

## **SUBSCRIPTION SERVICES AGREEMENT**

THIS AGREEMENT (THE "**AGREEMENT**") BETWEEN THE RELEVANT DATORAMA COMPANY AS DESCRIBED IN SECTION 9 ("**COMPANY**", "**WE**" OR "**OUR**") AND THE ORGANIZATION AGREEING TO THESE TERMS AND CONDITIONS ("**CUSTOMER**", "**YOU**" OR "**YOUR**") GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES (AS DEFINED BELOW).

BY SIGNING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING ANY ORDER FORM ("**ORDER FORM**") THAT REFERENCES THIS AGREEMENT, OR BY USING THE SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT AND IT BECOMES EFFECTIVE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "CUSTOMER" "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement was last updated on August 16, 2016.

### **TERMS AND CONDITIONS**

#### **1. THE SERVICES AND SUPPORT**

- 1.1. Subject to the terms of this Agreement, Company shall provide Customer services of digital analytics solutions through its proprietary platform ("**Platform**"), enabling aggregation and management of data (the "**Services**") during the Term of this Agreement in accordance with the Company's Service Level Agreement ("**SLA**").
- 1.2. Customer shall cooperate with Company and provide it with all necessary information and assistance for the integration of the Services into Customer's platforms and systems.
- 1.3. Any additional work which is not part of the Service (including but not limited to: additional training, custom integration with data sources, additional help and support in using the system etc.) shall be itemized, billed and charged separately according to the rates detailed in the Order Form.

#### **2. PAYMENT OF FEES**

- 2.1. Customer will pay Company the then applicable fees described in the Order Form for the Services in accordance with the terms therein (the "**Fees**"). Except as otherwise set forth in an Order Form, all Fees due hereunder shall be due and payable within thirty (30) days of invoice date. Except as otherwise stated in an Order Form, all Fees are quoted and payable in United States dollars. Customer shall provide Company with complete and accurate billing and contact information including a valid email address for receipt of invoices.
- 2.2. Except as specifically set forth to the contrary in an Order Form or in this Agreement, all payments obligations are non-cancelable and non-refundable.
- 2.3. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. If Customer's account is more than thirty (30) days past due, in addition to any other rights or remedies it may have under this Agreement or by law, Company reserves the right to suspend the Services upon thirty (30) days written notice, without liability to Customer, until such amounts are paid in full.

- 2.4. Except as otherwise stated in an Order Form, Customer shall be responsible for payment of any applicable sales taxes payable in connection with the Services, which are not included in the Fees provided hereunder including all sales, value added and other taxes and excluding, without limitation, taxes on Company's net income.
- 2.5. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email).

### 3. PROPRIETARY RIGHTS

- 3.1. Company is the sole and exclusive owner and/or authorized licensee of all right, title and interest in and to the Services and other intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued or enforceable under applicable laws anywhere in the world and all moral rights related thereto ("**IP Rights**"), any enhancements thereto, any documentary or other materials regarding the use thereof and related thereto, except for any data provided to Customer by Company in whatever form or media.
- 3.2. Neither this Agreement, nor anything contained herein, shall be construed as a sale or transfer of IP Rights. For the avoidance of doubt and notwithstanding any of the foregoing, Company hereby grants to Customer a worldwide right to use its Platform, including any IP Rights incorporated therein, as necessary in order for Customer to use the Services for its internal business purposes.
- 3.3. Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services; modify, translate, or create derivative works based on the Services; or use the Services in violation of applicable Laws or to create a competitive product.
- 3.4. Customer shall own all right, title and interest in and to its data and intellectual property, as well as any data that is based on or derived from the Customer data and provided to Customer as part of the Services.
- 3.5. Customer hereby grants Company a limited, non-exclusive right and license to use its name in presentations and customers list; to refer to Customer as such and to use its trademarks and logos on Company's website and presentations. Such right and license shall be revocable by Customer at any time. Neither party will issue a press release announcing its relationship with the other party without prior approval which will not be unreasonably withheld or delayed.

### 4. CONFIDENTIALITY

- 4.1. Any information provided hereunder by either Party which is marked as "confidential" or should be reasonably understood by its nature or the circumstances of its disclosure to be confidential or proprietary to such Party ("**Confidential Information**") shall not be used, disclosed or reproduced by the other Party without the express written consent of the Party providing such information, other than for the performance of such party's obligations under this Agreement.
- 4.2. "Confidential Information" excludes information which (i) is or has become generally known or available through no act or failure to act by the receiving Party; (ii) is already known or available at the time of receipt as evidenced by then-existing written records; (iii) is hereafter furnished to the receiving Party by a third party, as a matter of right and without restriction on its disclosure; (iv) is disclosed by written permission of the Party for whom such information is confidential; or (v) is required to be disclosed by court order or law. If a Party receives a demand in a legal proceeding that would require the Confidential Information of the other Party to be disclosed,



the receiving Party shall notify the other Party of the demand and assist the other Party in obtaining a protective order or other relief.

- 4.3. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Confidential Information.
- 4.4. Unless otherwise stated herein, the terms of this Agreement (but not its existence and the parties thereto) and specifically the rates set forth in the Order Form shall be deemed Confidential Information.

## **5. WARRANTIES AND DISCLAIMERS**

- 5.1. Each party represents that it has validly entered into this Agreement and has the legal power to do so and its provision of any materials in connection with this Agreement is authorized and does not breach its contractual obligations and/or third party rights, including intellectual property rights.
- 5.2. We warrant that (i) Company shall implement and maintain reasonable security procedures and practices appropriate to the nature of any Customer Confidential Information disclosed to or accessible by Company in order to protect such information from unauthorized access, destruction, use, modification or disclosure, and that it shall promptly notify Customer in writing in the event any unauthorized access to Customer Confidential Information is suspected and permit Customer to control any public notifications, with the reasonable assistance of Company; (ii) any software or technology provided will not contain any virus, time-bomb, trojan horse, worm or other harmful or disabling code; and (iii) Company shall use reasonable efforts to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Services in a professional and workmanlike manner.
- 5.3. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled maintenance, either by Company or by third party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by email of any scheduled service disruption.
- 5.4. Customer hereby acknowledges and agrees that Company is acting as a data processor and will use any data disclosed to it by Customer only in accordance with Customer's instructions. Company will implement appropriate technical and organizational measures to protect the data provided by Customer against unauthorized or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. Customer hereby warrants and represents that it will provide all appropriate notices, obtain all appropriate informed consents, and provide Company with any necessary opt-out information, as may be required by applicable law or industry guidelines to which Customer is subject, for the use of data in accordance with this Agreement, including provision of such data to Company and transfer of such data by Company to its affiliates and subcontractors, including transfer out of the European Economic Area.
- 5.5. CUSTOMER ACKNOWLEDGES THAT COMPANY HAS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY. ALL SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED OR PERFORMED ON AN "AS IS", "AS AVAILABLE" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS SOLELY AT ITS OWN RISK. OTHER THAN AS SET FORTH IN THIS AGREEMENT, COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## 6. INDEMNITY

6.1. Each party ("**Indemnitor**") shall defend, indemnify and hold the other party ("**Indemnified Party**") and the Indemnified Party's employees, affiliates and agents, harmless from and against any and all losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees ("**Claims**") arising out of or in connection with Indemnitor's breach of its warranties hereunder, provided, however, that the Indemnified Party: (i) promptly gives written notice of the Claim to the Indemnitor; (ii) gives the Indemnitor sole control of the defense and settlement of the Claim; and (iii) provides to Indemnitor, at its cost, all reasonable assistance.

## 7. LIMITATION OF LIABILITY

7.1. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT (EXCLUDING THE EVENT OF BREACH OF SECTION 3, 4 OR 5 ABOVE BY EITHER PARTY) SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION ANY LOST OPPORTUNITY OR PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF GOODWILL OR ANY OTHER INTANGIBLE BENEFIT, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL EITHER PARTY'S LIABILITY EXCEED THE TOTAL AMOUNT PAID TO COMPANY BY CUSTOMER HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE DATE THE CLAIM IS BROUGHT.

7.2. The limited warranty, exclusive remedies and limited liability provisions set forth herein are fundamental elements of this Agreement, and each party accepts and confirms that the other party would not be able to perform on an economic basis without such limitations.

## 8. TERM AND TERMINATION

8.1. Subject to earlier termination as provided in Section 8.2 below, this Agreement is for the Initial Term as specified in the Order Form, and shall be automatically renewed for additional periods of one (1) year each (each a "**Renewal Term**" and collectively, the "**Term**"), unless either party has provided written notice to the other party that it does not intend to renew this Agreement at least ninety (90) days prior to the expiration of the Initial Term, or any Renewal Term, as the case may be.

8.2. Either party may terminate this Agreement immediately if (i) the other party is in material breach of any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) calendar days of written notice thereof being provided by the party seeking to terminate, or (ii) the other party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other party (and not dismissed within sixty (60) days).

8.3. Sections 3, 4, 5 and 7 above shall survive the completion, expiration, termination or cancellation of this Agreement for any reason, as well as any other provision of this Agreement which, in accordance with its terms, is intended to survive such termination.

8.4. In the event the Agreement is terminated, all Order Forms are simultaneously terminated. Upon expiration or termination, Company shall make available all Customer data for download or transfer and otherwise provide reasonable transition assistance for thirty (30) days for no additional cost.

## 9. WHO YOU ARE ENGAGING WITH, GOVERNING LAW AND JURISDICTION

9.1. Which Company You are engaging with under this Agreement, which laws shall govern such engagement and apply in any dispute or lawsuit arising out of or in connection with this Agreement and which competent courts shall have sole and exclusive jurisdiction over any such dispute or lawsuit, depend on where You are domiciled, as follows:

If You are domiciled in:	You are engaging with:	The governing law is:	Venue is:
USA, Canada, LATAM	Datorama Inc.	New York	New York, NY, USA
EMEA (except for Germany and Israel)	Datorama UK Ltd.	England	England
Germany	Datorama GmbH	Germany	Germany
Israel	Datorama Technologies Ltd.	Israel	Tel Aviv, Israel
Pacific region	Datorama Australia PTY Ltd.	New South Wales	Sydney, NSW
Japan	Datorama Japan Inc.	Japan	Tokyo, Japan
Asia (except for Japan)	Datorama Singapore PTE Ltd.	Singapore	Singapore

9.2. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

## 10. GENERAL PROVISIONS

- 10.1. The parties are independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever.
- 10.2. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
- 10.3. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and exclusive of, any other remedies of a party at law or in equity.
- 10.4. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that's party's control and occurring without that party's fault or negligence, including, but not limited to, acts of God, act of government, flood, fire, civil unrest, acts of terror, strikes, or other labor problems.
- 10.5. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party without the prior written consent of the other party. Notwithstanding the forgoing, Company shall have the right to assign and transfer this Agreement to a parent, affiliate or subsidiary, in connection with a merger, reorganization, acquisition, change of control or other transfer or sale of all or substantially all of its assets and/or voting securities.



- 10.6. This Agreement, including any applicable Order Form, sets forth the entire agreement between the parties with respect to the subject matter and supersedes and replaces any prior or contemporaneous understandings. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties. In the event of a conflict between a provision of this Agreement and an Order Form, the terms of the applicable Order Form will prevail.
- 10.7. In the event that any provision of this Agreement is held invalid or unenforceable then (i) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties, and (ii) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.