

## DataCore™ Data Processing Agreement

This Data Processing Agreement (“**DPA**”) including its Schedules forms part of the DataCore End User License Agreement (“**EULA**”), the DataCore Software Support Services Terms and Conditions and any other agreement entered by the parties (in each case the “**Agreement**”) and applies where required pursuant to applicable Data Protection Laws when DataCore Software Corporation (“**DataCore**”) processes Personal Data on behalf of a customer of its software, hardware or services (“**You**”, “**Your**”). Execution of the Agreement (including click-through or click approve acceptance) with DataCore constitutes signature and acceptance of this DPA, the terms of which are incorporated in the Agreement by reference including for the avoidance of doubt with respect to any terms contained within its Schedules or otherwise incorporated by reference herein.

### Defined terms

For the purposes of this DPA the following terms shall have the meanings provided below with any other terms used and not otherwise defined in this DPA having the meanings set out in the relevant Agreement.

“**Controller**” means the entity which determines the purposes and means of Processing Personal Data.

“**Data Protection Legislation**” means all laws, regulations, guidance and codes of practice in any jurisdiction as applicable to a Party from time to time by virtue of or in connection with the terms of the Agreement, including where applicable: (i) the GDPR and any domestic legislation amending, supplementing or implementing the GDPR; (ii) the Privacy and Electronic Communications Directive (2002/58/EC) along with any national implementing legislation; and (iii) the FADP, in each case as amended or supplemented from time to time.

“**EULA**” means the DataCore Software Corporation End User License Agreement, which may be found at the following link and which may be updated from time to time by DataCore:  
<https://info.datacore.com/resources/legal/eula.pdf>.

“**EU Standard Contractual Clauses**” means Modules Two and Three of the standard contractual clauses for international transfers of Personal Data to third countries as provided under Commission implementing decision (EU) 2021/914, as further supplemented in this DPA and as updated from time to time by a competent Supervisory Authority.

“**FADP**” means collectively the Swiss Federal Act on Data Protection, Ordinance SR 235.11 and Ordinance SR 235.13, in each case as amended or supplemented from time to time

“**GDPR**” means the General Data Protection Regulation (Regulation EU 2016/679) (the **EU GDPR**) and the EU GDPR as it forms part of domestic law in the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (**UK GDPR**), as applicable.

“**Personal Data**” means as defined in the GDPR.

“**Processor**” means the entity which processes Personal Data on behalf of the Controller.

“**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, to include collection, recording, organization, structuring, storage, adaptation, alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, erasure, or destruction (and the terms **Process** and **Processed** shall be construed accordingly)

“**Services Personal Data**” means any Personal Data that is Processed by DataCore on your behalf in connection with the Agreement, as further defined in this DPA.

“**Standard Contractual Clauses**” means the EU Standard Contractual Clauses and the UK Standard Contractual Clauses, as applicable.

**“Supervisory Authority”** means any local, national, supranational, state, governmental or quasi-governmental agency, body, department, board, official or entity exercising regulatory or supervisory authority pursuant to the Data Protection Legislation.

**“UK Addendum”** means the UK Addendum to the EU Standard Contractual Clauses (Version B1.0), as amended or updated by the UK Information Commissioner's Office from time to time.

**“UK Standard Contractual Clauses”** means the EU Standard Contractual Clauses as amended by the UK Addendum, where applicable.

1. **Obligations of the parties** The Parties agree that:
  - a. To the extent that DataCore processes Services Personal Data on Your behalf for the purposes of the Agreement (as further outlined in Schedule 1), You shall be the Controller and DataCore shall be a Processor; and
  - b. To the extent DataCore processes Services Personal Data otherwise than on Your behalf, including for the avoidance of doubt where DataCore Processes such data (i) included in Systems Data, reports, information or other materials uploaded or created by You or Your authorised users on or through the services for the purposes of analysing performance and utilisation of DataCore products and services, to provide aggregate reporting and to develop and/or improve subsequent generations of DataCore products and services; and (ii) to comply with its own legal and compliance obligations, DataCore shall be the Controller.
2. Where DataCore processes Services Personal Data on Your behalf pursuant to paragraph 1(a) (as further described in Schedule 1) , DataCore shall:
  - a. Process Services Personal Data only on Your documented instructions (such instructions being constituted by this Agreement, each subsequent purchase order and otherwise as provided by You to DataCore from time to time), except where otherwise required pursuant to Data Protection Legislation in which case DataCore will, to the extent legally permissible, inform You of this requirement.
  - b. make available to you all information necessary to demonstrate compliance with its obligations under this DPA , including in allowing for and contributing to audits undertaken by you or an auditor acting on your behalf, provided that any such audit is limited to relevant facilities not impacting upon customer confidentiality and takes place within 24 months of the previous audit unless otherwise agreed in writing between the parties. The whole cost incurred by the Parties in connection with any such audit is to be met by you;
  - c. taking into account the nature of DataCore's Processing and the information available to DataCore, provide reasonable commercial assistance to enable You to comply with Your obligations under the Data Protection Legislation, including (where applicable) assisting You in complying Your obligations in relation to responding to requests from data subjects to exercise their rights under the GDPR, the making of Personal Data Breach notifications, the application of appropriate security measures, the conducting of data protection impact assessments and the conducting of prior consultation with a relevant Supervisory Authority;
  - d. promptly, and without undue delay inform You, if, in DataCore's view, any processing of Services Personal Data infringes the Data Protection Legislation;
  - e. take appropriate technical and organisational measures against the unauthorised or unlawful processing of Services Personal Data and against the accidental loss or destruction of, or damage to, Services Personal Data, and such measures may take into account:
    - i. the state of the art, the costs of implementation and the nature, scope, context and purposes of processing; the risk of varying likelihood and severity for the rights and freedoms of natural persons; and
    - ii. the risks that are presented by Processing Services Personal Data in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Services Personal Data processed on your behalf;
  - f. notify you without undue delay upon becoming aware of any Personal Data Breach affecting Services Personal Data;
  - g. ensure all persons authorised by DataCore to Process Services Personal Data processed have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - h. only subcontract processing of Services Personal Data to those third parties ("Sub-processors") as are generally authorised for use by reference to the list of Sub-processors made available by

- DataCore upon written request and only instruct an additional or replacement Sub-processor where DataCore has notified You of the intended change prior to the appointment (such notice to be provided at least [5 (five) days] prior to the date of appointment) and you have not objected to the appointment within 3 days of the notification;
- i. ensure that any Sub-processor appointed to paragraph 2(h) is bound by terms the substantially the same as those of this paragraph 2 as it applies to DataCore;
  - j. remain responsible for any breach by a Sub-processor of any of the obligations on the Sub-processor under the terms entered into pursuant to paragraph 2(i);
  - k. only transfer Services Personal Data processed on your behalf to a recipient located outside the European Economic Area (“EEA”) and/or the UK and/or Switzerland as applicable (in each case being a recipient in a ‘Third Country’) pursuant to your instructions, where necessary for the purposes of the Agreement or where otherwise required by law (where DataCore is required by law to transfer Services Personal Data to a Third Country DataCore shall inform you prior to the transfer unless prohibited by law from doing so);
  - l. when transferring such data to a Sub-processor located in a Third Country pursuant to paragraph 2(k), ensure that the destination jurisdiction has been deemed to provide an adequate degree of protection by the relevant Supervisory Authority and in any other case that appropriate model clauses for the international transfer of personal data have been executed between DataCore and the Sub-processor (such clauses being as approved for use by the relevant Supervisory Authority).
  - m. upon expiration or termination of the Agreement and at our election either return or permanently delete all the Services Personal Data (unless DataCore is legally required to retain any such Services Personal Data following expiration or termination of the Agreement).
3. Where DataCore processes Services Personal Data as an independent controller pursuant to paragraph 1(b):
    - a. DataCore shall only process Services Personal Data for the purposes of administering the Agreement, communicating with you, improving related DataCore products and services and/or otherwise as required or allowed by applicable law;
    - b. DataCore shall comply with Data Protection Legislation in relation to such processing; and
    - c. you agree to provide DataCore’s privacy notice to affected individuals, such notice being as made available by DataCore (at <https://www.datacore.com/privacy/>) and as updated from time to time.
  4. In relation to Services Personal Data, you acknowledge and agree that you are responsible for ensuring that all necessary conditions under the Data Protection Legislation are satisfied, including in ensuring the accuracy of Services Personal Data, its lawful collection and provision to DataCore and the making of all necessary notifications (and including provision of any other relevant information) under the Data Protection Legislation in order to adequately identify the processing of such data by DataCore.
  5. The Parties agree that Services Personal Data (as further described in Schedule 1) will be transferred to DataCore in circumstances where such transfers involve Processing in jurisdictions deemed to offer differing standards of protection for Personal Data for purposes of the GDPR. The Parties therefore agree to incorporate the Standard Contractual Clauses within this DPA and to adopt such supplementary provisions as outlined in this paragraph 5.
    - 5.1 Module 2 and Module 3 of the EU Standard Contractual Clauses for controller to processor transfers shall apply and be deemed completed with the information set out in Schedule 1 to this DPA and supplemented where appropriate as follows:
      - a. You are the data exporter and DataCore is the data importer;
      - b. Clause 7 (Docking Clause) shall be deemed incorporated;
      - c. Option 2 of Clause 9 (General Written Authorization) shall be adopted with an applicable advance notice period of five (5) days applied;
      - d. The option in Clause 11 is not incorporated;
      - e. Option 1 of Clause 17 shall be adopted with the applicable governing law being the law of Germany;
      - f. For the purposes of Clause 18, the relevant jurisdiction shall be Germany; and
      - g. Annexes I.A, I.B, I.C, II and III of the EU Standard Contractual Clauses shall be deemed completed with the information set out in Schedule 1 to this DPA, as appropriate.
    - 5.2 The UK Addendum shall be deemed incorporated in this Agreement and shall amend the EU Standard Contractual Clauses where appropriate. The UK Addendum shall be deemed completed and supplemented as follows:
      - a. Part 1 of the UK Addendum shall be deemed completed with the information as set out in Schedule 1 to this DPA;

- b. The Parties agree that nothing in the formatting of the UK Addendum shall adversely affect the Appropriate Safeguards as such safeguards are defined in the UK Addendum; and
  - c. Without prejudice to any other rights granted in the Agreement, if the UK Information Commissioner's Office issues a revised addendum resulting in changes to the UK Standard Contractual Clauses in circumstances where DataCore would as a direct result of the changes experience a substantial, disproportionate or demonstrable increase in the direct costs or risks involved in performing its obligations therein, where such increase is incapable of being mitigated accordingly, then DataCore may upon reasonable written notice and prior to commencement of the revised addendum terminate its obligations under the UK Standard Contractual Clauses.
- 5.3 Where the transfer of Services Personal Data to DataCore is subject to the FADP, then the EU Standard Contractual Clauses shall be deemed amended to the extent necessary to provide appropriate safeguards for such transfers in accordance with the FADP, including the following:
- a. the Parties agree that the term "Member State" when used in the EU Standard Contractual Clauses shall not be interpreted or construed in such a way so as to exclude Data Subjects located in Switzerland from the possibility of enforcing their statutory rights in their place of habitual residence;
  - b. the term "personal data" shall be deemed to include data relating to legal entities to the extent that such data is protected by the FADP; and
  - c. the relevant Supervisory Authority shall be the Swiss Federal Data Protection and Information Commissioner ("FDPIC") on an exclusive basis, except where the GDPR also applies in which case supervision shall be conducted as appropriate by the FDPIC and the additional Supervisory Authority as determined in accordance with the terms of this DPA.
6. In the event of any conflict or inconsistency arising between the terms contained or referenced in this DPA, the following order of precedence shall govern: (1) the UK Addendum, (2) the EU Standard Contractual Clauses, and (3) the remaining provisions of this DPA.
7. This DPA shall be governed by the laws of [the state of Florida, USA], except where otherwise stated herein.

## **SCHEDULE 1**

### **A. THE PARTIES**

- The names, addresses and relevant contact details of the Parties shall be as identified in the relevant Purchase Order.
- You are the Controller and/or the Processor and the data exporter.
- DataCore is the Processor and the data importer.
- Activities relevant to the transfers include provision of the services identified in the Purchase Order.

### **B. DESCRIPTION OF THE TRANSFER**

#### **Subject matter of the Processing**

Provision of the services by DataCore to You in accordance with the Agreement and to pursue any reasonably compatible or foreseeable purposes related to the provision of services to You.

#### **Duration of the Processing**

Processing shall commence when Service Personal Data is first Processed by DataCore through the provision or use of the services and shall terminate upon the later of when the Agreement expires or is terminated in accordance with its terms, subject to compliance with any retention periods applicable under domestic law.

#### **Nature and Purpose of the Processing**

- The processing activities conducted may include collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

- The purposes of processing are provision of the services, and such ancillary purposes as are related to the services, provided in this DPA or otherwise agreed by the Parties from time to time.

### **Categories of Data Subjects**

Data exporter's representatives and end-users including employees, contractors, collaborators, and customers of the data exporter. Data subjects may also include individuals attempting to communicate or transfer personal information to users of the services provided by data importer.

### **Categories of Personal Data**

The personal data transferred includes usernames, meta data relating to identifiable individuals and other personal data in an electric form collected by DataCore in the course of providing its software services, in particular relating to support, analysis and reporting services.

### **Sensitive Personal Data**

No sensitive personal data will be Processed.

### **Frequency of the Processing**

Processing will be conducted on a continuous basis.

### **Sub-processor transfers**

The Customer provides a general authorization for the appointment of Sub-processors, such Sub-processors and their respective processing activities being as identified pursuant to clause 4 of this DPA. The subject matter, nature and duration of Processing by Sub-processors shall otherwise be as provided in this Annex I.

## **C. COMPETENT SUPERVISORY AUTHORITY**

Where processing is subject to the EU GDPR then the competent supervisory authority shall be the relevant lead Supervisory Authority in the Member State in which the data exporter is established. Where processing is subject to the UK GDPR then, pursuant to these clauses as amended by the UK Addendum, the competent supervisory authority shall be the UK Information Commissioner's Office.

## Part A

### Appendix 1

#### to the Standard Contractual Clauses (entered into pursuant to paragraph 5(b))

**Data exporter:** The data exporter is you (a customer of DataCore software).

**Data importer:** The data importer is DataCore Software Cooperation (a provider of software and software services).

**Data subjects:** Data subjects include the data exporter's representatives and end-users including employees, contractors, collaborators, and customers of the data exporter. Data subjects may also include individuals attempting to communicate or transfer personal information to users of the services provided by data importer.

**Categories of data:** The personal data transferred includes usernames, meta data relating to identifiable individuals and other personal data in an electric form collected by the DataCore Collection Manifest in the course of DataCore providing software services – particularly support, analysis and reporting services.

**Processing operations:** Processing activities include: collection, recording, organisation, storage, retrieval, consultation, analysis, reporting, disclosure, combination and erasure for the purposes of providing the data importer's software services.

### Appendix 2

#### to the Standard Contractual Clauses (entered pursuant to paragraph 5(b))

Description of the technical and organizational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

**Personnel.** Data importer's personnel will not process Services Personal Data that is solely processed on behalf of you except as required to provide services under the Agreement or as required or allowed by law. DataCore personnel are obligated to maintain the confidentiality of any Services Personal Data and this obligation continues even after their engagement ends.

**Data Privacy Contact.** The data protection officer of the data importer can be reached via the following email address: [dataprotection@datacore.com](mailto:dataprotection@datacore.com)

**Technical and Organization Measures.** The data importer has implemented and will maintain appropriate technical and organizational measures, internal controls, and information security routines intended to protect Services Personal Data against accidental loss, destruction, or alteration; unauthorized disclosure or access; or unlawful destruction. Controls include physical locks, barriers and access restrictions, industry standard authentication requirements for access to DataCore systems, and data is exchanged via encrypted VPN tunnels, encrypted communications and secure websites. Details of these measures may be updated from time to time.

## Part B

### Annex B

to the Standard Contractual Clauses (entered into pursuant to paragraph 5(c))

#### DESCRIPTION OF THE TRANSFER

**Data subjects:** Data subjects include the data exporter's representatives and end-users including employees, contractors, collaborators, and customers of the data exporter. Data subjects may also include individuals attempting to communicate or transfer personal information to users of the services provided by data importer.

**Purposes of the transfer(s):** The transfer is made for the purpose of the data importer providing and the data exporter receiving software services – particularly support, analysis and reporting services.

**Recipients:** The personal data transferred may be disclosed only to DataCore's personnel, processors and business partners, and official authorities.

**Data exporter:** The data exporter is you (a customer of DataCore software).

**Data importer:** The data importer is DataCore Software Cooperation (a provider of software and software services).

**Data Privacy Contact.** The data protection officer of the data importer can be reached via the following email address: [dataprotection@datacore.com](mailto:dataprotection@datacore.com)

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