

TERMS AND CONDITIONS FOR THE USE OF DATA
(including cover for use of the Seradata Full Data Download function or Data supplied directly by Seradata Limited)

1 Definitions

In these terms and conditions:

"Agreement" means these terms and conditions and the Order Form signed or otherwise agreed to by the Customer;

"Authorised User" means a person authorised by the Customer to access and use the Data;

"Customer" means the subscribing entity (organisation or person)

"Data" means the information specified in the Order Form, including data downloaded via the Seradata Full Data Download function;

"Intellectual Property Rights" means all intellectual property rights, including copyright, database rights, trade and service marks and names, design rights, patents and other such rights, anywhere in the world, in each case whether registered or unregistered and including the right to apply for a registration for the full period therefore and all extensions and renewals thereof;

"Update" means an update to the Data;

"License Fee" means the annual fee agreed by the Customer in the Order Form for the Subscription Period;

'License Type' means the one of the following types of license purchased by the Customer as set out in the Order Form;

Single Workstation License: Data is to be installed on one personal computer (PC) only. Data is for the use only of the person using the computer. Printed reports are for use at the Place of Use only;

Site License: Data may be used on all computers (including laptops) and networks at the Place of Use;

Enterprise License: Data may be used at any of the Customer's premises, or as otherwise specified on the order Form as at the date of the Order Form;

User Group Licence: Data may be used by a defined group of individuals specified in the Order Form and located at one or more physical sites, up to the maximum number of users specified in the Order Form.

"Place(s) of Use" means the Customer's premises as at the date of the Order Form;

"Subscription Period" means the period referred to in the Order Form;

"Services" means any support and training services set out in the Order Form;

"Unauthorised Person" means anyone other than the Customer or an Authorised User;

2 Grant of License

2.1 Seradata Limited hereby grants to the Customer for the Subscription Period a non-exclusive licence to use the Data for the purpose of the Customer's business in accordance with the terms of the applicable License Type and upon these terms and conditions;

2.2 The Customer may not;

2.2.1 use the whole, or any part, of the Data other than in accordance with these terms and conditions;

2.2.2 assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Data nor use the Data on behalf of or make Data available to any Unauthorised Person.

2.2.3 publish any part of the Data, whether or not for payment, on an intranet or extranet or otherwise in printed or electronic format unless specifically agreed otherwise by Seradata Limited;

2.3 Any copy of the Data made by the Customer shall, in all respects, be subject to these terms and conditions.

3 License Fee and Payments

3.1 The Customer shall pay the License Fee annually in advance.

3.2 All amounts payable under this Agreement are payable within 30 days of Seradata Limited's invoice and exclude VAT which shall be paid by the Customer in addition at the applicable rate.

3.3 The Customer is responsible for payment of any local taxes payable on delivery of the Data or any Updates.

4 Updates

4.1 Seradata Limited shall make Updates and any services available to the Customer during the Subscription Period at the frequency set out in the Order Form.

4.2 Without prejudice to its other rights and remedies Seradata Limited may suspend access to the Data or the provision of Updates if it reasonably suspects breach by the Customer or any Authorised User of any of the terms of this Agreement.

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7. Property in the Data

7.1 All Intellectual Property Rights in, the Data are the exclusive property of Seradata Limited and its licensors and the Customer acknowledges that it has no rights in the Data other than as expressly granted by the Agreement.

7.2 The Customer shall:

7.2.1 limit access to the Data in accordance with the License Type;

7.2.2 reproduce Seradata Limited 's copyright and trade mark notices on any copy of or extract from the Data; Where data is used in customer's reports documents or tools. The data must be credited, source Seradata database.

7.2.3 take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provision of this Agreement.

7.3 Seradata Limited may at any time on no less than 10 days' notice to the Customer enter the Customer's premises, either itself or using representatives, to verify that the Data is being used in accordance with these terms and conditions.

8 Limitation of Liability

8.1 Seradata Limited 's liability to the Customer for death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence shall not be limited.

8.2 Seradata Limited's entire liability to the Customer in respect of any other loss or damage resulting from the use by the Customer or any Authorised User of the Data shall be limited to an amount equal to the Licence Fee paid by the Customer for the Subscription Period in which the loss or damage was incurred by the Customer. Seradata Limited shall have no liability for any other loss or damage arising from the use of the Data or from use of the Data other than as authorised by this Agreement.

9 Intellectual property rights indemnity

9.1 Seradata Limited will indemnify and hold harmless the Customer against any claim by any third party that the normal operation possession or use of the Data in accordance with this Agreement infringes the Intellectual Property Rights of such third party (a Claim') provided that the Customer:

9.1.1 is not in breach of any of these terms and conditions;

9.1.2 gives notice to Seradata Limited of any Claim immediately upon becoming aware of it;

9.1.3 gives Seradata Limited the sole conduct of the defence or settlement of the Claim and does not at any time admit liability or otherwise attempt to settle or compromise the Claim except upon the express instructions of Seradata Limited; and

9.1.4 acts in accordance with the reasonable instructions of Seradata Limited and gives to Seradata Limited such assistance as it shall reasonably require in connection with the Claim.

9.2 In the event of a Claim Seradata Limited shall be entitled at its own expense and option either to procure the right for the Customer to continue using the Data, or make such alterations modifications or adjustments to the Data so that it becomes non-infringing provided that if Seradata Limited in its reasonable judgement is not able to exercise any of these options then Seradata Limited shall be entitled to terminate this Agreement and refund to the Customer such proportion of the License Fee as is attributable to the unexpired portion of the Subscription Period during which the Claim arose.

10 Termination

10.1 The Agreement may be terminated:

10.1.1 at any time by Seradata Limited if the Customer fails to pay any sum due hereunder by the due date provided and such sums remain unpaid for 14 days after written notice from the Seradata Limited that such sum has not been paid (such notice to contain a warning of Seradata Limited's intention to terminate); or

10.1.2 at any time by Seradata Limited if the Customer is in breach of any of these terms and conditions.

10.2 Within 7 days of termination for any reason the Customer shall destroy all copies of the Data in its possession and shall delete the Data from its computers. If requested by Seradata Limited, a duly authorised officer of the Customer shall certify in writing to Seradata Limited that the Customer has complied with such obligation.

10.3 Termination for any reason shall be without prejudice to the rights of the parties accrued prior to Termination.

11 Waiver

The waiver by Seradata Limited of a breach or default by the Customer under any of these terms and conditions shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

12 Notices

Any notice to be given hereunder shall be delivered by hand or by first class post (UK customers only) or by courier to the address of the other party set out in the Order Form (or such other address as may have been notified) and any such notice shall be deemed to have been served upon obtaining of a signed receipt in the case of a notice delivered by hand or courier and on the expiration of 2 working days after posting in the case of a notice delivered by UK post.

13 Entire agreement

The Agreement contains the entire agreement between the parties and Seradata Limited shall not be liable to the Customer for any loss arising from or in connection with any representations, agreements, statements or undertakings made prior to the date of the Agreement other than those representations, agreements, statements or undertakings expressly incorporated or referred to in the Order Form and these terms and conditions.

14 Assignment and sub-licensing

The Customer shall not be entitled to assign the Agreement nor any of its rights or obligations thereunder nor sub-license the use (in whole or in part) of the Data.

15 Headings

Headings to clauses in these terms and conditions are for the purpose of information and identification only and shall not be construed as forming part of the Agreement.

16 Law

The Agreement shall be governed by and construed in accordance with English law and the English courts shall have non-exclusive jurisdiction over any matters arising from the Agreement or the Customer's use of the Data.

17. Arbitration – This clause only applies to customers in the People’s Republic of China (including Hong Kong and Macao)

17.1 In the event of any dispute, controversy or claim arising out of or relating to this Agreement, including its existence, validity, interpretation, performance, breach or termination or any dispute regarding non-contractual obligations arising out of or related to it (collectively, ‘Dispute’), the parties shall attempt in the first instance to resolve the Dispute through friendly consultations. If the Dispute cannot be resolved through friendly consultations between the parties within 30 days following the first written request from a party for consultations, then either party may submit the Dispute to arbitration in accordance with this clause, which shall be final and binding on the parties.

17.2 When any Dispute occurs and is the subject of friendly consultations or arbitration, the parties shall, during the course of such consultations or arbitration, continue to exercise their remaining respective rights and fulfil their remaining respective obligations under this Agreement, except in respect of those matters under Dispute.

17.3 Any Dispute which cannot be resolved through friendly consultations in accordance with clause 17.1 shall be submitted to the London Court of International Arbitration (LCIA) for arbitration which shall be conducted in accordance with the LCIA's arbitration rules in effect at the time of applying for arbitration. The arbitration award shall be final and binding on all parties.