



## **SUBSCRIPTION SERVICES AGREEMENT**

BY SIGNING THE ORDER FORM OR OTHER ORDERING DOCUMENT ("**ORDER FORM**") REFERENCING THIS AGREEMENT PROVIDED TO YOU OR YOUR COMPANY ("**CUSTOMER**", "**YOU**" OR "**YOUR**") BY THE RELEVANT DATORAMA COMPANY AS DESCRIBED IN SECTION 10 BELOW ("**COMPANY**", "**WE**" OR "**OUR**"), YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS SUBSCRIPTION SERVICES AGREEMENT ("**AGREEMENT**").

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 ALSO 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 May 29, 2018.

### **TERMS AND CONDITIONS**

#### **1. THE SERVICES**

- 1.1. Subject to the terms of this Agreement, Company shall provide Customer digital analytics services, which shall be provided on a subscription basis, through its proprietary platform ("**Platform**"), enabling aggregation and management of Your data, as more fully described in the applicable Order Form (the "**Services**"), during the Term (defined below) 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 systems.
- 1.3. Any additional work which is not part of the Services (including but not limited to additional training, custom integration with data sources, and additional help and support in using the Platform) shall be itemized and billed 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 and any additional work in accordance with the terms therein (the "**Fees**"). Except as otherwise set forth in an Order Form, all Fees are (i) quoted and payable in United States dollars; and (ii) due within thirty (30) days of the invoice date. 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 payment obligations are non-cancelable and non-refundable.
- 2.3. Unpaid due 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, including without limitation reasonable attorney's fees. If Customer's account is more than thirty (30) days past due, Company reserves the right, in addition to any other rights or remedies it may have under this Agreement or by law, to suspend the Services upon written notice to Customer, until such amounts are paid in full.

- 2.4. Except as otherwise expressly stated in an Order Form, Customer shall be responsible for payment of any applicable taxes payable in connection with the Services, including without limitation all sales, value added and other similar taxes but excluding taxes based 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 (such terms as defined below), upon thirty (30) days prior written notice to Customer (which may be sent by email).

### 3. PROPRIETARY RIGHTS

- 3.1. As between Company and Customer, Company is the sole and exclusive owner of all right, title and interest in and to (a) the Services and the Platform, any improvements, enhancements or modifications thereto, and associated documentation, (b) any software, inventions or other technology developed in connection with additional professional services described in an Order Form and provided under this Agreement, and (c) all the copyrights, trademarks, trade secrets, patents and all other intellectual property rights therein, issued or enforceable under applicable laws anywhere in the world and all moral rights related to any of the foregoing (collectively, "**IP Rights**"), except for any data provided to Company by Customer in whatever form or media, as further specified in Section [3.4](#), below.
- 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 and access the Platform and Services, including any IP Rights incorporated therein, for its internal business purposes during the Term of the Agreement and within the scope of use set forth in the applicable Order Form.
- 3.3. Customer will not, directly or indirectly, or allow any of its users to: 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 Platform, the Services or any software, documentation or data related to the Services; modify, translate, or create derivative works based on the Platform or the Services; or use the Platform or 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 Customer Data (as defined in Section 5.1 below), as well as any data that is based on or derived from such Customer Data. Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and the Platform (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.
- 3.5. Customer hereby grants Company a limited, non-exclusive right and license to use Customer's name in Company presentations and in its customer 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 the prior written approval (including by email) of such other party, which approval will not be unreasonably withheld or delayed.
- 3.6. In the event Customer provides Company with instructions, requests, suggestions, comments or feedback (whether orally or in writing) with respect to the Platform and/or the Services, Customer acknowledges that any and all rights, including intellectual property rights, therein

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shall belong exclusively to Company, without restrictions or limitations of any kind, and Customer hereby irrevocably and fully transfers and assigns to Company any and all intellectual property rights therein and waives any and all moral rights that Customer may have in respect thereto.

#### 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. 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.
- 4.2. “Confidential Information” excludes information which is (i) or has become generally known or available through no act or failure to act by the receiving party; (ii) already known or available at the time of receipt as evidenced by then-existing written records; (iii) hereafter furnished to the receiving party by a third party, as a matter of right and without restriction on its disclosure; (iv) disclosed by written permission of the party for whom such information is confidential; or (v) 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.

#### 5. CUSTOMER DATA

- 5.1. Customer is responsible for obtaining all necessary rights and permissions to enable, and grant such rights and permissions to, Company, its contractors and subprocessors to use, provide, store, and process, all data, software, and information that Customer or its authorized users provides, authorizes access to, or inputs into the Services (“**Customer Data**”) in the Services. Such Customer responsibility includes, but is not limited to Customer providing all appropriate notices and disclosures and obtaining informed consent, if required, before providing any individual's information, including personal or other regulated information in such Customer Data to Company. Customer will not input, provide, or allow Customer Data to be input into the Services if such may be subject to governmental regulation or requires security measures beyond those specified by Datorama in its product documentation without Company's prior written consent. Customer shall remain fully liable for any such Customer Data subject to governmental regulation or requiring additional security measures input or provided without Company's prior written consent and shall defend, hold harmless and indemnify Company and Company's affiliates and subsidiaries (including, without limitation, their employees, officers, directors, subcontractors and agents) from and against any and all losses, penalties, fines, damages, liabilities, settlements, costs and expenses, including reasonable attorneys' fees. If and to the extent, European Union General Data Protection Regulation (EU/2016/679) (“**GDPR**”) applies to personal data contained in Customer Data, Company's Data Processing Agreement found at <https://datorama.com/dpa/> (“**DPA**”) shall apply and supplement this Agreement.

#### 6. WARRANTIES AND DISCLAIMERS

- 6.1. 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 any third party rights, including intellectual property rights.
- 6.2. 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 Company 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) Company will take all commercially reasonable action to scan its software or technology to detect and eradicate any virus, time-bomb, trojan horse, worm or other harmful or disabling code prior to making such software or technology available to Customer; (iii) Company shall use reasonable efforts to maintain the Services in a manner which minimizes errors and interruptions in the Services; and (iv) Company shall perform the professional services in a professional and workmanlike manner.

In the event of any alleged breach of the warranties set forth in sections 6.2(ii), (iii) or (iv) above, Customer shall provide prompt notice to Company of the alleged breach with sufficient specificity of the non-conformance. Upon receipt of Customer's notice, Company shall promptly reperform, repair or replace the non-conforming Services, at no additional cost to Customer. This remedy shall be Company's sole liability, and Customer's exclusive remedy, in the event of any alleged breach or breach of the warranties set forth in sections 6.2(ii), (iii) or (iv).

- 6.3. CUSTOMER ACKNOWLEDGES THAT COMPANY HAS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY. EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 6, 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. CUSTOMER ACKNOWLEDGES THAT THE SERVICES MAY BE TEMPORARILY UNAVAILABLE FOR MAINTENANCE, SCHEDULED OR UNSCHEDULED, 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.

## 7. INDEMNITY

- 7.1. Each party (the "**Indemnitor**") shall defend, indemnify and hold the other party (the "**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 (i) Company's breach of its warranty in Section 6.2(i); (ii) Customer's breach of its warranty in Section 5.2; (iii) either party's breach of Section 4 (Confidentiality); and (iv) either party's breach of Section 6.1, 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 the Indemnitor, at its cost, all reasonable assistance.

## 8. LIMITATION OF LIABILITY

- 8.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT (EXCLUDING THE EVENT OF BREACH OF SECTION 3 (PROPRIETARY RIGHTS), 4 (CONFIDENTIALITY), 5 (CUSTOMER DATA), OR 7 (INDEMNITY) 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.
- 8.2. The limited warranties, 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.

**9. TERM AND TERMINATION**

- 9.1. Subject to earlier termination as provided in Section 9.2 below, this Agreement is for the initial term specified in the Order Form (the "**Initial Term**"), and shall be automatically renewed for additional periods of one (1) year each (each a "**Renewal Term**" and collectively, together with the Initial Term, 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.
- 9.2. 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).
- 9.3. Sections 3 (Proprietary Rights), 4 (Confidentiality), 6 (Warranties and Disclaimers), 7 (Indemnity) and 8 (Limitation of Liability), 10 (Who You are Engaging With, Governing Law and Jurisdiction) and 11 (General Provisions) 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.
- 9.4. In the event the Agreement is terminated or expired, 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 at no additional cost.

**10. WHO YOU ARE ENGAGING WITH, GOVERNING LAW AND JURISDICTION**

- 10.1. 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:

<b>If You are domiciled in:</b>	<b>You are engaging with:</b>	<b>The governing law is:</b>	<b>Venue is:</b>
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

10.2. 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.

## 11. GENERAL PROVISIONS

- 11.1. 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.
- 11.2. 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.
- 11.3. 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.
- 11.4. 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, acts of government, flood, fire, civil unrest, acts of terror, strikes, or other labor problems.
- 11.5. 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 without the prior written consent of Customer.
- 11.6. 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.
- 11.7. 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.