# Datagate Master Services Agreement

Jurisdiction: Florida, USA

## 1.  Introduction

This Master Services Agreement ("**Agreement**") is made and entered into as of the Order Form Agreement Start Date of the first Order Form executed between Datagate Innovation Limited ("**Datagate**") and the Customer, described in such Order Form ("**Customer**").

The Customer is responsible for carefully reading the terms of this Agreement before signing an order form or before clicking "accept" and/or accessing or using any services of Datagate. By (as applicable) signing an Order, clicking "accept" and/or accessing or using such services, the Customer confirms that Customer has read and accepts this Agreement.

Notwithstanding any different or additional terms the Customer may reference or provide, Datagate's offer or acceptance (as applicable) to enter into an Agreement with Customer with respect to the Services is expressly limited to this Agreement and conditioned on Customer's agreement hereto. The terms and conditions of this Agreement shall govern the Services to be provided by Datagate under any Order Form submitted by Customer and accepted by Datagate, as though the provisions of this Agreement were set forth in their entirety within such Order Form, and so that each Order Form and this Agreement shall be considered one, fully integrated document and agreement.

The term "Datagate" includes any third parties which are providing Third Party Services identified in an applicable Order Form. A Definitions section is included at the end of this Agreement. Customer agrees that purchases under this Agreement are not contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Datagate regarding future functionality or features.

## 2.  License Grant/Limitations/Restrictions

Subject to the terms and conditions of this Agreement, Datagate hereby grants Customer and its Affiliates a non-exclusive, non-transferable, non-assignable, limited license to use the Services provided hereunder solely for Customer's own business purposes and only for the specific Licensed Project, Work Group or Entity, and for the Transaction Volume and time periods as set forth in each fully executed Order Form. Except as otherwise provided in an applicable Order Form, such license is limited to a single production tenant. In addition, and to the extent that an applicable Order Form includes any third party provider products, these different license terms will be described on the applicable Order Form and may require Customer's agreement. All rights not expressly granted to Customer are reserved by Datagate and its licensors. Datagate reserves the right to make changes, modifications and enhancements to the Services from time to time.

## 3.  Limitations on Use

Customer may not release to any third party the results of any evaluation of the Services performed by or on behalf of Customer for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes without the prior written approval of Datagate.

Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or the Content in any way; (ii) modify or make derivative works based upon the Services or the Content; (iii) reverse engineer the Services; or (iv) access the Services in order to build a competitive product or service. For the avoidance of doubt, and subject to the license grant/limitations/restrictions in Section 2 above, nothing in this Section 3 shall be deemed to prohibit Customer from allowing Customer's customers from accessing the functionality of the Services, via interfaces, portal applications and the like, for its internal business purposes.

Additionally, Customer shall not use the Services to: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (v) attempt to gain unauthorized access to the Services or its related systems or networks.

## 4.  Order Process

Customer shall order the Services by completing and signing an Order Form. Datagate shall accept or reject such Order Form within ten (10) business days of receiving the Order Form.

Each accepted, fully executed Order Form shall deemed to become incorporated herein by reference as if attached and made an integral part of this Agreement. Specific terms and conditions explicit documented on the Order Form will take precedence over the relevant specific term in this Master Services Agreement.

In the event that Customer's business practices require a purchase order number be issued prior to payment of any Datagate invoices issued pursuant to an Order Form, then a purchase order number must be provided to Datagate prior to the Agreement Start Date of such Order Form.   The customer's execution and return of applicable Order Form to Datagate without designating a purchase order number shall be deemed an acknowledgement that no purchase order number is required for payment of invoices. Additionally, terms, provisions or conditions on any purchase order, acknowledgement, or other business form or writing that Customer may provide to Datagate or use in connection with the procurement of Services (or any software) from Datagate will have no effect on the rights, duties or obligations of the parties hereunder, regardless of any failure of Datagate to object to such terms, provisions or conditions.

## 5.  Customer Responsibilities Before and During Initial Service Implementation

It is the Customer's responsibility to provide all the information requested by Datagate as set on in the Order in the timeframes specified in the Order or in supporting communication from Datagate.  Datagate reserves the right to begin charging the Customer according to the timeframes set out in the Order even if the Customer has failed to provide the information in the manner and timeframe specified in the Order.

## 6.  Other Customer Responsibilities

Customer is responsible for all activity occurring under Customer's User accounts and shall comply with all applicable laws and regulations in connection with Customer's use of the Services, including

but not limited to those related to data privacy, international communications, the transmission of technical or personal data and export control laws and regulations.

The Customer shall: (i) notify Datagate immediately of any unauthorized use of any password or account or any other known or suspected breach of security with respect to the Services; (ii) report to Datagate immediately and use reasonable efforts to stop immediately any copying or distribution or misuse of Content, Datagate Technology, Services or Deliverable that becomes known or suspected by Customer or Customer's Users; and (iii) not impersonate another Datagate user or provide false identity information to gain access to or use the Services.

## 7. Account Information and Data

Datagate does not own any Customer or Supplier Data. The Customer, not Datagate, shall have sole responsibility for the accuracy, quality, integrity, legality, and intellectual property ownership or right to use all Customer and Supplier Data, and Datagate shall not be responsible or liable for the deletion, correction, destruction, damage, or loss of Customer and Supplier Data not caused by Datagate. Datagate's use of Customer and Supplier Data shall be limited to the purpose of providing the Services to the Customer and for Datagate to meet its obligations hereunder. As part of the Services and during the Term, Datagate makes available to Customer the ability to export a file of the Customer Data.

The Customer is responsible for the timeliness and accuracy of the Customer and Supplier Data provided to Datagate.

## 8. Professional Services

If professional services (such as scoping, business analysis, implementation, training, consulting, etc.,) are included in any Order Form ("**Professional Services**"), in addition to the provisions in any mutually agreed upon Statement of Work ("**SOW**") the following provisions shall apply. Datagate shall retain all ownership rights to any and all Deliverables excluding, any pre-existing technology or materials supplied by Customer for incorporation into such Deliverable. Datagate grants Customer a royalty-free, non-exclusive, non-transferable, non-assignable worldwide license to use any Deliverable, to the extent necessary to permit Customer to use the Deliverable in connection with the Services during the Term. Customer acknowledges that nothing in this Agreement shall restrict or limit Datagate from performing similar services for any third party.

## 9. Intellectual Property Ownership

Datagate alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Datagate Technology, the Content, the Services and any Deliverables, including to any and all enhancements, enhancement requests, suggestions, modifications, extensions and/or derivative works thereof. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services, to any Deliverable, the Datagate Technology or the Intellectual Property Rights owned by Datagate. The Datagate name, the Datagate logo, and the product names associated with the Services are trademarks of Datagate or third parties, and no right or license is granted to use them.

## 10. Customer's Third Party Interactions

During Customer's use of the Services, Customer may interact with third parties through the Services. Any such activity, and any terms, conditions, warranties or representations associated with such

activity are solely between Customer and the applicable third-party. Datagate and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer and any such third-party. Datagate does not endorse any sites on the Internet that may be linked through the Services and to the extent any links are provided by Datagate, these are provided to Customer only as a matter of convenience, and in no event shall Datagate or its licensors be responsible for any content, products, or other materials on or available from such sites.

## 11. Fees, Payment Terms, Taxes, Billing Contact

Customer shall pay all fees or charges as specified on each executed Order Form and SOW ("**Fees**"). All payment obligations are non-cancellable and all amounts paid are non-refundable. Datagate charges in advance for all Fees or as defined on each Order Form. Unless otherwise set forth in the applicable Order Form, payment terms are 20 days from the date of Datagate's invoice, without offsets or deductions of any kind, and payment is due in the currency as specified on the Order Form. If payment under an applicable Order Form is to be made via credit card or electronic money transfer, such payment shall be chargeable upon invoice date.

Datagate's Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties. If Datagate has the legal obligation to pay or collect taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Datagate with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer believes Customer's bill is incorrect, Customer must contact Datagate in writing within sixty (60) days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit. The Customer agrees to provide Datagate with accurate billing and contact information, including Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Administrator. The Customer agrees to update this information within thirty (30) days of any change to it. If the contact information Customer has provided is false or fraudulent, Datagate reserves the right to terminate Customer's access to the Services in addition to any other legal remedies.

Datagate reserves the right to modify its Fees with respect to its Services and to introduce new charges to become effective upon the upcoming Renewal Service Term by providing Customer written notice at least 45 days prior to the end of the then current Service Term. In the event that Customer does not provide notice of termination to Datagate as described in below, such Fee changes shall become effective at the commencement of the next Renewal Service Term. In the event the Customer fails to make payments per payment terms as set forth in this Agreement or in any applicable Order Form, and legal enforcement by Datagate is deemed necessary, Customer agrees to pay all reasonable legal fees and costs incurred by Datagate.

## 12. Agreement Term, Order Form Term

The Initial Term of this Agreement shall begin on the Order Agreement Start Date of the first Order Form and shall continue in effect until all underlying Order Forms with Customer have expired in accordance with the terms of such Order Form/s, or if this Agreement is terminated earlier, as provided herein.

The term of an applicable Order Form will begin on the Term Start Date of the applicable Order Form and shall continue for the term specified in such Order Form ("**Initial Service Term**"). In the event that an Order Form contains Services added to an existing service, such added Services shall be billed and

in a manner and form a term as set out on the applicable Order Form. Unless otherwise set forth in an applicable Order Form, or unless this Agreement is terminated as described in Section 14, upon expiration of the Initial Service Term of any Order Form, such Order Form/s will renew automatically for a subsequent Renewal Service Term of twelve (12) months (subject to any Fees adjustment as set forth in Section 11, unless either party notifies the other party of its intent to terminate at least thirty (30) days prior to the end of the then current Service Term.

## 13. Non-Payment and Suspension

In addition to any other rights granted to Datagate herein, Datagate reserves the right to suspend or terminate this Agreement, any related Order Forms, and Customer's access to the Services if Customer's account becomes delinquent and is uncured for a period of thirty (30) days. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, from the date due, plus all expenses of collection. In addition, Datagate has the right to remove any credit terms provided in any Order Form in the event Customer's account becomes delinquent (e.g. net 30 payment terms will be reduced to net 0). Customer will continue to be charged for Fees during any period of Service suspension due to Customer's delinquency. If Datagate initiates termination of this Agreement for cause, as further described in Section 14, Customer will be obligated to pay all remaining Fees due computed in accordance with their terms for the remainder of the applicable Order Initial Service Term, or Renewal Service Term thereof. Customer agrees that Datagate may charge such unpaid Fees to Customer's credit card or other electronic payment method, or otherwise bill Customer for such unpaid Fees.

## 14. Termination for Cause

Either party may terminate this Agreement (and any Order Forms then in effect) if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after delivery of notice of such breach.

## 15. Dispute Resolution

Each Party will immediately notify the other of the existence of any dispute relating to this Agreement and will attempt to resolve the dispute through good faith discussions between the relevant Datagate account manager and the usual Customer contact person. If the dispute is not resolved at that level within 14 days, the dispute may be referred by either Party to the senior management or executives of the Parties and both Parties will then use their respective best endeavours to resolve the dispute within a further 14 Business Days. If the dispute is unable to be resolved by the senior management or executives of the Parties, it will be referred to an independent mediator appointed by agreement between the Customer and Datagate. If the Customer and Datagate cannot agree on an independent mediator within 5 Business Days of the time lapsing for the senior management or executives of both Parties to resolve the dispute (unless a longer period is agreed), then an independent mediator will be appointed by the President for the time being, or his or her nominee to mediate the dispute. The independent mediator so appointed shall be a member of Lawyers Engaged in Alternative Dispute Resolution. The Parties agree that the outcome of the mediation will not be binding on the Parties unless the parties execute a written mediated settlement agreement. While following the above procedures to resolve the dispute, neither Party is relieved from its obligations under the Agreement and the Agreement remains in full force and effect. In the event mediation fails to resolve the dispute within 14 Business Days of the mediator's appointment, either party may refer the dispute to final and binding arbitration, by a single arbitrator appointed by agreement of the parties, and failing said agreement, to be appointed by the President for the time being, or his or her nominee. The arbitration shall be heard in the state of Florida. There shall be no appeal from or review of the arbitrator's award.

The arbitrator shall have discretion to make such costs awards as he or she deems appropriate. For the avoidance of doubt, nothing in this clause will prevent either Party from seeking urgent injunctive relief where damages would be an inadequate remedy.

## 16. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Datagate further represents and warrants that the Services will perform substantially in accordance with the relevant product data sheet(s) as found on the Datagate website under normal use and circumstances.

In the event of a breach of this warranty, Customer's sole remedy and Datagate's sole obligation will be for Datagate to make reasonable commercial efforts to correct the non-conformity or, if Datagate is unable to correct the non-conformity within ninety (90) days after Customer's written notice, for Customer to terminate the applicable Order Form and receive a refund on a pro-rata basis of any prepaid unused Fees under such Order Form.

## 17. Disclaimer of Warranties

Except for the express representations and warranties stated in section 13, datagate and its licensors makes no additional representation or warranty of any kind whether express, implied (either in fact or by operation of law), or statutory, as to any matter whatsoever. Datagate expressly disclaims all implied warranties of merchantability and fitness for a particular purpose. Datagate does not warrant that the services, (including professional services or related deliverables, if any), are or will be error-free, will meet customer's requirements, or be timely or secure. Customer will not have the right to make or pass on any representation or warranty on behalf of datagate to any third party.

## 18. Internet Delays

Datagate's services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Datagate is not responsible for delays, delivery failures, or other damage resulting from such problems not caused by Datagate.

Datagate hosts the portal services on behalf of clients on the Microsoft Azure platform, and will pass on any platform limitations and benefits extended to Datagate as provided under the platform's current terms and conditions. See http://azure.microsoft.com/en-us/support/legal/sla/ for more information.

## 19. Limitation of Liability

In no event shall Datagate's and its licensors' aggregate liability arising from or relating to this agreement exceed the amounts actually paid by and/or due from customer in the twelve (12) month period immediately preceding the event giving rise to such liability. In no event shall either party and/or its licensors be liable to the other party or any third party for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of revenue, profits, use or other economic advantage) arising out of, or in any way connected with this agreement, including but not limited to the use or inability to use the services, or for any content obtained from or through the services, any interruption, inaccuracy, error or omission, regardless of cause, even if

the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.

## 20. Marketing

Customer grants Datagate the right to use Customer's name and logo on Datagate's website simply to identify Customer as a Datagate customer without revealing any specifics about the parties' relationship or this Agreement. Datagate must not use a Customer logo or trademark in any other way without Customer's prior written approval. Customer further agrees that "Powered by Datagate" or a similar Datagate mark may appear in invoices, quotes, hosted payment pages, hosted checkout pages, and similar outputs generated through Customer's use of the Service; provided, however, that the font size and other attributes must be commercially reasonable. If Customer does not agree with any use by Datagate of Customer's name or logo, or with any attribute of the "Powered by Datagate" or similar mark, then Datagate and Customer will cooperate reasonably to resolve the issue promptly.

## 21. Anonymous Use Of Data

Customer grants Datagate the right to use Customer and Supplier Data residing on the Datagate Platform on an aggregated and anonymous basis for reporting, monitoring and service delivery purposes.

## 22. Notices

All legal notices (i.e. claimed breach or termination of Agreement or Order Form/s) required to be provided under this Agreement must be delivered in writing (a) in person, (b) by nationally recognized overnight delivery service or (c), by certified mail to the other party at the address set forth in the applicable Order Form or as otherwise communicated to the other party in writing.  All other notices from Customer to Datagate may be made by emailing notices@Datagate.com and Datagate may give notice by emailing Customer's billing contact as specified on the order form. All notices shall be deemed to have been given upon receipt or, if earlier, two (2) business days after being deposited in the mail as required above. Either party may change its address by giving timely notice of the new address to the other party pursuant to this Section and identifying in such notice the date on which such change is effective.

## 23. Assignment

Customer may not assign this Agreement to any third party except upon Datagate's prior written consent, which consent not to be unreasonably withheld. Any purported assignment in violation of this Section shall be void. This Agreement and each and all of the provisions hereof bind and benefit the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

## 24. Confidentiality

The parties agree that any confidentiality agreement ("**NDA**") entered into by the parties prior to the applicable Order Agreement Start Date, shall extend to Confidential Information disclosures made under this Agreement, and each party's confidentiality obligations with respect to such Confidential Information, shall remain in effect for three (3) years from the relevant date of disclosure of such

Confidential Information, regardless of any contrary terms in such NDA. For the avoidance of doubt, and without limiting the coverage of the NDA, Confidential Information includes (a) Customer Data, (b) all pricing terms offered to Customer under any Order Form, and (c) the Datagate Technology. In addition, neither party will disclose any pricing terms or other terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors under a duty of confidentiality except (a) as required by law, or (b) pursuant to a mutually agreeable press release. Finally, Confidential Information disclosures made under this Agreement are subject to the Limitation of Liability and other terms of this Agreement; in the event of any conflict between the NDA and this Agreement, this Agreement will prevail and govern.

## 25. General

This Agreement shall be governed by Florida law without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the courts of Florida. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Customer and Datagate as a result of this Agreement or use of the Services. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. This Agreement, together with any applicable Order Form(s) (including any other documents referenced therein), comprises the entire agreement between Customer and Datagate regarding the subject matter contained herein and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding such subject matter.

## 26. Definitions

As used in this Agreement and in any Order Form(s) associated herewith:

**"Affiliate"** means a company, firm or individual that controls, is controlled by, or is under common control with the Customer; "**Content**" means the audio and visual information, documents, software, products and services contained in or made available via the Services, other than Customer Data; "**"Licensed Project, Work Group, or Entity"** means an identifiable Customer application/s, business unit/s, project/s, brand/s or service/s for which the Service is licensed, as set forth in the applicable Order Form; "**Customer Data, Customer and Supplier Data**" means any data, information or material that Customer or Customer's Users, subscribers or partners may disclose or submit to Datagate or the Services in the course of using the Services including data from the Customer's suppliers; "**Order Agreement Start Date**" means the date identified in an Order Form as the date on which such Order Form shall be effective; "**Term Start Date**" means the date identified in an Order Form as the date of the start of the Initial Service Term; "**Initial Service Term**" means the contracted period specified in the applicable Order Form. "**Transaction Volume**" or "**Invoice Volume**" means the aggregate dollar or other currency amount, or other agreed upon measurement amount, invoiced by Customer using the Services for a specific monthly or other period as identified in the applicable Order Form and is measured by taking the sum of such agreed upon measurement amounts posted using the Services for such monthly or other period; "**Renewal Service Term**" means each subsequent renewal period beginning on the expiration of the Initial Term; "**Intellectual Property Rights**" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service

marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "**Administrator(s)**"means those Users designated by Customer who are authorized to submit, whether electronically or in writing, Order Forms and to create Customer accounts and otherwise administer Customer's use of the Services; "**Order Form(s) or Order**" means the form evidencing the initial subscription order for the Services and any subsequent Order Forms submitted online or in written form, specifying, among other things, the Order Agreement Start Date, Licensed Project, Work Group or Entity, Transaction Volume, and/or other services contracted for, the applicable Fees, the billing period, and other charges as agreed to between the parties, each such fully executed Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of the Order Form shall prevail); "**Datagate Technology**" means all of Datagate's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by Datagate in providing the Services; "**Service(s)**" means Datagate's online billing service, or other services identified during the ordering process as described in the relevant product data sheet(s) as found on the Datagate website developed, operated, and maintained by Datagate and accessible via [http://www.Datagate-i.com](http://www.Datagate-i.com) or another designated web site or IP address, or ancillary online or offline products and services provided or licensed to Customer by Datagate, to which Customer is being granted access under this Agreement, including the Datagate Technology, the Content and any product, service or license belonging to a third party that appears on an Order Form; "**User(s)**" means Customer's employees, representatives, consultants, contractors or agents who are authorized to use the Services and have been supplied user identifications and passwords by Customer (or by Datagate at Customer's request); "**Deliverables**" means any copyrightable works, products, discoveries, developments, designs, work product, deliverables, improvements, inventions, processes, techniques and know-how made, conceived, reduced to practice or learned by Datagate (either alone or jointly with Customer or others) that result from Professional Services included in any Order Form and/or SOW, and provided to Customer hereunder.

2/Apr/19

Jurisdiction: Florida