

**DATAFY ORDER FORM**

5974 S Fashion Point Dr. STE 200
South Ogden, UT 84403
801-252-6588
01/16/2025

Client Information:

San Juan County Visitor Services
117 South Main,
Monticello, UT 84535

Contact:

Allison Yamamoto-Sparks
Visitor Services Manager
ayamamoto@sanjuancountyut.gov
(435) 587-3235 Ext 4137

Services:

Datafy Analytics, which includes: Analysis of data observed within Clusters & Points of Interest (POI) along with strategic planning services and customizations described in attached Exhibit A, hereto the "Services".

Datafy Advertising, along with additional services and customizations described in attached Exhibit A, hereto the "Services".

Initial Analytics Period: February 1, 2025

Analytics Service Term: February 1, 2025 – January 31, 2026

Analytics Package Service Fees:

Service Item	Term	Details	Total
Datafy Essential Analytics	1 Year	Customized dashboard charts, graphs, maps or tables. Data Sources: Geolocation from mobile devices with unlimited POIs, airport dashboard, events dashboard, automated templates, basic spending dashboard.	\$13,500
One-Time Set Up Fee		\$2,000 one-time set up fee including 5+ years of historical data	\$2,000
Annual Historical Data Storage Fee		\$2,500 annual fee for storage of historical data <u>Waived for First Year</u>	\$0
Package Total			\$15,500

Analytics Package Payment Terms: Full payment is due net 30 days from contract start date. A 1.5% late fee will be applied to all past due payments.

SERVICES AGREEMENT TERMS

This Services Agreement ("Agreement") is entered into between Datafy, LLC ("Company"), and the Client listed above ("Client") effective on the contract signature date listed below. This Agreement includes and incorporates the above Order Forms, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations, and use limitations.

By signing below, I hereby represent and warrant that I am duly authorized to execute this binding contract on behalf of the Company or the Client.

Datafy LLC (Company):

By (Signature):



Name: Candie Perkins

Title: CEO

Date: 1/16/2025

San Juan County Visitor Services (Client):

By (Signature):

Name:

Title:

Date:

TERMS AND CONDITIONS

1. SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Client the Services outlined in the Order Form and customization described in Exhibit A.

1.2 Subject to the terms hereof, Company will provide Client with reasonable product and technical support services in accordance with the terms set forth in Exhibit B.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Client will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source data, underlying structure, ideas, know-how or algorithms relevant to the Services, documentation or data related to the Service; modify, translate, or create derivative works based on the Services (except to the extent expressly permitted by Company or authorized within the Services); use the Services for the benefit of a third party; or remove any branding, proprietary notices or labels.

2.2 Client represents, covenants, and warrants that Client will use the Services only in compliance with this agreement and all applicable laws and regulations. Client hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Client's use of Services. Although Company has no obligation to monitor Client's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.3 Company will deliver the Services electronically and Client shall be responsible for obtaining and maintaining any equipment and ancillary services needed to access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Client shall also be responsible for maintaining the security of the Equipment, Client account, passwords (including but not limited to administrative passwords) and files, and for all uses of Client account or the Equipment with or without Client's knowledge or consent. If the Client requests physical copies of the Services, Client will be responsible to pay for the costs of printing, postage, and additional labor.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding prices, promotions, features, functionality and performance of the Services. Proprietary Information of Client includes non-public data that has been created by the Client, an official representative of the Client, or a third-party at the direction of the Client and is provided by Client to Company to enable the provision of the Services ("Digital Media Placement/Client Data"). Client warrants that they have received permission from respective third-party data provider(s) to distribute Client Data to Company for the purpose of performance of the Services. Any restrictions of Client Data usage that will impact or limit the provision of Services must be disclosed in writing to the Company. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party and the Receiving Party agree that the foregoing shall apply with respect to the Proprietary Information and the Client Data for a period of two (2) years following the disclosure thereof, and shall not apply to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, (c) was rightfully disclosed to it without restriction by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law.

3.2 Client shall own all right, title and interest in and to the Client Data. Company retains an unrestricted, irrevocable, perpetual, non-exclusive, fully-paid and royalty-free, license to use the Client Data in order to provide the Services and to improve Company's Services, including the right to develop aggregated Client Data or any information derived from or obtained by using Client Data. All Client Data is subject to the terms of the applicable user agreement and any terms that may limit the scope of this agreement must be disclosed in writing by the Client. Client expressly gives Company the right to disclose publicly and to other parties Client status as a Client of Company and to reasonably cooperate with Company to serve as a reference account upon request.

3.3 Company shall own and retain all right, title and interest in and to (a) the Services, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Services or support, (c) the Aggregate Data (defined below), and (d) all intellectual property rights related to any of the foregoing.

3.4 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use, and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client Data, data or information regarding Client's activities on Company's website or in connection with the Services, including frequency of visits to the website, data entered when using the website, vital statistics and trends, general information regarding Client's use of the Services, correlations identified or categorical information regarding the kinds of Client Data provided, and data derived therefrom ("Aggregate Data")), and Company will be free (during and after the term Client will pay in full for the Services up to and including the last day on which the Services are provided. hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose Aggregate Data in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Client will pay Company the then applicable fees described in the Order Form for the Services in accordance with the terms therein (the "Fees"). Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Client (which may be sent by email). If Client believes that Company has billed Client incorrectly, Client must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's Client support department. Datafy reserves the right to increase fees for existing products and services upon renewal. Any expanded or newly added products or services are not initially subject to an increased fee.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice.

Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, these Agreements are for the Campaign Dates/Initial Service Term as specified in the Order Forms, and thereafter shall continue month to month. After the Initial Service Term, either party may terminate this Agreement for convenience and without penalty by providing the other party thirty (30) days written notice. Client will pay in full for the Services and media costs up to and including the last day on which the Services are provided.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Client will pay in full for the Services and media costs up to and including the last day on which the Services are provided. Upon any termination, Company may, but is not obligated to, delete stored Client Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

6.1 Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Services in a professional and workmanlike manner. Services may be temporarily delayed either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any service disruption. In cases where Datafy does not have access to monitor all aspects of performance metrics, Client assumes responsibility to inform Datafy of any reporting discrepancies in a timely manner. Client is responsible for any billing or charges that are a result of the reporting discrepancy.

6.2 HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT

MAY BE OBTAINED FROM USE OF THE SERVICES OR WITH RESPECT TO ANY MARKETING OR INVESTMENT DECISION MADE WHILE USING THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

6.3 Company shall use reasonable efforts to maintain availability of data sources required for the provision of Services. COMPANY DOES NOT WARRANT THAT THE DATA AND/OR TECHNOLOGY UTILIZED IN THE PERFORMANCE OF SERVICES WILL BE AVAILABLE IN PERPETUITY, AND THE DATA MAY, DUE TO CIRCUMSTANCES BEYOND THE COMPANY'S CONTROL, BECOME UNAVAILABLE. Under such circumstances, Company may, at its option and expense (a) replace or modify the Services to utilize available data sources, provided that such modification or replacement contains substantially similar features and functionality, (b) seek to renegotiate mutually agreeable terms of the Services with Client including consideration of alternative data sources and costs that may be associated with obtaining access to those sources.

7. INDEMNITY

Company shall hold Client harmless from liability to third parties resulting from infringement by the Services of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Services (i) not supplied by Company, (ii) made in whole or in part in accordance with Client specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Client continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Client's use of the Services is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that

such modification or replacement contains substantially similar features and functionality, (b) obtain for Client a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Client's rights hereunder and provide Client a refund of any prepaid, unused fees for the Service.

Client shall hold Company harmless from liability to third parties resulting from (i) infringement by any Client Data, including any third-party data subscribed to by Client and provided to Company for the provision of the Services, of any United States patent or any copyright or misappropriation of any trade secret, (ii) any nonfulfillment or breach of any covenant, agreement or other provision of this Agreement by the Client, (iii) any marketing or investment decision made while using the Services, or (iv) any losses which Company may suffer, sustain or become subject to as a result of any claims or threatened claims against Company arising out of the actions or inactions of Client with respect to the Client's business or the terms of this Agreement.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL DATA, EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA, OUTSIDE COMPANY'S REASONABLE CONTROL, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; (D) FOR ANY MARKETING OR INVESTMENT DECISIONS MADE BY Client WHILE USING THE SERVICES; OR (E) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY Client TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or

eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Client except with Company's prior written consent, which shall not be unreasonably withheld. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this

Agreement and Client does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Utah without regard to its conflict of laws provisions.

EXHIBIT A

Setup, Customization and Training

Datafy Analytics

Datafy Analytics Client Setup – Company will perform all steps necessary to setup Client's account based on input from Client. As part of this setup Company will add individuals or parties as directed by Client to the distribution list to receive updates.

Datafy Analytics Client Configuration and Customization – Data for the Points of Interest (POI's) as identified below:

- Analysis of the Unlimited Geolocation Points of Interest to be determined by Client and Company
- Basic credit card spending data
- Airport data
- Advanced spending dashboard (*if included in Service Fees outline*)
- International data (*if included in Service Fees outline*)
- Customized reports (*if included in Service Fees outline*)
- Advertising Services and Strategic Planning (*if contracted – supplemental agreement required*)

Geolocation (cell phone GPS) data for visitors with charts, maps, graphs and other visualizations as described below for Unlimited Points of Interest. Client will receive access to a web-based customized dashboard with live data reports and event dashboards with the ability to manipulate time periods for the type of data including but not limited to:

- Estimated visitors by POI
- Year-over-year comparisons
- Demographic profile of visitors
- % of market (at City, County or zip code level)
- Increase/decrease of visitors
- Spending dashboards
- Advertising analytics charts including spend (*if engaging with advertising services*)
- Return on Investment (requires marketing spend to be implemented)

Company will configure and customize the Services for the Client based on input from Client. One dashboard will be created with logins specified by Client. Company will advise the Client on the availability of requested locations of interest and the Client acknowledges that some potential locations of interest will be unavailable due to lack of sufficient data or privacy restrictions.

Add-On and One-Time Fees

- Set Up Fee including Historical Data back to February 2018: \$2,000 one-time cost
- Annual Historical Data Storage Fee: billed annually upon renewal date
- Ad Spend will be billed separately, as used and based on CPM and scope of work rates reviewed prior to advertising run.

Service Onboard Training (via live webinar and or recorded, telephone or in person) – Company will provide a Services training session that will be scheduled at Client's convenience to coincide with the delivery of the first Premium Insights Dashboard. The purpose of this training is to ensure that the Client understands the structure of the Services and the scope and breadth of the insights provided in the Services. It is recommended that any Client representatives who will be using the Services on a regular basis participate in the training session.

EXHIBIT B

Support Terms

Company will provide product assistance and technical support (e.g. explanation of data and visualization, corrections) to Client via both telephone and electronic mail on weekdays during the hours of 9:00 am through 6:00 pm Mountain Time, with the exclusion of Federal and State (Utah) Holidays ("**Support Hours**"). Client may contact the Company for product assistance or support by dialing 801-823-0083 or by emailing support@datafy.com.

Whereas Client has requested product customization, support will also include up to two rounds of revisions of the format and structure of the customized analysis and report. Additional modifications and customization requests will be billed separately at an hourly rate.