

# DATAIKU FREE EDITION SOFTWARE END USER LICENSE AGREEMENT

LAST UPDATE: 2/22/19

THIS AGREEMENT BETWEEN YOU AND DATAIKU GOVERNS THE USE OF DATAIKU SOFTWARE. ANY USE OF THE SOFTWARE OUTSIDE THE SCOPE OF THE TERMS AND CONDITIONS IS PROHIBITED.

BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AS “CUSTOMER”. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE THE SOFTWARE. IF YOU ARE USING THE SOFTWARE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP, OR OTHER ENTITY, YOU ACKNOWLEDGE THAT YOU ARE AUTHORIZED TO SIGN AND BIND THE ENTITY TO ACCEPT THE TERMS OF THIS AGREEMENT. THIS AGREEMENT IS EFFECTIVE ON THE DATE YOU FIRST DOWNLOAD THE SOFTWARE (“EFFECTIVE DATE”).

**1. Definitions.** Capitalized terms not otherwise defined in this Agreement are defined as follows:

“**Documentation**” means end user or technical documentation provided with the Software.

“**Intellectual Property Rights**” means patents, trademarks, service marks, trade names, registered and unregistered designs, trade or business names, copyright, database rights, design rights, rights in confidential information, and any other intellectual property rights regardless of registration, including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which exist now or will in the future exist in any part of the World.

“**Internal Business Purposes**” means use of the Software solely for Customer’s internal business projects, and deploying such projects in production mode. This definition does not include providing services using the Software to third parties.

“**Software**” means the object code of Dataiku’s proprietary free edition computer program, together with any modifications.

## 2. Software Use and License Grant

**2.1 License.** Dataiku grants to Customer a non-exclusive, non-transferable, and non-sublicensable license to: (i) install a single occurrence of the Software on a single computer or server owned or controlled by Customer or use the Software as a pre-built image run on a server (if applicable); and (ii) use the Software to process data owned, licensed, or controlled by Customer for Internal Business Purposes in accordance with the Documentation and this Agreement. Dataiku may, at its sole discretion, grant to Customer a non-exclusive, non-transferable, non-sublicensable limited license to a trial of the enterprise edition of the Software for a period of 2 weeks, which may be extended at Dataiku’s discretion.

**2.2 Restrictions.** Customer will not (and will not permit any third party to): (i) copy or use the Software other than allowed by this Agreement; (ii) use the Software with unauthorized equipment or products; (iii) modify the Software, create derivative works based upon the Software, reverse engineer, decompile, decrypt, disassemble, or otherwise reduce the Software to human-readable form; (iv) create programs similar or identical to the Software; (v) use the Software in violation of any applicable laws; (vi) distribute, sell, license or otherwise provide the Software to unauthorized third parties; (vii) install the Software on systems not under control by Customer, or use or permit the Software to be used to perform services for third parties, including as a service bureau, SaaS, time sharing basis or otherwise; (viii) disclose the results of any performance or functional evaluation of the Software including benchmark results or competitive analyses; or (ix) alter or remove proprietary notices or legends contained on or in the Software. No implied licenses are granted by Dataiku under this Agreement. Customer is responsible for all use of the Software by anyone accessing the Software using User credentials.

**3. Confidentiality.** “**Confidential Information**” means non-public data, information and other materials regarding the products, software, services, or business of Dataiku provided to Customer, where such information is marked or otherwise communicated as “proprietary” or “confidential,” or by its nature be reasonably considered confidential and/or proprietary. The parties agree that the Software (and any performance data, benchmark results, and related technical information), the Documentation, Dataiku’s pricing information is Confidential Information. Confidential Information shall not include information which: (i) is already known to the Customer prior to disclosure by Dataiku; or (ii) becomes publicly available without fault of the Customer. Customer agrees to: (i) use the Confidential Information of Dataiku only to perform or exercise rights granted under

this Agreement; (ii) treat all Confidential Information of Dataiku in the same manner as it treats its own proprietary information, but in no case with less than reasonable care; and (iii) disclose Dataiku’s Confidential Information only to employees and contractors of Customer who have a need to know such information, provided that any recipient shall be subject to obligations of confidentiality substantially similar to the terms of this Agreement. Customer shall be liable for the non-compliance of an employee or contractor.

**4. Ownership.** The Software is licensed and not sold or for perpetual use. Dataiku and its licensors own and retain all title, Intellectual Property Rights, and interest in and to the Software and all copies or portions, and any derivative works thereof. Suggestions or feedback provided by Customer to Dataiku relating to the Software will be Dataiku’s property and deemed Confidential Information of Dataiku, and Customer consents to assignment of suggestions and feedback to Dataiku.

**5. Warranties; Disclaimer.** The Software is provided “as is.” Customer assumes sole responsibility for any results obtained from using the Software. Dataiku disclaims any and all warranties, conditions or representations (whether express or implied, oral or written), including without limitation any implied warranties of title, non-infringement, information, merchantability or fitness for any particular purpose (whether or not Dataiku knows or has reason to know of such purpose), whether arising by law, custom, usage in trade or by course of dealing. Dataiku and its licensors do not warrant the results of any use of the Software, or that it is bug or error free, or that its use will be uninterrupted. Dataiku does not warrant that the Software or any equipment, system, or network on which the Software is used will be free of vulnerability to intrusion or attack. Dataiku will in no way be held liable for any inability of, error, or fault of Customer or any third party appointed by Customer to install the Software. Data uploaded to the Software and any third-party databases, software, hardware, or services connecting from or to the Software (collectively, “Third Party Materials”) are not the responsibility of Dataiku and Dataiku does not make any warranties or promises with respect to the Third-Party Materials.

## 6. Limitation on Liability.

**6.1 Exclusion of Non-Direct Damages.** In no event will Dataiku (or Dataiku’s licensors or suppliers) be liable for special, incidental, consequential, punitive, exemplary or tort damages (including, without limitation, any damages resulting from loss of use, data, profits, or business) arising out of or in connection with the Software or this Agreement, whether or not Dataiku has been advised of the possibility of such damages.

**6.2 Maximum Liability.** In no event will the cumulative liability of Dataiku, whether in contract, tort, or otherwise, arising out of or in connection with the Software or this Agreement, exceed \$5000. The limitation on liabilities set forth herein will apply to all claims in aggregate.

## 7. Term and Termination.

**7.1 Term.** This Agreement is effective as of the Effective Date and will remain in effect for until it is terminated by either party at any time or when Customer ceases to use the Software. This Agreement automatically terminates upon any breach by Customer. Upon termination, Customer will destroy all copies of the Software in its possession or control. Dataiku may terminate this Agreement at its discretion at any time.

**7.2 Survival.** Any terms that by their nature, including but not limited to Sections 1, 2.2, 3, 4, 5, 6, 7, and 8, extend beyond the Agreement remain in effect until fulfilled, and apply to successors and assignees.

## 8. General

**8.1 Open Source.** The Software may contain or be provided with components subject to third party open source software licenses (“**Open Source Software**”). A list of current Open Source Software is provided at <https://doc.dataiku.com/dss/latest/thirdparty.html>. To the extent necessary, the license accompanying the Open Source Software will apply in lieu of the terms of this Agreement specifically with respect to such Open Source Software.

**8.2 Marketing.** Dataiku has the right to disclose that Customer is a customer of Dataiku and use Customer’s name and logo for sales and marketing materials including on Dataiku’s website.

**8.3 Choice of Law; Venue.** This Agreement is governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws rules. The exclusive jurisdiction and venue for actions arising under this Agreement will be the State and Federal courts in New York, New York. The Uniform Computer Information Transactions Act (UCITA) and the United Nations Convention on the International Sale of Goods will not apply.

**8.4 Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement. Except as expressly provided herein, this Agreement supersedes and cancels all previous or contemporaneous communications, proposals, representations, collateral warranties, collateral contracts, statements, assurances, undertakings, and agreements of any nature (whether written or oral) relating to the subject matter contained herein. Each party acknowledges and agrees that in entering into this Agreement, it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other party in relation to the subject matter of this Agreement at any time before its execution (together “Pre-Contractual Statements”), other than those which are set out in this Agreement. Each party waives all rights and remedies which might otherwise be available to it in relation to Pre-Contractual Statements. Nothing in this Section excludes or restricts the liability of either party arising out of pre-contractual fraudulent misrepresentation or fraudulent concealment. This Agreement may only be amended by a writing executed by both parties.

**8.5 Severability.** If any provision of this Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect.

**8.6 Waiver.** A waiver of any right or remedy under this Agreement or by law is only effective in writing. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

**8.7 Assignment.** Neither party may assign any of its rights or obligations without the prior written consent of the other party (not to be unreasonably withheld). However, either party may assign their rights and obligations under this Agreement in its entirety, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Dataiku may also assign rights and obligations at any time to an affiliate. Any attempt to assign rights or obligations under this Agreement in breach of this section will be void. Dataiku may delegate any of its obligations hereunder, provided it shall remain fully liable and responsible for its delegates’ actions or inactions in violation of this Agreement. This Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

**8.8 Notice.** All notices under this Agreement must be in writing and sent to business addresses specified in this Agreement, unless a party designates otherwise. For notice purposes, Dataiku’s address will be: Dataiku Inc., 26 Broadway, New York, NY 10004, Attn: Dataiku Legal.

**8.9 Independent Contractors.** The parties are independent contractors for purposes under this Agreement, and this Agreement does not create any partnership, joint venture, employment, franchise, or agency relationship.

**8.10 Force Majeure.** Neither party will be liable for any delay in performance due to an act of God, nature, public enemy, terrorism, earthquake, flood, fire, government order, riot, civil disobedience, labor strife, or any other causes beyond its reasonable control, and without its fault or negligence, including, by way of example and not limitation, a shortage of supplies or personnel, interruption of electricity, communication, or transportation. The party whose performance is delayed will use commercially reasonable efforts to notify the other party and minimize its effect.

**8.11 Export.** The Software and Documentation, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, or other export or import laws and regulations in other jurisdictions. Customer agrees to comply with all applicable laws and regulations.

**8.12 Usage Information.** The Software, through a usage data tool, will collect and analyze data and other information related to use of the Software for purposes of improving and enhancing the Software.

**8.13 Data Privacy.** Each party undertakes to process personal data in accordance with all applicable laws and regulations, and in particular, when applicable, as of May 25, 2018, with Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such personal data.