

## Experian Data Quality Standard Terms and Conditions- for Self Service Clean Clients

### 1. DEFINITIONS

**"Affiliated Company"** shall mean any company which directly or indirectly controls, is controlled by, or is under common control with, Experian Marketing Solutions, Inc.

**"Agreement"** shall mean the Experian Data Quality Standard Terms and Conditions.

**"Confidential Information"** shall mean any and all information relating to the trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of the parties and/or to their customers (including Customer Data), suppliers, Customers or Affiliated Companies in or on any medium or format.

**"Customer"** shall mean the customer purchasing Experian Data Quality Licensed Materials or Services.

**"Customer Data"** shall mean any data owned by the Customer and provided to Experian Data Quality in connection with this Agreement.

**"Data Set"** shall mean any data set forming part of the Licensed Materials.

**"Data Set Updates"** shall mean any update to a Data Set supplied to the Customer under this Agreement included within the fee for the Licensed Materials.

**"Documentation"** shall mean any user guide, operational manual and any other materials relating to the use or operation of the Services and/or the Licensed Materials provided to the Customer by Experian Data Quality.

**"Effective Date"** shall mean the date Customer agrees to these terms.

**"Experian Data Quality"** shall mean Experian Marketing Solutions, Inc., a Delaware corporation with offices for its Data Quality division located at 125 Summer St Ste 1910, Boston MA 02110-1615.

**"Force Majeure"** shall mean any events beyond the reasonable control of the party including, without limitation, acts of God, public enemies, or terrorists, labor disputes, equipment malfunctions, material or component shortages, supplier failures, embargoes, rationing, acts of local, state or national governments or public agencies, utility or communication failures or delays, fire, earthquakes, flood, epidemics, riots and strikes.

**"Intellectual Property Rights"** shall mean copyright, database right, domain names, patents, registered and unregistered design rights, registered and unregistered trademarks, and all other industrial, commercial or intellectual property rights existing in any country and all the rights to apply for the same.

**"Licensed Materials"** shall mean the Licensed Programs and/or any other software, data or related documentation made available by Experian Data Quality to the Customer under this Agreement.

**"Licensed Programs"** shall mean any Experian Data Quality proprietary software made available by Experian Data Quality to the Customer under this Agreement.

**"Permitted Purpose"** shall mean the internal business purposes of the Customer.

**"Renewal Date"** shall mean any date on which the Customer would be entitled to terminate this Agreement under Section 3.1.

**"Services"** shall mean the services specified in the registration screen.

**"Third Party Software"** shall mean any third party software forming part of the Licensed Materials.

### 2. PRIMARY OBLIGATIONS

2.1. Experian Data Quality shall:

2.1.1. provide the Licensed Materials and Services in accordance with this Agreement;

2.1.2. use all reasonable care and skill in the performance of the Services.

2.1.3. Make available for a period of fifteen (15) days the results of Customer's request for Customer to take further action to pay for the results. If Customer does not pay for and download the results within this time period, they will cease to be available. If Customer does complete the sale and pays for the results within this timeframe, the results will be available for Customer to download for a period of thirty (30) days from the date of purchase.

2.2. The Customer shall be responsible for ensuring that any Customer Data provided to Experian Data Quality is complete, accurate and in the agreed upon format.

2.3. Each party shall use all reasonable efforts to perform its obligations under this Agreement in accordance with any written timetable agreed upon between the parties.

### 3. TERM

3.1. This Agreement shall commence on the Effective Date and, subject to the provisions of this Agreement, shall continue until Customer retrieves their results or in accordance with section 2.1.3, Experian Data Quality deleted the data..

### 4. PAYMENTS AND INVOICING

4.1. The Customer shall pay the fees set out in the ordering screen. The fees do not include applicable federal, state, local, or foreign sales or use taxes, and Customer will pay or reimburse Experian Data Quality for such taxes. Payment must be received prior to Customer accessing their returned file.

## **5. COMPLIANCE AND AUDIT**

- 5.1. Both parties agree to comply with all federal, state and local laws, rules and regulations applicable to each party's provision or use of the Customer Data, Licensed Materials, Licensed Programs and Services.
- 5.2. Experian Data Quality will have the right, on reasonable notice and during normal working hours, to audit the Customer's and any of its agents' compliance with its obligations under this Agreement in relation to the use of any software, data, Services or other materials. Experian Data Quality shall:
  - 5.2.1. observe the Customer's procedures relating to the protection of confidential information;
  - 5.2.2. take all reasonable steps to minimize disruption to Customer's business during such audit;
  - 5.2.3. be responsible for the costs of conducting such audit, except where Customer is found to be non-compliant with its obligations under this Agreement, in which case Experian Data Quality may charge Customer for its reasonable costs in conducting the audit.

## **6. CONFIDENTIALITY**

- 6.1. Each party when a recipient of Confidential Information shall:
  - 6.1.1. keep the Confidential Information strictly confidential and not disclose any part of such Confidential Information to any person except as permitted by or as required for the performance of the recipient's obligations under this Agreement;
  - 6.1.2. take reasonable steps to prevent unauthorized access to the Confidential Information.
- 6.2. Each party may disclose Confidential Information to the following persons, and allow its use in accordance with this Agreement provided that any party to whom it discloses Confidential Information shall observe the restrictions in this Section 6:
  - 6.2.1. employees and officers of the recipient who require it for the recipient to perform its obligations under this Agreement;
  - 6.2.2. the recipient's auditors and professional advisors solely for the purposes of providing professional advice;
  - 6.2.3. if Experian Data Quality is the recipient, to Experian Data Quality Affiliated Companies and to the agents and sub-contractors of Experian Data Quality and Experian Data Quality Affiliated Companies, involved in performing Experian Data Quality's obligations under this Agreement.
- 6.3. The restrictions in Section 6.1 do not apply to any information to the extent that it:
  - 6.3.1. is or comes within the public domain other than through a breach of Section 6.1; or
  - 6.3.2. is in the recipient's possession (with full right to disclose) before receipt from the other party; or
  - 6.3.3. is lawfully received from a third party (with full right to disclose); or
  - 6.3.4. is independently developed by the recipient without access to or use of the Confidential Information; or
  - 6.3.5. is required to be disclosed by law or by a court of competent jurisdiction provided that the recipient agrees to give prior written notice of such disclosure to the disclosing party and to take any reasonable and lawful actions available to it to avoid and/or minimize the extent of such disclosure.

## **7. WARRANTY AND DISCLAIMERS**

- 7.1. Each party warrants that it has the full power and authority to enter into this Agreement.
- 7.2. Experian Data Quality warrants that the Licensed Programs will conform to any description specified in the Documentation, subject to the Licensed Programs being used in accordance with this Agreement and the Documentation. If the Customer notifies Experian Data Quality that any Licensed Program has failed to comply with this warranty, Experian Data Quality will (as the Customer's sole remedy in respect to such failure) as soon as reasonable, replace the relevant Licensed Programs with software programs which do comply.
- 7.3. Because the Licensed Materials and Services contain information provided to Experian Data Quality by other sources, Experian Data Quality cannot be an insurer or guarantor of the accuracy, completeness, or reliability of the Licensed Materials, Licensed Programs and Services.
- 7.4. THE WARRANTIES IN THIS SECTION 7 ARE THE ONLY WARRANTIES EXPERIAN DATA QUALITY HAS GIVEN CUSTOMER WITH RESPECT TO THE LICENSED PROGRAMS. EXPERIAN DATA QUALITY MAKES NO REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, DATA SETS, LICENSED MATERIALS, LICENSED PROGRAMS, OR ANY OTHER MATERIALS (TANGIBLE OR INTANGIBLE) SUPPLIED BY EXPERIAN DATA QUALITY HEREUNDER, AND EXPERIAN DATA QUALITY HEREBY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES AS TO THE ACCURACY, COMPLETENESS OR CURRENTNESS OF ANY DATA OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
- 7.5. Customer hereby represents and warrants that: (i) Customer has the power and authority to transfer to Experian Data Quality e-mail addresses ("E-mail Addresses") in connection with the performance by Experian Data Quality of its obligations hereunder; (ii) with respect to each E-mail Address, Customer has all necessary permissions for Experian Data Quality, acting as an agent of Customer, to send electronic-mail messages on behalf of the Customer (without delivering such message and solely in order to perform the Services); (iii) with respect to each E-mail Address provided to Experian Data Quality, Customer has not scraped, harvested or obtained such E-mail Address using any illegal or surreptitious methods. Customer agrees to indemnify, defend and hold Experian Data Quality harmless from and against any losses, damages, expenses and other liabilities incurred by Experian Data Quality in connection with any breach by Customer of this warranty.

## **8. INTELLECTUAL PROPERTY RIGHTS AND LICENSE**

- 8.1. All Intellectual Property Rights in the Customer Data will remain vested in the Customer (or its relevant licensors).

- 8.2. All Intellectual Property Rights in the Services and the Licensed Materials will remain vested in Experian Data Quality (or its relevant licensors).
- 8.3. The Customer grants Experian Data Quality a limited royalty free, non-exclusive, non-transferable license to use (and copy) the Customer Data solely for the purposes of (i) performing its obligations under this Agreement; (ii) conducting performance assessments; and (iii) aggregation with data and performance information from other Experian Data Quality customers for benchmarking and system and service improvement.
- 8.4. Experian Data Quality grants to the Customer a limited, non-exclusive, non-transferable license to use the Licensed Materials for the Permitted Purpose in accordance with this Agreement. By using the Licensed Materials and/or the Services the Customer agrees to comply with the terms of this Agreement.
- 8.5. If at any time the parties agree to modify the Services then Experian Data Quality shall issue a revised document reflecting such modifications. Experian Data Quality will not be obligated to initiate any such modified Services and/or Licensed Materials until the Customer has agreed in writing to the revisions. Such modifications may include but not be limited to;
  - 8.5.1. varying the number of permitted users;
  - 8.5.2. increasing the number of permitted transactions;
  - 8.5.3. upgrading the Licensed Programs;
  - 8.5.4. including additional Data Sets; and/or
  - 8.5.5. changing the location, application, equipment or operating environment which applies to the Services and/or Licensed Materials in question.
- 8.6. The Customer agrees that it will:
  - 8.6.1 use the Services and the Licensed Materials for the Permitted Purpose only and in accordance with the Documentation and ensure that all personnel who use the Licensed Materials are employees, temporary employees or individual contractors of the Customer;
  - 8.6.2 only use any software comprised within the Licensed Materials on computer equipment complying with such minimum specifications as may be agreed by the parties in writing, or in the absence of agreement as may reasonably be specified by Experian Data Quality;
  - 8.6.3 not sell, transfer, sub-license, distribute, commercially exploit or otherwise make available to, or allow use of for the benefit of, any third party any of the Services and/or Licensed Materials;
  - 8.6.4 not copy, adapt, alter, modify, reverse engineer, decompile or otherwise interfere with the Licensed Materials or combine the same with other materials without the prior written consent of Experian Data Quality except as permitted by law and provided that the Customer is permitted to retain a copy of the Licensed Materials for the purposes of load balancing, back up and disaster recovery only;
  - 8.6.5 only use any software comprised within the Licensed Materials on equipment owned, operated or controlled by the Customer at premises owned or used by the Customer, or on such other site as may be agreed by the parties from time to time in writing;
  - 8.6.6 not allow any third party to amend, modify or otherwise alter the Licensed Materials without Experian Data Quality's prior written consent.
  - 8.6.7 comply with the Experian Data Quality SaaS Fair Usage Policy, available at [www.support.qas.com](http://www.support.qas.com).

## 9. THIRD PARTY CLAIMS

- 9.1. Subject to Section 9.3, Experian Data Quality shall indemnify, defend and hold harmless Customer and its officers, directors, and employees from and against any and all any third party claim, damage, loss, liability, cost or expense, including reasonable attorneys' fees ("Claims") to the extent arising as a result of any:
  - 9.1.1. (i) direct infringement by Experian of any United States patent, copyright, trade secret, or other intellectual property right in connection with the Licensed Programs; or (ii) Experian Data Quality violation of any applicable federal, state or local law, regulation, rule or judicial or administrative order in Experian Data Quality's performance of the Services or provision of the Licensed Materials.
- 9.2. To the fullest extent permitted by law, Customer shall indemnify, defend and hold harmless Experian Data Quality and its officers, directors, and employees from and against any and all Claims to the extent arising as a result of any:
  - 9.2.1. (i) infringement of any United States patent, copyright, trade secret, or other intellectual property right in connection with the Customer Data; or (ii) Customer violation of any applicable federal, state or local law, regulation, rule or judicial or administrative order in Customer's use of the Services or use of the Licensed Materials.
- 9.3. If any Claims are made, or in Experian Data Quality's reasonable opinion are likely to be made, by any third party alleging that its Intellectual Property Rights are infringed by the Customer's use of the Licensed Materials as permitted by the terms of this Agreement, Experian Data Quality may at its sole option and expense:
  - 9.3.1. procure for the Customer the right to continue using the relevant Licensed Programs (or any part of them) in accordance with the terms of this Agreement;
  - 9.3.2. modify the relevant Licensed Programs to avoid the infringement or replace the relevant Licensed Programs with non-infringing materials, while providing the same, or substantially similar, functionality to the infringing materials;
  - 9.3.3. terminate this Agreement and Experian Data Quality shall refund to the Customer on a pro rata basis the amount of any fee paid in advance which relates to use of the relevant Licensed Materials, Data Set and/or Third Party Software during any period following termination.
- 9.4. Procedure. A party seeking indemnification for a Claim pursuant to this Agreement ("Indemnified Party") shall provide written notice detailing the circumstances of the Claim to the party responsible for indemnifying against the Claim

("Indemnifying Party") promptly following the discovery of such Claim by the Indemnified Party. Failure to timely provide such notice shall not diminish the Indemnifying Party's indemnification obligation except to the extent the Indemnifying Party's ability to defend such Claim is materially prejudiced by such failure or delay. The Indemnified Party shall provide the Indemnifying Party with such information and cooperation as the Indemnifying Party may reasonably request.

- 9.5. This Section 10 sets out the entire liability of Experian Data Quality and the sole remedy of the Customer with respect to any claims relating to the indemnities given herein.

## **10. LIMITS ON LIABILITY**

- 10.1. Neither party excludes nor limits its liability to the other for any of the following (and nothing in this Agreement shall be construed as excluding or limiting such liability):
- 10.1.1. for personal injury or death resulting from its negligence or that of its employees, agents and/or sub-contractors;
  - 10.1.2. for breach of Section 6;
  - 10.1.3. for any matter which it would be illegal for that party to exclude and/or limit its liability; or
  - 10.1.4. for a party's fraudulent misrepresentation
  - 10.1.5. Customer breach of Section 8.6.4;
  - 10.1.6. Customer breach of Section 12.
- 10.2. EXCEPT AS PROVIDED IN SECTIONS 10.1, 10.2 AND 11.1, THE LIABILITY OF EACH PARTY TO THE OTHER FOR ANY OR ALL LOSSES OR INJURIES FROM ANY ACTS OR OMISSIONS UNDER THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE LEGAL OR EQUITABLE RIGHT CLAIMED TO HAVE BEEN VIOLATED, SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO EXPERIAN DATA QUALITY UNDER THIS AGREEMENT FOR THE PARTICULAR LICENSED MATERIALS OR SERVICES WHICH ARE THE SUBJECT OF THE ALLEGED BREACH DURING THE TWELVE MONTH PERIOD PRECEDING THE ALLEGED BREACH.
- 10.3. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES TO BUSINESS REPUTATION, LOST BUSINESS, LOST PROFITS, OR LOST ANTICIPATED SAVINGS), WHETHER FORESEEABLE OR NOT AND HOWEVER CAUSED, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MIGHT ARISE.

## **11. TERMINATION**

- 11.1. Either party may terminate this Agreement (or part of it with respect to a particular part of the Licensed Materials) upon written notice to the other party in the following circumstances:
- 11.1.1. if the other party commits a material breach of any of its obligations under this Agreement which is not cured within thirty (30) days after receipt of a notice from the non-breaching party;
  - 11.1.2. if the other party becomes insolvent, files or has filed against it a petition in bankruptcy or;
  - 11.1.3. (in the case of termination by Experian Data Quality only and subject to Section 11.2) if Experian Data Quality loses the right to distribute any Data Set as contemplated by this Agreement, or (subject to Experian Data Quality giving the Customer not less than twelve (12) months prior written notice) if Experian Data Quality decides to discontinue the provision of any Data Set.
- 11.2. If Experian Data Quality terminates the provision of any Data Set or Third Party Software under Section 11.1.3, or the Customer terminates the provision of any Data Set or Third Party Software under Section 13.4, Experian Data Quality shall refund to the Customer on a pro rata basis the amount of any fee paid in advance which relates to use of the relevant terminated Data Set or Third Party Software during any period following termination.
- 11.3. The Customer's right to use the Licensed Materials or Services shall cease upon termination of this Agreement.

## **12. THIRD PARTY TERMS**

The Customer shall comply with any relevant Data Set license or Third Party Software terms imposed on Experian Data Quality by a third party licensor in relation to a Data Set or Third Party Software as notified to the Customer by Experian Data Quality or as made available on Experian Data Quality's website at [www.qas.com/legal](http://www.qas.com/legal) (or such other url as Experian Data Quality informs the Customer of from time to time). If at any time during the term of this Agreement, any such data license or Third Party Software terms change, Experian Data Quality will notify the Customer, and the Customer shall be entitled to terminate the use of any Data Set or Third Party Software materially and adversely affected by the change upon written notice to Experian Data Quality, in which case Section 11.2 shall apply.

## **13. GENERAL**

- 13.1. All notices, requests and other communications hereunder shall be in writing and shall be deemed delivered at the time of receipt if delivered by hand or communicated by electronic transmission, or, if mailed, three (3) days after mailing by first class mail with postage prepaid. Notices to Experian Data Quality and Customer shall be addressed to the addresses provided on the registration screen, or to such other address as either party shall designate in writing to the other from time to time. Experian Data Quality may provide notice by email.
- 13.2. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assignees. This Agreement may not be assigned, transferred, shared or divided in whole or in part by either party without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, except that Experian Data Quality may assign or transfer any or all of its obligations under this Agreement to any Experian Affiliated Company without Customer's consent.
- 13.3. Experian Data Quality shall be entitled to sub-contract any or all of its obligations under this Agreement to a sub-contractor but by doing so Experian Data Quality shall be responsible for the acts and omissions of the sub-contractor to the same extent as if it had carried out the obligations itself pursuant to this Agreement.

- 13.4. If any part of this Agreement is found to be invalid or unenforceable by any court or other competent body, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.
- 13.5. Neither party will be liable for any delay or failure in the performance of its obligations under this Agreement if such delay or failure is due to an event of Force Majeure.
- 13.6. If either party fails to exercise a right or remedy that it has or which arises in relation to this Agreement, such failure shall not prevent that party from exercising that right or remedy subsequently in respect to that or any other incident.
- 13.7. A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed on behalf of the party who is waiving the breach or provision. Any waiver of a breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.
- 13.8. This Agreement is governed by and construed in accordance with the internal substantive laws of the State of Illinois. Any dispute under this Agreement shall be brought in the federal or state courts in Cook County, Illinois.
- 13.9. This Agreement may only be amended in writing signed by authorized representatives of both parties.
- 13.10. This Agreement sets out all the terms agreed between the parties relating to the subject matter of this Agreement and supersedes any previous agreement between the parties relating to the same subject matter. It is a condition of this Agreement that neither of the parties shall be bound by, or liable to the other party for, any representation, promise or inducement (other than fraudulent misrepresentations) made by it or by any agent or person on its behalf which is not expressly contained in this Agreement.
- 13.11. Subject to any contrary provision in any Data Set license terms referred to in Section 12, the parties hereby agree that nothing in this Agreement shall be construed as creating a right which is enforceable by any person who is not a party to this Agreement or a permitted assignee of such a party.
- 13.12. Nothing in this Agreement is intended to, or shall, operate to:
  - 13.12.1. create a partnership or joint venture of any kind between the Customer and Experian Data Quality;
  - 13.12.2. authorize either party to act as agent for the other party;
  - 13.12.3. authorize either party to act in the name or on behalf of, or otherwise to bind, the other party in any way.
- 13.13. In this Agreement:
  - 13.13.1. the singular includes the plural and vice versa;
  - 13.13.2. the headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
  - 13.13.3. where any matter is to be agreed, such agreement must be recorded in writing;

These terms and conditions prevail over any other statements or terms to the extent of any conflict or inconsistency, except that the obligations on the part of the Customer in relation to any Data Set shall prevail over all other terms.