

# Terms of Service

**THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION AND WAIVER OF JURY TRIAL. PLEASE READ IT CAREFULLY BEFORE AGREEING.**

Effective Date: July 12, 2017

Datalogue, Inc. (hereinafter "**Datalogue**," "**we**" or "**us**"), provides this website, product and the services, functionality data, information, tools, updates and similar materials delivered or provided by us (the "**Services**") subject to your agreement to and compliance with the conditions set forth in this Terms of Service Agreement (the "**Agreement**").

This Agreement sets forth the legally binding terms and conditions governing your use of the Services, and the use by the entity on whose behalf you sign up. If you do not agree to these terms and conditions, you may not use the Services.

## License

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As long as you are in compliance with the conditions of this Agreement and all incorporated documents, we hereby grant you during the Term a limited, revocable, non-assignable, non-transferrable, non-sublicensable, non-exclusive license to access and receive the Services and the materials thereon that are intended to be displayed publicly. No rights not explicitly listed are granted.

## Incorporated Terms

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The following additional terms are incorporated into this Agreement as if fully set forth herein: - Privacy Policy

## Important Notices

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We do not represent or warrant that access to the Services will be error-free or uninterrupted, and we do not guarantee that users will be able to access or use the Services, or their features, at all times. We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services, or any part thereof, with or without notice.

The Services may be used to perform data analysis and other analytics; however, we cannot guarantee the results of any such analysis.

The Services may contain typographical errors or inaccuracies, and may not be complete or current. We reserve the right to correct any such errors, inaccuracies or omissions and to change or update information at any time without prior notice.

Although we have the right to review, edit, remove or modify information from or on the Services, we may not screen this material or control the sources of this information, and we do not guarantee the accuracy, suitability, completeness, currency, quality, adequacy or applicability of any such information.

The materials appearing on the Services, including but not limited to summaries, descriptions, publications and any other such materials, are not intended to and DO NOT constitute legal, medical, financial, investment, business or professional advice of any kind. Those accessing the materials appearing on the Services should not act upon them without first seeking relevant professional counsel, as these materials are general in nature, and may not apply to particular circumstances. The materials should not be used as a substitute for consultation with a professional adviser. You agree that we are not responsible for any decisions that you may make.

Circular 230 Disclosure: Pursuant to U.S. Treasury Department Regulations, we are required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this Website, App or Services, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

## **Eligibility**

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You must be over the age of 13 to register an account or use the Services. By using the Services, you represent that you meet this minimum age requirement.

Some parts or all of the Services may not be available to the general public, and we may impose eligibility rules from time to time. We reserve the right to amend or eliminate these eligibility requirements at any time.

You are not eligible to use the Services if doing so would violate any U.S. law or regulation, including but not limited to export controls or restrictions.

## Rules Of Conduct

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Your use of the Services is conditioned on your compliance with the terms of this Agreement, including but not limited to these rules of conduct.

You agree that you will not violate any applicable law or regulation in connection with your use of the Services.

You agree not to distribute, upload, make available or otherwise publish through the Services any suggestions, information, ideas, comments, causes, promotions, documents, questions, notes, plans, drawings, proposals, or materials similar thereto ("Submissions") or graphics, text, information, links, profiles, audio, photos, software, music, sounds, video, comments, messages or tags, or similar materials ("Content") that:

- is unlawful or encourages another to engage in anything unlawful;
- contains a virus or any other similar programs or software which may damage the operation of our or another's computer;
- violates the rights of any party or infringes upon the patent, trademark, trade secret, copyright, right of privacy or publicity or other intellectual property right of any party;
- is false, inaccurate, fraudulent or misleading; or,
- is libelous, defamatory, obscene, inappropriate, invasive of privacy or publicity rights, abusing, harassing, threatening or bullying.

You must keep your user name and password and any other information needed to login to the Services, if applicable, confidential and secure. We are not responsible for any unauthorized access to your account or profile by others.

You further agree that you will not do any of the following: - modify, adapt, translate, copy, reverse engineer, decompile or disassemble any portion of the Services; - interfere with or disrupt the operation of the Services, including restricting or inhibiting any other person from using the Services by means of hacking or defacing; - transmit to or make available in connection with the Services any denial of service attack, virus, worm, Trojan horse or other harmful code or activity; - attempt to probe, scan or test the vulnerability of a system or network of the Services or to breach security or authentication measures without proper authorization; - take any action that imposes, or may impose, in our sole discretion, an unreasonable or disproportionately large load on our infrastructure; - harvest or collect the email address or other contact information of other users of the Services; - scrape or collect content from the Services via automated or large group means; - submit, post or make available false, incomplete or misleading information to the Services, or otherwise provide such information to us; - register for more than one user account; or, - impersonate any other person or business.

You are not licensed to access any portion of the Services that is not public, and you may not attempt to override any security measures in place on the Services.

Notwithstanding the foregoing rules of conduct, our unlimited right to terminate your access to the Service shall not be limited to violations of these rules of conduct.

## **Content Submitted Or Made Available To Us**

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You are under no obligation to submit anything to us, and unless otherwise noted, we will not claim ownership of any Content. However, in order for us to provide the Services, we need your permission to process, display, reproduce and otherwise use content you make available to us.

Therefore, if you choose to submit any Content to the Services, or otherwise make available any Content through the Services, you hereby grant to us a perpetual, irrevocable, transferrable, sub-licensable, non-exclusive, worldwide, royalty-free license to reproduce, use, modify, display, perform, distribute, translate and create derivative works from any such Content, including without limitation distributing part or all of the Content in any media format through any media channels.

By submitting any Content or Submissions to us you hereby agree, warrant and represent that: (a) the Content and Submissions do not contain proprietary or confidential information, and the provision of the Content and Submissions is not a violation of any third-party's rights; (b) all such Submissions and Content are accurate and true, (c) we are not under any confidentiality obligation relating to the Content or Submissions; (d) we shall be entitled to use or disclose the Content or Submissions in any way; and (e) you are not entitled to compensation or attribution from us in exchange for the Submissions or Content.

You acknowledge that we are under no obligation to maintain the Services, or any information, materials, Submissions, Content or other matter you submit, post or make available to or on the Services. We reserve the right to withhold, remove and or discard any such material at any time.

## **Content Shared Through The Services**

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You understand that by sharing information on the Services, and requesting information to be sent through the Services, you may be revealing information about yourself and/or your business that you may include and that may be generated by the Services. You understand and acknowledge that you are fully aware and responsible for the impact of sharing such materials, and you agree that we shall not be held responsible, and we shall be released and held harmless by you from any liability or damages arising out of such conduct.

## **Our Intellectual Property**

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Our graphics, logos, names, designs, page headers, button icons, scripts, and service names are our trademarks, trade names and/or trade dress. The "look" and "feel" of the Services (including color combinations, button shapes, layout, design and all other graphical elements) are protected by U.S. copyright and trademark law. All product names, names of services, trademarks and service marks ("Marks") are our property or the property of their respective owners, as indicated. You may not use the Marks or copyrights for any purpose whatsoever other than as permitted by this Agreement.

You acknowledge that the software used to provide the Services, and all enhancements, updates, upgrades, corrections and modifications to the software (the "Software"), all copyrights, patents, trade secrets, or trademarks or other intellectual property rights protecting or pertaining to any aspect of the Software (or any enhancements, corrections or modifications) and any and all documentation therefor, are and shall remain the sole and exclusive property of us and/or our licensors, as the case may be. This Agreement does not convey title or ownership to you, but instead gives you only the limited rights set forth herein.

To the extent that you gain access to any such Software, you agree that you will delete the Software upon any termination of this Agreement, termination of your use of the Services, or at our request.

## **Passwords & Accounts**

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You are responsible for controlling the access to and use of your account. Always make sure that your password is kept as confidential. You understand and agree that we may assume that instructions from an individual associated with your account are authoritative and should be acted upon by us.

We are not responsible for any unauthorized access to your account or profile, and any ramifications of such access, and is not required to take action to disable any account. You agree that you will not bring an action against us arising out of or related to any claimed unauthorized access using your account credentials.

## **Enforcement & Termination**

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The "Term" of this Agreement will be until terminated as provided herein. We reserve the right to terminate this Agreement and/or deny all or some portion of the Services to any user, in our sole discretion, at any time.

Without limiting the foregoing or assuming additional legal obligations, we have a policy of terminating repeat violators of the Copyright Act, in accordance with applicable law. All grants of any rights from you to us related to Content, Submissions, or other materials, including but not limited to copyright licenses, shall survive any termination of this Agreement. Further, your representations,

defense and indemnification obligations survive any termination of this Agreement.

You may terminate this Agreement at any time by ceasing use of the Services or by closing your account through the functionality of the Service.

## **Disclaimers And Limitation On Liability**

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BY USING THE SERVICES YOU AGREE AND ACKNOWLEDGE THAT WE PROVIDE THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. WE AND OUR PARENTS, SUBSIDIARIES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES AND SUPPLIERS, SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, ACCURACY, SUITABILITY, APPLICABILITY, MERCHANTABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER WARRANTIES OF ANY KIND. NO ADVICE OR INFORMATION (ORAL OR WRITTEN) OBTAINED BY YOU FROM US SHALL CREATE ANY WARRANTY.

USE OF THE SERVICES IS AT YOUR SOLE RISK. WE DO NOT WARRANT THAT YOU WILL BE ABLE TO ACCESS OR USE THE SERVICES AT THE TIMES OR LOCATIONS OF YOUR CHOOSING; THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE OF INACCURACIES, MISREPRESENTATIONS BY USERS, VIRUSES OR OTHER HARMFUL COMPONENTS.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT AS OTHERWISE PROHIBITED BY LAW, IN NO EVENT SHALL WE OR OUR AFFILIATES, LICENSORS OR BUSINESS PARTNERS (COLLECTIVELY, THE "RELATED PARTIES") BE LIABLE TO YOU BASED ON OR RELATED TO THE SERVICES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH ACCESS TO OR USE OF THE SERVICES, EVEN IF WE AND/OR RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Notwithstanding the foregoing, in the event that a court shall find that the above disclaimers are not enforceable, then you agree that neither we nor any of our

subsidiaries, affiliated companies, employees, members, shareholders, or directors shall be liable for (1) any damages in excess of \$500.00, or (2) any indirect, incidental, punitive, special, or consequential damages or loss of use, lost revenue, lost profits or data to you or any third party from your use of the Services. This limitation shall apply regardless of the basis of your claim or whether or not the limited remedies provided herein fail of their essential purpose.

SOME STATES, INCLUDING NEW JERSEY, MAY NOT PERMIT CERTAIN DISCLAIMERS AND LIMITATIONS, AND ANY SUCH DISCLAIMERS OR LIMITATIONS ARE VOID WHERE PROHIBITED.

## **Indemnification**

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You agree to defend, indemnify and hold us and our suppliers, subsidiaries, licensors, and licensees, and each of their officers, directors, shareholders, members, employees and agents harmless from all allegations, judgments, awards, losses, liabilities, costs and expenses, including but not limited to reasonable attorney's fees, expert witness fees, and costs of litigation arising out of or based on (a) Submissions or Content you submit, post to or transmit through the Services (b) your use of the Services, (c) your violation of the Agreement, and (d) any conduct, activity or action which is unlawful or illegal under any state, federal or common law, or is violative of the rights of any individual or entity, engaged in, caused by, or facilitated in any way through the use of Services.

## **Disputes Governing Law And Jurisdiction**

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You agree that any claim or dispute arising out of or relating in any way to your use of the Services or any service provided by us, will be resolved solely and exclusively by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this agreement. The laws of the State of New York shall govern this Agreement, and shall be used in any arbitration proceeding.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or

statutory damages), and must follow the terms of this Agreement as a court would.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to the following address:

Datalogue, Inc., 450 Park Ave South, Floor 3, New York, NY 10016

Arbitration under this Agreement will be conducted by the American Arbitration Association (AAA) under its rules then in effect. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules.

You and us agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration, both you and us agree that parties have each waived any right to a jury trial.

Notwithstanding the foregoing, you agree that we may bring suit in court to enjoin infringement or other misuse of intellectual property or other proprietary rights.

To the extent arbitrations does not apply, you agree that any dispute arising out of or relating to the Services, or to us, may only be brought by you in a state or federal court located in New York, New York. YOU HEREBY WAIVE ANY OBJECTION TO THIS VENUE AS INCONVENIENT OR INAPPROPRIATE, AND AGREE TO EXCLUSIVE JURISDICTION AND VENUE IN NEW YORK.

## **Policies For Children**

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The Services are not directed to individuals under the age of 13, nor do they contain information which would be potentially harmful to minors. In the event that we discover that a child under the age of 13 has provided personally identifiable information to us, we will make efforts to delete the child's information in accordance with the Children's Online Privacy Protection Act. Please see the Federal Trade Commission's website ([www.ftc.gov](http://www.ftc.gov)) for more information.

Notwithstanding the foregoing, pursuant to 47 U.S.C. Section 230 (d), as amended, we hereby notify you that parental control protections are commercially available to assist you in limiting access to material that is harmful to minors. More information on the availability of such software can be found through publicly

available sources. You may wish to contact your internet service provider for more information.

## **General**

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### **Severability**

If any provision of this Agreement is found for any reason to be unlawful, void or unenforceable, then that provision will be given its maximum enforceable effect, or shall be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision.

### **Revisions**

This Agreement may only be revised in a writing signed by us or posted by us to the Services. In the event that we update this Agreement and you are made aware of the update, your continued use of the Services after the update shall constitute an agreement to the updated terms.

### **No Partnership**

You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of this Agreement or your use of the Services.

### **Assignment**

We may assign our rights under this Agreement, in whole or in part, to any person or entity at any time with or without your consent. You may not assign the Agreement without our prior written consent. Any unauthorized assignment shall be null and void.

### **No Waiver**

Our failure to enforce any provision of this Agreement shall in no way be construed to be a present or future waiver of such provision, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by us of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

### **Notices**

All notices given by you or required under this Agreement shall be in writing and addressed to: [legal@datalogue.io](mailto:legal@datalogue.io).

### **Equitable Remedies**

You hereby agree that we would be irreparably damaged if the terms of this Agreement were not specifically enforced, and therefore you agree that we shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this Agreement, in addition to such other remedies as we may otherwise have available to us under applicable laws.

### **Entire Agreement**

This Agreement, including the documents expressly incorporated by reference, constitutes the entire agreement between you and us with respect to the Services, and supersedes all prior or contemporaneous communications, whether electronic, oral or written.

## **Copyright Policy**

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If you believe in good faith that any material posted on our Services infringes the copyright in your work, please contact our copyright agent, designated under the Digital Millennium Copyright Act ("DMCA") (17 U.S.C. §512(c)(3)), with correspondence containing the following:

- A physical or electronic signature of the owner, or a person authorized to act on behalf of the owner, of the copyright that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed;
- Identification, with information reasonably sufficient to allow its location of the material that is claimed to be infringing;
- Information reasonably sufficient to permit us to contact you;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and,
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You acknowledge that if you fail to comply with all of the requirements of this policy, your DMCA notice may not be valid. For any questions regarding this

procedure, or to submit a complaint, please contact our designated DMCA Copyright Agent:

### **Copyright Agent**

Datalogue 450 Park Ave South, Floor 3, New York, NY 10016 e-mail: [legal@datalogue.io](mailto:legal@datalogue.io)

## **Complaint Policy Including Trademark And Privacy**

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If you believe in good faith that any material posted on the Services infringes any of your rights other than in copyright, or is otherwise unlawful, you must send a notice to [legal@datalogue.io](mailto:legal@datalogue.io), containing the following information:

- Your name, physical address, e-mail address and phone number;
- A description of the material posted on the Site that you believe violates your rights or is otherwise unlawful, and which parts of said materials you believe should be remedied or removed;
- Identification of the location of the material on the Site;
- If you believe that the material violates your rights, a statement as to the basis of the rights that you claim are violated;
- If you believe that the material is unlawful or violates the rights of others, a statement as to the basis of this belief;
- A statement under penalty of perjury that you have a good faith belief that use of the material in the manner complained of is not authorized and that the information you are providing is accurate to the best of your knowledge and in good faith; and,
- Your physical or electronic signature.

If we receive a message that complies with all of these requirements, we will evaluate the submission, and if appropriate, in our sole discretion, we will take action. We may disclose your submission to the poster of the claimed violative material, or any other party.