

# Rackmounted.com: Service Level Agreement

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This Agreement ("Agreement") is between Datarealm, Inc., a Pennsylvania corporation ("Datarealm") with an office at Suite 707, 117 So. 17th Street, Philadelphia, PA 19103 and the party specified in the order form annexed hereto and incorporated herein by reference ("Order"). Such party shall be referred to herein as the "Customer" and shall enter into this Agreement by signing below.

For good and valuable consideration, the parties agree as follows:

## 1. SERVICES

Subject to the terms and conditions of this Agreement, Datarealm will provide to Customer the Web hosting and/or related services described in the plan selected by Customer from Datarealm then published list of services offered from time to time ("Services"). The specific plan of Services to be provided initially to Customer shall be as selected in the Order and thereafter as established through correspondence between Customer and Datarealm.

## 2. TERM

The initial term of this Agreement shall be as stated in the Order ("Initial Term"). The Initial Term shall begin upon commencement of Service to Customer, provided, however, no Service shall commence unless and until Datarealm receives and accepts a completed Order from Customer, plus payment as set forth in the Order. Customer remains obligated to pay all fees due during the Initial Term, even if those fees are to be paid in accordance with a schedule (for example, X months paid in full before commencement and Y months paid quarterly). Datarealm reserves the right to reject any submitted Order for any or no reason prior to written acceptance thereof by Datarealm. After the Initial Term, unless otherwise agreed to by the parties, this Agreement shall automatically renew for successive terms of one calendar month unless terminated or canceled by either party only as provided in Paragraph 9 below. The Initial Term plus all successive renewal periods during which Service is provided shall be collectively referred to as the "Term."

## 3. FEES AND PAYMENT

All fees for Services rendered or provided to Customer shall be in accordance with Datarealm fee schedule then in effect, the terms of which are incorporated herein by reference. A fee schedule setting forth Datarealm current rates for Services is annexed to the Order. Datarealm may, with 30 days notice to Customer, amend the Services and/or the rates and fees it charges for the Services. Fees for renewal periods after the Initial Term shall be due and owing immediately upon the first day of such renewal period. Customer will receive an invoice for the charges for the basic Services rendered or provided by Datarealm for such renewal period, plus any additional Services rendered or provided by Datarealm to Customer for the preceding month of the Term, and any other charges or fees then due hereunder. Payment in full of such invoiced amount is due upon receipt of the invoice. Should payment in full of any invoice not be received by Datarealm within thirty (30) days after date of invoice, Datarealm may impose a debt service charge equal to one and one-half percent (1.5%) of the overdue balance (or such lesser amount as may be required by law) for each month or fraction thereof the overdue amount remains unpaid. In addition, in the event that any amount due Datarealm remains unpaid thirty (30) days after presentation of an invoice to Customer, Datarealm, in its sole discretion, may immediately terminate this Agreement, and/or withhold or suspend Services. Accounts 14 days past due are subject to suspension. All taxes, fees and governmental charges relating to the Services provided hereunder (other than income taxes of Datarealm) shall be paid by Customer. Termination and/or deletion of account does NOT relieve client of obligation to pay for any outstanding balance. CLIENT AGREES TO REIMBURSE Datarealm OR ITS COLLECTIONS AGENT(S) FOR ALL COLLECTIONS COSTS, INCLUDING ALL COURT COSTS AND REASONABLE ATTORNEY'S FEES, IF ACCOUNT IS DELINQUENT FOR MORE THAN 60 DAYS.

## 4. CONTENT AND CUSTOMER'S RESPONSIBILITY

Datarealm will exercise no control whatsoever over, nor have any responsibility or liability whatsoever for, the content of the information passing through its network. Datarealm shall make no effort to validate any information passing through its network for content, correctness, usability or for any other reason.

## 5. NO WARRANTY

Initial: \_\_\_\_\_ Date: \_\_\_\_\_

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Customer agrees to use all Datarealm Services and facilities, and any information obtained through or from Datarealm, at Customer's own risk. Customer acknowledges and understands that neither Datarealm, nor any of its employees, representatives, agents or the like, warrant that the Services offered or provided hereunder will not be interrupted or be error free, nor do they make any warranty or representation as to the results that may be obtained from the use of the Service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the Service, unless otherwise expressly stated in this Agreement. Datarealm specifically disclaims all warranties of any kind, including, without limitation, the warranty of merchantability and fitness for a particular purpose, whether expressed or implied, for the Service it is offering or providing hereunder.

## 6. PROHIBITED USES

Customer shall not use, nor permit the use by any person of, Customer's Web space or any part thereof, including any links to other Web space, in violation of Datarealm "Usage Policy" provided herewith.

## 7. LIMITED LIABILITY

Under no circumstances, including negligence, shall Datarealm, its officers, agents or anyone else involved in creating, producing or distributing the Service hereunder be liable to Customer or any third party, for any claims, causes of action or direct, indirect, incidental, special, or consequential, trebled, or punitive damages, that result or have alleged to have resulted from the use of or inability to use the Service; or that results from mistakes, omissions, interruptions, deletion of files, loss of data, errors, defects, delays in operations, or transmission or any failure of performance, whether or not limited to acts of God, communications failure, theft, destruction or unauthorized access to Datarealm records, programs or services. Datarealm further shall have no responsibility whatsoever to Customer or any third party for the accuracy or quality of information obtained through or in connection with its Services provided hereunder. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, in such states, Datarealm's liability is limited to the extent permitted by law. Notwithstanding the above, Customer's exclusive remedies for all damages, losses, costs or causes of actions from any and all claims, whether in contract, quasi-contract, statutory, tort including negligence, or otherwise, shall not exceed the aggregate dollar amount which Customer paid during the twelve (12) months immediately preceding the claim or the term of this Agreement, whichever is less.

## 8. INDEMNIFICATION

Customer shall defend, indemnify, save and hold Datarealm harmless from any and all damages, demands, liabilities, losses, costs and claims, including, without limitation, reasonable attorneys' fees, compensatory damages, punitive damages, trebled damages, and statutory damages (hereinafter "Liabilities") asserted against Datarealm, its agents, its customers, servants, officers and employees, that may arise or result from any service provided or performed or agreed to be performed by Customer, its agents, employees or assigns or any product distributed, offered or sold by Customer, its agents, employees or assigns.

## 9. TERMINATION

This Agreement may be terminated: (i) by either party, without cause, by giving the other party 30 days prior written notice; (ii) by Datarealm, at any time, upon 20 days' prior notice if in the sole judgment of Datarealm, Customer breaches any material provision of this Agreement and has not cured same by the end of the 20 days; (iii) by Datarealm in the event of nonpayment by Customer as provided in Paragraph 3 above; and (iv) by Datarealm, at any time, without notice, if, in Datarealm's sole judgment, Customer is in violation of any terms or conditions of Datarealm's Usage Policy. Termination by Customer at Customer's discretion will not relieve Customer of payment obligation under this Agreement, except that all payments shall be due immediately and not paid over the remaining Term. Termination by Datarealm under 9 (ii), 9 (iii) or 9 (iv) shall not relieve Customer of payment obligation under this Agreement, except that all payments shall be due immediately and not paid over the remaining Term.

## 10. IP ADDRESSES

Datarealm has a responsibility to make sure that IP addresses are being used efficiently. Accordingly, Datarealm will not

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allocate additional IP addresses unless there is a minimum of 90% of all currently assigned IP addresses in use. Within 30 days of receiving new IP addresses, a minimum of 90% of all IP addresses assigned to Customer must be in use. In the event that IP addresses are not in 90% use, Datarealm reserves the right to reallocate those IP addresses as it sees fit. Additionally, under no circumstances shall Customer attempt to add an IP address that has not been allocated by Datarealm. Any such attempt shall be considered a violation of the Usage Policy, since such attempt might interfere with use of that IP address by another party.

### 11. ADDITIONAL TERMS AND CONDITIONS

Customer hereby acknowledges that it has received and reviewed a copy of Datarealm's "Usage Policy" provided herewith and that the terms of the Usage Policy are incorporated herein by reference. Datarealm reserves the right to amend the Usage Policy from time to time and Customer shall be bound by any such amendments. Customer shall have the obligation to periodically visit Datarealm Web site to review its Usage Policy and to make certain Customer is in full compliance therewith. In the event of any inconsistencies between this Agreement and the Usage Policy, the terms of the Usage Policy shall govern.

### 12. NOTICE

All notices must be sent either in writing or by email, except as otherwise expressly provided herein that a notice must be in writing. All notices to Datarealm shall be delivered to its address stated above or its email address as provided. All notices to the Customer shall be delivered to its mailing address or its email address as provided on the Order. The parties may change their respective address by notice delivered to the other party. All notices delivered in writing must be sent either by overnight courier or certified mail, return receipt requested. Evidence of successful transmission of all notices delivered by email must be retained by the delivering party.

### 13. MISCELLANEOUS

This Agreement sets forth the entire agreement between Datarealm and Customer with respect to the subject matter hereof and supersedes all previous representations, understandings or agreements and shall prevail notwithstanding any variance with terms and conditions of any other prior writing between the parties. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless continue in full force and effect. Customer may not transfer or assign this Agreement without Datarealm's prior written consent. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania and all claims concerning this Agreement shall be brought exclusively in the state or federal courts located in the County of Philadelphia, Pennsylvania and the Commonwealth of Pennsylvania. This agreement takes place in Philadelphia, Pennsylvania. The parties hereby consent to submit to the jurisdiction of such courts and waive any personal jurisdiction or venue defenses concerning said forum.

Agreed To	Accepted
Date:	Date:
By:	By: Datarealm Internet Services, Inc
Name:	Name:
Title:	Title:
Signature	

Initial: \_\_\_\_\_ Date: \_\_\_\_\_