

# Experian Data Terms and Conditions

April 9, 2020

## Experian Online Terms & Conditions

By clicking on the "I Agree to the Terms & Conditions" checkbox during the checkout process, you hereby agree that you and the business on behalf of which you are licensing data (collectively "You" or "Your") from Experian Marketing Solutions, LLC ("Experian") through Amazon Web Services, Inc.'s Marketplace ("AWS Marketplace") website located at <http://aws.amazon.com/marketplace> and all related, linked or successor web pages (the "Sites") have entered into an agreement with Experian pursuant to these terms and conditions ("Terms") and that Experian shall be entitled to enforce Your compliance with these Terms upon Experian's Approval.

**1. Definitions.** The following capitalized terms shall have the meaning ascribed thereto in these Terms:

"Approval" means Experian accepting these Terms by authorizing AWS Marketplace to send You the Experian Data.

"Claim" means any third party claim, damage, loss, liability, cost or expense, including reasonable attorney fees.

"Confidential Information" means all information and materials that either party to these Terms discloses to the other party in the performance of these Terms, but not including the Experian Data.

"Experian Data" means the data file(s) containing Census Area Projections & Estimates (CAPE) and any other information or data provided by Experian to You that enhances, supplements or assists the CAPE data file(s) .

"Experian Property" means the Experian Data and any technologies, templates, methods, processes, know-how, techniques and any other Intellectual Property Rights used, originated or developed in connection with the Experian Data.

"Fees" means the fees You pay to Experian for the Experian Data.

"Indemnify" means to indemnify, defend and hold harmless a party and its officers, directors, and employees from and against any and all third party claims, damages, losses, liabilities, costs and expenses (including reasonable attorney's fees).

"Intellectual Property Rights" means any and all copyrights, patents, trademarks, trade secrets, and any other intellectual property rights recognized under applicable law associated with or relating to Experian's proprietary data, software, materials, technologies, processes, and

methodologies, and any extensions, modifications, updates, improvements and enhancements thereto, and derivative works thereof.

“Internal Analysis” means the process of inspecting, mining and modeling Your data with the goal of discovering useful information, suggesting conclusions, and supporting decision-making for You.

“License Term” means the duration of Your permitted use of Experian Data as indicated at Signup.

"Security Breach" means any actual, potential or threatened unauthorized access to or use of any Experian Data.

“Signup” means the process of ordering the Experian Data through the Sites, including the selection of term length, pricing terms, and the provision of Your information.

## **2. Experian Data and Fees**

**2.1. Experian Data Order.** Upon Experian’s Approval, Experian shall provide You with the Experian Data for which You complete the Signup in accordance with these Terms and the Signup terms and conditions, including those set forth at the Sites applicable to the Experian Data.

**2.2. Fees.** You shall pay the Fees specified at the Signup for the Experian Data in accordance with the payment terms and methods set forth therein.

## **3. Data Use and Restrictions**

**3.1. Experian Data License.** Experian hereby grants to You a limited, nonexclusive, and nontransferable license to use the Experian Data during the License Term in the United States for Internal Analysis in strict accordance with these Terms. You shall destroy the Experian Data within ten (10) days following the expiration or termination of the License Term. In the event that You fail to comply with the foregoing, Experian may charge You additional Fees for Your continued use of the Experian Data at Experian’s standard rates, in addition to exercising any other remedies Experian may have at law or in equity.

**3.2. Experian Data Terms.** The following terms and conditions apply to all of Your uses of any of the Experian Data:

(a) You shall not: (i) resell, license, or otherwise provide or disclose Experian Data to any third party; (ii) copy or otherwise reproduce any Experian Data, except as necessary for backup or security purposes; (iii) attempt to discover or reverse engineer any confidential and proprietary criteria developed or used by Experian in the compilation of the Experian Data; (iv) merge or incorporate the Experian Data with any third party file without Experian’s prior written consent;

(v) use Experian Data to enhance any third party file or list, or develop, publish or maintain any list, enhancement, directory, or other similar product; (vi) access, store, transfer, or use the Experian Data outside the United States or its territories; (vii) use Experian Data to determine the identity of any individuals from whom the Experian Data was derived or any attributes of such individuals; or (viii) use Experian Data for any marketing purposes.

(b) You shall use all Experian Data in strict accordance with: (i) all applicable federal, state and local laws, regulations, rules, and judicial and administrative decisions; (ii) relevant industry guidelines; and (iii) Your own privacy policies.

(c) You acknowledge that Experian Data has not been collected for credit purposes and is not intended to be indicative of any consumer's credit worthiness, credit standing, credit capacity, or other characteristics listed in Section 603(d) of the Fair Credit Reporting Act ("FCRA"), 15 USC Section 1681a. You shall not use any Experian Data as a factor in establishing any consumer's eligibility for (i) credit or insurance used primarily for personal, family or household purposes, (ii) employment purposes, or (iii) other purposes authorized under Section 604 of the FCRA, 15 USC Section 1681b or any similar statute.

(d) You will maintain reasonable security procedures and practices appropriate to the nature of the information to protect the Experian Data from unauthorized access, destruction, use, modification or disclosure. You shall provide Experian immediate written notice upon discovery or notification of any Security Breach and immediately, and at Your own expense, investigate and take all steps to identify, prevent and mitigate the effects of any Security Breach. You shall promptly provide to Experian a detailed description of the incident, the Experian Data accessed, the identity of affected consumers, and such other information as Experian may request concerning the Security Breach and conduct any recovery necessary to remediate the impact and bear any cost or loss Experian may incur as a result of a Security Breach, including any cost associated with Experian notifying any affected consumers.

(e) Upon reasonable notice to You, Experian may withdraw or decline to provide to You any Experian Data to comply with any requirements imposed by any applicable federal, state, or local law, rule or regulation, judicial or administrative decision, or industry self-regulatory guideline or in the event Your use of the Experian Data is the subject of a substantial, adverse and documented consumer reaction related to consumer privacy issues.

**3.3. Retained Rights.** Experian shall own and retain exclusively all Intellectual Property Rights in and to the Experian Data, and any enhancements, modifications, updates, improvements thereto, or derivative works thereof.

#### **4. Warranty**

**4.1. General Warranty.** Experian warrants to You that the Experian Data will be as complete, accurate, and current as such data can be in view of Experian's customary method of

compilation or acquisition of such data and the nature and accuracy of Experian's sources for such data.

**4.2. Your Warranties.** You warrant to Experian that (i) You have the full right power and authority to enter into these Terms, (ii) You will not resell the Experian Data or otherwise make it available to any third party, and (iii) You will only access, receive and use the Experian Data in the manner explicitly permitted by these Terms.

**4.3. Warranty Disclaimer.** Experian is not a guarantor of the Experian Data and shall assume no responsibility or liability for the strategies implemented or the results achieved by You. THE WARRANTIES SET FORTH IN SECTION 4.1 (GENERAL WARRANTY) ARE THE ONLY WARRANTIES EXPERIAN HAS GIVEN YOU WITH RESPECT TO THE EXPERIAN DATA. EXPERIAN MAKES NO REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EXPERIAN DATA OR ANY OTHER MATERIALS (TANGIBLE OR INTANGIBLE) SUPPLIED BY EXPERIAN HEREUNDER, AND EXPERIAN 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.

## **5. Confidentiality**

**5.1. Restriction.** You and Experian may disclose to each other Confidential Information. A party receiving Confidential Information pursuant to these Terms ("Recipient") shall treat all Confidential Information provided by the disclosing party ("Discloser") as proprietary and confidential to the Discloser and shall not disclose or permit disclosure of such Confidential Information to any third party, provided that the Recipient may disclose Confidential Information to its employees, officers, or directors, or legal or financial representatives on a need-to-know basis for performance of its obligations pursuant to these Terms. The Recipient shall safeguard all Confidential Information of the Discloser with at least the same degree of care (and in no event less than reasonable care) as the Recipient uses to protect its own Confidential Information of like kind.

**5.2. Exclusions.** The following shall not be deemed Confidential Information and a Recipient shall have no obligation regarding any information that is: (i) in or enters the public domain by no fault or wrongful act of the Recipient; (ii) known by the Recipient prior to disclosure by the Discloser; (iii) disclosed to the Recipient by a third party who was not under a similar restriction or obligation of confidentiality to the Discloser and without breach of these Terms; (iv) independently developed by the Recipient without any breach of these Terms, as shown by documentary evidence; (v) approved for release by written authorization of the Discloser; or (vi) disclosed pursuant to the lawful requirement or order of a court or any regulatory body or governmental agency, provided that the Recipient gives prompt notice thereof to the Discloser (unless such request is not possible under the circumstances) so that the Discloser may have the opportunity to contest such disclosure and seek a protective order or other appropriate remedy.

**5.3. Remedies.** The Parties acknowledge and agree that, given the unique and proprietary nature of the Confidential Information, monetary damages may not be calculable or a sufficient remedy for a breach of this Section 5 (Confidentiality), and that a Discloser may suffer irreparable injury as a consequence of such breach. Accordingly, in the event of an actual or threatened breach of this Section 5 (Confidentiality), a Discloser shall be entitled to seek equitable relief (including, but not limited to, injunction and specific performance) to remedy such breach or threatened breach. Such remedies shall not be deemed to be exclusive remedies, but shall be in addition to any other remedies available to a Discloser at law or in equity.

**6. Indemnification.**

**6.1. Experian.** Experian shall indemnify, defend and hold harmless You and Your officers, directors, and employees from and against any and all Claims to the extent arising as a result of an Experian violation of any applicable federal, state or local law, or regulation, in Experian's provision of the Experian Data to You in accordance with these Terms.

**6.2. You.** You shall indemnify, defend and hold harmless Experian and its officers, directors, and employees from and against any and all Claims to the extent arising as a result of any (i) breach of these Terms; (ii) Security Breach; and (iii) violation of any applicable federal, state or local law, regulation, rule, or judicial or administrative decision or order or any applicable privacy policy in Your use of the Experian Data.

**6.3. Procedures.** A Party seeking indemnification for a Claim pursuant to these Terms ("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.

**7. Limitation of Liability.** You acknowledge that Experian maintains several databases compiled from multiple sources updated on a periodic basis, and that Experian does not undertake a separate investigation for each inquiry or request for Experian Data made by You. You also acknowledge that the Fees are based upon Experian's expectation that the risk of any loss or injury that may be incurred by use of the Experian Data will be borne by You and not Experian. THE EXPERIAN DATA IS PROVIDED "AS IS" AND "AS AVAILABLE" AND EXPERIAN WILL NOT BE LIABLE TO YOU FOR ANY LOSS OR DAMAGES BASED ON ANY ERRORS OR OMISSIONS WITH RESPECT THERETO. THERE ARE NO REFUNDS. IF NOTWITHSTANDING THE ABOVE, LIABILITY IS IMPOSED ON EXPERIAN, THEN YOU AGREE THAT EXPERIAN'S TOTAL LIABILITY FOR ANY OR ALL OF YOUR LOSSES OR INJURIES FROM EXPERIAN'S ACTS OR OMISSIONS UNDER THESE TERMS, REGARDLESS OF THE NATURE OF THE LEGAL OR EQUITABLE RIGHT CLAIMED TO HAVE BEEN VIOLATED, SHALL NOT EXCEED THE FEES PAID BY YOU HEREUNDER FOR THE

EXPERIAN DATA THAT IS THE SUBJECT OF THE ALLEGED BREACH. YOU COVENANT THAT YOU WILL NOT SUE EXPERIAN FOR ANY AMOUNT GREATER THAN AS SET FORTH IN THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, IN NO EVENT SHALL EXPERIAN BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES TO BUSINESS REPUTATION, LOST BUSINESS, OR LOST PROFITS), WHETHER FORESEEABLE OR NOT AND HOWEVER CAUSED, EVEN IF EXPERIAN IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MIGHT ARISE.

## **8. Miscellaneous.**

**8.1. Termination.** Experian may terminate Your use of the Experian Data upon five (5) days written notice to You at the address You provide at Signup, in the event You commit a material breach of any term or condition of these Terms.

**8.2. Governing Law.** These Terms shall be deemed to have been performed in and shall be governed by the internal laws of the State of California without regards to its conflicts of law principles. The Parties agree that the venue for adjudication of any dispute under these Terms shall be in the federal or state courts in Orange County, California.

**8.3. Assignment.** These Terms may not be assigned or transferred by You in whole or in part without Experian's prior written consent.

**8.4. Waiver.** Experian may waive compliance by You with any covenants or conditions contained in these Terms only by written instrument signed by an authorized representative of Experian. No such waiver, however, shall be deemed to waive any other circumstance or any other covenant or condition not expressly named in the written waiver.

**8.5. Taxes.** You shall pay all taxes (including sales, use, excise, value added, goods and services, turnover taxes, business taxes, consumption taxes, gross receipts taxes, and any other taxes, charges, duties, fees, and levies of a similar nature) levied in connection with these Terms (whether included on an invoice or identified during an audit), except taxes based upon Experian's net income.

**8.5. Records and Audit.** You shall maintain complete, detailed, and accurate records (in accordance with standard accounting practices) of Your use of the Experian Data for three (3) years after the License Term. Experian may once per annum, upon reasonable notice to You and during regular business hours, inspect, audit, and/or copy any records that directly relate to the foregoing.

**8.6. Severability.** In the event any one or more of the provisions of these Terms shall for any reason be held to be invalid, void, illegal, or unenforceable by any court, arbitrator, or governmental agency, the remaining provisions of these Terms shall remain in full force and effect, and the invalid, void, illegal, or unenforceable provision(s) shall survive to the extent not so held. To the extent reasonably possible and practicable, the invalid, void, illegal, or unenforceable provision(s) shall be replaced by a mutually acceptable valid, legal, and

enforceable provision(s) which best reflects the Parties' intentions underlying the replaced invalid, void, illegal, or unenforceable provision(s).

**8.7. Survival.** Sections 2.2, 3.1, 3.2, 3.3, 5, 6, 7, and 8 shall survive any termination or expiration of these Terms or the applicable License Term and shall continue in full force and effect.

**8.8. Complete Agreement.** These Terms set forth the complete understanding of Experian and You with respect to the subject matter hereof and supersedes all prior agreements, communications or representations, whether oral or written, made by any representative of either party relating hereto.

**8.9. Experian Data Issues.** Any problems, issues, disputes or feedback with the Experian Data or these Terms shall be made through Experian, not the AWS Marketplace. Experian may be contacted at <https://www.experian.com/marketing-services/contact>.