

# Datorama System Terms of Service

**Last Updated: May 25, 2015**

Please read these Terms carefully before making any use whatsoever of the System. By accessing or using the System you agree to be legally bound by these Terms and all terms, policies and guidelines incorporated by reference in these Terms. If you do not agree with these Terms in their entirety, you may not use the Services.

By selecting the box “I agree”, or otherwise accessing and using the System (as defined below), you acknowledge that you (collectively “**you**” or “**your**”), have read and understood and agree to comply with the terms and conditions set forth herein (the “**Terms**”), by Datorama Inc. and/or Datorama Technologies Ltd. (“**Datorama**”, “**us**”, “**we**” or “**our**”). You further agree that you are at least 18 years old and, if you are entering into these Terms on behalf of your employer or other legal entity, that you have full authority to bind said employer or other legal entity to these Terms.

If you do not agree to comply with and be bound by these Terms please do not accept these Terms or access or use the System (as defined below).

## 1. Description of Our System

Datorama’s marketing analytics system (the “**System**”) shall be made available to you on a software-as-a-service (SaaS) basis through a web portal on our website <https://app.datorama.com/login.html> (the “**Site**”) and includes:

the software that you access via the Site;

the products, services, and features made available or provided to you by Datorama in connection with the System; and

the content, text, documents, intellectual property, descriptions, products, graphics, photos, sounds, videos, interactive features, and the trademarks, service marks and logos (“**Marks**”), contained in or made available through the System.

## 2. Subscription to the System

Subject to your compliance with these Terms, and payment of applicable fees as agreed between you and Datorama and as set forth in the confirmed Order Form, Datorama hereby grants you, and you accept, a non-exclusive, non-transferable, non-sublicensable, and fully revocable right to access and use the System in the Territory (as detailed in the Order Form) during the Term (defined below) for your internal business purposes only.

Your subscription to the System entitles the use of System by the end users specified in the Order Form (“**End Users**”). “**Order Form**” means the form sent to you by Datorama, via e-mail or otherwise, containing the details of your order, including System specifications and features, Territory, Term, fees, End Users, or other usage limitations, which has been confirmed by you either in writing or in return email to Datorama confirming your acceptance of the terms in such order form.

## 3. Account

In order to use the System, we will create and provide you with an account (“**Account**”). You must not allow anyone other than yourself and End Users you authorize (limited to the number specified in the Order

Form) to access and use your Account. You acknowledge and confirm: (i) that you have provided and will provide accurate and complete information in connection with the Account; (ii) to keep all Account information and login details, and ensure that End Users keep all End User login details and passwords secure at all times; (iii) to remain solely responsible and liable for the activity that occurs in connection with your Account; (iv) that the login details for each End User may only be used by that End User, and that multiple people may not share the same login details; and (v) to promptly notify Datorama in writing if you become aware of any unauthorized access or use of your Account or the System.

#### **4. Web Browser Requirements**

You acknowledge that, as of the Effective Date, the System requires a web browser version that supports HTML5. You are solely responsible for upgrading to the then-current minimum web browser requirements that Datorama defines from time to time. If the web browser requirements change, Datorama shall either: (i) display the then-current web browser requirements on the website, [www.datorama.com](http://www.datorama.com); or (ii) notify you of the then-current web browser requirements.

#### **5. Trial Period**

We may offer a free, no-obligation trial period of the System (“**Trial Period**”). During a Trial Period, some of the System’s features may not be available. If you use or access the System as part of a Trial Period, the term of such Trial Period, if any, shall commence on the date that you first access or use the System, unless Datorama indicates a different period to you, and will conclude at the earlier of (i) the end of the period displayed or specified on the Site or when registering for the Trial Period; (ii) on the date the full subscription for use of the System shall start as specified in any Order Form or other message you may receive from us or as we may so notify you; (iii) if you upgrade your Account by beginning to pay the applicable fees for the System, or (iv) if your use of the System is terminated or suspended in accordance with these Terms. You acknowledge and agree that these Terms are applicable and binding upon you during the Trial Period and that Datorama: (i) does not make any commitments, warranties or representations in connection with the System during the Trial Period; and (ii) may send you, subject to your opting out, communications and other notices about the System to your email address. We reserve the right to modify, cancel and/or limit any Trial Period offer at any time.

#### **6. Our Privacy Policy**

You acknowledge and agree that your use of the System, including, without limitation, any information transmitted to or stored by Datorama, is governed by the Datorama Privacy Policy at [www.datorama.com/privacy-policy](http://www.datorama.com/privacy-policy) (“**Privacy Policy**”).

#### **7. Customer Data and Anonymous Information**

**Ownership of Customer Data:** You shall retain your ownership rights to your data or other intellectual property which you submit or enter into the System (“**Customer Data**”).

**License to Customer Data; Anonymous Information:** We do not claim any ownership interest in your Customer Data, but we do need the right to use your Customer data to the extent necessary to operate the Systems and provide the services, now and in the future. Accordingly, you hereby grant Datorama a non-exclusive royalty-free and irrevocable license to (i) use, process, display, copy and store Customer Data to provide you with and enable you to properly use the System and (ii) collect, store, copy, use, and publish statistical, benchmarking or other Anonymous Information collected, run on or based on such Customer Data and/or Your use of the System to improve and publicize the System or Datorama’s other programs and services. “**Anonymous information**” means information which does not enable identification of an individual such as aggregated and analytical information. Notwithstanding Section 7.1, Datorama owns all Anonymous Information collected or obtained by Datorama.

**Responsibility:** You represent and warrant that (i) you own or have obtained the rights to all the Customer Data and you have the right to provide Datorama the license to use such Customer Data as set forth in this Section 7.2 and otherwise agree to the provisions therein; and (ii) the Customer Data does not infringe or violate any patents, copyrights, trademarks or other intellectual property, proprietary or privacy or publicity rights of any third party.

**Availability of Customer Data:** You acknowledge that (i) Datorama does not store all of the Customer Data used for and/or in relation to the System and some may remain stored on your own systems or other third party sites or servers and Datorama shall not be held liable or have any warranty regarding such Customer Data, access to it or storage of it; and (ii) you are solely responsible for the backup of your Customer Data. You may download certain Customer Data that you provided to Datorama at any time during the Term of this Agreement, or as otherwise set forth herein, provided that you comply with the Terms and any of Datorama's security requirements.

## 8. Title

Title and full, exclusive ownership rights of the System (and all parts thereof), and all reproductions, corrections, modifications, enhancements and improvements, and all related patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill, including data related to the System and/or your usage thereof, and Datorama's intellectual property, and any rights therein not explicitly granted to you hereunder, are reserved to and shall remain solely and exclusively proprietary to Datorama (or its third party licensors). The name "Datorama", the Datorama Logo, and other marks are Marks of Datorama or its affiliates shall remain exclusive property of Datorama at all times.

## 9. Restrictions on Use

You must not, and shall not allow any permitted End User or any other person or entity to: (i) give, sell, rent, lease, lend, timeshare, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the System or provide access to the System to any third party, including, but not limited to your affiliates, partners or subsidiaries, other than as specifically stated in the Order Form, or use the System in any timeshare, hosting or service bureau arrangement; (ii) circumvent, disable or otherwise interfere with security-related features of the System or features that prevent or restrict use or copying of any content or that enforce limitations on use of the System, including but not limited to the number of End Users; (iii) reverse engineer, decompile or disassemble the System or any components thereof; (iv) modify, translate, patch, alter, change or create any derivative works of the System, or any part thereof; (v) use any robot, spider, scraper, or other automated means to access the System for any purpose; (vi) take any action that imposes or may impose an unreasonable or disproportionately large load on the Datorama infrastructure (as Datorama may determine in its sole discretion); (vii) interfere or attempt to interfere with the integrity or proper working of the System, or any related activities; (viii) remove, deface, obscure, or alter Datorama's or any third party's copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the System, or use or display Marks differing from Datorama's own without Datorama's prior written approval; (ix) use the System to develop a competing service or product; (x) use the System to send unsolicited or unauthorized commercial communications; (xi) use or access the System outside the Territory set forth in Order Form; and/or (xii) use the System in any unlawful manner or in breach of these Terms. You agree to remain liable to Datorama for any act or omission of an End User or any person or entity which you enabled or allowed to access the System that would constitute a breach of these Terms if such acts or omissions were by you.

## 10. Term

These Terms shall become effective on the earlier of: (i) the date that you commence access to or use of the System; or (ii) the date that we receive payment of any applicable System subscription fee, and shall continue until expiration of the subscription period (the "**InitialTerm**"). Thereafter, subject to your payment of any applicable System subscription fees, these Terms shall automatically renew for successive

subscription periods (each a “**Renewal Term**,” and together with the Initial Term, the “**Term**”), or until these Terms are terminated in accordance with the section herein entitled “Termination.” If you continue to use the System past any subscription period renewal date, you shall be deemed to have renewed these Terms for the corresponding Renewal Term and will be required to undertake any additional payments for such continues use.

## **11. Fees**

Your access to and use of the System is subject to up-front payment in full of the subscription fees as set forth in the Order Form. You acknowledge that the subscription fee during any Renewal Term will, unless set forth in the Order Form, be determined by Datorama’s then-current subscription fees.

All fees are stated, and shall be paid, in US Dollars, are non-refundable and are exclusive of all taxes, levies, or duties, which are your responsibility. The payment methods are set forth in the Order Form.

## **12. Termination**

Without derogating from your obligation to pay the subscription fees, you may terminate these Terms and your Account by sending a cancellation request to us at [service-direct@datorama.com](mailto:service-direct@datorama.com) which includes your Account number, your name (in the case of an Account of an entity, the name of the entity on whose behalf the Account is being cancelled and the name of the relevant contact person), and a phone number where you can be reached, following a minimum use period of 30 days from the end of the free Trial Period detailed in section 5 above. If you terminate as set forth in this Section 12, the termination will be effective upon our receipt and processing of your cancellation request and subject to payment of all subscription fees or others fees that may be due to Datorama up to such date of termination, including the full fees due for the then-current subscription period. Notwithstanding the foregoing or any other provision in these Terms, we may terminate, or suspend until such time as we determine, these Terms and your Account and/or cease providing the System to you at any time in the event that you breach these Terms or act in any way or manner that may become a breach of these Terms.

## **13. Effect of Termination**

Upon termination of these Terms, your Account will be cancelled and you will lose all access to the System and to any data, including Customer Data that we may be storing on your behalf. It is your responsibility to download any Customer Data prior to canceling your Account or any termination of these Terms. Notwithstanding the foregoing, for a period of thirty (30) days from the effective date of termination of these Terms we will provide you, upon your written request, with a reasonable opportunity to download your Customer Data at a time nominated by us. We reserve the right to permanently delete from our (or our third party service provider’s) servers any data that may be contained in your Account and/or on the System, including any Customer Data, at any time following said thirty (30) day period. We do not accept any liability for any termination of the System or data, including Customer Data that is deleted in connection thereto. You shall pay Datorama the fees which may accrue during the subscription period in which the termination is effective. You will not receive a refund for any subscription fees already paid or owed to Datorama. This section 13 and Sections 9 (Restrictions), 8 (Title), 7 (Customer Data), 14 (Warranty Disclaimer), 15 (Limitation of Liability), 16 (Indemnification), 17 (Disclosure), 18 (Assignment), 19 (Modifications), 20 (Governing Law and Disputes), 21 (General), and any provision or Section so intended, shall survive termination of these Terms.

## **14. Warranty Disclaimer**

We take reliability and security seriously. We put a great deal of effort into ensuring that our System operates smoothly, and that it is a secure environment for your Customer Data. We use what we believe to be “best-of-class” hosting services and security technologies and services that we believe provide you with a secure and safe environment. However, no system is perfectly secure or reliable, the internet is an

inherently insecure medium, and the reliability of hosting services, internet intermediaries, your internet service provider, and other service providers cannot be assured. When you use the System, you accept these risks, and the responsibility for choosing to use a technology that does not provide perfect security or reliability. If a third party is authorized through you to have access to your Customer Data we cannot control and are not responsible or liable for the third party's use of your Customer Data or for access to or such Customer Data in general.

Except as expressly set forth herein: (i) the System, Reports (defined below) and any support services are provided on an "as is" basis; and (ii) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMISSIBLE BY APPLICABLE LAW. DATORAMA DOES NOT WARRANT THAT ACCESS TO OR USE OF THE SYSTEM WILL BE UNINTERRUPTED, THAT THE SYSTEM WILL BE AVAILABLE AT ANY GIVEN TIME OR FOR A CERTAIN PERCENTAGE OF TIME OVER ANY PERIOD, OR WILL BE ERROR FREE, OR THAT ANY DEFECTS WILL BE CORRECTED. DATORAMA SHALL NOT BE LIABLE OR RESPONSIBLE FOR: (A) ANY TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); AND/OR (B) ANY ISSUE THAT IS ATTRIBUTABLE TO YOUR HARDWARE OR SOFTWARE OR YOUR INTERNET OR DATA SERVICE PROVIDER OR TO YOUR CUSTOMER DATA OR YOUR ABILITY TO RETRIEVE OR ACCESS SUCH CUSTOMER DATA. DATORAMA DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY CONTENT, REPORTS, INFORMATION OR RESULTS YOU OBTAIN THROUGH THE SYSTEM (COLLECTIVELY, "REPORTS"), OR THAT THE REPORTS ARE COMPLETE OR ERROR-FREE. THE REPORTS DO NOT CONSTITUTE LEGAL ADVICE, AND YOU UNDERSTAND THAT YOU MUST DETERMINE FOR YOURSELF WHETHER YOU NEED TO OBTAIN INDEPENDENT LEGAL ADVICE REGARDING THE SUBJECT MATTER OF ANY REPORT AND/OR ANY SOFTWARE THAT YOU USE OR ARE CONSIDERING USING. YOUR SELECTION, USE OF AND RELIANCE UPON THE SYSTEM AND ANY REPORTS IS ENTIRELY AT YOUR SOLE DISCRETION AND RISK AND DATORAMA SHALL HAVE NO RESPONSIBILITY WITH ANY OF THE FOREGOING.

## **15. Limitation of Liability**

TO THE FULLEST EXTENT PERMISSIBLE BY LAW, DATORAMA SHALL NOT BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, LOSS OF PROFIT, LOSS OR REVENUE OF ANY KIND ARISING OUT OF THESE TERMS OR IN CONNECTION WITH THE REPORTS AND/OR THE SYSTEM AND/OR USE OF OR INABILITY TO USE THE SYSTEM AND/OR THE REPORTS, EVEN IF DATORAMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF DATORAMA UNDER THESE TERMS OR IN CONNECTION WITH THE USE OF OR THE INABILITY TO USE THE SYSTEM AND/OR IN CONNECTION WITH THE REPORTS EXCEED THE TOTAL AMOUNT OF THE SUBSCRIPTION FEE ACTUALLY PAID BY YOU DURING THE SIX (6) MONTHS PRIOR TO BRINGING THE CLAIM, EXCEPT WITH REGARD TO DATORAMA'S INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 16.2, UNDER WHICH THE TOTAL LIABILITY OF DATORAMA SHALL IN NO EVENT EXCEED 3 TIMES THE TOTAL AMOUNT OF THE SUBSCRIPTION FEE ACTUALLY PAID BY YOU DURING THE SIX (6) MONTHS PRIOR TO BRINGING THE CLAIM.

## **16. Indemnification**

**Indemnification by You:** You agree to defend, indemnify and hold harmless Datorama and our affiliates and our respective officers, directors, agents, consultants and employees from any third party claims, damages, liabilities, costs, and expenses (including reasonable attorney's fees) arising from: (i) use of the System and/or the Reports by you, End Users or anyone acting on your behalf or with your permission or

which you enabled to make use of the System, including by way of negligence; (ii) the Customer Data, including any use of or inability to make use of such Customer Data by Datorama in accordance with this Agreement;.

**Indemnification by Datorama:** Datorama agrees to defend, indemnify and hold you harmless from third party claims, damages, liabilities, costs, and expenses (including reasonable attorney's fees) by final court arising from infringement of such third party intellectual property by use of the System strictly in accordance with the Terms; and solely to the extent that the underlying claim does not arise from Customer Data, your intellectual property or any modification to the System or any breach of these Terms by you or any person or entity other than Datorama.

**Indemnification Requirements:** The Indemnification obligations set forth in this Section 16 shall be subject to the indemnifying party's being: (i) notified promptly of any claims, suits, and proceedings in writing; (ii) offered full and complete authority to defend and settle such claims, except that no claim shall be settled without the consent of the indemnified party, such consent not being unreasonably withheld; and (iii) given full information and assistance for the defense or settlement of such claims.

## **17. Disclosure**

We reserve the right to access, read, preserve, and disclose any information that we obtain in connection with the System as we reasonably believe necessary to: (i) satisfy any applicable law, regulation, legal process, subpoena or governmental request, (ii) enforce these Terms, including to investigate potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to your support requests, and/or (v) protect the rights, property or safety of Datorama, its users or the public.

## **18. Assignment**

These Terms, and any rights or obligations hereunder, may not be transferred or assigned by you.

Datorama may assign its rights and obligations to any parent, affiliate or subsidiary or otherwise to an acquirer or successor in connection with a change of control, merger or an acquisition of all or substantially all of its shares or assets or of the line of business, services, systems and/or products to which this Agreement pertains, provided that such assignee assumes all of Datorama's obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors, assigns, heirs, executors, and administrators.

## **19. Modifications**

We reserve the right, at our discretion, to change these Terms at any time. Such change will be effective ten (10) days following our sending a notice thereof to you or posting the revised Terms on the Site, and your continued use of the System thereafter means that you accept those changes.

## **20. Governing Law and Disputes**

These Terms and any disputes relating thereto shall be governed by the laws of the State of New York, without reference to its conflict of laws rules.

The exclusive jurisdiction and venue for all disputes hereunder shall be the courts located in New York City, and each party hereby irrevocably consents to the jurisdiction of such courts. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are excluded from these Terms. Notwithstanding the foregoing, Datorama reserves the right to seek injunctive relief in any court of competent jurisdiction.

## **21. General**

These Terms, the Order Form and Privacy Policy, represent the complete agreement concerning the System between you and Datorama and supersede all prior agreements and representations related to the subject matter hereof. To the extent of any inconsistency or conflict between these Terms, the Order Form or the Privacy Policy, these Terms shall prevail. Section headings are provided for convenience only and have no substantive effect on construction. Except for your obligation to pay Datorama, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. Nothing herein shall be construed to create any employment relationship, partnership, joint venture or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party. If any provision of these Terms is held to be unenforceable, these Terms shall be construed without such provision. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

## **22. Questions and Comments**

If you have any questions regarding these Terms or your use of the Services, please contact us at [sales-direct@datorama.com](mailto:sales-direct@datorama.com).