

Dataforge Master Services Agreement (MSA)

Dataforge Inc.

Version 1.4, 2019-1-4

The following terms and conditions apply to Dataforge Inc. (“Dataforge”) and all its proposed or provisioned services. Outlined in this agreement (the “Dataforge MSA”) and sets out the basic rights, obligations and limitations of Dataforge to its Customers (the “Customer”). All of the terms and conditions contained herein (hereinafter referred to as “Terms”) bind both DATAFORGE and the CUSTOMER and are subject to change from time to time at the sole discretion of DATAFORGE, without any prior notice to the CUSTOMER.

Quotes

QUOTES approved by CUSTOMER from DATAFORGE will also be known as a (“Service Agreement”). CUSTOMER and DATAFORGE agree that QUOTES from DATAFORGE are regarded as an extension of this document and may have specific TERMS or parameters unique to the service and/or products being offered on the QUOTE.

Services

1. DATAFORGE agrees to supply the services described in one or more SERVICES AGREEMENT (the “Services”) or general work performed at request of CUSTOMER in accordance with the terms of this Agreement. CUSTOMER agrees to receive the services from DATAFORGE in accordance with the terms of this Agreement.
2. SERVICE AGREEMENT parameters and TERMS will also be specified on quotes and invoices. This document is an amendment to those TERMS.

Term

1. This Agreement shall commence on the request by CUSTOMER to DATAFORGE for services, or when a separate SERVICES AGREEMENT is approved by CUSTOMER.
2. If the customer has approved a separate SERVICES AGREEMENT;
 - a. The Effective Date and shall remain in effect for the period outlined in SERVICES AGREEMENT (“Term”) unless terminated by either party as permitted by this Agreement. The Term of each service will commence upon the Effect Date outlined in the SERVICES AGREEMENT and billing will begin for that service(s). This Agreement will automatically renew for successive terms equal in duration to the initial Term unless written notice is provided by either party to the other at least sixty (60) days prior to the expiration of the initial Term or any renewal Term, as the case may be, in which case the contract will expire on said expiration date. Upon termination of this Agreement, the CUSTOMER will return to DATAFORGE all property that is owned by DATAFORGE and has been installed at the CUSTOMER location for the purpose of providing the Services.
3. The terms of this agreement also apply to general work conducted without a formal SERVICES AGREEMENT for various services. By doing business with DATAFORGE the CUSTOMER agrees with this Master Services Agreement (MSA) and the TERMS herein.

Compensation

1. Monthly services provided are invoiced monthly in advance. The first invoice will be issued by DATAFORGE upon approval by the CUSTOMER. Subsequent months will be invoiced in advance once the Services have been established and are available for use by the CUSTOMER. DATAFORGE shall invoice the CUSTOMER based on the rates indicated in the Service Schedule for the Services to be provided in that month and, except for payment of the first invoice, which must be paid by CUSTOMER to DATAFORGE before commencement of the Term.
2. Labor services are invoiced at the end of the month.
3. CUSTOMER shall pay all invoices within thirty (30) days after the date the invoice is issued. Upon thirty (30) days or greater written notice prior to the end of the Term, DATAFORGE may change any fees payable under this Agreement. CUSTOMER is solely responsible for payment of any taxes (including without limitation sales, use, capital, intangible and property taxes) resulting from the CUSTOMER's purchase or use of the Services. CUSTOMER agrees to hold harmless DATAFORGE from all claims and liability arising from CUSTOMER failure to report or pay such taxes in a timely fashion.
4. All services and rates provided by DATAFORGE are governed by certain regulatory filings. If any of these filings are revised, and all parties are impacted equally, DATAFORGE reserves the right to amend our pricing to accommodate any material change of our pricing structure if the impact is deemed material. Material is deemed to be any amount in excess of 2%. For purposes of interpretation, this will be treated similarly to how taxes are levied and revised within term.
5. Rates for the following licensing are subject to adjustment at any time with a 30 day notice. This includes changes to our pricing model adjustments.
6. Invoices outstanding for more than thirty (30) days shall bear interest at a monthly rate of 3% per month (42.58% per annum) and such interest charges shall accrue from and after the due date of payment to the date that payment is made to DATAFORGE.
7. In the event of non-payment of an invoice, DATAFORGE may, in addition to all other rights and remedies under this Agreement and in law, suspend the provision of any or all Services. Any such suspension of Services shall not constitute the termination of this Agreement. If DATAFORGE is required to bring legal action for the recovery of any amounts due hereunder, the CUSTOMER agrees to be responsible for, and to reimburse DATAFORGE for, the payment of reasonable legal fees and costs incurred by DATAFORGE. In the case of late payment of an invoice, or if DATAFORGE is concerned regarding the CUSTOMER's credit worthiness, DATAFORGE reserves the right to require the CUSTOMER to enter into on a pre-authorized Payment plan to mitigate the potential of non-payment. In such circumstances, the CUSTOMER shall authorize the payment to DATAFORGE from a Canadian bank, or similar institution acceptable to DATAFORGE, of a fixed monthly amount that will not exceed the recurring or delayed charges included in the price payable each month during the Term.
8. All invoicing will be sent electronically to CUSTOMER supplied address.

Termination

1. In regards to formal SERVICE AGREEMENTS;

2. Upon giving sixty (60) days prior written notice to DATAFORGE, the CUSTOMER may, during the initial Term or any renewal Term and without cause, terminate: (a) any one of the Services specified in this Agreement or (b) this Agreement; provided, however, that in either case, the CUSTOMER shall pay DATAFORGE, upon written demand in one lump sum as liquidated damages and not as a penalty, 100% of the total monthly revenue for the terminated Services multiplied by the number of months and any portions thereof remaining in the Term.
3. CUSTOMER acknowledges that there are set-up costs that are individual to the customer and must be re-cooped under this Agreement and agrees that this provision is a pre-estimate of damages and not oppressive.
4. DATAFORGE may terminate this Agreement upon written notice to the CUSTOMER if: (a) the CUSTOMER commits any act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act (Canada), if any bankruptcy or insolvency proceeding is taken against the CUSTOMER, if the CUSTOMER makes any voluntary assignment for the benefit of its creditors, if a receiver takes possession of any of the CUSTOMER's property, or if the CUSTOMER ceases to carry on business in the normal course; or (b) the CUSTOMER fails to make full payment of any invoice within sixty (60) days after the date of the invoice; or (c) the CUSTOMER fails to cure to DATAFORGE's sole satisfaction any material default under this Agreement, which default is not cured to DATAFORGE's sole satisfaction within fifteen (15) calendar days of receiving written notice describing the nature of such default from DATAFORGE.
5. At termination or at the end of the agreement, and at the request of DATAFORGE, the customer is responsible for the return of any and all DATAFORGE provided equipment including Routers, Switches and other items indicated at the time of the request. DATAFORGE will arrange pickup for large items including Racks, Servers and other items indicated. Failure to do so within 60 days of the request by DATAFORGE may result in additional one time charges to of the replacement value of the equipment.

Indemnity and Waivers

1. The CUSTOMER shall indemnify and save DATAFORGE, or their respective directors, officers, employees and agents harmless from and against all loss, liability or damages of any type and expense, including without limitation reasonable legal fees and disbursements, arising from any and all claims by any third party, including without limitation end users and distributors (collectively, the "Third Party"), in connection with the use of the Services (and related equipment) by the CUSTOMER or any Third Party or in connection with the CUSTOMER's failure to comply with its obligations under this Agreement, whether the failure is attributable to the CUSTOMER's, or one or more other person's, use of the Services with or without permission of the CUSTOMER.
2. Under no circumstances shall DATAFORGE, or their respective directors, officers, employees and agents, be liable to the CUSTOMER for any incidental, special or consequential damages, expenses, costs, liability, loss or damage whatsoever
3. Neither DATAFORGE, nor their respective directors, officers, employees and agents, shall be liable for any lost profits, anticipated revenue, loss of data, loss of use of any information system, lost business revenue, failure to realize expected savings or any other commercial or economic loss of any kind whatsoever arising out of or in connection with this Agreement or the provision of the Services, even if the DATAFORGE has been advised of the possibility of such

loss.

4. DATAFORGE, its affiliates, their successors and assigns, and their respective directors, officers, employees and agents, are not liable for any failure or delay in performance here under if such failure is due, in whole or in part, to any cause beyond DATAFORGE's reasonable control.
5. This section shall apply even in the event of a breach of condition, a breach of an essential or fundamental term or a fundamental breach of this Agreement. The indemnities contained within this section shall survive termination of this Agreement for the maximum time period permitted by law.

Change Request for Service

If the CUSTOMER wishes to order additional services or make a change to the Services:

1. the CUSTOMER may submit to DATAFORGE a change request in writing via email, detailing the change in the Services being requested or changed;
2. DATAFORGE will respond to the CUSTOMER in writing via email within ten (10) business days of receipt of the Change Request (the "Quote"), stating whether the change may be made, and if so, specifying the estimated cost and time required to implement the change and the impact, if any, of the change on the Services otherwise such change will not be made and this Agreement will remain unchanged.

CUSTOMER Obligations

Subject always to any other term of this Agreement, the CUSTOMER shall:

1. provide DATAFORGE and its employees, agents and representatives with access to conduit, cables, termination panels and any other equipment located on private property to which access is required or desirable to provide the Services;
2. provide DATAFORGE with 24 hour/day, 7 days/week access to their premises as required to support the Service Level Agreement, as referenced in DATAFORGE's Service Level Objectives.
3. be responsible to provide first line support personnel who will be the interface between DATAFORGE and the CUSTOMER for all services performed as part of this Agreement;
4. notify DATAFORGE of the CUSTOMER due date for moves, adds and changes; and
5. obtain written consent for moves, adds, and changes from DATAFORGE for DATAFORGE's equipment.
6. review our service agreements that outline additional terms and conditions around the user of our service. It outlines both our obligations to you and limits our liability and exposure.

Supplemental agreements are available online at <http://www.dataforgecanada.com/legal>

Restrictions on Use of Services

The CUSTOMER shall use the provided service in accordance with the terms and conditions

outlined in DATAFORGE's standard Acceptable Use Agreement.

Permitted Service Suspension

1. The CUSTOMER agrees that it may be necessary for DATAFORGE to temporarily suspend service for technical or maintenance reasons, the timing of which, other than emergency maintenance, will be agreed upon in advance. The parties may agree to regularly scheduled maintenance windows for this purpose. Such a suspension of service will not be considered Network unavailability for the purposes of the Uniform Terms and Conditions hereto.
2. Without incurring liability, DATAFORGE may immediately and without notice:
 - a. discontinue or suspend the Services;
 - b. cancel a request for the Services; or
 - c. temporarily block service to a particular jurisdiction, sector, authorized code or other criteria, as DATAFORGE determines, if DATAFORGE deems such action is necessary, either to prevent improper use, as outlined in this Agreement, or to protect against fraud or the commission of suspected illegal activities, or to otherwise protect its personnel, agents, facilities or services.

Compliance with Laws

The CUSTOMER agrees to comply with all applicable laws relating to the use of the Services. Without limiting the generality of the foregoing, the CUSTOMER shall not use the Services to upload, download or transmit any illegal content.

Confidentiality

The CUSTOMER agrees that the terms and provisions of this Agreement shall remain strictly confidential and may not be disclosed to any third party without the express written consent of DATAFORGE, which consent may be arbitrarily withheld.

Proprietary Information

1. All information of DATAFORGE including the services/know-how rendered here under and the confidential information of DATAFORGE, shall remain the sole property of DATAFORGE.
2. All information of the CUSTOMER including its confidential information shall remain the sole property of the CUSTOMER. DATAFORGE shall exercise no censorship control and shall have no censorship responsibility whatsoever over the content over CUSTOMER's data. Each party hereto shall take all reasonable steps to preserve the confidential information of the other party.

Governing Law

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the

laws of Canada applicable therein. CUSTOMER and DATAFORGE at torn to the exclusive jurisdiction of the Courts of Ontario and CUSTOMER and DATAFORGE at torn to the exclusive venue for litigation of Burlington, Ontario, Canada.

Force Majeure

DATAFORGE shall not be liable for failure to perform or delay in performance of its obligations due to fire, flood, extreme weather, strike or other labor difficulty, act of God, act of any governmental authority or of the CUSTOMER, embargo, fuel or energy shortage, car shortage, wrecks or delays in transportation, or due to any other cause beyond DATAFORGE's reasonable control. In the event of delay in performance due to any such cause, the date of delivery, time for completion or performance of the Services will be extended by a period of time reasonably necessary to overcome the effect of such delay.

Notice

Every notice, approval, request, authorization, direction or other communication under this Agreement may be given in writing to the party and will be deemed to have been delivered and given for all purposes .. two business days after deposit with a commercial overnight carrier, with written verification of receipt; or .. five business days after deposit at a post office for delivery by registered mail, with written verification of receipt; or .. upon completion of transmission, if sent via facsimile, with a confirmation of successful transmission; or .. by e-mail for the purposes of s. 6.1 a) herein

Severability

The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

Assignment

This Agreement shall be binding on DATAFORGE and CUSTOMER and their respective successors in interest and assigns. CUSTOMER shall not have the power to assign or subcontract this Agreement without the prior written consent of DATAFORGE.

Receivables Assignment

Pursuant to the Pricing Schedule of this agreement, DATAFORGE, at its sole discretion, shall have the right to assign monies payable under this Agreement to a Financing Partner whether pursuant to a lease, a conditional sale, receivable sale or otherwise, .. all or any part of the payments due under this Agreement; and .. DATAFORGE's rights under this Agreement to any Product provided

for in this Agreement, in such case to secure its obligations in connection with the financing of and or provision of such Product. CUSTOMER shall make all payments under this Agreement to DATAFORGE provided that DATAFORGE is not in default (“Default”) of an assignment agreement with a Financing Partner for all or part of the payments under this Agreement. In the event of a Default, the Financing Partner may notify CUSTOMER of the Default and direct CUSTOMER in writing to remit the payments under this Agreement directly to such Financing Partner. Upon receipt of and in accordance with such notice and direction, CUSTOMER agrees to make the payments under this Agreement directly to the Financing Partner. The CUSTOMER will be required to sign an acknowledgement with respect to their concurrence with said assignment and direction to make such payments directly to the assignee in the event of a default by DATAFORGE.

Survival

All terms and conditions of this Agreement, which by their nature extend beyond the terms hereof or which are required to ensure that DATAFORGE and CUSTOMER fully exercise their rights and perform their obligations hereunder, shall survive the completion or earlier termination of this Agreement.

Inurement

This Agreement shall inure to the benefit of and be binding upon DATAFORGE and CUSTOMER and their respective successors and permitted assigns.

Entire Agreement

The terms and conditions set forth in this Agreement constitute the full and final expression of the sale of the Services to the CUSTOMER by DATAFORGE. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect thereto.

Modification

DATAFORGE reserves the right to modify this agreement from time to time. CUSTOMER agrees to review the MSA periodically to ensure CUSTOMER is apprised of the terms of service contained within the MSA.

Relationship

The relationship of DATAFORGE to the CUSTOMER will be that of an independent contractor, and neither DATAFORGE nor any employee of DATAFORGE will be deemed to be an agent or employee of the CUSTOMER.

Confidentiality

The receiving party agrees that it shall not use the Confidential Information of the disclosing party other than as required for the performance of this Agreement, and shall take all reasonable security measures to protect against unauthorized access, such measures to be of the same standard of care as the receiving party uses for its own Confidential Information and in any event no less than a commercially reasonable standard of care. Upon request, the receiving party shall return all tangible material concerning the Confidential Information of the disclosing party.

Data Storage & Security

1. DATAFORGE will implement reasonable and appropriate measures designed to help CUSTOMER secure data against accidental or unlawful loss, access or disclosure.

Hardware Service

For systems under contract

DATAFORGE guarantee's the functioning of all server hardware components and will replace any failed component at no cost. "Hardware" means the processor(s), RAM, hard disk(s), motherboard, NIC card and other related hardware included with the server. Hardware replacement will begin once DATAFORGE identifies the cause of the problem.

For general hardware service

Dataforge will provide "best effort" services in regards to hardware service. Dataforge takes no responsibility for loss of data or damages as a result of hardware repair, service, upgrades or modifications that are either successful or unsuccessful. Customer should understand that there is always risks associated with hardware repair, service or upgrades.

CUSTOMER's Equipment & Obligations

CUSTOMER shall

1. be solely responsible for the provision and maintenance of all CUSTOMER's equipment at CUSTOMER's location;
2. ensure that the CUSTOMER's equipment is installed and maintained in accordance with the manufacturer's specifications, with the reasonable requirements of DATAFORGE and of DATAFORGE's suppliers and with the requirements of the Canadian Standards Association and any other regulatory body having jurisdiction;
3. provide all necessary infrastructure including, without limitation, power outlets, grounding and anti-static environments required for the safe and efficient operation and maintenance of DATAFORGE's equipment located on the CUSTOMER's property or premises; iv. provide personnel who will be the interface between DATAFORGE and the CUSTOMER for the purposes of this Agreement;
4. notify DATAFORGE of the CUSTOMER's due date for moves, adds and changes, which must be approved by DATAFORGE in writing;

5. not re-arrange, disconnect, remove or otherwise tamper with DATAFORGE’s equipment or facilities;
6. use interconnection equipment compatible with the equipment of DATAFORGE;
7. not use the name of DATAFORGE or of any of the suppliers of DATAFORGE for any marketing or other purposes without the prior written approval of DATAFORGE;
8. comply with all laws, regulations, rules, codes, guidelines, licenses and other governmental or regulatory mandates applicable to DATAFORGE and/or the CUSTOMER relative to the Services; and,
9. not use the trademarks, service marks, trade names, tag lines, slogans and/or any other right in or to the identity of DATAFORGE or DATAFORGE’s suppliers.

Service Level Objectives

See Repair and Monitoring schedules in this document for specifications.

Warranty

THE SERVICE OFFERINGS ARE PROVIDED “AS IS.” WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERINGS OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THE THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

Dataforge Service Levels & Pricing

Version	version 1.1, 2018-12-13
---------	-------------------------

In general Dataforge services are conducted on a first come first serve basis as well as the nature of the emergency and if the customer holds respective contracts with Dataforge.

Table 1. Times of Service

All Services	8:30am-5pm, Monday - Friday (excluding holidays)
Extended Hours	Available on request, extra fees will apply

Table 2. Service Rates

Hourly Rate	\$130.00 (standard) per/hour
-------------	------------------------------

Emergency Charge (per incident)	\$300
After hours rate (weekday)	Time and a Half (minimum 2 hours)
Weekend Rate	Time and a Half (minimum 8 hours)

Table 3. Repair Times

Service Type	Response Objective	Repair Objective
General User Level Support	60 minutes	Next Business Day
Emergency User Level Support	30 minutes	4 Hours
Contracted Hardware Repair	30 minutes	4 hours
Dataforge Offsite Backup	4 hours	4 hours