SAS 2020 icence Terms and Conditions

Please read these Licence Terms and Conditions carefully and only submit a Chest Order Form if they are acceptable to your organisation.

1   Definitions

1.1   In this Licence Agreement the following terms, when starting with a capital letter, have the meanings shown:

(a)	Authorised Users	any of the following persons: (i) Students which means any person undertaking education or research for whom the Licensee is responsible. Students may access the Software from any location. (ii) Staff which means any personnel used by the Licensee to instruct or direct Students, the Licensee's research staff and, unless stated otherwise on the Order, administrative and management personnel. Staff may access the Software from any location. (iii) Any other person authorised by the Licensee to have controlled access from the UK or Republic of Ireland to the Licensee's information systems.
(b)	Educational Purposes	education, teaching, distance learning, private study, personal development, academic research and, unless stated otherwise on the Order, the administration and management of the Licensee's educational and research operations (including proof of concept and test work only). The Licensee, but not any user, may receive payment or funding from students or third parties for activities using the Software provided that all such payments and funding are applied to the cost of running the normal educational and research operations of the Licensee. The results of research or services funded by third parties must be published in the same way that the Licensee would publish the results of research not funded by third parties. Educational Purposes do not include funded research or consultancy services where the results of such research or services would be retained by a third party. The Licensee is not permitted to use the Software to develop a commercial offering or product directly or indirectly competing with an offering or product from the Licensor (except to the extent allowed by law). In addition to this, the Licensee is not permitted to use the Software in a production environment.
(c)	Fee	the sums set out on the Website, which are to be paid by the Licensee for the Software and rights under this Licence Agreement.
(d)	Intellectual Property Rights	patents, trademarks, trade names, design rights, topography rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.
(e)	Licence Agreement	the binding contract consisting of these Licence Terms and Conditions, the Order and any documents or annexes or schedules referenced in either. In the event of conflict the Order prevails over the referenced documents or annexes or schedules which prevail over these Licence Terms and Conditions. The Licence Agreement is formed when the Licensor accepts an Order.
(f)	Licensee	the party shown on the Order who is granted the rights to use the Software.
(g)	Licensor	the party shown on the Order who grants the rights hereunder to the Licensee.
(h)	Order	a request for Software in the form shown on the Website.
(i)	Software	the product shown on the Order which includes the machine readable computer programs and related documentation, support services and training materials set out in the Specification.
(j)	Specification	the detailed description of the Software published on the Website.
(k)	Website	JISC's Chest internet site which sets out details about the Software and other information relevant to this Licence Agreement (see https://www.CHEST.ac.uk/sas/).

2   Licence Grant and Intellectual Property Rights

2.1   In consideration of the Fee and subject to the terms and conditions of this Licence Agreement, the Licensor grants the Licensee a nonexclusive and non-transferable right to use the Software and to allow Authorised Users to use the Software for the term set out on the Order, or any mutually agreed extensions thereto. Licensee may install the Software on the number of environments identified in the Order for the scope of use described in the Order and these terms (including as described in section 6 of the Order on Fees).

2.2   Throughout the term of this Licence Agreement and subject to its terms and conditions, the Licensee may for Educational Purposes only:

   (a)   install and use the Software (i) only within the UK & Ireland and (ii) on a portable computer in countries outside the UK & Ireland for up to three (3) months of an annual licence period;

(b)   make such temporary local electronic copies of the Software as are necessary for Authorised Users to use the Software effectively;

(c)   allow Authorised Users to access and use the Software installed under clause 2.2 (a);

(d)   allow "home use" of the Software unless stated otherwise on the Order. "Home Use" means that Students and Staff may install the Software on their own computer only for their own use and only for Educational Purposes. "Home Use" is subject to the Licensee ensuring that each Home User agrees to the terms and conditions in the annex to this Licence Agreement and/or such other terms and conditions that the Licensor may require;

(e)   allow Authorised Users to download and/or print out copies of the documentation supplied with and forming part of the Software for training purposes;

(f)   make a reasonable number of copies of the Software for back up purposes.

2.3   The Software is copyrighted. Title to the Software and all other rights remain with SAS or its licensors at all times. Source code from which the Software object code is derived is a SAS trade secret. This Licence Agreement shall not restrict or limit the rights of the Licensee and Authorised Users under the Copyright (Visually Impaired Persons) Act 2002 or any amending legislation, or any rights under any other applicable legislation which cannot be waived or restricted by law.

2.4   This Licence Agreement does not assign or transfer to the Licensee any right, title or interest to the Intellectual Property Rights in the Software except for the right to use the Software in accordance with the terms and conditions of this Licence Agreement.

3   Restrictions

3.1   The Licensee and Authorised Users may not:

(a)   sell, resell, sublicense, lease, rent, hire, loan or transfer the Software or redistribute it to any third party;

(b)   remove, obscure or modify copyright notices, disclaimers, means of identification or other text appearing in the Software;

(c)   alter, adapt, modify, disassemble, decompile, reverse engineer or create any derivative works of the Software except to the extent necessary to make it readable on a computer screen, or as otherwise permitted in this Licence Agreement or by law;

(d)   use the Software other than for its own internal Educational Purposes and not to provide services for the benefit of third parties in exchange for compensation;

(e)   allow any party other than Authorised Users to use, edit, modify, or otherwise access underlying Software, or to perform free form programming with the Software.

4   Product Authorisation Code

4.1   The Software operates with a product authorization code which is a component of the Software that allows the Software to operate for its applicable annual licence period. At each new licence period, Licensee must apply a new product authorization code to keep the Software operating. Licensor is not required to provide the product authorization code if Licensee is in breach of this Licence Agreement or if all undisputed amounts due under this Licence Agreement are not paid. Licensor is not liable for damages caused by the resulting Software interruption. Licensee acknowledges and agrees that the Product Authorization Code is Licensor's confidential and proprietary information.

5.   Licensee Responsibilities

5.1   The Licensee will:

(a)   use the Software only as set out in the user documentation or instructions provided or published and referred to by the Licensor;

(b)   only use Software subcomponents as part of the specific Software offering listed on the Order Form, and not individually. For example, if a Software offering includes Base SAS, Licensee may not separately use Base SAS for any purpose other than as part of the Software offering with which it is licensed and packaged;

(c)   ensure that all Authorised Users are made aware of the terms of this Licence Agreement and shall be responsible for their adherence to such terms;

(d)   use all reasonable efforts to ensure compliance by Authorised Users with the terms of this Licence Agreement and with the Licensee's security processes and to prevent and monitor for unauthorised use of the Software. The Licensee shall promptly and diligently investigate any material breach of the foregoing and initiate disciplinary procedures in accordance with the Licensee's standard practice and shall use all reasonable effort to bring an end to the breach as quickly as possible, to mitigate its effect and to prevent any recurrence;

(e)   not more than once a year, reasonably co-operate with any request from the Licensor to demonstrate compliance with the terms and conditions of this Licence Agreement;

(f)   nominate technical contacts for matters arising under this Licence Agreement.

6.   Technical Support and Software Delivery

6.1   During the term of the Licence Agreement, Licensor will use reasonable efforts, either by telephone or in writing, to help Licensee solve specific problems installing or using the Software. It may not be possible for Licensor to solve all problems or correct all errors in the Software. From time to time, Licensor may make available, and Licensee agrees to use reasonable efforts to install, new releases, updates and corrective code. During ongoing Software development, Licensor may add, change or delete individual components or functionality in new releases. Such Software modifications shall be subject to the terms of this Licence Agreement. If Licensee chooses not to install the most current release of the Software, the level of technical support may diminish over time.

6.2   The Licensor will identify contacts for the support services and for other matters relating to this Licence Agreement.

6.3   The Licensor shall make the Software available to the Licensee by the date requested on the Order or, before such date, inform the Licensee when the Software will be made available or inform the Licensee of the reasonable grounds why the Order cannot be accepted.

7   Fee

7.1   The Licensee will pay the Fee as set out in the Order. Unless otherwise shown on the Order, Fees are due within thirty days of invoice receipt.

8.   Warranties, Remedies and Disclaimer

8.1   Licensor warrants it has the right to license the Software to Licensee. The exclusive remedy for breach of this warranty is Licensor's indemnification obligations set forth in clause 9.

8.2   Licensor warrants that each production release of the Software shall substantially conform to its documentation including any updates thereto, and the Software and any media on which it is installed shall be free of software viruses when received by Licensee. As the exclusive remedy for breach of these warranties, Licensor, at its option, shall: (a) repair the Software; (b) replace the Software; or (c) terminate the Software Licence and refund the fees paid for the Software at issue during the then-current annual licence period.

8.3   To the fullest extent permitted by law, Licensor and its licensors disclaim all other warranties, express or implied, including, but not limited to, any implied warranties of merchantability and/or fitness for a particular purpose whether alleged to arise by law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing, Licensor and its licensors do not warrant or represent that the Software will result in compliance, fulfilment or conformity with laws, rules, regulations, requirements or guidelines of any governmental agency.

9.   Indemnification

9.1   If a claim of copyright, patent, trade secret, or other intellectual property rights violation is made against Licensee relating to the Software, Licensee agrees to immediately notify Licensor, allow Licensor to control the litigation or settlement of such claim, and cooperate with licensor in the investigation, defence, and/or settlement thereof. Licensor agrees to take control of the litigation and indemnify Licensee by paying any settlement approved by Licensor, or any judgment finally awarded against Licensee for such claim, and any costs, or attorneys' fees Licensee incurs at SAS' direction. Licensee may participate at its own expense. This indemnification obligation does not apply to the extent: (a) the claim is based on a combination of SAS Software with other software or a Licensee modification to the Software if such claim would not have been made but for the combination or modification; or (b) as of the date the claim arose, Licensee had not installed the latest version of, or update to, the Software as instructed by Licensor prior to such date, if such claim would not have been made if the update or latest version had been installed.

9.2   If such a claim is made or, in Licensor's opinion, is likely to be made, Licensor, at its option, may modify the Software, obtain rights for Licensee to continue using the Software, or terminate the licence for the Software product at issue and refund the then-current annual licence fee paid by Licensee. Licensee agrees to abide by Licensor's decision and, if appropriate, install a different version of the Software or stop using the Software.

10   Liability

10.1   Without prejudice to clauses 9, 10.2 and 10.3, the Licensor's aggregate liability to the Licensee for direct loss or damage, whether arising in contract, law or tort, shall not exceed 110% of the Fees payable under this Licence Agreement.

10.2   The Licensor (and its licensors) shall have no liability to the Licensee for any indirect, special or consequential loss or damage, loss of profits, business, revenue or goodwill whether arising in contract, law or tort.

10.3   Notwithstanding any of the foregoing, neither party excludes nor limits liability for death or personal injury caused by its negligence or for liability resulting from its wilful misconduct or fraud.

11   Term and Termination

11.1   This Licence Agreement shall commence on the date shown on the Order provided that the Licensee allows at least ten working days between the date the Order is submitted and the commencement date requested and provided that the Licensor does not reject the Order or agree some other commencement date in accordance with clause 6.3.

11.2   Unless terminated in accordance with its other provisions, this Licence Agreement will continue for the period shown on the Order. The Licensor will reasonably endeavour to give the Licensee at least ninety days' notice, and in any event as much notice as it reasonably can, where it does not intend to offer renewal of this Licence Agreement on broadly similar terms and prices.

11.3   Either party may terminate this Licence Agreement by written notice if the other:

        (a)   is in breach of any material term, condition or provision of this Licence Agreement or of any material provision required by law, or is in persistent breach of any other term, condition or provision and fails to remedy the same within thirty days of written notice;

        (b)   ceases to carry on the business relevant to this Licence Agreement, or receives a court order or passes a resolution for winding-up (other than for the purpose of solvent amalgamation or reconstruction), or is declared insolvent; or initiates any arrangement or composition with its creditors; or has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or is deemed by any relevant statutory provisions to be unable to pay its debts.

11.4   Except in the case of perpetual licences, upon termination of this Licence Agreement, the Licensee shall promptly de-install and destroy all copies of the Software. The Licensee will allow the Licensor reasonable access to verify compliance with the foregoing obligation.

11.5   All rights and obligations of the parties under this Licence Agreement will automatically cease upon termination except for such rights of action that have accrued prior to termination and any rights or obligations under this Licence Agreement or at law, which expressly or by implication come into or continue in force on or after termination.

12   Dispute Resolution

12.1   The chief executive of the Licensor and the head of the Licensee, or their nominees, will have thirty days to resolve any dispute before either party may resort to any other course of action. Notwithstanding the foregoing, either party is entitled to immediately terminate and/or immediately seek prohibitory injunctive relief in the case of a potential breach of confidence or infringement of intellectual property rights (actual or threatened).

13   Assignment

13.1   Neither party may assign or transfer all or part of this Licence Agreement, or any of its rights or obligations or appoint any agent to perform such obligations without the other's prior written consent. However, by giving the Licensee not less than sixty days' prior written notice, the Licensor may transfer all of its rights and obligations to a wholly owned subsidiary, or to a wholly owned subsidiary of its parent company, or to its parent company.

14   Waiver

14.1   Failure by either party to enforce any of the provisions of this Licence Agreement will not represent a waiver of such rights and will not affect the validity of this Licence Agreement nor affect that party's rights to take subsequent action.

15   Changes

15.1   This Licence Agreement may only be changed by the written agreement of the parties; such written agreement shall state that it is intended to be an amendment to this Licence Agreement. The foregoing applies to alterations or additions to the Specification. Renewals on the same terms may be recorded by writing, or by Licensee paying an invoice for the renewal sent by Licensor (or sent by Licensor's authorised third party, which is currently JISC).

16   Severability

16.1   If any competent authority finds any part of this Licence Agreement to be invalid, unlawful or unenforceable, this Licence Agreement will be deemed to be amended to the extent required to remove the competent authority's finding but so as to allow the rest of this Licence Agreement to remain valid and unaffected to the fullest possible extent.

17   Notices

17.1   Any notice or written agreement may be given as follows:

(a)   by delivery recorded mail or courier to the other party's authorised representative at any address shown in this Licence Agreement, or to any other address as one party has notified the other of, and will be valid on the date of recorded receipt, or

(b)   by fax to the other party's authorised representative to any fax number shown in this Licence Agreement, or to any other fax number as one party has notified the other of, and will be valid at the time shown on a successful transmission report.

17.2   Notices to the Licensor must be copied to JISC whose details appear on the Order.

18   Force Majeure

18.1   Except for the obligation to make payments properly due, neither party will be liable for delay or failure to perform obligations caused by circumstances beyond its reasonable control, provided that the affected party promptly gives the other written notice of such delay or failure and circumstances and that the affected party uses reasonable endeavours to mitigate the delay or failure.

19   Licence Compliance

19.1   Solely to verify Licensee's compliance with the terms and conditions of the Licence Agreement, Licensor or its designee may visit Licensee's site and review any relevant records relating to the Licensee's use of the Software. Licensee will allow such on-site visits and review of records provided it has been given fifteen (15) business days' notice. Licensee shall cooperate with Licensor by: (a) making applicable records available; (b) providing copies of the records requested; and (c) directing all agents to cooperate. If Licensor finds that the Licensee is not in compliance with the Licence terms to such an extent that Licensee owes additional Licence fees, Licensee shall pay the amounts owed and Licensor's reasonable expenses in conducting its compliance enquiries.

20   Legal Construction

20.1   The parties agree to use the English language for all matters relating to this Licence Agreement.

20.2   This Licence Agreement is governed by English law and subject to the exclusive jurisdiction of the English courts. Licensor hereby notifies Licensee that because the Software is of United States origin, United States export laws and regulations apply to the Software. Both parties agree to comply with these and other applicable export and import laws and regulations. The United Nations' Convention on Contracts for the International Sale of Goods does not apply to this Licence Agreement.

20.3   This Licence Agreement represents the entire agreement and understanding between the parties in respect of its subject matter.

20.4   The terms and conditions of any purchase orders, receipts, acknowledgements or similar documentation put forward by either party in connection with this Licence Agreement shall have no effect whether or not they are expressly rejected by the party to whom they are presented. The Licensor agrees that any "click-wrap" or "shrink-wrap" terms which may need to be acknowledged by the Licensee in order to access the Software are part of an unavoidable administrative process only and do not form part of nor prevail over this Licence Agreement even if such "click-wrap" or "shrink-wrap" terms contain any statement to the contrary.

20.5   The Licensee accepts these terms and conditions by submitting an Order. The Licensor accepts these terms and conditions by accepting the Order in accordance with clause 6.3.

Licence Annex: Home Use Undertakings

Subject to the Home User accepting the following provisions, the Licensor grants the Home User the right to Home Use of the Software:

1: Definitions

- "Home Use" means a Home User may install the Software on a single computer of their own, which shall only be used by the Home User and only for the purposes of their own education, learning, private study, personal development or academic research or in connection with teaching the Licensee's students.

- "Home User" means any student or staff for whom the Licensee is responsible.

- "Licensee" means the party who has licensed the Software from the Licensor.

- "Licensor" means the party who allows Home Use of the Software.

- "Software" means the product shown on JISC's Chest website.

2: Undertakings

The Home User agrees:

- to adhere to the terms and conditions of this Annex and/or such other terms and conditions that the Licensor may require; • to use the Software for Home Use only;

- not to receive any payment, consideration or concession of any kind from Home Use nor to use the Software for any commercial purpose;

- not to sell, resell, sublicense, lease, rent, hire, loan or transfer the Software or make it available to any other person or party;

- not to remove, obscure or modify copyright notices, disclaimers, text or means of identification appearing in the Software;
- not to alter, adapt, modify, disassemble, decompile, reverse engineer or create any derivative works of the Software except to the extent necessary to make it readable on a computer screen, or as otherwise permitted by law;

- that the Software is made available "as is" without warranty, except for any statutory warranty that may not be excluded by law;

- that no support is available for Home Use from the Licensor;

- to co-operate as required by the Licensee and/or the Licensor, at any reasonable time and subject to reasonable notice, in order to demonstrate compliance with these undertakings;

- that these undertakings are given to the Licensee and Licensor, either or both of whom may enforce the same.