

# Daruma Tech Cloud Platform Terms of Service

Welcome to the Daruma Tech Cloud Platform by Daruma Tech, LLC (“DT”). We offer an online Software as a Service (SaaS) delivery model to provide local business information to the local community and visitors. You should read and understand these Terms of Service, which include our Privacy Policy because they govern your use of any of the DT products and services (in whole or in part, the “Products and Services”), including all features and functionalities, our user interfaces such as our website, and all content and software associated therewith.

This document was last updated on January 1, 2020, and is effective as of this date.

## 1. Acceptance of Terms of Service

By using, visiting, browsing or connecting to our service as a user or paid or unpaid member, you accept and agree to be bound by these Terms of Service, available at <http://www.localexplorers.com/legal>. If you do not agree to these Terms of Service, you should not use our Services, including our website and software. Violation of any terms will result in termination of your account. Questions about the Terms of Service may be sent to [info@darumatech.com](mailto:info@darumatech.com).

Any failure of DT to enforce or exercise a right provided in these terms is not a waiver of that right.

## 2. Changes to Terms of Service

DT reserves the right, from time to time, with or without notice to you, to change these Terms of Service, including the Privacy Policy, in our sole and absolute discretion. DT may also freely assign or transfer this Agreement. The most current version of these Terms of Service can be reviewed by visiting our website and clicking on “Legal” located at the bottom of the pages of the DT website. The most current version of the Terms of Service will supersede all previous versions.

If any provision of this Agreement is declared void or unenforceable by any judicial authority, this shall not nullify the remaining provisions of the Agreement, which shall remain in full force and effect.

## 3. Account Terms Overview

You are responsible for using the Products and Services in a private and secure manner. DT is not liable for any damage or loss due to unauthorized account access resulting from your actions, such as not logging out of the Products and Services or sharing your account password.

DT can refuse registration or cancel an account at its sole discretion at any time.

You may not use the Products and Services for any illegal activity or to violate laws in your jurisdiction.

You may not use the Products and Services to distribute unsolicited email (“spam”) or malicious content such as viruses or worms.

You may not exploit the Products and Services to access unauthorized information.

DT reserves the right to modify, suspend, or discontinue the Products and Services for any reason, with or without notice.

Abuse or excessively frequent requests to the DT website or other Products and Services may result in the temporary or permanent suspension of your account's access to the Products and Services. DT, at its sole discretion, will determine abuse or excessive usage. DT will make a reasonable attempt via email to warn the account owner prior to suspension.

DT owns intellectual property rights to any protectable part of the Products and Services, including but not limited to the design, artwork, functionality, and documentation. You may not copy, modify, or reverse engineer any part of the Products and Services owned by DT. For more details, see below the Intellectual Property section of these Terms of Service.

#### 4. Conduct and Submissions

Any text, graphics, photographs, or other information communicated to DT (collectively, "Content") belongs to the person who posted such content. You may use any Content posted by you in any other way without restriction. You may only use Content posted by others in the ways described in these Terms of Service.

You give DT a non-exclusive, free, worldwide license for the duration of the applicable author's rights, to publish your Content. In addition to the right to publish, you also grant the following rights, without limitation: (i) the right to reproduce; (ii) the right to transfer, which includes the distribution via computer and networks; (iii) the right to edit, modify, adapt, arrange, improve, correct, translate, in all or in part; (iv) the right to update/upgrade by adding or removing; and (v) the right to film, perform or post the Content in any media. Except as described in our Privacy Policy, DT will not be required to treat any Content as confidential.

DT cannot control all Content posted by third parties to the Products and Services, including to our user interfaces, and does not guarantee the accuracy, integrity or quality of such Content. You understand that by using the Products and Services you may be exposed to Content that you may find offensive, indecent, incorrect or objectionable, and you agree that under no circumstances will DT be liable in any way for any Content, including any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of your use of any Content. You understand that you must evaluate and bear all risks associated with the use of any Content, including any reliance on the content, integrity, and accuracy of such Content. If you would like to report objectionable materials, please contact [info@darumatech.com](mailto:info@darumatech.com)

Your use of the site is subject to all applicable laws and regulations, and you are solely responsible for the substance of your communications through the site. By posting information in or otherwise using any communications service, chat room, message board, newsgroup, software library, or other interactive service that may be available to you on or through this site, you agree that you will not upload, share, post, or otherwise distribute or facilitate distribution of any content -- including text, communications, software, images, sounds, data, or other information -- that:

- a) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals), or otherwise violates our rules or policies;
- b) victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- c) infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party;
- d) constitutes unauthorized or unsolicited advertising, junk or bulk email (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;
- e) contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party; or
- f) impersonates any person or entity, including any of our employees or representatives.

You also agree not to interfere with the servers or networks connected to any portions of the Products and Services or to violate any of the procedures, policies or regulations of networks connected to the Products and Services. You also agree not to impersonate any other person while using the Products and Services, conduct yourself in a vulgar or offensive manner while using the Products and Services, or use the Products and Services for any unlawful purpose.

Use of the Products and Services and any personally identifying information submitted through the Products and Services, such as through our user interfaces containing community forums, is subject to our Privacy Policy, the terms of which are incorporated herein, and a copy of which is currently located at [www.localexplorers.com/legal](http://www.localexplorers.com/legal). Please review our Privacy Policy to understand our practices. The date of any changes to our Privacy Policy will be noted at the bottom of the policy.

By using the Products and Services, you are consenting to receive certain communications from us. For example, DT may send you newsletters about new DT features, special offers, promotional announcements and customer surveys via email or other methods.

Please review our Privacy Policy for further details on our marketing communications. You can also find the unsubscribe instructions there. By using the Products and Services, you consent to receive electronic communications from DT. These communications may include notices about your account (for example, change in password or Payment Method, confirmation e-mails and other transactional information) and information concerning or related to our service. These communications are part of your relationship with DT and you receive them as part of the DT membership. You agree that any notice, agreements, disclosure or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

The member who created the Daruma Tech account and whose Payment Method is charged is referred to here as the “Account Owner”. The Account Owner has access and control over the Daruma Tech account. The Account Owner’s control is exercised through use of the Account Owner’s password and therefore to maintain exclusive control, the Account Owner should not reveal the password to anyone. In addition, if the Account Owner wishes to prohibit others from contacting DT Customer Service and potentially altering the Account Owner’s control, the Account Owner should not reveal the Payment Method details

(for example, the last four digits of their credit or debit card, or their email address if they use PayPal) associated with their account. BY SHARING THE DARUMA TECH ACCOUNT PASSWORD, THE ACCOUNT OWNER AGREES TO BE RESPONSIBLE FOR ASSURING THAT THE PERSONS WITH WHOM IT SHARES THE PASSWORD COMPLY WITH THE TERMS OF SERVICE AND SUCH ACCOUNT OWNER SHALL BE RESPONSIBLE FOR THE ACTIONS OF SUCH PERSONS.

Any abuse or threatened abuse of other users of the Products and Services or of DT personnel will result in immediate account termination.

## 5. Payment and Fees

To access any of our Products and Services, you must have access to the Internet and must create an account, either on a free or paid-subscription basis. To use our paid Products and Services, you must have a current valid accepted payment method as indicated during sign-up (“Payment Method”).

A valid credit card or Paypal account is required for paid subscription Products and Services.

When you subscribe to paid Products and Services, your credit card or Paypal account will be billed according to current DT rates for the selected subscription plan to prepay usage of Product and Services for the current period. For monthly plans you will be charged subsequently on the same day of each month. If the billing date is the 29th — 31st, and the billing month does not contain this date, then the billing date will be adjusted to the last day of the current calendar month. Annual plan renewals will be charged on same day of the following year to prepay usage of Product and Services for the next annual service period.

If you choose to downgrade your subscription by switching to a free subscription plan, DT will change your account immediately. No credit will be applied for the unused portion of service.

## 6. Taxes

Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). You are responsible for paying all Taxes associated with Your purchases hereunder.

## 7. Cancellation and Termination

You can cancel your paid subscription to DT Products and Services with 30 days advance notice. There will be no subsequent charges to your credit card or Paypal account after cancellation.

## 8. Features and Functionality

The Products and Services include an online listing of your company and its products that can be integrated with a mobile app, your existing website, blog, social network as applicable. We reserve the right in our sole and absolute discretion to make changes from time to time and without notice in how we operate the Products and Services. Any description of how the Products and Services work should not be considered a representation or obligation with respect to how the Products and Services always will work. We are making constant adjustments to the Products and Services and often these Terms of Service do not capture these adjustments completely.

## 9. Registration Data and Privacy

You are responsible for updating and maintaining the truth and accuracy of the information you provide to us relating to your account. You are also responsible for maintaining the confidentiality of your account and password and for restricting access to your DARUMA TECH account. DT reserves the right to place any account on hold anytime with or without notification to the member in order to protect itself and its partners from what it believes to be fraudulent activity.

## 10. Warranties

UNLESS EXPRESSLY SET FORTH IN THIS AGREEMENT, DT MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WITHOUT LIMITATION ADVERTISING AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OR CONDITIONS OF NON INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. DT DOES NOT WARRANT THE RESULTS OF USE OF ANY OF THE PRODUCTS AND SERVICES, AND ACCOUNT HOLDER ASSUMES ALL RISK AND RESPONSIBILITY WITH RESPECT THERETO.

**Limitation of Liability and Damages. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SYSTEM FAILURE OR NETWORK OUTAGE, WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES THAT RESULT FROM THIS AGREEMENT, EVEN IF SUCH PARTY OR ITS AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE INDEMNITY OBLIGATIONS SET FORTH HEREIN, IN NO EVENT WILL EITHER PARTY'S OR ITS AFFILIATES' TOTAL LIABILITY TO THE OTHER PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE) EXCEED THE AMOUNTS PAID BY ACCOUNT HOLDER TO DT HEREUNDER.**

THIS SITE COULD INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES OR TYPOGRAPHICAL ERRORS. WE MAY MAKE CHANGES TO THE MATERIALS AND SERVICES AT THIS SITE, INCLUDING THE

PRICES AND DESCRIPTIONS OF ANY PRODUCTS LISTED HEREIN, AT ANY TIME WITHOUT NOTICE. THE MATERIALS OR SERVICES AT THIS SITE MAY BE OUT OF DATE, AND WE MAKE NO COMMITMENT TO UPDATE SUCH MATERIALS OR SERVICES.

## 11. Indemnification

IN NO EVENT SHALL DT, OR ITS SUBSIDIARIES OR ANY OF THEIR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR LICENSORS BE LIABLE (JOINTLY OR SEVERALLY) TO YOU FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, GOODWILL, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL OR INTANGIBLE DAMAGES OR LOSS, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF DAMAGE, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS AND SERVICES, OUR WEBSITE, AND ALL CONTENTS AND SOFTWARE ASSOCIATED THEREWITH, OR OTHERWISE RELATED TO THE PRODUCTS AND SERVICES, INCLUDING ANY FEATURES OR FUNCTIONALITIES ASSOCIATED THEREWITH. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES FOR LOSSES ARISING FROM THE USE OR INABILITY TO USE THE PRODUCTS AND SERVICES, INCLUDING OUR WEBSITE AND USER INTERFACES, AND ALL CONTENT AND SOFTWARE ASSOCIATED THEREWITH (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT OF YOUR PREVIOUS THREE (3) MONTHS OF FEES PAID TO DT ON YOUR MEMBERSHIP PLAN. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION OR OTHER SECTIONS OF THESE TERMS OF SERVICE, INCLUDING ANY PORTION OF THE PRIVACY POLICY, TO BE UNENFORCEABLE, THEN THOSE PORTIONS DEEMED UNENFORCEABLE SHALL BE SEVERED AND THE TERMS OF SERVICE SHALL BE ENFORCED ABSENT THOSE PROVISIONS AND ANY LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW.

You shall indemnify DT for damages, costs and attorneys fees that DT incurs from any third party claim that (i) arise from your modification of the Products and Services or (ii) the use by DT of any materials provided to DT by you for use in the Products and Services infringe any U.S. patent, copyright, trademark, trade secret or other intellectual property right under U.S. law. You shall assume the defense of any third party claim with counsel reasonably satisfactory to DT. DT may employ its own counsel in any such case, and shall pay such counsel's fees and expenses. You shall have the right to settle any claim for which indemnification is available; provided, however, that to the extent that such settlement requires DT being indemnified to take or refrain from taking any action or purports to obligate DT being indemnified, then you shall not settle such claim without the prior written consent of DT, which consent shall not be unreasonably withheld, conditioned or delayed. THE PARTIES DISCLAIM THE IMPLIED WARRANTY OF NON-INFRINGEMENT, RELYING INSTEAD ON THE TERMS OF THIS SECTION.

Additional disclaimers or limitations of liability may be contained in the various third party software, licensing and service agreements you may have agreed to in order to access the Products and Services.

## 12. Intellectual Property

*Copyright.* The Products and Services, including all content included on our user interfaces, or delivered to members as part of the Products and Services, including, but not limited to, source code, data compilations, and software, are the property of DT or its licensors and are protected by United States and international copyright, trade secret or other intellectual property laws and treaties. While the Products and Services include open-source software available for free, the compilation of all content and any software or other materials provided by DT, or in connection with the Products and Services are the exclusive property of DT and its licensors and are protected by the copyright and trade secret laws in the territories in which the Products and Service operate and by international treaty provisions. Content shall not be reproduced or used without express written permission from DT or its licensors.

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## 13. Use of Information Submitted

DT is free to use any comments, information, ideas, concepts, reviews, or techniques or any other material contained in any communication you may send to us (“Feedback”), including responses to questionnaires or through postings to the Products and Services, including the DT website and user interfaces, without further compensation, acknowledgment or payment to you for any purpose whatsoever including, but not limited to, developing, manufacturing and marketing products and

creating, modifying or improving the Products and Services. Furthermore, by posting any Feedback on our site, submitting Feedback to us, or in responding to questionnaires, you grant us a perpetual, worldwide, non-exclusive, royalty-free irrevocable license, including the right to sublicense such right, and right to display, use, reproduce or modify the Feedback submitted in any media, software or technology of any kind now existing or developed in the future.

Please note DT does not accept unsolicited materials or ideas for use or publication and is not responsible for the similarity of any of its content or programming in any media to materials or ideas transmitted to DT. Should you send any unsolicited materials or ideas, you do so with the understanding that no additional consideration of any sort will be provided to you, and you are waiving any claim against DT and its affiliates regarding the use of such materials and ideas, even if material or an idea is used that is substantially similar to the idea you sent.

## 14. Service Testing

From time to time, we test various aspects of our Products and Services, including our website, other user interfaces, service levels, plans, promotions, features, delivery, and pricing, and we reserve the right to include you in or exclude you from these tests without notice.

## 15. Customer Service

If you need assistance with your account, you can reach us with customer service questions at [info@darumatech.com](mailto:info@darumatech.com)

## 16. Limitations on Use

You must be 18 years of age or older to become a member and end-user of the Products and Services. In certain jurisdictions, the age of majority may be older than 18, in which case you must satisfy that age in order to become a member. While individuals under the age of 18 may utilize the Products and Services, they may do so only with the involvement of a parent or legal guardian, under such person's account and otherwise subject to these Terms of Service. While DT does distribute products that may be used by children, the Products and Services are not intended to be used by children, without involvement, supervision, and approval of a parent or legal guardian (see also "Parental Controls"). Unless otherwise specified, we grant you a limited, non exclusive, non transferable, license to access the Products and Services. Except for the foregoing limited license, no right, title or interest shall be transferred to you. You may not download (other than through page caching necessary for personal use, or as otherwise expressly permitted by these Terms of Service), modify, copy, distribute, transmit, display, perform, reproduce, duplicate, publish, license, create derivative works from, or offer for sale any information contained on, or obtained from or through, the Products and Services, without our express written consent. DT does not promote, foster or condone the copying of third-party content, or any other infringing activity. You may not circumvent, remove, alter, deactivate, degrade or thwart any of the content protections in the Products and Services. You may not frame or utilize any framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or



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## 17. Claims of Copyright Infringement

It is the policy of DT to respect the intellectual property rights of others. DT does not condone the unauthorized reproduction or distribution of copyrighted content. If you or any user of this site believes its copyright, trademark or other property rights have been infringed by a posting on this site, you or the user should send notification to our Designated Agent (as identified below) immediately. To be effective, the notification must include:

- 1) Identify in sufficient detail the copyrighted work that you believe has been infringed upon or other information sufficient to specify the copyrighted work being infringed).
- 2) Identify the material that you claim is infringing the copyrighted work listed in item #1 above.
- 3) Provide information reasonably sufficient to permit us to contact you (email address is preferred).
- 4) Provide information, if possible, sufficient to permit us to notify the owner/administrator of the allegedly infringing webpage or other content (email address is preferred).
- 5) Include the following statement: "I have a good faith belief that use of the copyrighted materials described above as allegedly infringing is not authorized by the copyright owner, its agent, or the law."
- 6) Include the following statement: "I swear, under penalty of perjury, that the information in the notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed." 7) Sign the paper.
- 8) Send the written communication to the following address:

Contact: Robert Kennedy

Address: Daruma Tech, LLC 3651 FAU Blvd, Suite 400, Boca Raton FL, 33431

Email: [info@darumatech.com](mailto:info@darumatech.com)

You acknowledge and agree that upon receipt of a notice of a claim of copyright infringement, we may immediately remove the identified materials from our site without liability to you or any other party and that the claims of the complaining party and the party that originally posted the materials will be referred to the United States Copyright Office for adjudication as provided in the Digital Millennium Copyright Act.

## 18. Governing Law

These Terms of Service shall be governed by and construed in accordance with the laws of the state of Florida, U.S.A., without regard to conflict of laws provisions. If any provision or provisions of these terms shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the

validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and shall remain in full force and effect.

## 19. Arbitration Agreement

You and DT agree that any dispute, claim or controversy arising out of or relating in any way to the Products and Services, including our website, user interfaces, these Terms of Service and this Arbitration Agreement, shall be determined by binding arbitration in Palm Beach County, Florida, instead of in courts of general jurisdiction. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to these Terms of Service, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and DT are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of this Agreement and the termination of your DT membership.

YOU AND DT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and DT agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.