

STANDARD TERMS AND CONDITIONS

At DataPerk, LLC (hereinafter "DataPerk") we value our customers and wish to provide you with a positive experience. In order to deliver the best products and services it is important that all customers agree to the same rules. Thus, DataPerk requires all customers ("Customers") to agree to the standard terms and conditions as follows:

- DEFINITIONS:** "Plans" means DataPerk hosting, maintenance, backup, managed services, or any other services of any nature provided to Customer. "Service" means any service of any nature provided by DataPerk to Customer including but not limited to networking support, cabling, software and hardware support and service. "Products" includes any tangible products offered by DataPerk including but not limited to computer hardware or software. "Customer" includes any end user as well as any related entities such as subsidiaries, partners, affiliates, employees, customers or the like.
- PAYMENT & TERMS:** Payment shall be made per invoice terms in US dollars. DataPerk reserves the right to apply payments to any outstanding invoice and will apply payments to Services and Plans before Products, irrespective of any payment designation by the Customer. If DataPerk fails to receive payment in full by the INVOICE DUE DATE, DataPerk may discontinue, withhold, delete or suspend Plans, Services or Products to Customer, including deletion of their website and/or reclaim any Services or Plans provided to Customer. A reactivation fee may apply to restore Service if account is suspended or disabled. Additionally, DataPerk will charge Customer interest at 18% per annum, or 1- ½% per month on any balance not paid within invoice terms. If it becomes necessary to hire a third party to collect from Customer, Customer hereby agrees to pay all costs of collection including reasonable attorneys' fees.
- RENEWAL/CANCELLATION:** For your convenience, renewal of Plans and Service is automatic. If you wish to cancel, you must do so in writing. DataPerk does not provide refunds or proration for prepaid Plans or Services.
- CABLING:** Customer agrees and acknowledges that all cabling Services are complete and successful upon a live ping of a LAN tester on the line.
- THIRD PARTY PRODUCTS OR SERVICES:** DataPerk may re-sell third party products or services. DataPerk makes no representation or warranty as to any third party product or service. Any defects in third party products or services are the responsibility of the third party, not DataPerk. Client expressly acknowledges that DataPerk is not responsible for any damage caused by third party products or services.
- LIMITATION OF LIABILITY:** DataPerk will utilize its best efforts to maintain acceptable performance of Plans and Service. However, DataPerk hereby disclaims any and all warranties whatsoever, express or implied, including any warranty of merchantability or fitness for a particular purpose. DataPerk does not and cannot guarantee continuous Service, Service at any particular time, or integrity of data stored or transmitted via its system, the Internet or via third party products or services. DataPerk does not and cannot guarantee backups. Customer agrees that DataPerk will not be liable for any disclosure, corruption or erasure of data transmitted, received or stored. Customer further agrees that DataPerk shall not be liable to Customer for any claims or damages resulting from the loss of data, hardware, software, the inability to access Internet, or inability to transmit or receive information, caused by, or resulting from, delays, non-deliveries, or service interruptions whether or not caused by the fault or negligence of DataPerk. DataPerk's liability to Customer, and any end user of any Plan or Service is limited to the amount paid to and received by DataPerk for such Plan or Service. In no event shall DataPerk be liable to Customer, or any end user or any other entity for any special, consequential, or other damages, however caused, whether for breach of contract, negligence or otherwise, even if DataPerk has been advised of the possibility of such damage.
- INDEMNIFICATION:** Customer agrees that it shall defend, indemnify, save and hold harmless from any and all demands, liabilities, losses, costs, claims, including reasonable attorney's fees, (hereinafter "Liabilities") against DataPerk, its agents, its partners, customers, servants, officers, and its employees which may arise or result from any Plan or Service provided, performed or agreed to be performed or any product sold to Customer, its agents, employees or assigns. Customer agrees that DataPerk shall not be liable to Customer for any claims of actual, compensatory and/or consequential damage which may be suffered by Customer, including, but not limited to, losses or damages due to the loss of data resulting from delays, non deliveries or Service interruptions caused by the fault or negligence of DataPerk.
- PROHIBITED USES:** Customer is solely responsible for its conduct and its data related to any Service or Plan. DataPerk does not under any circumstances allow the following activities on any of its servers: Running WAREZ web sites, participation in unsolicited bulk e-mails (SPAMMING) either through the use of our mail servers or otherwise, GAMBLING, PORNOGRAPHY, materials violative of the INTELLECTUAL PROPERTY RIGHTS OF OTHERS, or promoting or participating in ILLEGAL activities. All of these activities will result in immediate discontinuance of Service or Plan without prior notice and Customer will not be entitled to any refund for prepaid Plans or Service. DataPerk reserves the right to notify law enforcement officials should it become aware of any illegal activity.
- RESERVATION OF RIGHTS:** DataPerk reserves the right to discontinue any Plan or Service.
- CONFIDENTIALITY:** DataPerk and Customer acknowledge that in the course of their relationship, they will exchange certain Confidential Information. The parties agree that they will not disseminate said Confidential Information to third parties except as is necessary to provide Plans, Services and Products. The parties agree that they will return all Confidential Information upon request by the other party. Confidential Information does not include information that is otherwise available to the public, information that is acquired from a third party or information that is independently developed by the disclossee.
- APPLICABLE LAW/ARBITRATION/JURISDICTION:** This agreement takes effect when accepted by DataPerk in Alabama. It is to be governed by and construed by the laws of the State of Alabama. Any controversy or claim arising out of or relating to our relationship, this Agreement or the breach thereof, may be settled by a court of law or arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, at the option of DataPerk. The parties irrevocably agree to the jurisdiction of the federal and state courts of Jefferson County, Alabama.

12. **ENTIRE AGREEMENT/MODIFICATION:** This agreement sets forth the entire understanding between the parties and merges all prior discussions. DataPerk may amend this Agreement from time to time and Customer agrees to the current version of the Terms and conditions as contained at www.dataperk.com/tos.