# The Datamyne Terms of Use Policy

**1. General:** Subscriber may access and use the Services in accordance with the Agreement. All Services ordered by Subscriber are provided by Datamyne or its licensors and subject to the Agreement.   All capitalized terms that are not expressly defined herein shall have the same meaning as in the Subscription Agreement.

**2. Changes:** During the Term, Datamyne reserves the right to modify or discontinue the Services, including adding, removing or changing features or functionality, from time to time to reflect changes in, including but not limited to, applicable law, regulations, rules, technology or availability of data.  Datamyne will notify Subscriber of any material changes to Subscriber's ability to access or use the Services or discontinuation of any Services.

**3. Credentials:** The Credentials are specific to the User and may only be used by such User and by no more than one (1) User at a time. Neither Subscriber nor User shall directly or indirectly provide or disclose to any third party the Credentials, or use the Credentials to provide third parties with access to or use of the Services.

**4. Rights:** Datamyne hereby grants to Subscriber a revocable, non-exclusive, and non-transferable limited right to use the Services for Subscriber's internal business use during the Term solely in accordance with the Agreement. As between Datamyne and Subscriber, Datamyne and its licensors retain all ownership and intellectual property rights in and to the Services, including the inclusion of the Services in any derivative works thereof and/or anything developed or delivered by or on behalf of Datamyne under the Agreement. Nothing contained herein shall be construed as conferring to Subscriber, by implication or otherwise, any intellectual property rights in and to the Services.

**5. Limitations and Restrictions on Use:** Subscriber shall not, and shall not cause or permit Users or any third parties to, or attempt to: (a) remove or modify any program or service markings, Trademarks or any notice of Datamyne's, its Affiliates' or licensors' propriety rights; (b) use Trademarks without Datamyne's prior written consent; (c) modify, disassemble, decompile, reverse engineer, reproduce, republish, copy or make derivative works of any part of the Services; (d) "frame" or "mirror" any Services provided through the Internet; (e) perform or disclose any benchmarking, vulnerability scanning, password cracking, penetration, availability or performance testing of the Services; (f) use in conjunction with the Services or introduce into the Services any device, software, or routine that could damage or interfere with the proper operation of the Services, including, but not limited to any scraper, robot, spider to access or use the Services; (g) inhibit the operation of the Services, including, but not limited to, denial of service attacks, extensive session lengths or conducting search queries that Datamyne, in its sole discretion, reasonably determines to be abusive; (h) develop, support or assist a third party in developing, supporting or assisting with products or services that are competitive to the Services; (i) license, sell, resell, transfer, assign, distribute, outsource, permit timesharing or service bureau use, commercially exploit or otherwise make available the Services to a third party, including any materials generated by the Services; or (j) access or use the Services in a manner intended to: (I) harass or cause damage or injury to any person or property; (II) violate a third party's privacy, contractual or property rights; (III) violate applicable laws, ordinances or regulations; (IV) avoid incurring fees or exceeding login or usage limits; or (k) access or use the Services for any purpose other than as expressly permitted by the Agreement. Datamyne reserves the right to monitor Subscriber's use of the Services to provide guidance and assistance in the access and use of the Services, and to monitor Subscriber's conformance with the Agreement.

**6. Disclaimers:** DATAMYNE CANNOT GUARANTEE THE AVAILABILITY, PROVISION, QUALITY, ACCURACY, INTEGRITY OR RELIABILITY OF THE SERVICES AND SUCH SERVICES ARE PROVIDED "AS IS".  DATAMYNE DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THE SERVICES WILL MEET SUBSCRIBER'S EXPECTATIONS OR REQUIREMENTS.  EXCEPT TO THE EXTENT PROHIBITED BY LAW, DATAMYNE, ITS AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

**7. Limitation of Liability:** UNDER NO CIRCUMSTANCES SHALL DATAMYNE, ITS AFFILIATES AND/OR LICENSORS BE LIABLE TO SUBSCRIBER OR ANY OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS, SALES, DATA, DATA USE, GOODWILL OR REPUTATION (EVEN IF SUCH DAMAGES ARE FORESEEABLE OR WHERE DATAMYNE HAS BEEN ADVISED OR HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES).  FURTHER, DATAMYNE, ITS AFFILIATES AND/OR LICENSORS WILL NOT BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT OR DAMAGES ARISING IN CONNECTION WITH: (A) SUBSCRIBER'S INABILITY TO USE OR ACCESS THE SERVICES AS A RESULT OF: (I) SUSPENSION OR TERMINATION OF THE AGREEMENT; (II) SUBSCRIBER'S DECISION NOT TO USE THE SERVICES; (III) DATAMYNE'S DISCONTINUATION OF ANY OR ALL OF THE SERVICES; OR (IV) A FORCE MAJEURE EVENT; (B) THE COST OF PROCUREMENT OF SUBSITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES OR COMMITMENTS BY SUBSCRIBER IN CONNECTION WITH THE AGREEMENT.   UNDER NO

CIRCUMSTANCES SHALL THE AGGREGATE LIABILITY OF DATAMYNE, ITS AFFILIATES AND/OR LICENSORS ARISING OUT OF OR IN RELATION TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY SUBSCRIBER FOR THE SERVICES UNDER THE AGREEMENT GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

**8. Indemnification:**

8.1 If a third party makes a claim against Subscriber claiming that any Materials furnished by Datamyne and used by Subscriber or any User infringes a third party's intellectual property rights, Datamyne, at Datamyne's sole cost and expense, will defend the Subscriber against the claim and indemnify the Subscriber and its employees, officers and directors from any damages, liabilities, costs and expenses (including any reasonable attorney's fees) awarded by a court to the third party claiming infringement or the settlement agreed to by Datamyne, provided that the Subscriber complies with the obligations in Section 8.4.  Datamyne will not defend or indemnify the Subscriber to the extent a claim is based upon: (a) the combination of any Material with any products or services not provided by Datamyne; (b) the use of the Materials outside the scope of rights granted to Subscriber or otherwise in violation of the Agreement; (c) the alteration of Materials by Subscriber in a manner not authorized by Datamyne; (d) use of a version of the Materials which has been superseded and where such infringement claims could have been avoided by using an unaltered and current version of the Materials which was made available to Subscriber; (e) any infringement caused by the actions of the Subscriber or any User; or (f) Materials not provided by Datamyne, including such Materials a third party source that is accessible or made available to the Subscriber within or by the Services.

8.2 If Datamyne believes or has determined that any of the Materials furnished by Datamyne has or may have violated a third party's intellectual property rights, Datamyne may choose to: (a) modify the Materials to be non-infringing (but substantially preserving the Materials' utility or functionality); or (b) obtain the rights to allow for the continued use of the Materials by Subscriber.  If options (a) and (b) are not commercially reasonable, then, in the sole discretion of the Datamyne, Datamyne may terminate the Services upon written notice to Subscriber.  In addition, if the Materials are subject to a license from a third party and the terms of such license does not allow Datamyne to end the license for the Materials, then Datamyne may terminate the Services upon written notice to Subscriber.

8.3 If a third party makes a claim against Datamyne arising out of or in connection with: (a) any breach of the Agreement by Subscriber or any User; (b) any Materials furnished by Subscriber or any User, whether generally or in conjunction with the Services; or (c) any dispute between Subscriber or any User and any third party, Subscriber, at the Subscriber's sole cost and expense, will defend Datamyne against the claim and indemnify Datamyne and  its employees, officers and directors for any damages, liabilities, costs and expenses (including any reasonable attorney's fees) awarded by a court to the third party claimant or settlement agreed to by Subscriber, provided that Datamyne complies with the obligations in Section 8.4.

8.4 If a party seeks indemnification (the "Indemnitee") from the other party (the "Indemnitor") pursuant to this Section 8, the Indemnitee must comply with the following obligations: (a) notify the Indemnitor promptly in writing, not later than thirty (30) days after the Indemnitee receives notice of the claim (or sooner if required by applicable law); (b) give the Indemnitor sole control of the defense and any settlement obligations; and (c) give the Indemnitor the information, authority and assistance the Indemnitor reasonably needs to defend against or settle the claim.

8.5 If the Indemnitor: (a) fails to assume the defense of claim against the Indemnitee within thirty (30) days of receiving the notice of claim; or (b) having assumed defense of the claim against the Indemnitee, unreasonably fails to defend such claim against the Indemnitee, then, upon fifteen (15) days written notice to the Indemnitor, the Indemnitee may assume the defense of the claim and the Indemnified Party shall be entitled to assume the costs of such defense as damages covered by the Indemnitor.

8.6 This Section 8 provides the parties exclusive remedy for any third party claims or damages.

**9. Confidentiality:** In the performance of this Agreement, each party and/or its Representative may disclose (collectively, the "Discloser") Confidential Information to the other party and/or its Representative (collectively, the "Receiver"). Receiver acknowledges and agrees that the Confidential Information provided by Discloser shall remain the sole and exclusive property of Discloser. Receiver shall not disclose, reproduce, use, distribute, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Confidential Information provided by Discloser, except as expressly provided under the Agreement. The disclosure of such Confidential Information to Receiver does not confer upon Receiver any license, interest, or rights of any kind in or to the Confidential Information, except as expressly provided under the Agreement.  Confidential Information shall not include information that: (a) is or becomes publicly available through no act or omission of the Receiver; (b) was in the Receiver's lawful possession prior to the disclosure and had not been obtained by the Receiver either directly or indirectly from the Discloser; (c) is lawfully disclosed to the Receiver by a third party without restriction on the disclosure; or (d) is independently developed by the Receiver without the use of the Discloser's Confidential Information.  The Discloser shall disclose only such Confidential Information as is reasonably necessary to the facilitate the purpose of the Agreement.  The Receiver acknowledges and agrees that: (i) it will use the Confidential Information solely in connection with the

Agreement unless otherwise expressly authorized in writing by the Discloser; (ii) it will protect the Confidential Information using efforts no less protective than those it uses to protect its own proprietary information and in no event less protective than a reasonable standard; (iii) it will not alter, deface, copy, convert into human readable form, create derivative works, distribute, disassemble, decompile, reverse engineer, reproduce, translate or otherwise modify the Discloser's Confidential Information or any copy, adaptation, extract, transcription or merged portion thereof; and (iv) will only disclose to its Representatives with a "need to know" provided that the Receiver ensures that such Representatives will be bound by written non-disclosure agreements substantially similar to those set forth in the Agreement. Each party is responsible for a breach of this Agreement by its Representatives and the party agrees to take, at its sole expense, all reasonable measures (including, but not limited to, instituting court proceedings) to restrain its Representatives from prohibited or unauthorized disclosure or use of Discloser's Confidential Information. If the Receiver is required to disclose Confidential Information pursuant to a judicial order, subpoena, search warrant, regulatory requirement, statutory requirement or other operation of law, prior to disclosing Confidential Information, the Receiver, if permitted by law and if its reasonably practical in the circumstances, will provide reasonable written notice to the Discloser in order to allow the Discloser to take any available protective action prior to such disclosure.

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10. **Force Majeure:** Neither party shall be responsible for a failure or delay in performance if caused by conditions beyond its reasonable control such as, but not limited to, an act of war, fires, floods, acts of God, governmental or regulatory restrictions, power or telecommunication outages or failures, natural disasters, or acts of terrorism (each a "Force Majeure Event"). Each party will use reasonable efforts to cure the effect of a Force Majeure Event. If such Force Majeure Event continues for more than thirty (30) days, either party may cancel any unperformed Services, in whole or in part. This Section 10 does not excuse Subscriber's obligation to pay for the Services.

11. **Dispute Resolution:** Except for the right of either party to apply to a court of competent jurisdiction for interim or interlocutory relief or other provisional remedy to prevent irreparable harm pending final determination or to pursue a claim for infringement of any intellectual property right, any dispute or controversy between the parties arising out of or relating to the Agreement (each, a "Dispute") shall be resolved by good faith negotiations between the parties which negotiations shall not terminate until the Dispute has been considered by a senior officer of each party.

12. **Survival:** Notwithstanding the foregoing and any expiration or termination of the Agreement, in addition to any provisions in the Agreement which are expressly stated to survive termination, the following provisions of this Policy shall survive such expiration or termination: Sections 1, 3, 5, 6, 7, 8, 9, 11, 13, 14 and this Section 12.

13. **Miscellaneous:** Subscriber may not assign the Agreement or give or transfer the Services, or any interest in the Services, to another individual or entity. The parties are independent contractors and each party agrees that no partnership, joint venture or agency relationship exists between the parties. Failure by either party to enforce any provision of the Agreement shall not be deemed a waiver of future enforcement of that or any other provision in the Agreement. Each party agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under the Agreement. No third party beneficiary relationships are created by the Agreement. The Agreement constitutes the complete, final and exclusive statement of the governing provisions between the parties with respect to its subject matter and supersede any and all other agreements or understandings, written or oral, with respect thereto. If any provision of the Agreement is held to be invalid or unenforceable, that provision will be struck and the remaining provisions shall be enforced. Notwithstanding any agreement with a third party or any provision of law, regulation or Agreement, if Subscriber is an agency of the government of the United States of America, then Subscriber's rights in respect of the Services shall not exceed the rights provided under the Agreement. Unless expressly noted otherwise, the Agreement shall not be modified or amended or any term within the Agreement waived except as mutually agreed by Datamyne and Subscriber in writing.

14. **Definitions:**

"**Affiliate**" means any corporation that: (a) is controlled, either directly or indirectly, by a party; (b) is under common voting control, either directly or indirectly, with the party; or (c) that controls the party; as the case may be, where "control" means the ability to vote greater than fifty percent (50%) of the outstanding voting securities in such corporation.

"**Confidential Information**" means information (including any copies, extracts, summaries or adaptations of such information), regardless of the form of its disclosure, that is either: (a) clearly marked as "Confidential" or "Proprietary" at the time of disclosure or identified as such in a written summary delivered within ten (10) days following the disclosure; or (b) that by its nature or by the circumstances in which it is disclosed, ought reasonably be considered to be confidential. The parties agree that: (i) all information relating to business processes, information technology systems and requirements, products (including product features and any information that is embedded in or related to a party's product, technology or services or to the development, testing and commercial exploitation thereof), the Services, sales and marketing plans, customers, prospective customers, target markets, pricing and financial

data shall be deemed to be Confidential Information of the Discloser; and (ii) the terms of the Agreement shall be deemed to be Confidential Information of Datamyne.

"**Credentials**" means an identification code and a password for each individual User provided by Datamyne to access and use the Services.

"**Infrastructure**" means all software, technology, websites, platform and any updates or changes to the foregoing owned, licensed or utilized by Datamyne in connection with the delivery and use of the Services.

"**Materials**" means any information, report, analysis, design, specification, instruction, software, hardware or other material.

"**Representative**" of a party shall mean any employees, directors or officers of a party and/or its Affiliate, agent, advisors or subcontractors.

"**Services**" means all Datamyne services or products and its content ordered by the Subscriber and howsoever provided by Datamyne and the supporting Infrastructure for which Subscriber has entered into a current and valid Agreement.

"**Trademarks**" means any trademarks, service marks, service or trade names, logos and other designations of Datamyne, its Affiliates and/or licensors that are made available to Subscriber in connection with the Agreement.

"**User**" means an employee, contractor or agent authorized by Subscriber to access and use the Services in accordance with the Agreement.