

DataCore[™] Software Corporation End User License Agreement

THIS IS A BINDING CONTRACT BETWEEN DATACORE SOFTWARE CORPORATION ("DATACORE") AND ALL DATACORE SOFTWARE USERS ("YOU" OR "YOUR"). BY CLICKING ACCEPT OR AGREE, 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. THE TERM "SOFTWARE" MEANS THE SOFTWARE ACCOMPANYING THIS AGREEMENT, INCLUDING PERIFERY BRANDED SOFTWARE; OBJECT MATRIX BRANDED SOFTWARE, SOFTWARE THAT MAY BE PRE-INSTALLED ON APPLIANCES ("HARDWARE") UNDER ANY DATACORE OR OBJECT MATRIX BRAND; SOFTWARE UNDER THE CARINGO, CARINGO FILEFLY OR CARINGO SWARM BRANDS; AND ALL OTHER SOFTWARE PROVIDED BY DATACORE WITH OR FOR USE WITH THE ACCOMPANYING SOFTWARE (UNLESS DATACORE EXPLICITLY PROVIDES YOU WITH A SEPARATE LICENSE FOR THAT SOFTWARE). YOU ACKNOWLEDGE AND AGREE THAT THE SOFTWARE AND ITS ACCOMPANYING DOCUMENTATION ARE PROVIDED SOLELY UNDER LICENSE AND NOT SOLD TO YOU. YOU DO NOT ACQUIRE ANY OWNERSHIP INTEREST IN THE SOFTWARE OR DOCUMENTATION UNDER 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 AND FULLY PAY APPLICABLE LICENSE FEES, YOU MAY NOT DOWNLOAD, OPEN, INSTALL, OR OTHERWISE USE ANY SOFTWARE, AND 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 THE PROCESS OF DOWNLOADING, ACCESSING OR INSTALLING THE SOFTWARE, A PERSON OTHER THAN THE END USER ACCEPTS THIS AGREEMENT, THAT PERSON HEREBY REPRESENTS TO DATACORE THAT HE/SHE/THEY ARE AUTHORIZED TO ENTER INTO, AND HAS ENTERED INTO, THIS AGREEMENT ON BEHALF OF THE END USER, AND THAT HE/SHE/THEY HAVE PROVIDED A COPY OF THIS AGREEMENT TO THE END USER.

THE TERMS OF THIS AGREEMENT MAY BE UPDATED FROM TIME TO TIME AT DATACORE'S SOLE DISCRETION, WITH OR WITHOUT NOTICE TO YOU. IT IS YOUR RESPONSIBILITY TO REVIEW AND COMPLY WITH THE CURRENT VERSION OF THIS AGREEMENT, WHICH CAN BE FOUND AT: https://info.datacore.com/resources/legal/eula.pdf.

CERTAIN DATACORE SOFTWARE REQUIRES ACTIVATION. IF THE SOFTWARE REQUIRES ACTIVATION, YOU WILL BE PROMPTED 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.

NOTICE TO DATACORE HARDWARE USERS: DATACORE HARDWARE MAY CONTAIN VMWARE AND/OR MICROSOFT SOFTWARE. NOTHING IN THIS AGREEMENT WILL BE CONSTRUED AS GRANTING ANY RIGHTS TO YOU, BY LICENSE OR OTHERWISE, IN OR TO SUCH VMWARE SOFTWARE AND/OR MICROSOFT SOFTWARE. YOU ARE RESPONSIBLE FOR OBTAINING THE APPROPRIATE LICENSE RIGHTS FOR ITS USE FROM VMWARE, INC. AND/OR MICROSOFT CORPORATION DIRECTLY.

NOTICE TO 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 THIRTY (30) DAYS, OR SUCH OTHER DATE AS DATACORE MAY SPECIFY, (THE "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, non-sublicensable, limited 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 and its accompanying documentation 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 parameters and optional features (if any), specified by DataCore. Limited parameters may include, but not be limited to, number of computing devices (including virtual machines running in Your own environment or on a third party cloud infrastructure authorized by DataCore), storage capacity, time period, and number of users. You will not cause or permit any use of the Software in a production environment. You will adhere to the license restrictions (and all applicable provisions) of this Agreement. 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, non-sublicensable, limited to the paid term (as applicable), 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, subject to the parameter limits and optional features (if any), of Your license as may be stated on Your DataCore quote, proposal and/or order form. License parameter limits may include, but not be limited to, number of computing devices (including virtual machines running in Your own environment or on a third party cloud infrastructure), storage capacity (total, used, and managed; as explained below), number of users, time period, and other limitations specified by DataCore. Storage capacity means Your entire storage capacity accessible to DataCore, less any capacity occupied by data protection algorithms, which may include more than one DataCore software application or instance. For the avoidance of doubt, storage capacity is the sum total of all storage space accessible to DataCore software applications, even if not (yet) used or managed at a given time; used capacity is storage space taken up by data, metadata and system information managed by DataCore and managed capacity is storage space under the control of a DataCore software application and available for consumption even though not in use. Storage capacity will be used and monitored to determine storage-based license fees. If You want to increase Your license parameters or features beyond that for which You have paid. You must purchase the increased license(s) from DataCore. 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.

DCSPP Participants. Pursuant to Your valid DataCore Cloud Service Provider Program ("DCSPP") Agreement, You may only use the Software to provide Hosted IT Services. "Hosted IT Services" means an internet-based subscription service operated by a service provider entity that consists of providing multiple end service users (as defined below) 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 service provider has a commercial relationship; or (ii) departments, divisions or workgroups served by a subscribing central hosting service provider. Your authorized users, (employees or others), may access the Software remotely through a wide area network or VPN, or other secure remote access method, provided that You comply with the parameter limitations of the Software and subscription plan for which You have been expressly authorized by DataCore. All DCSPP participants (authorized Cloud Service Providers, ("CSPs")), must have accepted and be subject to a current and valid DataCore Cloud Service Provider Agreement, as well as, a current and valid CSP/Aggregator Agreement that includes, but is not limited to: (i) complete terms of use for the DCSPP, (ii) Software usage requirements and limitations, and (iii) DataCore's liability limits, in accordance with this Agreement. For the purposes of this Agreement, a DataCore Aggregator ("Aggregator") shall mean a Software Distributor that has a current and valid contract with DataCore, which authorizes them to sell and distribute the Software for the DCSPP. If applicable, You may make one backup copy of the Software, provided the copy must contain all of the original Software's copyright, trademark and other proprietary notices.

<u>Object Matrix Users</u>. Object Matrix users shall comply with this Agreement along with any additional terms and conditions provided to You by DataCore. Object Matrix perpetual software licenses are not transferrable between devices. For the avoidance of doubt, Object Matrix perpetual software licenses are tied solely to the device(s) upon which they are initially installed. For Legacy (as defined below) Object Matrix users, specific terms and conditions of Your use of Object Matrix products and services ("OM Terms") may be found at: https://www.datacore.com/legal/, under the *Legacy Object Matrix* section. "Legacy" means Object Matrix users that meet all conditions stated at the *Legacy Object Matrix* section. Rights granted to You apply only to the specific products to which You have subscribed as set out in Your Object Matrix quote and/or order form (as the case may

be) (the "Order") relate. For Legacy Object Matrix users, in the event of a conflict arising between this Agreement and OM Terms, then the OM Terms shall prevail.

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. Any copy remains the exclusive property of DataCore or its licensors. You will not cause or permit: (i) use or copying of the Software or documentation, except as expressly provided in this Agreement; (ii) modification, adaption, assignment, distribution, rental, sub-license, lease, lending or transfer of the Software; (iii) reverse engineering, disassembly, translation, decoding 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) removal, deletion, circumvention or alteration of any trademarks, copyright or other intellectual property rights notices provided with the Software; (vi) removal, disablement or circumvention of any security or copy protection features; (vii) use of the Software to violate or circumvent any law, regulation or rule, or for any purpose other than its intended use in accordance with the documentation; (viii) 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. Notwithstanding the foregoing, if You have express written authorization from DataCore that grants You leasing, factoring, or other alternative servicing rights to the Software, such rights may be exercised in full compliance with such Agreement.

<u>Ownership</u>. The Software (including any copies) is 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 on a term basis or as a subscription service, DataCore, from time to time, 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, however, such services may be separately purchased under a support contract. To receive technical support entitlements for Software, all licenses currently activated for the Software on Your system must be under a current support contract with DataCore (either as included in the purchase of a term licence or as a separately purchased support contract for a perpetual license). Systems running any active licenses that are not covered by a current support contract shall be deemed ineligible for technical support. Support contracts are tied to specific licenses and are not interchangeable with other licenses. For all licenses (term or perpetual), 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. Subject to satisfaction of any eligibility conditions stated therein, the terms of the DataCore Services Conditions. available Support Terms and as through the following link: https://www.datacoreassets.com/resources/support/DataCore-Software-Support-Services-Terms-and-<u>Conditions.pdf</u>, and shall apply and hereby be incorporated into this Agreement by this reference. Certain support and maintenance terms applicable to Hardware, may be found under the Legacy Object Matrix section at: https://www.datacore.com/legal/.

<u>System Data Rights</u>. You agree that DataCore will collect and track technical and related information about You and Your use of the Software, which may include, but not be limited to, Your internet protocol address, hardware identifying information, operating system, application software, storage capacity, peripheral hardware, and Software usage statistics (together "System Data"), to assist with the operation and function of the Software, the

provision of updates, support, invoicing, marketing by DataCore or its agents, benchmarking and research and development. A current summary of information collected by DataCore (the "DataCore Collection Manifest") is available through the following link:<u>https://docs.datacore.com/intelligenceservice/intelligenceservice/collection-manifest.htm</u>, and hereby incorporated into this Agreement by this reference. The terms of the DataCore Data Processing Agreement ("DPA") as available through the following link:<u>https://info.datacore.com/resources/legal/dpa.pdf</u>, shall also apply and hereby be incorporated into this Agreement by this reference.

<u>DCSPP Participants</u>. You agree that DataCore will utilize automated data collection, ("ADC"), for the automated processing and communication by which DCSPP program cloud service provider ("CSP") participant's usage data is collected and transmitted to DataCore for monitoring, reporting and billing purposes. Furthermore, You will cooperate with DataCore to enable ADC, as necessary. (Examples of ADC may include, but not be limited to, DataCore Insight Services (DIS), Phone Home, etc.)

<u>Confidentiality</u>. The Software contains confidential and proprietary information of DataCore and/or its licensors. You agree to take all reasonable and adequate measures, and no less than measures You take to secure Your own confidential and proprietary information, to protect and secure 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 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.

<u>Evaluation License Termination</u>. 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.

<u>Production Use License Termination</u>. 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 term basis (a "Term License"), upon the expiration or cancellation of Your Term License; (ii) You breach any provision in this Agreement; (iii) DataCore does not receive payment in full for Your license;

(iv) if You entered into an Exchange Agreement with DataCore in which Your perpetual license(s) are terminated in exchange for Term License(s), a different edition of perpetual licenses, or license key exchange for equivalent license or capacity (TB); or (vi) 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 any and 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 the foregoing.

With regard to Term Licenses, at the termination date of Your Term License (including expiration or cancellation), and without notice from DataCore, You will be provided a 60-day grace period to collect Your exportable data. In the event Your Term License is renewed within the 60-day grace period (requiring the payment of all fees due), Your use of the Software and access to Your data may be resumed, provided that You have properly backed-up Your configuration information and it can be restored. If DataCore does not receive and acknowledge Your Term License renewal within the 60-day grace period, DataCore may delete or destroy Your configuration and historic information associated with the Software. After the 60-day grace period, Your previous Term License can no longer be renewed and any Term License added shall be treated as a new Term License and unrelated to the terminated Term License. DataCore has no obligation to restore access to any previous Term License configuration information, history or data. In no event shall DataCore be liable to You for loss or accuracy of Your configuration information or data. 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 \$500 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>U.S. Government Rights</u>. 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.

<u>Export Law Assurances</u>. 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.

<u>License Compliance Assurances</u>. DataCore reserves the right to run periodic license compliance tests to determine and enforce the parameters of Your license(s). Without interruption to users, license compliance data may be reviewed and/or collected on demand, whether by automatic or manual means. Parameters associated with such compliance tests may include, but not be limited to, system memory, number of CPU cores, storage capacity, users, time, and configuration.

<u>Governing Law</u>. 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.

<u>Assignment</u>. 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.

<u>Third-Party Code</u>. 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.

<u>Conflicts.</u> In the event of a conflict or inconsistency arising between the subject matter of this Agreement and the DPA then the terms of the DPA shall prevail.

<u>General Provisions</u>. 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. You shall immediately notify DataCore if You become aware of any misuse of the Software or any infringement of DataCore's intellectual property rights in the Software and fully cooperate with DataCore in any legal action taken to enforce DataCore's intellectual property rights. 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. 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. The English language version of this Agreement will control in all respects, and all other versions are for convenience only and are not binding.