



FOR
DATACORE APPLIANCES

THIS IS A BINDING CONTRACT BETWEEN DATACORE SOFTWARE CORPORATION ("DATACORE") AND ALL DATACORE SOFTWARE USERS ("YOU" OR "YOUR"). PLEASE READ THESE TERMS CAREFULLY BEFORE ACCEPTING THE TERMS OF THIS AGREEMENT BY CLICKING THE ACCEPTANCE BUTTON (BUTTON MAY NOT BE APPLICABLE TO LINUX VERSION) OR OPENING, DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE. THE TERM "SOFTWARE" MEANS THE SOFTWARE ACCOMPANYING THIS AGREEMENT, INCLUDING SOFTWARE PRE-INSTALLED ON DATACORE HARDWARE, AND ALL OTHER SOFTWARE PROVIDED BY DATACORE WITH OR FOR USE WITH THE ACCOMPANYING SOFTWARE (UNLESS DATACORE PROVIDES YOU WITH A SEPARATE LICENSE FOR THAT SOFTWARE).

YOU HEREBY ACCEPT THIS AGREEMENT BY CLICKING THE ACCEPTANCE BUTTON (BUTTON MAY NOT BE APPLICABLE TO LINUX VERSION), OR BY OPENING, DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING ANY OF THE SOFTWARE, YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF THE SOFTWARE IS FOR USE BY A CORPORATION OR OTHER ENTITY, YOU REPRESENT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY. DATACORE IS WILLING TO LICENSE THE SOFTWARE TO YOU ONLY IF YOU ACCEPT ALL OF THE TERMS IN THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU MAY NOT DOWNLOAD, OPEN, INSTALL, OR OTHERWISE USE ANY SOFTWARE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU MUST PROMPTLY DESTROY ALL DOWNLOADED SOFTWARE IN YOUR POSSESSION OR CONTROL, INCLUDING ANY BACK-UP COPY, AND RETURN ALL OTHER SOFTWARE TO THE VENDOR FROM WHOM IT WAS ACQUIRED IN ACCORDANCE WITH THE VENDOR'S RETURN POLICY FOR THE SOFTWARE. IF, IN CONNECTION WITH INSTALLATION SERVICES PROVIDED TO THE END USER OR OTHERWISE, A PERSON OTHER THAN THE END USER ACCEPTS THIS AGREEMENT, THAT PERSON HEREBY REPRESENTS TO DATACORE THAT HE OR SHE IS AUTHORIZED TO ENTER INTO, AND HAS ENTERED INTO, THIS AGREEMENT ON BEHALF OF THE END USER, AND THAT HE OR SHE HAS PROVIDED A COPY OF THIS AGREEMENT TO THE END USER.

CERTAIN DATACORE SOFTWARE REQUIRES ACTIVATION. IF THE SOFTWARE REQUIRES ACTIVATION IT WILL PROMPT YOU TO ACTIVATE THE SOFTWARE IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED. IF THE SOFTWARE REQUIRES ACTIVATION AND IS NOT ACTIVATED WITHIN 30 DAYS AFTER SOFTWARE INITIALIZATION, IT WILL CEASE FULL OPERATION UNTIL THE SOFTWARE IS ACTIVATED. SOME EVALUATION VERSIONS OF THE SOFTWARE MAY NOT BE ELIGIBLE FOR ACTIVATION.

FOR EVALUATION USERS, UNTIL YOU HAVE CONVERTED TO A PAID PRODUCTION USE LICENSE, THIS LICENSE IS SOLELY FOR THE PURPOSE OF YOUR EVALUATION OF THE SOFTWARE; YOU ARE NOT PERMITTED TO USE THE SOFTWARE IN A PRODUCTION ENVIRONMENT OR TO PROVIDE SERVICES. IF YOU CHOOSE NOT TO CONVERT TO A PAID PRODUCTION USE LICENSE, THE SOFTWARE WILL CEASE FULL OPERATION IN 30 DAYS (OR SUCH OTHER DATE AS DATACORE MAY SPECIFY) ("EVALUATION PERIOD"). FOR THE PURPOSES OF THIS AGREEMENT, "EVALUATION" SHALL MEAN ANY FREE, TRIAL, PILOT OR DEMONSTRATION USE.

Evaluation License Grant. Subject to the terms and conditions contained herein, and solely during the Evaluation Period, DataCore Software Corporation ("DataCore") hereby grants to you a revocable, non-transferable, non-exclusive license to download, install and use, or access and use on a third party cloud infrastructure, one copy of the binary code version of the Software for your internal use only in accordance with all the following: (i) solely for purposes of your internal evaluation and testing of the operation of the Software in a nonproduction environment; (ii) during the term of the Evaluation Period; and (iii) limited to the optional features (if any), number of computing devices (including virtual machines running in your own environment or on a third party cloud infrastructure authorized by DataCore), storage capacity, number of users, storage devices, drives, ports, and CPU cores and other limitations specified by DataCore, as applicable, for which you have been expressly authorized by DataCore. You will not cause or permit any use of the Software in a production environment. DataCore and its licensors reserve all rights not expressly granted to you herein, and no other licenses, whether express, implied or otherwise, are granted to you.

Production Use License Grant. Subject to the terms and conditions contained herein, DataCore Software Corporation ("DataCore") hereby grants to you a non-transferable, non-exclusive license to download, install and use, or access and use on a third party cloud infrastructure authorized by DataCore, the binary code version of the Software for your internal use, limited to the optional features (if any), number of computing devices (including virtual machines running in your own environment or on a third party cloud infrastructure), storage capacity, number of users, disk drives, ports, and CPUs and other limitations specified by DataCore, as applicable, for which you have paid the applicable license fee. If you want more than that for which you are licensed, you must purchase additional licenses. DataCore and its licensors reserve all rights not expressly granted to you herein, and no other licenses, whether express, implied or otherwise, are granted to you.

License Restrictions. Your employees may access the Software remotely through a wide area network or VPN, or other secure remote access method, provided that, if applicable, you may in no event exceed the number of permitted concurrent uses or users of the Software for which you have been expressly authorized by DataCore. In the absence of any express written authorization by DataCore to the contrary, the number of concurrent uses or users of the Software, the number of computing devices (including virtual machines) on which the Software may be used, and the number of copies of the Software you may make, shall be one. You may also make one back-up copy of the Software, provided the copy must contain all of the original Software's copyright, trademark and other proprietary notices. You will not cause or permit: (i) use or copying of the Software, except as expressly provided in this Agreement; (ii) modification, rental, sub-license, lease, lending or transfer of the Software; (iii) reverse engineering, disassembly, or decompilation of the Software, except to the extent expressly permitted by law notwithstanding this prohibition; (iv) creation of any derivative works based on the Software; (v) except as DataCore may otherwise agree in writing, use of the Software in connection with a service bureau or other use or configuration whereby the Software is used by, for the benefit of, or to provide a service on the computer equipment of, a third party.

Ownership. All copies of Software are licensed, not sold. DataCore and its licensors retain all right, title and interest in the Software, and in all copies, improvements, updates, revisions, enhancements, modifications and derivative works thereof, including, without limitation, all patent, copyright, trade secret, trademark and database rights. The terms of this Agreement are intended to benefit any third party licensors, who may directly enforce applicable terms of this Agreement to protect their interest in the Software.

Maintenance, Support and Updates. For Software licensed to you as a subscription service ("SaaS" product), DataCore may update, fix, and maintain the Software as DataCore, in its sole discretion, deems necessary, or as DataCore may otherwise expressly agree in writing. For perpetual Software licenses, except as provided under the limited warranty set forth below, and except as DataCore may otherwise expressly agree in writing, DataCore is under no obligation to maintain, support or update the Software in any way, or to provide updates or error corrections. Such services may be separately purchased. In either license case, if DataCore provides you with a bug fix, maintenance release or update to the Software, it is provided to you as is and shall be considered Software subject to the terms of this Agreement, unless you receive a separate license from DataCore for that release or update that supersedes this Agreement. In addition, the Software may contain support and/or data collection

functions that provide DataCore with certain system telemetry information that DataCore may use to provide support, analysis, and reporting to you, as well as to update or enhance the Software. By using the Software, you consent to DataCore's access and use of such information for such purposes.

Data Rights. You agree that DataCore will collect and track technical and related information about you and your use of the Software, which may include your internet protocol address, hardware identifying information, operating system, application software, peripheral hardware, and Software usage statistics, to assist with the operation and function of the Software, the provision of updates, support, invoicing, marketing by DataCore or its agents and research and development. A current summary of information collected by DataCore (the "DataCore Collection Manifest") is available through the following link: https://docs.datacore.com/ssv-webhelp/collection_manifest.htm, and hereby incorporated into this Agreement by this reference. To the extent that personal data within the meaning of the European Union's General Data Protection Regulation (EU) 2016/679 ("GDPR") is collected by the DataCore Collection Manifest, the DataCore European Data Protection Provisions, as available through the following link [<https://info.datacore.com/resources/legal/dpa.pdf>], shall apply and hereby incorporated into this Agreement by this reference.

Confidentiality. The Software contains confidential and proprietary information of DataCore and/or its licensors. You agree to take adequate steps to protect the Software from unauthorized disclosure or use.

Limited Warranty. During the Evaluation Period the Software is provided and you accept the Software "AS-IS" and "WITH ALL FAULTS." Upon commencement of the production use license, DataCore warrants for a period of ninety (90) days that the Software will substantially conform under normal use to DataCore's specifications contained in the user guides and operating manuals provided by DataCore with the Software. DataCore will, at its sole discretion, either promptly replace any Software that fails to comply with this warranty at its cost or refund the amount paid for the Software. Any claims submitted under this section must be submitted in writing to DataCore within the specified warranty period. This limited warranty is void if failure of the Software results from accident, abuse, misapplication, abnormal use or a virus. Any replacement for the Software, and any bug fix, maintenance release or update to the Software, will be warranted under this limited warranty for the remainder of the original warranty period applicable to the Software or thirty (30) days from its delivery, whichever is longer. THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY, AND DATACORE'S AND ITS SUPPLIERS' SOLE AND EXCLUSIVE LIABILITY, IN CONNECTION WITH THE SOFTWARE, INCLUDING FOR ANY BREACH OF THE WARRANTY RELATING TO THE SOFTWARE. THIS LIMITED WARRANTY SET FORTH IN THIS SECTION GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE ADDITIONAL RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, AND DATACORE AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND AGAINST HIDDEN DEFECTS TO THE FULLEST EXTENT PERMITTED BY LAW. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM DATACORE OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. DATACORE DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF VARIATIONS FROM THE DOCUMENTATION. DATACORE IS NOT RESPONSIBLE FOR ANY INTERFERENCE WITH OR INABILITY TO USE THE SOFTWARE RESULTING FROM ADDITIONAL SOFTWARE OR SERVICES PROVIDED BY THE CLOUD INFRASTRUCTURE SUPPLIER, IF ANY, THROUGH WHICH YOU ACCESS THE SOFTWARE.

Evaluation License Termination. The Evaluation license granted under this Agreement shall terminate automatically upon the expiration of the Evaluation Period. In addition, the Evaluation license shall terminate prior to its automatic termination upon the occurrence of any of the following: (i) either you or DataCore at any time give the other written notice of termination (with or without cause); (ii) you breach any provision in this Agreement; or (iii) if applicable, your access to the Software is terminated by your cloud infrastructure provider. The Software will cease to function or become inaccessible in whole or in part upon termination of the evaluation license.

Production Use License Termination. The production use license granted to you under this Agreement will terminate immediately and automatically without notice upon the occurrence of any of the following: (i) if you have licensed the Software on a subscription basis, upon the expiration of your subscription; (ii) you breach any provision in this Agreement; (iii) DataCore does not receive payment in full for your license; or (iv) if applicable, your access to the Software is terminated by the cloud infrastructure provider through which you acquired the production use license. Upon termination of this license you will discontinue use of the Software and remove all copies of the Software and any part of the Software from any and all computing devices, including any back-up copy, and destroy the Software. At DataCore's request, you will certify in writing to DataCore that all complete and partial copies of the Software have been destroyed and that no copies remain in your possession or under your control. The provisions of this Agreement, except for the license grant and warranty, will survive termination.

Limited Liability. UNDER NO CIRCUMSTANCES WILL DATACORE OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, SAVINGS, BUSINESS, GOODWILL OR DATA, COST OF COVER, RELIANCE DAMAGES OR ANY OTHER SIMILAR DAMAGES OR LOSS, EVEN IF DATACORE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. EXCEPT AS LIMITED BY APPLICABLE LAW, DATACORE'S AND ITS SUPPLIERS' TOTAL LIABILITY UNDER THIS AGREEMENT OR OTHERWISE SHALL IN NO EVENT EXCEED THE GREATER OF \$100 OR THE LICENSE FEE PAID BY YOU FOR THE SOFTWARE GIVING RISE TO THE LIABILITY. THE LIABILITY LIMITATIONS SET FORTH IN THIS AGREEMENT SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT OR THE INVALIDITY OF ANY OTHER PROVISION.

U.S. Government Rights. The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and other relevant government procurement regulations. Any use, duplication, or disclosure of the Software or its documentation by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement.

Export Law Assurances. The Software, including its documentation and related technical data, is subject to the export control laws and regulations of the United States ("Export Laws"). You agree not to export or re-export (directly or indirectly) the Software (including its documentation and related technical data) or any direct product thereof without fully complying with the Export Laws.

License Compliance Assurances. DataCore reserves the right to run periodic license compliance tests to determine and enforce the parameters of your license(s). Parameters associated with such compliance tests may include, but not be limited to: system memory, number of CPU cores, capacity under management, configuration, etc.

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 jurisdiction and exclusive venue 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.

Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. You may not assign this Agreement in whole or in part, without DataCore's prior written consent. You agree to notify DataCore of any intended assignment, and to provide DataCore evidence of the proposed assignee's agreement to comply with the terms of this Agreement. Any attempt to assign this Agreement without such notice and consent will be null and void.

Third-Party Code. The Software may contain or be provided with components subject to the terms and conditions of "open source" software licenses ("Open Source Software"). Open Source Software may be identified in the user guides and operating manuals provided by DataCore with the Software, or DataCore

may provide a list of the Open Source Software for a particular version of the Software upon written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, enhancement, modification or reverse engineering.

NOTICE: The DataCore Appliances contain VMware software. Nothing in this Agreement will be construed as granting any rights to you, by license or otherwise, in or to such VMware software. You are responsible for obtaining the appropriate license rights for its use from VMware Inc.

General Provisions. If any provision hereof shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of all other provisions of this Agreement shall not be affected thereby. No delay or failure by either party to exercise or enforce at any time any right or provision hereof shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Agreement. This Agreement is the complete and exclusive statement between you and DataCore relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the parties, if any, including but not limited to any prior license for the Software. This Agreement may only be amended in a writing executed by each party. In the case of any conflict between the terms of this Agreement and the provisions of any purchase order for the Software, the terms of this Agreement shall control. 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 aux présentes 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.
