its obligations to End User under the Agreement. Without limiting the generality of the foregoing, Company may subcontract Technical Support to Company´s Licensors.
	2. **End User Responsibilities.** End User will: (a) verify the accuracy of its data input and output while using the Software; (b) duplicate, document and protect all data and software End User uses with the Software; (c) 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 relative to the applicable Pricing Metrics and usage rights and provide a copy of such records to Company upon request. Company will provide such reports to Company´s Licensors; and (g) designate a single delivery contact for Product Authorization Codes and installation media and a single billing contact for invoices.
	3. **End User Feedback.** Company or Company´s Licensors may use any feedback related to any 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.
	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.
	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 Company or Company´s Licensors may have under the Agreement at law, in equity, or otherwise.
	6. **Non-Assignment.** End User will not assign the Agreement or any of its rights or obligations without Company’s written permission, which will not be unreasonably withheld and may be subject to permission by Company´s Licensors. If the End User attempts to assign the Agreement in violation of this subsection, that assignment is void and is a material breach of the Agreement. However, Company may assign the Agreement by notice to End User.
	7. **Order of Precedence.** In the event of any conflict or inconsistency among the following parts of the Agreement, the order of precedence will be:
3. The Required End User Agreement Terms – Software License.
4. Order in the version executed between the Parties for a specific Software license.
5. End User Agreement.
	1. **Complete Agreement.** The Agreement will be binding upon both parties upon the execution of the Order by both Parties. The Agreement is the parties' complete statement relating to its subject matter. Any additional or conflicting terms on purchase orders or other purchasing documents are null and void. The Agreement may not be modified except in writing duly executed by an authorized representative of both parties.

**Definitions**

These defined terms are used in the Agreement, EUVL if applicable and/or an Order. Company may define additional terms in an Order or EUVL if applicable.

1. **“Agreement**”means the End User Agreement including its Exhibits, Attachments and any Amendments. Invoices also form part of the Agreement.
2. “**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.”
3. “**Committed Period**” means a period during which neither party may terminate an Order for convenience, except as set forth in the *Termination* section of the Agreement.
4. “**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, Personal Data and the Product Authorization Code.
5. **“Company´s Licensors”** mean the relevant distributor of the Software and SAS Institute Inc. the sole manufacturer of the Software which based on the relevant contracts authorized the Company to sublicense Software to the End User.
6. “**Documentation**”means the official user documentation that is made available for Software at <https://support.sas.com/en/documentation.html>.
7. “**End User**” means the End User entity identified in the Agreement.
8. **“End User Agreement”** means this agreement between Company and End User including its Exhibits, Attachments and Amendments.
9. **“End User Verification Letter” or “EUVL”** means a document per which the End User confirms that the Software licensed to the End User and the permitted usage scope in the Agreement are consistent with the terms of the EUVL. "The company will confirm whether Extreme Ultraviolet Lithography (EUVL) is required for this specific order."
10. “**Fee**” means the fee that End User will pay to Company under the Order.
11. “**License Period**”means the period during which End User is authorized to use the Software.
12. **“Offering”** means the SAS offering listed on the Order. The only Offering that is provided under this Agreement is SAS Software.
13. “**Order**” means the ordering document entered into between Company and End User that specifies the Offering, Fee and other commercial terms, a sample copy of which is provided in Exhibit 1.
14. **“Party”** means Company or the End User party to the Agreement. “Parties” mean both Company and End User.
15. “**Personal Data**”means information relating to an identified or identifiable natural person.
16. “**Pricing Metric**” means the metric used to determine the Fee.
17. “**Product Authorization Code**” means a code that enables the Software to operate for the applicable License Period.
18. “**Related Entity**” means a separate legal entity that is controlled by, is under common control with, or controls End User. 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.
19. “**SAS**” means SAS Institute Inc. unless another SAS entity is defined in the Order.
20. **“Required End User Agreement Terms – Software License**” provides the terms that are required by the manufacturer of the Software as part of the Agreement located at [Required End User Agreement Terms – Software License.docx - Docusign CLM (springcm.com)](https://sharena11.springcm.com/Public/Document/23386/683c227b-bdea-ee11-b829-48df37a6f7d0/85739802-c0ea-ee11-b829-48df37a6f7d0).
21. “**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.
22. “**Software**”means SAS software listed in the Order, including its embedded subcomponents, licensed to End User under the Agreement.
23. **“Term”** means twelve (12) months, or another initial time period if specified in the Order Form, and any subsequent renewal period.
24. **“Territory”** means global, unless otherwise set forth in the Order.
25. “**User**”means any individual authorized by End User to access an Offering.

**Exhibit 1 : ORDER**

|  |  |
| --- | --- |
| **Company:** **Address:** | **End User:****Address:** |

1. **Governing Terms.** This Order is governed by the End User Agreement. This Order constitutes a separate agreement between End User and Company incorporating the terms of the End User Agreement.
2. **Effective Date:** The effective date will be earlier of the 15th or the last date of the month immediately following End User´s acceptance or signature.

[Note to drafter: To fill in the commercial details below use the End User Verification Letter provided by the Distributor].

1. **Software Grid, Pricing Metrics, Quantity and Other Usage Parameters**

| **Software** | **Pricing Metrics, Quantity and Other Usage Parameters** | **Operating System** | **Initial Fees** |
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1. The pricing metrics and, if applicable, additional usage parameters described herein apply to the Software.
	1. **Pricing Metrics**.
2. …
3. …
4. …

3.2 **Additional Use Parameters.**

**(a)**

**(b)**

**(c)**

1. **Term and Fees**
2. **Invoicing**

Signature Block