



## DATACORE CLOUD SERVICE PROVIDER PROGRAM CLOUD SERVICE PROVIDER AGREEMENT

THIS IS A BINDING CONTRACT BETWEEN YOU AND DATACORE SOFTWARE CORPORATION. BY CLICKING THE BUTTON INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, OR BY OPENING, DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING THE ASSOCIATED DATACORE SOFTWARE OR SERVICE, YOU REPRESENT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE CLOUD SERVICE PROVIDER. IF YOU ARE ACCESSING OR OTHERWISE USING THE DATACORE SOFTWARE OR SERVICE WITHOUT ACCEPTING THE TERMS OF THIS AGREEMENT IN FULL, YOU ARE IN VIOLATION OF THIS AGREEMENT AND MUST IMMEDIATELY CEASE USE OF THE SOFTWARE OR SERVICE.

This DataCore Cloud Service Provider Program (“DCSPP”) Cloud Service Provider Agreement (“Agreement”) is entered into as of the Effective Date by and between DataCore Software Corporation (“DataCore”, “Us” or “We”) having an office at 6300 NW 5<sup>th</sup> Way, Fort Lauderdale, Florida, U.S.A, 33309 and Cloud Service Provider (“CSP”, “You” or “Your”), having its principal place of business at the address set forth in the Application (as defined below). DataCore or CSP may be referred to herein as a “Party”, and together as the “Parties”.

### 1. DCSPP DEFINITIONS

- 1.1. “Aggregator” means the company authorized by DataCore to engage with and distribute DCSPP Software licenses and DCSPP subscriptions to a CSP (You) under the DCSPP.
- 1.2. “Application” means the application or registration by the CSP for authorization to participate in the DCSPP. The completed Application may be provided and/or authorized by Aggregator or DataCore, as determined by DataCore.
- 1.3. “DataCore Logo(s)” means the DataCore logo (s) and trademarks set forth in the DCSPP Policy Guide or otherwise on DCSPP Partner Portal.
- 1.4. “DCSPP Policy Guide” means the then current DataCore Cloud Service Provider Program Policy Guide for CSPs as published by DataCore from time to time and is made available on the DCSPP Partner Portal. “DCSPP” means the DataCore Cloud Service Provider Program, as it exists from time to time.
- 1.5. “DCSPP Partner Portal” means the DCSPP-oriented website portal located at <http://www.datacore.com/cloud-service-provider-program> (or such other site as may be specified by DataCore).
- 1.6. “DCSPP Software” means the DataCore software products, in object code form only, that DataCore makes available to subscribing CSPs through an Aggregator for use under the DCSPP, as available from time to time.
- 1.7. “DIS” means DataCore Insight Services, which is the automated communications process by which Usage Data is collected from the CSP and transmitted to DataCore for monitoring and reporting in the CSP Monthly Usage Report.
- 1.8. “Effective Date” means the date that the CSP completes the information requested in the Application and clicks “Agree” or “Accept” to the terms of this Agreement.
- 1.9. “Hosted IT Services” means an internet-based subscription service operated by a service provider entity that consists of providing multiple end service users access to: (i) the storage resources of systems operated by the service provider entity (such as utility or grid computing), or (ii) various software applications that are installed and operated on the systems of the service provider entity. For purposes of this Agreement, “end service users” may be: (i) independent third-parties with which the CSP has a commercial relationship; or (ii) departments, divisions or workgroups served by a subscribing central hosting CSP.
- 1.10. “CSP” means the Hosted IT Services provider entity that is identified on and has completed a DCSPP Application, which entity has, by clicking “Agree” or “Accept”, entered into this Agreement, and has, by clicking “Agree” or “Accept” for the CSP EULA, has entered into that agreement.
- 1.11. “CSP/Aggregator Agreement” means the written or accepted online contract between the Aggregator and a CSP under which the Aggregator resells DCSPP subscriptions and distributes DCSPP Software to the CSP pursuant to the DCSPP.



- 1.12. "CSP EULA" means, as to given DCSP Software, the applicable DataCore Cloud Service Provider Program Time-Limited End User License Agreement accompanying that DCSP Software or otherwise provided by DataCore for the use of that product under the DCSP.
- 1.13. "CSP Monthly Usage Report" means the monthly report provided by DataCore to Aggregator for each subscribing CSP, which captures the CSP's Usage Data for that calendar month. "Usage Data" means all the data regarding the CSP's usage, monthly or otherwise, of DCSP Software as determined solely by DataCore.
- 1.14. "Support Services Terms" means DataCore's standard terms for support services as posted on DataCore's Web site at [www.datacore.com/services\\_support/servsup\\_policies.asp](http://www.datacore.com/services_support/servsup_policies.asp) (or such other site as DataCore may specify), as they exist from time to time.

## 2. DCSP POLICY GUIDE

The DCSP Policy Guide (the "Guide") is hereby incorporated in full into this Agreement by reference. CSP shall comply with all policies, plans and processes set forth in the Guide. DataCore may update or revise the Guide at any time by posting a new version on the DCSP Partner Portal, and those updates and revisions become effective and binding upon CSPs on the effective date stated in the new version, which shall be at least thirty (30) days after the date it was posted on the DCSP Partner Portal unless DataCore provides CSPs with written notice of an earlier effective date. In the event of conflict between the Guide and this Agreement, the terms and provisions of this Agreement shall prevail.

## 3. DCSP SOFTWARE

- 3.1. CSP may obtain DCSP Software license(s) only during the term of this Agreement. CSP shall obtain DCSP Software license(s) directly from an Aggregator. Each DCSP Software includes support services under the Support Services Terms for the license term. CSP may only use the DCSP Software during the paid subscription license term in accordance with the CSP EULA to provide Hosted IT Services.
- 3.2. DCSP Software is licensed for the paid term of the DCSP subscription, which the CSP has purchased and under which the usage of such Software is controlled and it will expire automatically at the end of such paid term unless renewed by the purchase of an additional DCSP subscription. FOLLOWING THE EXPIRATION OR TERMINATION OF THE LICENSE, CSP WILL NO LONGER BE PERMITTED TO ACCESS THE DCSP PRODUCT, AND ALL DATA STORED BY OR FOR CSP OR ITS END SERVICE USERS USING THE DCSP PRODUCT MAY BECOME INACCESSIBLE. CSP IS SOLELY RESPONSIBLE FOR RETRIEVING AND PRESERVING ANY DATA PRIOR TO SUCH EXPIRATION OR TERMINATION. CSP AGREES TO DEFEND AND INDEMNIFY DATACORE AGAINST ANY CLAIMS BY CSP'S END SERVICE USERS RESULTING FROM EXPIRATION OR TERMINATION OF THE CSP'S LICENSE TO DCSP SOFTWARE.
- 3.3. The DCSP Software contains confidential information of DataCore, and the CSP agrees that it shall not disassemble, decompile or otherwise attempt to reverse engineer the DCSP Software in whole or in part, except to the extent expressly permitted under applicable law notwithstanding such prohibition, and shall not encourage others to do so. CSP shall have no rights with respect to the DCSP Software or its documentation except as expressly set forth herein, and agrees not to copy or translate them without DataCore's express written consent. DataCore is not obligated to translate or otherwise localize DCSP Software or its documentation. CSP shall not modify the DCSP Software in any way without the express written consent of DataCore.

## 4. USE OF TRADEMARKS

- 4.1. Permitted Use. Subject to the terms and conditions of this Agreement, the CSP shall have the worldwide, nonexclusive right to use the DataCore Logos during the term of this Agreement in marketing, advertising and promotional materials solely for the purpose of publicizing its membership in the DCSP.
- 4.2. Restrictions.
  - A. CSP shall comply with all guidelines provided by DataCore in writing concerning the use of the DataCore Logos, including without limitation the DataCore Trademark Guidelines posted on DCSP Partner Portal or within the Guide.
  - B. Except as set forth in this Section 4, nothing in this Agreement shall grant or shall be deemed to grant to CSP any right, title or interest in or to the DataCore Logos. All use by CSP of DataCore Logos (including any goodwill associated therewith) shall inure to the benefit of DataCore. At no time during or after the term of this Agreement shall CSP challenge or assist others to challenge the DataCore



Logos or other trademarks of DataCore or the registration thereof by DataCore, nor shall CSP attempt to register any trademarks that are confusingly similar to those of DataCore. CSP shall not adopt, use, register, make application or attempt to register any acronym, trademark, trade names or other marketing name of DataCore or any confusingly similar mark, uniform resource locator (URL), Internet domain name, or symbol as part of CSP's own name or the name of any of its affiliates or the names of any Software it markets.

## 5. FEES AND PAYMENT

CSP shall make all payments for the use of DCSP Software, per the purchased DCSP subscription, directly to Aggregator per the terms established in the CSP/Aggregator Agreement. CSP shall pay the Aggregator the monthly DCSP amounts due for the DCSP subscription purchased as determined by DataCore in each CSP Monthly Usage Report.

## 6. TERM AND TERMINATION

- 6.1. Term. This Agreement shall commence on the Effective Date and continue in effect for the term of CSPs active DCSP subscription (minimum 12-months) purchased from an Aggregator, unless sooner terminated in accordance with this Section 6 or the applicable DCSP termination provisions of the CSP/Aggregator Agreement. Thereafter, this Agreement shall renew automatically for successive paid DCSP 12-month subscription terms. All CSP's rights under the DCSP shall terminate immediately upon expiration or termination of this Agreement.
- 6.2. Rights upon Termination. Either Party may terminate this Agreement for breach upon written notice to the offending Party and providing thirty (30) days for the offending Party to cure such breach. Each of the Parties has considered its expenditures in preparing for performance of and performing this Agreement and possible losses resulting from its termination. It is expressly understood that this right of termination is absolute and that neither Party shall be liable to the other for damages, or otherwise, resulting from expiration or termination of this Agreement in accordance with its terms. THE PARTIES ACKNOWLEDGE THAT THIS SECTION HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR DATACORE TO ENTER INTO THIS AGREEMENT AND THAT DATACORE WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR THE LIMITATIONS OF LIABILITY AS SET FORTH HEREIN.
- 6.3. Effect of Termination. Notwithstanding any expiration or termination of this Agreement, Sections 1, 2, 3.2, 4.2, 5, 6.3, 7, 8, 9, 10 and 11 shall survive and remain in effect in accordance with their terms. Termination or expiration of this Agreement does not release CSP from any obligation or liability it may have to DataCore or an Aggregator with respect to the DCSP, DCSP Point Plans, DCSP Software or otherwise.

7. **WARRANTY DISCLAIMER**. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN CSP EULAS, DATACORE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATING TO THE DCSP, THE DCSP SOFTWARE OR SUPPORT SERVICES FOR THE DCSP SOFTWARE. DATACORE SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8. **LIMITATION OF LIABILITY**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DATACORE BE LIABLE TO CSP FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DATACORE'S AGGREGATE LIABILITY TO CSP ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DCSP EXCEED \$1000 USD. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS AGREEMENT.

9. **PROPRIETARY RIGHTS**. DataCore and its licensors shall own all right, title and interest in and to the DCSP Software. CSP shall not remove or alter any copyright notices or other proprietary rights notices placed on or embedded in the DataCore Software by DataCore. CSP will do all things reasonably requested by DataCore to protect DataCore's intellectual property rights as those reasonably relate to CSP's use of the DCSP Software, including without limitation copyrights, patent rights, trademarks and trade secrets.

## 10. CONFIDENTIAL INFORMATION

- 10.1. Use and Disclosure. All non-public information provided by one Party to the other Party that (a) is disclosed in writing and marked as “confidential” (or “proprietary”) at the time of disclosure, or (b) is orally disclosed but identified as confidential at the time of disclosure, and is designated as “confidential” in a written memorandum delivered to the other Party within thirty (30) days of disclosure, summarizing the Confidential Information sufficiently for identification (the “Confidential Information”) constitutes confidential information of the disclosing Party. Notwithstanding the foregoing, “Confidential Information” includes, without limitation, DataCore customer lists and customer information, and any information regarding future DataCore products or services (including, without limitation, DataCore product road maps), whether or not such information is marked, identified or summarized in writing as confidential. Neither Party shall disclose any of the other Party’s Confidential Information to any third party (other than employees and contractors on a need-to-know basis who are bound in writing by confidentiality obligations, which are no less protective than those contained herein), or otherwise use the other Party’s Confidential Information, except as expressly permitted under this Agreement. The provisions of this Section 10.1 do not apply to information that: (a) was rightfully in possession of either Party prior to receipt of such Confidential Information from the other Party, (b) is or becomes a matter of public knowledge through no fault of the Party receiving such Confidential Information hereunder, (c) is rightfully received from a third party without a duty of confidentiality, (d) is independently developed by the other Party without breach of these confidentiality obligations, or (e) is disclosed by either Party with the other Party’s written approval. Each Party’s duty to protect Confidential Information in accordance with the provisions of this Section 10.1 expires three (3) years after the date of receipt of the applicable Confidential Information. In addition, the provisions of this Section 10.1 will not restrict a Party from disclosing the other Party’s Confidential Information: (i) to obtain or enforce its legal rights and remedies arising in connection with this Agreement; or (ii) to the extent required by any law or regulation, provided that the Party required to make such a disclosure uses reasonable efforts to give the other Party reasonable advance notice of such required disclosure in order to enable the other Party to prevent or limit such disclosure.
- 10.2. Injunctive Relief. The Parties agree and acknowledge that money damages may not be an adequate remedy for any breach of Section 10.1 and that either Party may, in its sole discretion, apply to any court of law or equity of competent jurisdiction for injunctive relief in order to prevent any such breach.

## 11. GENERAL PROVISIONS

- 11.1. Support Bundle. DataCore may from time to time require CSP to deliver a “Support Bundle” to DataCore (at its US headquarters or such other location as it shall direct) at the times provided in the Guide and at such other times as DataCore may in its discretion otherwise require. A Support Bundle is a compressed file that is created by DCSP Software and contains system and other information relating to the use and functionality of DCSP Software. DataCore may use the information obtained in the Support Bundle for support, product improvement, and auditing reported CSP usage of DCSP Software.
- 11.2. Usage Data Transmission. Via DIS, CSP must enable continuous transmission of its DCSP Software usage from each subscribed DataCore instance to enable accurate monthly billing. Refer to the DCSP Policy Guide for further requirements and policies.
- 11.3. Audit Rights. During the term of this Agreement and for a period of two (2) years from the date of its termination or cancellation: (i) CSP shall maintain complete, clear, and accurate records that demonstrate compliance with the terms and conditions of this Agreement, the CSP EULA, and the DCSP subscription parameters, and (ii) upon thirty (30) days’ written notice, DataCore will be entitled to audit CSP’s books, records and use of DCSP Software and any other DataCore materials provided by DataCore under this Agreement or the Guide, to verify compliance with the terms of this Agreement, Your DCSP subscription, and all applicable DataCore policies. CSP shall promptly pay to DataCore or the Aggregator, as applicable, any underpayments owed to such party as revealed by any such audit, plus any applicable late payment fees. Any such audit will be performed at DataCore’s expense during normal business hours, in a manner so as to try not to upset CSP’s normal business operations and procedures, provided that CSP shall cooperate fully with DataCore and shall promptly reimburse DataCore for the cost of such audit if such audit reveals: (a) an underpayment by the CSP of more than five percent (5%) of the amounts payable by



- the CSP in connection with the DCSPP for the period audited (b) any evidence that CSP has violated laws, DCSPP rules or DataCore policies, or (c) any other material breach of this Agreement
- 11.4. CSP Indemnity. CSP agrees to indemnify and hold DataCore harmless from any loss, cost, liability or damage, including attorneys' fees, arising out of any third party claim, suit, or proceeding ("Action") brought against DataCore based upon: (a) any negligent act or omission by, or willful misconduct of the CSP, its employees or agents, (b) any omission or inaccuracy in the CSP's advertisements and promotional materials that relate to the DCSPP Software, (c) any representations made by the CSP relating to the DCSPP Software, or (d) the CSP's performance of services using or related to the DCSPP Software.
  - 11.5. Relationship of the Parties. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. The relationship of the Parties established by this Agreement is that of independent contractors. Nothing contained herein shall constitute either Party the agent of the other Party or otherwise grant either Party the authority to bind the other Party to any obligation, or constitute the Parties as partners or joint venturers and neither Party shall hold itself out as being an agent, having such authority, or being a franchisee, partner or joint venture of the other.
  - 11.6. Notices. All notices, consents, waivers and other communications required or permitted by this Agreement ("Notices") shall be in writing, in the English language, and shall be deemed given to a Party when (a) delivered by hand or by nationally recognized overnight courier service (costs prepaid), or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the address referenced in the opening paragraph of this Agreement (or to such other address as the Party may specify upon written notice). Notices to CSP may be given by email instead of the other specified means and shall be deemed given when sent to the email address provided in the Application (which CSP may change by giving written notice hereunder). If Notice is sent to DataCore, it shall be sent to the attention of Contracts Administration, with a copy to the General Counsel.
  - 11.7. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Florida U.S.A., excluding the United Nations Convention on Contracts for the International Sale of Goods, and without regard to principles of conflicts of law. Each Party consents to the exclusive jurisdiction of the state and federal courts of Broward County, Florida U.S.A.; provided, DataCore shall at all times have the right to commence proceedings in any other court of its choice of appropriate jurisdiction to obtain an injunction, specific performance or other equitable relief for protection of intellectual property rights.
  - 11.8. Force Majeure. Neither Party shall be in default by reason of any failure to perform any obligation (excluding any obligation to pay money) due to causes beyond such Party's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes or strikes.
  - 11.9. Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by a CSP, whether voluntarily or by operation of law, without the prior written consent of DataCore which may be withheld or conditioned in DataCore's discretion. Any assignment in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.
  - 11.10. Waiver. No delay or failure by either Party to enforce any right under this Agreement shall constitute a waiver of that right or any other right. A waiver of any breach or default under this Agreement shall not constitute a waiver of any other right for subsequent breach or default.
  - 11.11. Severability. If any provision of this Agreement is found illegal or unenforceable, it will be modified to the minimum extent required to make it legal and enforceable, and the legality and enforceability of the other provisions of this Agreement will not be affected.
  - 11.12. Government Contracts. All DCSPP Software delivered to the U.S. Government are "commercial computer software" as defined in DFARS 252.227-7014(a)(1), and are provided subject to the manufacturer's standard commercial end user license, pursuant to FAR 12.212(a). If applicable, such DCSPP Software is provided with "restricted rights", with use, duplication, and disclosure by the U.S. Government restricted as provided in either DFARS 252.227-7013(c)(1)(ii) (OCT 1988) or FAR 52.227-14 (ALT III) (JUN 1987). Manufacturer is DataCore Software Corporation.
  - 11.13. Service Restrictions. CSP acknowledges that the DCSPP Software is subject to export controls imposed by the U.S. Export Administration Act of 1979, as amended (the "Act"), and the regulations promulgated there under. CSP will not, and will require that the end service users do not, export, re-export, host, or offer access to (directly or indirectly) the DCSPP Software or associated technical data without complying with the Act and the regulations thereunder and will not export, re-export, host, or provide access (directly or indirectly) to embargoed destinations.



- 11.14. Injunctive Relief. It is expressly agreed that CSPs violation of Sections 4 or 10.1 will cause irreparable harm to DataCore and that a remedy at law would be inadequate. Therefore, without limiting DataCore's remedies that may be available at law, DataCore shall be entitled to an injunction or other equitable remedies in the event of any threatened or actual violation of any such provision.
- 11.15. Choice of Language. The Parties confirm that it is their wish that this Agreement, as well as all other documents relating hereto, have been and shall be drawn up in the English language only. *Les parties à la présente confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.* The English language version of this Agreement will control in all respects, and all other versions are for convenience only and are not binding.
- 11.16. Entire Agreement. This Agreement, the Guide, the CSP EULA and the Support Services Terms set forth the entire agreement between the Parties regarding the subject matter of this Agreement and supersede all previous communications, representations, understandings and agreements, either oral or written, between the Parties with respect to said subject matter. No modifications or amendments to this Agreement will be binding upon the Parties unless made in writing and executed by each Party, except DataCore may modify the Guide and its forms of CSP EULA unilaterally in its sole discretion. This Agreement does not constitute an offer by DataCore and it shall not be binding upon DataCore until it has admitted CSP into membership in the DCSP. Notwithstanding the foregoing, DataCore, in its sole discretion, may amend the terms, policies, software, products, support, portals and plans associated with the DCSP from time to time.

END OF AGREEMENT