

## DATACORAL, INC.

### TERMS AND CONDITIONS

All capitalized terms used but not defined in this **Terms and Conditions** will have the meanings ascribed to them in the Order Form. These Terms and Conditions are effective as of the date of the last signature to the Order Form (“**Effective Date**”).

#### **1. DEFINITIONS**

In addition to terms defined elsewhere in these Terms and Conditions, the following terms are defined as follows:

- 1.1 “**Authorized Users**” means any individual who accesses the Platform on Customer’s behalf and who has agreed to comply with this Agreement.
- 1.2 “**Cloud Account**” means a cloud-account controlled by Customer.
- 1.3 “**Confidential Information**” means all confidential information disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) that: (a) is marked in writing as “confidential” or by a similar designation; or (b) the Receiving Party should reasonably consider confidential based on the nature of the information and circumstances of disclosure. Confidential Information excludes any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without reference to any information of the Disclosing Party.
- 1.4 “**Customer**” means the customer identified in the Order Form.
- 1.5 “**Customer Data**” means all data that Customer owns or controls that is transmitted to or processed by the Platform.
- 1.6 “**Customer Systems**” means the information technology systems owned or operated by or on behalf of Customer.
- 1.7 “**Documentation**” means any user documents related to the Platform that Datacoral makes available to Customer.
- 1.8 “**Fees**” means, collectively, the fees set forth in the Order Form.
- 1.9 “**Hosted Service**” means the Software-as-a-Service portion of the Platform.
- 1.10 “**Materials**” means collectively the Platform, Documentation and any Work Product.
- 1.11 “**Order Form**” means the mutually agreed and executed order form referencing and incorporating these Terms and Conditions.
- 1.12 “**Platform**” means the Platform-as-a-Service product described in the Order Form, including any Updates thereto.
- 1.13 “**Professional Services**” means any professional services identified in the Order Form.
- 1.14 “**Services**” means collectively the Materials, Support Services and Service Levels and any Professional Services.
- 1.15 “**Software**” means the portion of the Platform consisting of locally installed software on devices or servers controlled by or on behalf of Customer.
- 1.16 “**Start Date**” has the meaning set forth in the Order Form.
- 1.17 “**Subsequent Orders**” has the meaning set forth in the Order Form.
- 1.18 “**Support Services and Service Levels**” means the technical support services and service levels set out in **Schedule 1** attached hereto.
- 1.19 “**Term**” means the Initial Term and all Renewal Terms set forth in the Order Form.
- 1.20 “**Third Party Services**” means application programming interfaces or other technology or services made available by any third party.
- 1.21 “**Updates**” means any updates, bug fixes, patches, or other error corrections to the Platform that Datacoral makes generally commercially available free of charge to a majority of licensees of the Platform.
- 1.22 “**Work Product**” means any work product generated in connection with the Professional Services.

## 2. PROPRIETARY RIGHTS

2.1 License by Datacoral. Subject to Customer's ongoing compliance with Sections 2.1 and 2.3, Datacoral hereby grants to Customer a non-exclusive, non-transferable (except under Section 12.2), irrevocable (subject to Datacoral's rights to terminate this Agreement) and non-sublicensable license, during the Term only, to allow its Authorized Users to: (a) access and use the Hosted Service solely for its internal business purposes to better understand and deploy data in its business; (b) execute and use the Software solely for its internal business purposes to make Customer's Systems interoperate with the Platform; and (c) use the Documentation and any Work Product solely for Customer's internal business purposes and as necessary to exercise the rights granted in the preceding (a) and (b) in this Section 2.1. Nothing in this Section 2.1 prohibits Customer from sharing its own Customer Data with any third party.

2.2 Changes. Datacoral may change or update the Materials during the Term without advance notice to Customer so long as doing so does not materially decrease the features or functionalities of the same or otherwise have a material adverse effect on Customer or its use of the Materials.

2.3 Restriction. Customer may not, and may not authorize any third party, including Authorized Users, to: (a) copy, modify, translate, or create derivative works of the Materials; (b) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Platform or Work Product; (c) lend, lease, offer for sale, sell or otherwise use the Materials for the benefit of any third party; (d) attempt to disrupt the integrity or performance of the Platform or Work Product; (e) attempt to gain unauthorized access to the Materials (or to the Hosted Service's related systems or networks); or (f) use the Materials in a manner that violates this Agreement, any third party rights or any applicable laws, rules or regulations. Without limiting the foregoing, Customer is responsible for ensuring that: (i) only one Authorized User at a time uses each set of access credentials to any part of the Platform; (ii) all use and misuse of the Materials by Authorized Users; and (iii) any breach of this Agreement by any Authorized User is deemed a breach by Customer.

2.4 License by Customer. Customer hereby grants to Datacoral, during the Term only, a non-exclusive, non-transferable (except under Section 12.2), non-sublicensable, irrevocable (subject to Customer's rights to terminate this Agreement), worldwide and royalty-free right to: (a) access its Cloud Account solely to deploy the Platform on such account as necessary to perform its obligations under this

Agreement; and (b) transmit and process Customer Data solely as necessary to provide the Platform to the Customer as contemplated in this Agreement.

2.5 Feedback. If Customer or any Authorized User makes available to Datacoral any input, analysis, suggestions and/or comments about any aspect of the Services (collectively, "**Feedback**"), then Customer, on its behalf and on behalf of all Authorized Users, hereby grants to Datacoral a perpetual and irrevocable right to use, exploit and disclose such Feedback to provide and improve the Services and Datacoral's current and future business without any restrictions whatsoever or obligation to provide Customer or any other Party with any compensation or credit. For clarity, all Feedback will not be considered Confidential Information of Customer or any third party, and nothing in this Section 2.5 grants Datacoral any rights under any of Customer's issued patents.

2.6 Ownership; Reservation of Rights. Except for the rights granted to Customer in Section 2.1, as between the Parties, Datacoral retains all rights, title and interest, including all intellectual property rights, in and to the Materials. Except for the rights granted to Datacoral in Sections 2.4 and 2.5, as between the Parties, Customer owns all rights, title and interest, including all intellectual property rights, in and to Feedback and Customer Data. Each Party retains all rights that are not expressly licensed to the other Party in this Agreement and does not grant the other Party any implied licenses under any theory.

## 3. PROFESSIONAL SERVICES; SUPPORT AND SERVICE LEVELS; UPDATES

3.1 Professional Services; Support Service and Service Levels. Datacoral will provide to Customer solely: (a) any Professional Services; and (b) the Support Services and Service Levels.

3.2 Updates. Customer is required to accept all Updates necessary for the proper function and security of the Platform, as and when such Updates are generally released by Datacoral (provided that such Updates can reasonably be implemented by Customer and do not have a material adverse effect on Customer or its use of the Platform).. Datacoral will use commercially reasonable efforts to provide Customer with advance written notice of any Updates as soon as reasonably possible. Datacoral may suspend its performance under this Agreement on five (5) days written notice, without liability to Customer, if Customer refuses to accept any Updates as set forth in this Section 3.2; provided, however, that Datacoral may suspend its performance under this Agreement immediately without notice if Datacoral reasonably determines that a failure to do so could subject Datacoral or Customer to claims of

infringement, misappropriation or other violation of any third party intellectual property or other rights.

#### **4. RESTRICTIONS AND RESPONSIBILITIES**

4.1 Cooperation. Customer will cooperate with Datacoral in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Datacoral may reasonably request. Customer will also cooperate with Datacoral to establish procedures to ensure that only Authorized Users have access to the Platform.

4.2 Primary Contact. Customer has designated the primary contact set out on the Order Form, who is an employee of Customer responsible for all matters relating to this Agreement. Customer may change such individual at any time by providing written notice to Datacoral in accordance with Section 12.8.

4.3 Access to Customer Data. Datacoral will not access Customer Data without Customer's prior authorization. If Customer authorizes Datacoral to access Customer Data in connection with this Agreement, then Datacoral's access to Customer Data will be subject to Section 5.

4.4 Third Party Services. Customer acknowledges and agrees that: (a) (i) the Platform operates in conjunction with Third Party Services, (ii) Datacoral is not responsible for the operation or availability of the same, and (iii) Datacoral makes no representations or warranties about the same; and (b) Customer is solely responsible for obtaining all rights necessary to enable it and Datacoral to access Third Party Services as contemplated under this Agreement.

#### **5. CONFIDENTIALITY**

5.1 Non-Use and Disclosure. The Receiving Party agrees: (a) not to disclose any of the Disclosing Party's Confidential Information to any third party except to its employees and contractors with a need to have access to perform obligations under this Agreement; (b) not to use the Disclosing Party's Confidential Information for any reason other than exercising its rights or performing its obligations under this Agreement; and (c) to take the same security precautions to protect the Disclosing Party's Confidential Information against unauthorized access, use or disclosure that it takes with respect to its own proprietary information of a similar nature, but in no event will it use less than reasonable security precautions. Nothing in this Agreement will prevent the Receiving Party from disclosing the Disclosing Party's Confidential Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of the same and uses reasonable efforts, at the Disclosing Party's sole expense, to assist the Disclosing Party to seek a

protective order or other method to limit such disclosures to the extent permitted by law.

5.2 Permitted Disclosures. Notwithstanding anything to the contrary in this Agreement, either Party may disclose this Agreement in confidence: (a) to its legal counsel, accountants and other professional advisors; or (b) to facilitate due diligence efforts, to actual or potential acquirers, investors or funding sources and their respective professional advisors.

#### **6. PAYMENT OF FEES**

6.1 Fees and Payment Terms. Customer will pay Datacoral the Fees in United States dollars without any right of set-off or deduction. All payments will be made in accordance with the Order Form and each invoice submitted to Customer. All Fee payments will be due within thirty (30) days of when Customer receives the applicable invoice. Invoices will be issued no more frequently than quarterly.

#### **7. TERMINATION**

7.1 Term. Subject to earlier termination as provided for in Section 7.2, this Agreement commences on the Effective Date and will continue during the Term.

7.2 Termination. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving 10 business days' prior written notice of termination to the breaching Party; provided, however, that this Agreement will not be terminable if the breaching Party has cured the breach prior to the expiration of such 10 business day period. As used in the prior sentence, "business day" means Monday through Friday and excludes any federal public holidays in the United States. Further, either Party may terminate this Agreement immediately upon written notice upon: (a) the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings that are not dismissed within 60 days of commencement; (b) the other Party's making an assignment for the benefit of its creditors; or (c) the other Party's dissolution or ceasing to do business in the ordinary course. Finally, either Party, commencing three (3) months after the Start Date, may terminate this Agreement at any time for convenience upon 30 days' prior written notice to the other Party. If Datacoral terminates this Agreement pursuant to the immediately preceding sentence, then, if requested by Customer in writing, Datacoral will use commercially reasonable efforts to assist in transitioning Customer to another service provider identified by Customer, at Customer's sole expense. In addition, if Datacoral breaches Section 3 of Schedule 1 attached hereto on three (3) or more occasions in any rolling six (6) month period, then Customer may terminate for breach, on written notice, without a cure period.

7.3 Effects of Termination. Upon any termination of this Agreement: (a) Datacoral may immediately suspend access to the Platform and remotely deactivate and/or remove all Software from any Customer account where such Software may reside, and the license granted under Section 2.4 will survive for fifteen (15) days past the date of such termination, to enable Datacoral to do the same; (b) the Order Form will automatically terminate; (c) all outstanding payment obligations of Customer will become due and payable immediately; and (d) the following Sections, any defined terms and provisions required to interpret or enforce those Sections (but only to extent required for such interpretation or enforcement), will survive: 1, 2.3, 2.5, 2.6, 4.4, 5, 6, 7.3, 8, 9, 10, 11 and 12.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 Mutual. Each Party represents and warrants to the other Party: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or other organization; (b) the execution of the Order Form by its representative whose signature is set forth on the Order Form has been duly authorized by all necessary corporate or organizational action of such Party; and (c) when the Order Form has been executed by both Parties, the Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

8.2 Datacoral. Datacoral further represents and warrants that: (a) at the time of initial delivery, the Platform and Software do not contain any virus or other malicious code designed to cause the Platform and/or Software to become inoperable or incapable of being used in accordance with the Documentation and that it will use best efforts to ensure that the Platform and Software continue to remain free of viruses or other malicious code; and (b) it will provide any Professional Service in a professional and workpersonlike manner in accordance with generally recognized industry standards.

8.3 Customer. Customer further represents and warrants that Customer owns, or otherwise has all rights in and to the Customer Data and Feedback, that are necessary to grant to Datacoral the rights set forth in this Agreement, so that, as received by Datacoral and used in accordance with this Agreement, Datacoral does not and will not infringe, misappropriate, or otherwise violate any rights of any third party or violate any applicable laws, rules or regulations, or be obligated to pay any amounts to any third party other than pursuant to agreements previously entered into between Datacoral and such third party for the use of any Customer Data and Feedback.

## **9. WARRANTY DISCLAIMER**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8, SUBJECT TO DATACORAL'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11, DATACORAL'S OBLIGATIONS UNDER SCHEDULE 1 ATTACHED HERETO AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE FOLLOWING TERMS APPLY:

DATACORAL HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES REGARDING DATA LOSS, AVAILABILITY, SECURITY OR ACCURACY AND ALL WARRANTIES REGARDING THE SERVICES BEING ERROR-FREE, AVAILABLE OR UNINTERRUPTED). WITHOUT LIMITING THE FOREGOING, DATACORAL WILL HAVE NO LIABILITY TO CUSTOMER ARISING OUT OF OR IN CONNECTION WITH ANY UNAVAILABILITY OF ANY THIRD PARTY SERVICES USED IN CONNECTION WITH THE SERVICE.

## **10. LIMITATION OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (a) IN NO EVENT WILL DATACORAL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, TREBLE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, DATA, OR ECONOMIC ADVANTAGE, AND COSTS OF SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED, AND BASED ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (EXCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF DATACORAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (b) DATACORAL'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER DURING THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY.

## 11. INDEMNIFICATION

11.1 Datacoral. If a third party asserts a claim (each, a “**Third Party Claim**”) against Customer or any of its affiliates, officers, employees or contractors (each, a “**Customer Released Party**”) alleging that the Platform infringes such third party’s intellectual property rights (“**Infringement Claim**”), then Datacoral will defend the Customer Released Party from the Third Party Claim and hold such Customer Released Party harmless from any damages finally awarded or settlements entered into with respect to the Third Party Claim. In the event of an Infringement Claim, Datacoral, at its sole option and expense, may: (a) procure for Customer the right to continue using the Platform or infringing part thereof; (b) modify the Platform or infringing part thereof; (c) replace the Platform or infringing part thereof with other software having substantially the same or better capabilities; or (d) if the foregoing are not commercially practicable, then terminate this Agreement and repay to Customer a pro-rata portion of any Fees pre-paid by Customer hereunder. Notwithstanding the foregoing sentences of this Section 11.1, Datacoral will have no liability for an Infringement Claim if the actual or alleged infringement results from (i) any breach of this Agreement by Customer or any Authorized User; (ii) any modification, alteration or addition made to the Platform by Customer or any Authorized User, including any combination of the Platform with software not provided by Datacoral when the infringement would have not occurred absent that combination; or (iii) any failure by Customer or any Authorized User to use any Updates made available by Datacoral in accordance with Section 3.2.

11.2 Customer. If a Third Party Claim is asserted against Datacoral or any of its affiliates, officers, employees or contractors (each, a “**Datacoral Released Party**”) that arises out of Customer’s breach of this Agreement, then Customer will defend the Datacoral Released Party from the Third Party Claim and hold such Datacoral Released Party harmless from all damages finally awarded or settlements entered into arising with respect to the Third Party Claim.

11.3 Procedures. The Party seeking indemnity under this Section 11 (“**Indemnified Party**”) will use commercially reasonable efforts to provide the other Party (“**Indemnifying Party**”) with prompt written notice of any claim for which the Indemnified Party seeks an indemnity. The Indemnified Party reasonably will cooperate in the defense of any such claim, at the Indemnifying Party’s sole expense. The Indemnifying Party may not settle any claim against the Indemnified Party without the Indemnified Party’s prior express written consent, which consent will not be unreasonably withheld, conditioned or delayed. The Indemnified Party may participate in the defense of a claim

through counsel of its own choice at its own expense; provided, however, that if the Indemnified Party reasonably determines that the Indemnifying Party is unwilling or unable to defend the Indemnified Party’s interests, then the Indemnified Party may assume the defense against any claim at the Indemnifying Party’s sole expense.

## 12. MISCELLANEOUS

12.1 Severance. If any provision of this Agreement is unenforceable or invalid, then it will be severed from this Agreement and this Agreement will otherwise remain in full effect.

12.2 Assignment. Neither the rights nor the obligations arising under this Agreement are assignable or transferable by either Party without the prior written consent of the other Party, which will not be unreasonably withheld, conditioned or delayed; provided that either Party may assign this Agreement or any rights under it without prior written consent to a successor in connection with a merger, acquisition, reorganization, consolidation, or sale of all or substantially all of its assets or the business to which this Agreement relates.

12.3 Entire Agreement. This Agreement, including the Order Form (and all Subsequent Orders), is the complete and exclusive statement of the mutual understanding of the Parties and supersedes all previous or contemporaneous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement.

12.4 Amendments; Waivers. Amendments to this Agreement must be made in writing and signed by both Parties, and waivers of rights arising under this Agreement must be made in writing and signed by the Party making the waiver.

12.5 Assistance of Counsel. This Agreement has been negotiated at arm’s length between the parties, both of which are sophisticated and knowledgeable in the matters which are encompassed in this Agreement. In addition, each party has been represented by experienced and knowledgeable counsel. Accordingly, any rule of law or legal decision that would require the interpretation of ambiguities in this Agreement against the drafting Party are not applicable and are hereby waived.

12.6 Independent Contractors. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and Customer does not have any authority of any kind to bind Datacoral contractually in any respect whatsoever.

12.7 Waiver. No waiver of any term, provision or condition of this Agreement, the breach or default thereof,

by conduct or otherwise, in one or more instances shall be deemed to be either a continuing waiver or a waiver of a subsequent breach or default of any such term, provision or condition of this Agreement.

12.8 Notices. Any notice required or permitted to be given under this Agreement will be effective if it is: (a) in writing and sent by certified or registered mail, or insured courier, return receipt requested, and with the appropriate postage affixed, to the appropriate Party in accordance with the final sentence of this Section; or (b) sent via facsimile or electronic mail in accordance with the final sentence of this Section; provided, however, that any notice alleging breach of this Agreement or threatening litigation must be made pursuant to Section 12.8(a) only. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. Notices are deemed given three (3) business days following the date of mailing, one (1) business day following delivery to a courier, and/or on the same day a facsimile or electronic mail is sent to the recipient. In all cases, the contact information for notices are as follows: (a) Customer: refer to the contact information in the Order Form; and (b) Datacoral: mailing address: Attn: Chief Executive Officer, Datacoral, Inc., 329 Bryant Street Suite 1C, San Francisco, CA 94107; phone number: (415) 737-5423; and email address: [contracts@datacoral.co](mailto:contracts@datacoral.co), with a simultaneous copy delivered to Gary R. Greenstein, Esq., Wilson Sonsini Goodrich & Rosati, 1700 K Street, N.W., 5<sup>th</sup> Floor, Washington, D.C. 20006.

12.9 Governing Law; Dispute Resolution. This Agreement will be governed by the laws of the State of California, U.S.A., without regard to its conflict of laws provisions. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any court of competent jurisdiction), any dispute arising under this Agreement will be finally settled in accordance with the Comprehensive Arbitration Rules of the Judicial Arbitration and Mediation Service, Inc. (“**JAMS**”) by three arbitrators appointed in accordance with such rules. The arbitration will take place in Santa Clara

County, California, USA, in the English language and the arbitral decision may be enforced in any court of competent jurisdiction. With respect to all disputes arising in relation to this Agreement, but subject to the preceding arbitration requirement in this Section 12.9, the Parties consent to exclusive jurisdiction and venue in the courts (state and federal) located in San Francisco, California. The prevailing Party in any action or proceeding to enforce this Agreement will be entitled to recover costs and attorneys’ fees.

12.10 Rights Cumulative. Except as otherwise provided herein, the rights and remedies of either Party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity.

12.11 Force Majeure. Neither Party will incur any liability to the other Party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the applicable Party (including, without limitation, acts of God, strikes, lockouts, riots, acts of war or terrorism, earthquake, fire and explosions) (each, a “**Force Majeure Event**”). The inability to meet financial obligations, and failure of any third party services or equipment engaged by Datacoral, are expressly excluded from the “Force Majeure Event” definition (except in cases where any such service or equipment is itself subject to a Force Majeure Event, in which case any failure of the same will constitute a Force Majeure Event).

12.12 Headings. The captions and headings in this Agreement are intended only for convenience, and will in no event be construed to define, limit or describe the scope or intent of this Agreement, or of any provision of this Agreement, nor in any way affect the interpretation of this Agreement.

End of Terms and Conditions.