

SOFTWARE TERMS AND CONDITIONS

These Software Terms and Conditions (“Agreement”) supplement the Order and set forth the terms and conditions under which DataKeeper will provide access to certain proprietary technology to Customer. The Agreement sets forth the terms and conditions under which Customer may Use (as defined herein) DataKeeper’s software indicated on the Order (“Software”).

1. LICENSE GRANT AND RIGHT OF USE

- 1.1. **License Grant.** Subject to all limitations and restrictions contained herein and the Order, DataKeeper grants Customer a subscription, software as a service (SaaS), nonexclusive and nontransferable right to use the Software as hosted by DataKeeper as described in the Order (“Use”).
- 1.2. **Use.** Customer shall not allow any website, that is not fully owned by Customer, to frame, syndicate, distribute, replicate, or copy any portion of Customer’s web site that provides direct or indirect access to the Software.
- 1.3. **Additional Restrictions.** In no event shall Customer disassemble, decompile, or reverse engineer the Software or Confidential Information (as defined herein) or permit others to do so. Disassembling, decompiling, and reverse engineering include, without limitation: (i) converting the Software from a machine-readable form into a human-readable form; (ii) disassembling or decompiling the Software by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof; (iii) examining the machine-readable object code that controls the Software’s operation and creating the original source code or any approximation thereof by, for example, studying the Software’s behavior in response to a variety of inputs; or (iv) performing any other activity related to the Software that could be construed to be reverse engineering, disassembling, or decompiling. To the extent any such activity may be permitted pursuant to written agreement, the results thereof shall be deemed Confidential Information subject to the requirements of this Agreement. Customer may use DataKeeper’s Confidential Information solely in connection with the Software and pursuant to the terms of this Agreement.

2. PAYMENT

- 2.1. **Fees.** Customer shall pay DataKeeper the fees indicated on the Order. Unless otherwise provided in an Order, all fees shall be paid to DataKeeper within fifteen (15) days of the date of invoice. The initial payment for the Software must be made on the Order Effective Date.
- 2.2. **Work Fees and Expenses.** The Work and Deliverables provided by DataKeeper shall be at the pricing set forth in the applicable Statement of Work. In the event a Statement of Work does not reference any specific pricing, such Work shall be provided at DataKeeper’s then current standard time and material rates. Customer shall reimburse DataKeeper for all reasonable travel, food, lodging and other out-of-pocket expenses incurred in performance of a given Statement of Work. Work fees and applicable expenses may be billed to Customer monthly.
- 2.3. **Late Payments.** Any late payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less.
- 2.4. **Taxes.** The license, service fees, and other amounts required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). Customer shall reimburse

DataKeeper and hold DataKeeper harmless for all sales, use, VAT, excise, property or other taxes or levies which DataKeeper is required to collect or remit to applicable tax authorities. This provision does not apply to DataKeeper’s income or franchise taxes, or any taxes for which Customer is exempt, provided Customer has furnished DataKeeper with a valid tax exemption certificate.

3. MAINTENANCE AND SUPPORT SERVICES

- 3.1. **Maintenance.** DataKeeper shall use commercially reasonable efforts to provide corrections to reported problems that (i) prevent the Software from conforming in material respects to its specifications, and (ii) are replicated and diagnosed by DataKeeper as defects in the Software (“Maintenance and Support Services”). DataKeeper shall use commercially reasonable efforts to begin working on a resolution to Customer’s written notice of reported problems within fourteen (14) days, provided corrections shall be prioritized in DataKeeper reasonable discretion. A response is not a guaranty of a solution to the reported problem; however, DataKeeper will keep Customer apprised of the resolution closure. Additional features and functions are not included as part of the maintenance and support services.
- 3.2. **Service Availability.** DataKeeper’s goal is to provide Software availability twenty-four hours per day, seven (7) days per week (referred to as “24x7 Availability”) EXCEPT during times of scheduled updates. However, the parties recognize that 24x7 Availability is only a GOAL, and DataKeeper cannot represent or guarantee that such goal can be achieved. These response time goals apply only to public production servers (i.e. web servers, application servers, and database servers). DataKeeper shall use reasonable efforts to achieve 99% Software availability in North America. The Software availability goal exclude any time Customer requests the site be taken down for scheduled updates. DataKeeper does not and cannot control the flow of data to or from DataKeeper’s network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer’s connections to the Internet (or portions thereof). Although DataKeeper will use reasonable efforts to take actions it deems appropriate to remedy and avoid such events, DataKeeper cannot guarantee that such events will not occur. Accordingly, DataKeeper disclaims any and all liability resulting from or related to such events.
- 3.3. **Exclusions.** DataKeeper shall not be obligated to provide Maintenance and Support Services for any software other than the generally available Software delivered to Customer pursuant to this Agreement (collectively the “Unsupported Code”). Any DataKeeper support services related to Unsupported Code shall be subject to execution of a mutually agreed upon Statement of Work.
- 3.4. **Third Parties.** DataKeeper shall have the right to use third parties, including employees of DataKeeper’s affiliates and subsidiaries (“Subcontractors”) in performance of its obligations and services hereunder and, for purposes of this Section, all references to DataKeeper or its employees shall be deemed to include such Subcontractors.

4. PROFESSIONAL SERVICES

- 4.1. **Time and Materials.** Unless otherwise provided on a Statement of Work, all Work to be performed hereunder shall be performed on a time and materials basis and Customer shall pay for all Work provided by DataKeeper.

- 4.2. **Statement of Work.** Each Statement of Work shall define the Work to be provided to Customer, the applicable pricing, Deliverables to be created thereunder, Customer deliverables and obligations, and all other appropriate terms and conditions. DataKeeper will not be obligated to begin any Work unless a Statement of Work governing such Work has been executed by both parties. DataKeeper may immediately cease performing Work, without liability, if a Statement of Work expires and is not immediately extended or replaced with a valid Statement of Work.
- 4.3. **Change Control Process.** Change control for additional Work or scope to be delivered under a Statement of Work will be completed according to the following procedure prior to DataKeeper starting any Work.
- 4.3.1. Specific changes may be proposed by Customer.
- 4.3.2. Proposed changes will be reviewed by DataKeeper and a report of the scope, schedule, and budget impact ("Impact Report") will be prepared and delivered to Customer.
- 4.3.3. Customer will then review the Impact Report and approve or deny changes in scope, schedule, and/or budget.
- 4.3.4. Once DataKeeper receives approval, DataKeeper will begin work on the specific changes that have been approved.
- 4.4. **Rights to Deliverables.** Subject to Customer's full payment for Deliverables, subject to any restrictions contained in the applicable Statement of Work, DataKeeper hereby grants to Customer, at no additional charge, an internal, worldwide, nonexclusive, nontransferable license to the object code version of the Deliverables to use and exploit the Deliverables solely in connection with the Software.
5. **OWNERSHIP**
- 5.1. **Reservation of Rights.** By signing the Order, Customer irrevocably acknowledges that, subject to the licenses granted herein, Customer has no ownership interest in the Software, Deliverables, or DataKeeper materials provided to Customer. DataKeeper shall own all right, title, and interest in such Software and DataKeeper materials, subject to any limitations associated with intellectual property rights of third parties. DataKeeper reserves all rights not specifically granted herein.
- 5.2. **Aggregate Data.** As between the parties, DataKeeper owns and shall continue to own all right, title and interest in and to all aggregate and statistical information or analyses created and developed by DataKeeper from performance and usage data generated through Customer's use of the Software (collectively, "Aggregate Data"). Aggregate Data is de-identified so that Customer cannot be identified as the source within the Aggregate Data.
6. **CONFIDENTIALITY**
- 6.1. **Definition.** "Confidential Information" includes all information marked pursuant to this Section and disclosed by either party, before or after the Effective Date, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information.
- 6.2. **Confidentiality of Software.** All Confidential Information in tangible form shall be marked as "Confidential" or the like or, if intangible (e.g., orally disclosed), shall be designated as being confidential at the time of disclosure and shall be confirmed as such in writing within thirty (30) days of the initial disclosure. Notwithstanding the foregoing, the following is deemed DataKeeper Confidential Information with or without such marking or written confirmation: (i) the Software and other related materials furnished by DataKeeper; (ii) the oral and visual information relating to the Software; and the terms and conditions of this Agreement.
- 6.3. **Exceptions.** Without granting any right or license, the obligations of the parties hereunder shall not apply to any material or information that: (i) is or becomes a part of the

public domain through no act or omission by the receiving party; (ii) is independently developed by the other party without use of the disclosing party's Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality; or (iv) is already known by the receiving party without any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice is promptly given to the disclosing party so that the disclosing party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.

- 6.4. **Ownership of Confidential Information.** Nothing in this Agreement shall be construed to convey any title or ownership rights to the Software or other Confidential Information to Customer or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest to the DataKeeper Confidential Information. Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy, reproduce, or distribute the Confidential Information except as expressly permitted in this Agreement. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft, disclosure, and the unauthorized copying, reproduction, or distribution of the Confidential Information.
- 6.5. **Non-Disclosure.** Each party agrees at all times to keep strictly confidential all Confidential Information belonging to the other party. Each party agrees to restrict access to the other party's Confidential Information only to those employees or Subcontractors who (i) require access in the course of their assigned duties and responsibilities; and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section.
- 6.6. **Personal Information.** DataKeeper is committed to maintaining the privacy and integrity of the personal information collected through the Software. DataKeeper does not use, nor does DataKeeper allow any third party to use, the information collected through our services for the purpose of marketing or advertising. Additionally, DataKeeper does not engage in targeted marketing based on the data collected from its users, nor will it use such information to sell services to users. DataKeeper is dedicated to ensuring that the personal information Customer provides is as outlined in this Agreement, and for no other purpose.
- 6.7. **Injunctive Relief.** Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section.
- 6.8. **Suggestions/Improvements to Software.** Notwithstanding this Section, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding the Software or other DataKeeper materials provided to Customer shall be owned by DataKeeper, and Customer hereby agrees to assign any such rights to DataKeeper. Nothing in this Agreement shall preclude DataKeeper from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by DataKeeper in the performance of services hereunder.
7. **WARRANTY**
- 7.1. **Authorized Representative.** Customer and DataKeeper warrant that each has the right to enter into this Agreement and that the Agreement shall be executed by an authorized representative of each entity.

7.2. **Disclaimer of Warranties.** Customer acknowledges and agrees that it is not relying on any statement or warranty not expressly provided herein with respect to the Software or maintenance, or other services provided hereunder. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS" AND DATAKEEPER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

7.3. **No Modifications.** Notwithstanding anything to the contrary in this Section, any and all warranties under this Agreement are VOID if Customer has made changes to the Software or has permitted any changes to be made other than by or with the express, written approval of DataKeeper.

8. LIMITATION OF LIABILITY

8.1. **Liability Cap.** IN NO EVENT SHALL DATAKEEPER BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER IN THE SIX (6) MONTHS PRIOR TO THE CLAIM FOR THE SOFTWARE OR SERVICES WHICH GAVE RISE TO SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

8.2. **Disclaimer of Damages.** IN NO EVENT SHALL DATAKEEPER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

9. TERM AND TERMINATION

9.1. **Termination by DataKeeper.** This Agreement and any license created hereunder may be terminated by DataKeeper (i) if Customer fails to make any payments due hereunder within fifteen (15) days of the due date; (ii) on thirty (30) days written notice to Customer if Customer fails to perform any other material obligation required of it hereunder, and such failure is not cured within such thirty (30) day period; or (iii) Customer files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

9.2. **Termination by Customer.** This Agreement may be terminated by Customer on thirty (30) days written notice to DataKeeper if DataKeeper fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from DataKeeper's receipt of Customer's notice or a longer period if DataKeeper is working diligently towards a cure.

9.3. **Termination.** Upon termination of this Agreement, Customer shall no longer access the Software or Deliverables and Customer shall not circumvent any security mechanisms contained therein.

9.4. **Other Remedies.** Termination of this Agreement shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement.

10. CUSTOMER OBLIGATIONS

10.1. **Ancillary Agreements.** Customer agrees that no employees of DataKeeper shall be required to individually sign any agreement in order to perform any services hereunder including, but not

limited to, access agreements, security agreements, facilities agreements or individual confidentiality agreements.

11. MISCELLANEOUS

11.1. **Compliance With Laws.** Customer agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under this Agreement. The parties agree that the Agreement shall not be governed by the United Nations Convention on the International Sale of Goods or by UCITA, the application of which is expressly excluded.

11.2. **Assignment.** Customer may not assign this Agreement or otherwise transfer any license created hereunder whether by operation of law, change of control, or in any other manner, without the prior written consent of DataKeeper. Any assignment or transfer in violation of this Section shall be null and void.

11.3. **Survival.** The provisions set forth in Sections 2, 6, 7.2, 8, 9.3, 9.4, and 11 of this Agreement shall survive termination or expiration of this Agreement and any applicable license hereunder.

11.4. **Notices.** Any notice required under this Agreement shall be given in writing and shall be deemed effective upon delivery to the party to whom addressed. All notices shall be sent to the applicable address specified on the face page hereof or to such other address as the parties may designate in writing. Unless otherwise specified, all notices to DataKeeper shall be sent to the attention of the CEO. Any notice of material breach shall clearly define the breach including the specific contractual obligation that has been breached.

11.5. **Force Majeure.** DataKeeper shall not be liable to Customer for any delay or failure of DataKeeper to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of DataKeeper. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by Customer in providing required resources or support or performing any other requirements hereunder.

11.6. **Restricted Rights.** Use of the Software by or for the United States Government is conditioned upon the Government agreeing that the Software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for assuring that this provision is included in all agreements with the United States Government and that the Software, when delivered to the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such delivery.

11.7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect thereto. Any signed copy of this Agreement made by reliable means (e.g., photocopy or PDF) shall be considered an original.

11.8. **Order of Precedence.** In the event of a conflict between the terms and conditions of this Agreement, an Order, or an End User License Agreement, the terms and conditions of the Order, Agreement, or End User License Agreement shall prevail, in that order.

11.9. **Modifications.** The parties agree that this Agreement cannot be altered, amended, or modified, except by a writing signed by an authorized representative of each party.

11.10. **Nonsolicitation.** During the term of this Agreement and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or Subcontractor of DataKeeper without the prior written consent of DataKeeper. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of DataKeeper for a period of one (1) year from such former employee's or Subcontractor's last date of service with DataKeeper. Violation of this provision shall entitle DataKeeper to liquidated damages against Customer equal to

two hundred percent (200%) of the solicited person's gross annual compensation.

- 11.11. **Publicity.** Customer agrees to cooperate with DataKeeper (i) in preparation of at least one (1) press release, where the aforementioned materials can be used in/on DataKeeper's Web site, marketing materials, trade shows, public advertisements, and other associated marketing uses ("DataKeeper Marketing Materials"); and (ii) in preparation of a DataKeeper-sponsored testimonial advertisement to be run in newspapers, magazines, and other publications and for use in DataKeeper Marketing Materials. The parties further agree that DataKeeper may include Customer's logo on publicly displayed customer lists (including DataKeeper's Internet Web site and public advertisements). There shall be a "Powered by DataKeeper" logo, to be provided by DataKeeper, in the bottom portion of any of Customer's Web pages that utilize the Software, which logo shall link directly to the then-current DataKeeper Web site home page.

- 11.12. **No Waiver.** No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.

- 11.13. **Severability and Reformation.** Each provision of this Agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation.

- 11.14. **Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF ANY STATE OR JURISDICTION. ANY ACTION ARISING OUT OF, OR RELATED TO, THIS AGREEMENT SHALL BE BROUGHT IN THE STATE OR FEDERAL COURTS LOCATED IN AUSTIN, TEXAS AND EACH PARTY HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS.