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Terms of Service

These Terms of Service constitute a legally binding agreement made between you, whether personally or on behalf of an entity (the “**Customer**”) and Datarails Ltd. an Israeli company, number 515258333 or Datarails Inc., a Delaware company, number 82-4035181, shall be referred to as “**Datarails**”, “**Company**”, “**we**”, “**us**” or “**our**”, concerning your access to and use of the data automation, financial planning and analysis solution software (respectively the “**Software**” or “**Service**”).

You agree that by accessing the Service, you have read, understood, and agree to be bound by these Terms of Service, Datarails [Privacy Policy](#) and Datarails [Data Processing Agreement](#) for the processing of personal and other information, all are incorporated herein by reference (together, the “**Terms of Service**”). If you do not agree with all of these Terms of Service, then you are expressly prohibited from using the Service and you must discontinue use immediately.

1. **Registration, User Account, Password and Security**

- 1.1. In order to use the Service, the Customer has to create an account and must not allow anyone, other than authorized employees and independent contractors (each, an “**User**”), to access such account and use the Service. In addition, the Customer must provide truthful, accurate, and current information required for Datarails for the provision of the Service. The Customer must maintain and update the data provided upon registration so that it remains at all times accurate, current and complete.
- 1.2. Customer acknowledges and agrees (*a*) not to exceed the aggregate number of authorized Users designated in the applicable Order Form (as defined in Section 7.1 below), unless Customer first notifies Datarails in writing and pay Datarails the required additional subscription fees; (*b*) that the login details for each User may only be used by that User, and that multiple people may not share the same login details; (*c*) to keep, and ensure that Users keep, all account login details and passwords secure at all times; (*d*) that Customer remains solely responsible and liable for the activity that occurs in connection with Customer’s account, and the activities of the Users on or relating to the Service, whether or not Customer knows of such activity; and (*e*) to promptly notify Datarails in writing if Customer becomes aware of any unauthorized access or use of Customer’s account or the Service.
- 1.3. Datarails may suspend or terminate Customer or any User’s access to the Service upon notice to Customer in the event that Datarails reasonably determines that the Customer or any User has violated these Terms of Service. Customer will ensure that all Users comply with the terms and conditions of these Terms of Service. Customer will be solely liable for any violation of the Terms of Service by any User. The Customer is fully and solely responsible for any and all activities that occur through the account.

2. **License to the Service**

- 2.1. **Subscription to the Service.** Subject to Customer’s compliance with these Terms of Service and payment of the Fees (as defined in Section 7.2 below), Datarails hereby grants Customer and each of its Users a worldwide, non-exclusive, non-transferable, non-sublicensable license, and fully revocable right to access and use the Service during the Term (as defined in Section 8.1 below) for Customer’s internal business purposes only. Customer’s subscription to the Service is limited to the number of End Users designated in the Order Form.



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- 2.2. Restrictions on Use. Customer must not, and shall not allow any other third party (including any permitted User) to: (a) circumvent, disable or otherwise interfere with security-related features of the Service or features that prevent or restrict use or copying of any content or that enforce limitations on use of the Service; (b) allow any third party not authorized by Datarails to use the Service; (c) use the Service to process data on behalf of any third party; (d) give, sell, rent, lease, timeshare, outsource, sublicense, disclose, publish, assign, market, resell, transfer or distribute any portion of the Service to any third party, or use the Service in any service bureau arrangement. Notwithstanding the above, the Customer may sublicense the license to its affiliates, provided that all of the obligations of the affiliates under the Terms of Service will apply to such affiliate, and the Customer shall be fully responsible for the use of such affiliate in the sublicense; (e) reverse engineer, decompile or disassemble the Service or any components thereof, except to the extent such acts are required to be permitted by applicable law; (f) disclose or publish the results of any benchmark tests run on the Service; (g) use any robot, spider, scraper, or other automated means to access the Service for any purpose; (h) interfere or attempt to interfere with the integrity or proper working of the Service, or any related activities; (i) modify, translate, patch, alter, change or create any derivative works of the Service, or any part thereof; (j) disclose Customer's account, user names or passwords to any third party; (k) remove, deface, obscure, or alter Datarails' or any third party's copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the Service, or use or display logos with the Service differing from Datarails' own without Datarails' prior written approval; (l) use the Service in any unlawful manner or in breach of these Terms of Service; and/or (m) develop any other product or service containing any of the concepts and ideas contained in the Service or use the Service for the purpose of building a similar or competitive product.
- 2.3. Maintenance and Support. Datarails will provide to Customer support and maintenances services with respect to the Service, in accordance with the Service Level Agreement.

3. Customer Content

- 3.1. Customer and Customer's Users may choose to provide, post, input, submit, or otherwise make accessible to Datarails, data or information about Customer, Customer's employees, customers, or any third party (the "**Content**"), and Datarails will store such Content on Customer's behalf, all in connection with Customer's use of the Service. Customer hereby provides Datarails and its service providers, agents, sub-contractors, representatives, acting on its behalf, a royalty-free, irrevocable, non-exclusive right to use, process, upload, display, copy, distribute copies of, perform, transform and store Content, only for the purposes of providing the Service.
- 3.2. Without derogating Section 3.1 above, Datarails may also collect, disclose, publish and use in any other manner anonymous information which is derived from the Service and/or the Content (i.e., non-identifiable information, aggregated and analytics information) ("**Analytics Information**"), in order to provide and improve the Service, its products, and for any other legitimate business purpose. Datarails shall remain the sole owner of the Analytics Information.
- 3.3. Customer represents and warrants that **(a)** Customer owns all Content or has all rights that are necessary to grant Datarails and its affiliates and their directors, employees, service providers, agents, sub-contractors, representatives, and anyone on their behalf (the "**Related Parties**") the licensed rights in Content under these Terms of Service; **(b)** Customer's collection of Content has and will be in compliance with all applicable laws and regulations, including, without



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limitation, those concerning data or information privacy; and (c) neither the Content, nor the inclusion of it in or use in connection with the Service, will infringe, misappropriate or violate any Intellectual Property Rights (as defined below), or violate the privacy rights of any third party, or result in the violation of any applicable law or regulation, including without limitation those concerning data or information privacy.

For the purpose hereof, “**Intellectual Property Rights**” means any patent rights (including, without limitation, patent applications and disclosures), service marks, logos, domain names, copyrights, trademarks, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world whether registered or non-registered.

As between Customer and Datarails, Customer retains exclusive ownership of the Content. Customer may download Customer’s Content at any time during the Term, or as otherwise set forth herein, provided that the Customer and the User complies with these Terms of Service and Datarails’ security requirements.

- 3.4. To the maximum extent permitted under applicable law, Datarails shall maintain generally accepted industry safeguards to protect the security and confidentiality of Customer’s Content. Datarails will maintain any personally identifiable information that Datarails collects and/or receives in connection with the Service in accordance with Datarails [Privacy Policy](#) and Datarails [Data Processing Agreement](#).

4. **Representations**

- 4.1. Each party represents and warrants that: (a) it has full power to enter into these Terms of Service and to grant to the other party the rights granted to such other party under these Terms of Service; (b) it has obtained all necessary corporate approvals to enter into and execute these Terms of Service; and (c) its entering into these Terms of Service and its performance of obligations under these Terms of Service will not in any way conflict or violate any duty that it may have to any other person or entity, or under any agreement, commitment on its part, order, judgment, decree, rule, regulation or law to which such party is bound.
- 4.2. Each party shall comply with all applicable laws relating in any way to its performance of its obligations under these Terms of Service. Customer agrees to fully comply with all applicable export laws and regulations in any jurisdiction to ensure that neither the Service nor any technical data related thereto are exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations.

5. **Intellectual Property Rights**

- 5.1. The Service (and all parts thereof), all reproductions, corrections, modifications, enhancements and improvements thereto, and all data related to the Customer’s usage thereof, and all Intellectual Property Rights therein or relating thereto, including but not limited to, any modifications or custom features to the Service to be developed by Datarails for the Customer’s benefit, whether requested or instructed by the Customer or not, are and will remain the exclusive property of Datarails or its third party licensors. Any rights therein not explicitly granted to Customer hereunder, are reserved to and shall remain solely and exclusively proprietary to Datarails (or its third party licensors).

- 5.2. Any error and bug reports, additional features, ideas, requests, feedbacks, recommendations, comments, concepts and other requests or suggestions related to the Service (collectively, the “Ideas”) that the Customer may provide to Datarails, will be solely owned by Datarails. The Customer hereby irrevocably assigns and transfers any intellectual property rights in such Ideas to Datarails, free of charge.

6. Confidentiality

- 6.1. “**Confidential Information**” means any information disclosed or otherwise made available by one party to the other party that: (a) if disclosed in writing, is marked “confidential” or “proprietary” at the time of disclosure; (b) if disclosed orally, is identified as “confidential” or “proprietary” at the time of disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after any such disclosure, including but not limited to, all computer software (in binary or source code form), programs, designs, concepts, scientific, algorithmic and structural information included in, or related to, the Service, information of a business and commercial nature (such as financial and marketing information disclosed in any form or medium whatsoever). Confidential Information includes all information designated by either party as confidential or proprietary within a reasonable time of its disclosure or which a reasonable person would expect to be treated as confidential; or (c) under the circumstances, a person exercising reasonable business judgment would understand that such information is to be confidential or proprietary. For the avoidance of doubt, the Content is considered to be Customer’s Confidential Information, the Service is Datarails’ Confidential Information, and the terms of these Terms of Service constitute Confidential Information of both Customer and Datarails. Notwithstanding the above, Datarails may disclose these Terms of Service and any documents related to the Terms of Service in any due diligence process in connection with a financing round and/or a M&A transaction.
- 6.2. The use and nondisclosure obligations and restrictions set forth in Section 6.3 6.1 will not apply to any information that: (a) is or becomes generally known to the public through no breach of these Terms of Service by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure; (c) is independently developed by the receiving party without use of or access to the disclosing party’s Confidential Information; or (d) the receiving party rightfully obtains from a third party who has the right to disclose such information without breach of any confidentiality obligation to the disclosing party.
- 6.3. The receiving party will not use the disclosing party’s Confidential Information except as necessary for the performance or enforcement of these Terms of Service and will not disclose such Confidential Information to any third party except to those of its employees and subcontractors who have a bona fide need to know such Confidential Information for the performance or enforcement of these Terms of Service; provided that each such employee and subcontractor is bound by a written agreement that contains use and disclosure restrictions consistent with the terms set forth in this Section 6. Each receiving party will protect the disclosing party’s Confidential Information from unauthorized use and disclosure using efforts equivalent to the efforts that the receiving party ordinarily uses with respect to its own confidential information and in no event less than a reasonable standard of care. The provisions of this Section 6.3 will remain in effect during the term of these Terms of Service and for a period of three (3) years after the expiration or termination of these Terms of Service.

- 6.4. The provisions of this Section 6 will not restrict either party from disclosing Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement or limit the scope of such request. The party responding to such an order or requirement will only disclose that information that is expressly required.
- 6.5. The receiving party acknowledges that the disclosure of Confidential Information could cause substantial harm to disclosing party that could not be remedied by the payment of damages alone. Accordingly, disclosing party will be entitled to preliminary and permanent injunctive relief and other equitable relief in any relevant jurisdiction for any breach of this Section 6 or misuse of Confidential Information by the receiving party.

7. Order Form; Fees; Taxes

7.1. Order Form

- 7.1.1. For the purposes of these Terms, the term “**Order Form**” means Datarails’ current order form that Customer enters into with Datarails prior to using the Service. The parties may agree to use another form of document or instrument to record their agreement on the type and number of licenses purchased by Customer, but such other forms and instruments shall bind Datarails only if executed by an authorized officer of Datarails; provided however, that in any event whatsoever, any pre-printed/boilerplate terms in such forms issued by the Customer to the Datarails (for administrative, accounting or other purposes) will be null and void and shall not have any effect on the parties’ rights, and these Terms of Service shall prevail.
- 7.1.2. Any mutually agreed upon Order Form shall be deemed an integral part of these Terms of Service, and these Terms of Service shall apply thereto. In the event of a conflict between these Terms of Service and the applicable Order Form, the terms of the applicable Order Form shall prevail solely if (a) the applicable Order Form expressly identifies and supersedes or modifies a specific provision in these Terms of Service; and (b) the applicable Order Form is signed by an authorized signatory of both parties.
- 7.1.3. The type and scope of the Service will be as set forth in the Order Form. Such Order Form shall include at least the following information: (a) the type of license (monthly or annually); (b) the number of licenses to be purchased by the Customer; (c) Customer name; (d) the Fees and the payment terms; (e) the Term; and (f) any other details to be agreed upon by the parties.

7.2. Fees

- 7.2.1. In consideration for the Service, the Customer shall pay Datarails the fees agreed upon between the Customer and Datarails and as detailed in the applicable Order Form (the “**Fees**”). Unless otherwise explicitly detailed in these Terms of Service, all amounts owed to Datarails are non-cancellable and the Fees paid are non-refundable.
- 7.2.2. Datarails will invoice the Customer for the Service as set forth in the applicable Order Form, and each invoice will be paid by either credit cards, bank wires or other methods made available by Datarails, in accordance with the payment terms detailed in the applicable Order Form. Any Fees unpaid by the due date shall thereafter bear interest at



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the rate of one percent (1%) per month (or the maximum amount permitted by applicable law, whichever is lower), during the period between the date the payment first becomes due and the date such amount is actually paid.

7.3. Taxes. All Fees payable hereunder, do not include local, state, or federal sales, use, excise, personal property, VAT or other taxes, customs and duties, including, without limitation, any withholding tax. Any such taxes, to the extent legally applicable, shall be borne and paid by the Customer. The Customer will pay all applicable taxes when invoiced by Datarails or will supply appropriate tax exemption certificates in a form satisfactory to Datarails. In cases wherein the Customer is legally required to withhold any income or remittance tax from amounts payable to Datarails, then (a) the Customer will promptly notify Datarails; (b) the amounts payable to Datarails will be automatically increased to the full extent required to offset such tax, so that the amount remitted to Datarails, net of all taxes, equals the amount stated in the invoice; and (c) the Customer will provide Datarails with the official receipt of payment of such taxes to the appropriate taxing authority.

8. Term and Termination

8.1. Term. The Service is provided for the period designated in the applicable Order Form (the “**Term**”). These Terms of Service shall become effective on the Effective Date (as defined in the Order Form) and shall continue until expiration of the Term, unless terminated earlier as provided in these Terms of Service.

8.2. Termination for Cause. Either party may terminate these Terms of Service or any Order Form upon written notice to the other party if (a) the other party commits a material breach of these Terms of Service and fails to cure or remedy such breach within thirty (30) days after receiving written notice of such breach; or (b) one or more of the following events occur(s): (i) appointment of a trustee or receiver for all or any part of the assets of the other party; (ii) insolvency or bankruptcy of the other party; (iii) a general assignment by the other party for the benefit of creditor(s); or (iv) dissolution or liquidation of the other party, such termination shall be immediately.

8.3. Consequences of Termination. Upon expiration or termination of these Terms of Service, (a) Customer and Customer’s Users rights to access and use the Service will immediately terminate; (b) Customer and Customer’s Users will immediately cease all use of the Service; and (c) each party will immediately return to the other party or destroy all copies of the other party’s Confidential Information in its possession or control, except for copies stored in backups, which shall continue to stay confidential.

For a period of forty-five (45) days from the effective date of expiration or termination of these Terms of Service, Datarails will provide Customer, upon Customer’s written request, with a reasonable opportunity to download Customer’s Content at a time nominated by Datarails. Datarails reserves the right to (and if instructed in writing by Customer, Datarails shall) permanently delete from Datarails (or Datarails’ third-party service provider’s) servers any Content that may be contained in Customer’s account at any time following said forty-five (45) day period. Datarails does not accept any liability for any deactivation of the Service or Content that is deleted in connection thereto. In addition, upon expiration or termination of these Terms of Service, Datarails will cease to use of the Customer’s name and/or logo (“**Customer Marks**”); provided, however, that (a) Datarails will have a reasonable time to remove the



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Customer Marks from promotional materials; (b) Datarails will be entitled to exhaust materials printed during the Term that include the Customer Marks; and (c) Datarails will not be required to remove any such printed materials from circulation.

8.4. For the avoidance of doubt, expiration or termination of these Terms of Service for any reason shall not relieve Customer from Customer's obligation to pay Datarails any outstanding payments due under these Terms of Service and/or Order Form and Datarails has the right to issue an invoice to Customer for any such outstanding payments. If either party terminates these Terms of Service for cause pursuant to Section 8.2 herein, Customer will remain liable for payment of the entire Fees for the Term.

8.5. Sections 5, 6, 8.4, 8.5, 10, 11 and 13 shall survive expiration or termination of these Terms of Service.

9. Disclaimer of Warranties

9.1. The Service is provided on an "as is" and "as available" basis, and without warranties of any kind either express or implied. Customer assumes all responsibility for the selection of the Service to achieve Customer's intended results. DATARAILS HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DATARAILS DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. DATARAILS DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY INFORMATION, RESULTS, OR ADVICE THAT CUSTOMER OBTAINS THROUGH THE SERVICE.

9.2. The Service may use or include third party software, files and components that are subject to open source and third party license terms ("**Third Party Components**"). Customer right to use such Third Party Components as part of, or in connection with the Service is subject to any applicable acknowledgements and license terms accompanying such Third Party Components contained therein or related thereto. If there is a conflict between the licensing terms of such Third Party Components and these Terms of Service, the licensing terms of the Third Party Components shall prevail in connection with the related Third Party Components. Such Third Party Components are provided on an "AS IS" basis without any warranty of any kind and shall be subject to any and all limitations and conditions required by such third parties. Customer hereby agrees to such terms associated with the Third Party Components. Under no circumstances shall the Service or any portion thereof (except for the Third Party Components contained therein) be deemed "open source" or "publicly available" software. A list of Third-Party Components whose license terms require notification to Users is available in the Service or its documentation and will be updated from time to time.

10. Indemnification

10.1. Customer Indemnification. Customer agrees to defend, indemnify and hold harmless Datarails and its Related Parties from any and all claims, suits or actions including related judgments, awards, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) and other expenses (collectively, the "**Damages**"), attributable to such claim awarded in final judgment against or paid in settlement by Datarails or its Related Parties, brought against



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Datarails and its Related Parties to the extent that are based on or arise from: *(a)* a third party claims Damages arising from Customer's unauthorized access or use of the Service; *(b)* Customer and/or any User breach of these Terms of Service; *(c)* any breach of the Customer's representations and warranties set forth herein; *(d)* Customer gross negligence or willful misconduct; *(e)* any claim from a third party that the Content infringes any intellectual property, including any patent or any copyright or misappropriate any trade secret.

10.2. **Datarails Indemnification.** Datarails will defend any suit or action brought against Customer to the extent that it is based upon a third party claim that the Service, as provided by Datarails to Customer, infringe any intellectual property, including any patent or any copyright or misappropriate any trade secret ("**IP Claim**"), and will pay any costs, damages and reasonable attorneys' fees attributable to such claim awarded in final judgment against or paid in settlement by Customer.

10.3. **Exclusions for Datarails Indemnification for an IP Claim.** Notwithstanding the terms of **Section 10.2**, Datarails will have no liability for any IP Claim to the extent that it results from: *(a)* a modification of the Service by anyone other than Datarails; *(b)* the combination, operation or use of the Service with software or data (including without limitation the Content) not supplied by Datarails, if a claim would not have occurred but for such combination, operation or use; or *(ii)* Customer's or an User's use of the Service other than in accordance with these Terms of Service or the Service's documentation.

Customer's use of the Service is, or in Datarails' opinion is likely to be, subject to an IP Claim, then Datarails may, at its sole option and expense: *(a)* replace or modify the Service to make them non-infringing and of equivalent functionality; *(b)* procure for Customer the right to continue using the Service under the terms of these Terms of Service; or *(c)* if Datarails is unable to accomplish either *(a)* or *(b)* despite using its reasonable commercial efforts, terminate Customer's rights and Datarails' obligation under these Terms of Service with respect to such Service and refund to Customer a pro-rata portion of the Fees paid for the remaining Term during which Customer would have had access to the Service.

10.4. **Indemnification Procedures.** The indemnifying party's indemnification undertakings above, shall be conditioned upon the following: *(a)* the indemnifying party shall be given prompt written notice of the claim by the indemnified party promptly upon its receipt; *(b)* the indemnified party shall act in good faith and use commercially reasonable efforts to cooperate with the indemnifying party; *(c)* the indemnifying party, at its cost and expense, shall take over the claim and assume the defense; and *(d)* the indemnified party shall not make any admission, file any papers, consent to the entry of any judgment or enter into any compromise or settlement without the express prior written consent of the indemnifying party.

10.5. **Sole Remedy.** THE FOREGOING STATES THE ENTIRE OBLIGATION OF DATARAILS AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL IP CLAIM.

11. **Limitation of Liability**

11.1. DATARAILS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, LOST PROFITS OR OTHER INTANGIBLE LOSSES),



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UNDER ANY THEORY OF LAW INCLUDING UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY, OR OTHERWISE ARISING OUT OF OR RELATING IN ANY WAY TO THE SERVICE PROVIDED TO CUSTOMER (EVEN IF DATARAILS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE).

11.2. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DATARAILS' TOTAL AGGREGATE LIABILITY TO CUSTOMER OR ANY OTHER PARTY FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNTS ACTUALLY RECEIVED BY DATARAILS FROM THE CUSTOMER FOR THE SERVICE PROVIDED TO THE CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE CIRCUMSTANCES FIRST GIVING RISE TO THE CLAIM OF LIABILITY.

THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THESE TERMS OF SERVICE BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS SHALL NOT ENLARGE THE LIMIT.

11.3. The Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action it may have arisen out of or related to the use of the Service or otherwise under these Terms of Service must be filed within two (2) years after such claim or cause of action arose or the Customer hereby agrees to be forever barred from bringing such claims.

11.4. These Terms of Service shall not confer any rights or remedies upon any person or entity on behalf of the Customer other than the Customer.

12. **Publicity**

Customer agrees that Datarails may, during the Term, identify Customer as a customer of the Service, and display Customer Marks on the Datarails site, in press releases and in Datarails' published marketing materials, solely in connection with the Service and such identification. Customer retains all title in and to Customer Marks, and all goodwill developed from such use shall be solely for Customer's benefit.

13. **General**

13.1. These Terms of Service and the applicable Order Form, represent the complete agreement concerning the Service between Customer and Datarails and supersede all prior agreements and representations related to the subject matter hereof.

13.2. Section headings are provided for convenience only and have no substantive effect on construction.

13.3. Except for Customer's obligation to pay Datarails, neither party shall be liable for any failure to perform due to causes beyond its reasonable control.

13.4. Datarails reserves the right at any time to modify these Terms of Service. Any such modification will be effective immediately upon posting the amended Terms of Service on Datarails' website or by sending an electronic mail to the Customer or by notification in the Service. The

Customer's continued use of the Service after the effective date of any such modification will be deemed acceptance of such modified these Terms of Service.

- 13.5. These Terms of Service and any rights granted hereunder, may not be transferred or assigned by either party without the other party's prior written consent; provided, however, that each party may assign these Terms of Service in whole or in part to its affiliate or to a successor in connection with a merger, consolidation, or acquisition of all or substantially all of the assigning party's assets.
- 13.6. The relationship of the parties is solely that of independent contractors, and nothing herein shall be construed to create any employment relationship, partnership, joint venture or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party.
- 13.7. If any provision is held to be unenforceable, these Terms of Service shall be construed without such provision. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future, all subject to the terms of these Terms of Service. No waiver by either party of any default shall be deemed a waiver of any prior or subsequent default of the same or other provisions of these Terms of Service, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.
- 13.8. If the Service was obtained from Datarails Inc., all disputes arising out of these Terms of Service will be subject to the governing law of New York, USA, and the exclusive jurisdiction of the competent courts located in the city of New York, New York, USA. The parties understand and fully agree that they are giving up their right to have a trial by jury.

If the Service was obtained from Datarails Ltd., all disputes arising out of these Terms of Service will be subject to the governing law of the state of Israel and the exclusive jurisdiction of the competent courts located in the city of Tel Aviv, Israel.

The parties agree and submit to the personal and exclusive jurisdiction and venue of these courts, except that nothing will prohibit either party from instituting an action in any court of competent jurisdiction to obtain injunctive relief or protect or enforce its intellectual property rights. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms of Service.

- 13.9. Notices and all other communications provided for in these Terms of Service shall be in writing and shall be deemed to have been duly given when personally delivered or sent by email (support@datarails.com if to Datarails, and the email provided by the Customer as part of the applicable Order Form if to the Customer), provided that the recipient confirmed the receipt of such notice, or certified mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth on the respective Order Form or last given by each party to the other. Such notice, demand or other communication shall be deemed given *(a)* if sent by an email - one business day following the sending the email; *(b)* at the expiration of seven (7) days from the date of mailing by registered mail; or *(c)* immediately if delivered by hand.