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## **3DATA END USER LICENSE AGREEMENT**

THIS END USER LICENSE AGREEMENT BETWEEN YOU (“**LICENSEE**”) AND **DATAVIZVR INCORPORATED DBA 3DATA** (“**LICENSOR**”) AND ITS CORRESPONDING SALES ORDER(S) (COLLECTIVELY REFERRED TO AS THE “**AGREEMENT**”) GOVERN YOUR INSTALLATION AND USE OF THE SOFTWARE (AS DEFINED BELOW). PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE, AND/OR BEFORE DOWNLOADING OR INSTALLING THE SOFTWARE, AND INDICATE YOUR ACCEPTANCE BY CHOOSING “I ACCEPT”. BY CHOOSING “I ACCEPT”, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY ALL THE TERMS OF THIS LICENSE AGREEMENT. The date you accept this License Agreement by choosing “I Accept” shall be the “Effective Date” of this Agreement. For the sake of clarity, these terms and conditions shall not apply to Licensees who have licensed the Software through, and signed an end user license agreement with, a reseller authorized by Licensor to resell subscriptions to the Software, so long as such end user license agreement complies substantially with the terms and conditions of this Agreement. In such cases, Licensee is granted its license in the Software by and through the reseller and not directly by Licensor.

This Agreement has 3 sections:

**Section I** applies if you are downloading or using the Software free of charge for evaluation purposes only.

**Section II** applies if you have purchased or have been otherwise granted a license by Licensor to use the Software.

**Section III** applies to all grants of license. Definitions of capitalized terms used in this Agreement are set forth in Section 21 below.

### **SECTION I -- TERMS APPLICABLE TO GRANT OF EVALUATION LICENSE 1.**

#### **Evaluation Licenses.**

- 1.1. If Licensee is downloading the Software for the first time, solely for purposes of considering the purchase of a subscription to the Software, using the Software through the Free Trial section of Licensor’s website, or if a Sales Order specifies that an evaluation license is being granted thereunder, Licensor hereby grants to Licensee, and Licensee accepts, a nonexclusive, non-transferable, non-sub-licensable, limited right to use the Software in machine-readable, object code form, free of charge, for the purpose of evaluating whether to purchase a Software license, subject to the terms herein. Licensee may use the Software during the evaluation period for internal operations, on one Authorized Server, by the Authorized Users specified upon download of the Software. The evaluation period is limited to a maximum of 14 days, unless Licensor has extended such period at its sole discretion or unless a different period is stated in the applicable Sales Order.
- 1.2. If Licensee is a current subscriber to the Software who has agreed to participate in testing of a pending release of the Software or certain features or functionality of the Software prior to its or their general release, for purposes of identifying issues and providing

feedback (a “**Beta Test**”), Licensor hereby grants to Licensee, and Licensee accepts, a nonexclusive, non-transferable, non-sub-licensable, limited right to use the Software in machine-readable, object code form, free of charge, for the purpose of participating in the Beta Test, subject to the terms herein. Licensee may use the Software during the Beta Test term for internal operations, on one Authorized Server, by the Authorized Users specified upon download of the Software. The Beta Test term is limited to the period communicated by Licensor to Licensee in connection with offering Licensee the opportunity to participate in the Beta Test, unless Licensor has extended such period at its sole discretion.

- 1.3. Documentation or support may be provided at Licensor’s sole discretion for evaluation or Beta Test licenses. Each evaluation or Beta Test license shall expire at the end of the evaluation period or Beta Test term. Licensee hereby acknowledges that Licensor reserves the right to terminate Licensee’s evaluation or Beta Test license at any time, with or without notice. Upon expiration or termination of the evaluation or Beta Test license, Licensee shall immediately cease using the Software and promptly irrevocably erase it and certify to Licensor that Licensee has acted accordingly.

## **2. Disclaimer of Warranty**

The Software is provided on an "AS IS" basis, without warranty of any kind. SUBJECT TO THE REQUIREMENTS AND LIMITATIONS, IF ANY, OF APPLICABLE LAW, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, SATISFACTION AND MERCHANTABILITY SHALL NOT APPLY. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS BORNE BY LICENSEE. LICENSEE’S SOLE RECOURSE IN THE EVENT OF ANY DISSATISFACTION WITH THE SOFTWARE IS TO STOP USING IT. This disclaimer of warranty constitutes an essential part of the agreement.

If Licensee wishes to purchase a license, contact Licensor at [info@3data.io](mailto:info@3data.io) or via [www.3data.io](http://www.3data.io).

## **SECTION II -- APPLICABLE TERMS WHEN GRANTED A LICENSE**

**3. License Grant.** Subject to payment of license fees under a valid Sales Order (“**Sales Order**”), Licensor hereby grants Licensee, and Licensee accepts, a nonexclusive, nontransferable, non-sub-licensable, limited license to use the Software, in machine-readable, object code form only, by the Authorized Users to support Licensee’s internal business operation, strategy and decision making process, in accordance with the license scope and terms set forth in the Sales Order and in Section III below.

Subject to payment of the fees in the Sales Order, the activation and use of the Software shall be enabled remotely on Licensor’s servers following the download of the Software.

**Limitation of Warranty.** The Software is provided on an "AS IS" basis, without warranty of any kind. SUBJECT TO THE REQUIREMENTS AND LIMITATIONS, IF ANY, OF APPLICABLE LAW, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, SATISFACTION AND MERCHANTABILITY SHALL NOT APPLY. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS BORNE BY LICENSEE. LICENSEE’S SOLE RECOURSE IN THE EVENT OF ANY DISSATISFACTION WITH THE SOFTWARE IS TO STOP USING IT. This disclaimer of warranty constitutes an essential part of the agreement.

**Disclaimer.** MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE AND/OR SERVICES. LICENSOR DISCLAIMS AND EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NONINFRINGEMENT OF THIRD PARTIES' RIGHTS. NO LICENSOR DEALER, DISTRIBUTOR, RESELLER, AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY.

**5. Indemnification.** Licensor will indemnify, defend and hold Licensee harmless against all actions, proceedings, suits, claims or demands that may be brought or instituted against Licensee by any third party based on or arising out of allegations that Licensee's use of the Software in accordance with the terms of this Agreement infringes any third party intellectual property rights ("**Claims**"). Licensor's foregoing defense and indemnity obligation shall not extend to claims based on (i) unauthorized modification or use of the Software made by any third party other than by or with the approval of Licensor; (ii) the combination of the Software with items not supplied by Licensor or approved by Licensor for use with the Software in the Documentation to the extent such claim would not have arisen but for the combination; (iii) open source software components; or (iv) Licensee's use of any release other than the latest Version of the Software that has been commercially available for at least six (6) months prior to the date of assertion of such Claim. As a condition to Licensor's indemnity obligation Licensee shall give Licensor prompt notice of any Claim, grant Licensor sole control of the defense and/or settlement of any Claim (provided that Licensor shall not enter into any settlement that admits liability on behalf of Licensee or imposes any obligations on Licensee other than cessation of use of the allegedly infringing item or payment of amounts indemnified hereunder) and provide reasonable assistance as requested by Licensor. If the Software or part thereof becomes, or in Licensor's opinion may become, subject to a Claim or Licensee's use thereof may be otherwise enjoined, Licensor may, at its option, either: (a) procure for Licensee the right to continue using the Software; (b) replace or modify the Software, so that it is non-infringing; or (c) if neither of the foregoing alternatives is reasonably practical, terminate this Agreement and refund any sums prepaid for the unused Term, if any, upon the return or destruction (and certification of destruction) of the Software. This Section 6 states Licensor's entire liability and Licensee's exclusive remedy for infringement.

### **SECTION III -- TERMS APPLICABLE TO ALL GRANTS OF LICENSE**

**7. Scope of License.** The type and scope of license will be specified in the Sales Order.

7.1. The Sales Order will specify the number of Licensee's Authorized Users, and the number of Licensee's Authorized Servers. Authorized Users shall receive a personal login and password which should be maintained securely by Licensee from unauthorized use. Licenses may not be shared. If Licensee wishes to add Authorized Users or Authorized Servers, purchase of additional licenses is required. Authorized Users fall into one of the following three categories: Administrators, Creators or Viewers.

Licensee's Authorized Users shall have the right to use the Software in and perform or access different functions of the Software as further detailed and described in the Documentation.

7.2. If an Authorized Server becomes non-operable, the Software may be installed on a substitute server authorized in writing by Licensor. Concurrent use on two or more servers

is not permitted without explicit written authorization from Licensor and the payment of applicable license fees.

7.3. For the sake of clarity, Licensee shall not use any technical or other means within or external to the Software to exceed use of the Software as licensed under the applicable Sales Order; for example, by providing access to Virtual Command Centers, etc., other than to Authorized Users unless the applicable Sales Order expressly permits use by unauthenticated users.

**8. Limitations.** Except as expressly provided in this Agreement or the applicable Sales Order, Licensee may not, and may not permit any third party to: (i) attempt to obtain, receive, review, or otherwise use or have access to the source code for the Software (or any part thereof) by decompilation, disassembly or other means except as is required to be permitted under applicable law; (ii) copy, reverse engineer, translate or modify the Software except as is required to be permitted under applicable law; (iii) sublicense, transfer, rent or lease the Software or use it as part of a service bureau to provide services or access to the Software or as a module for other software; (iv) test the Software or use the Software in connection with any benchmark tests, evaluation, or any other tests of which the results are designated or likely to be published in any form or media, or otherwise made available to the public, without Licensor's prior written approval; (v) represent that Licensee possesses any proprietary interest in the Software; (viii) directly or indirectly, take any action to contest Licensor's Intellectual Property rights evidenced by or embodied in or connected or related to the Software or infringe them in any way; or (ix) use the Software for the purpose of building a similar or competitive product or in any other manner competing with Licensor. For avoidance of doubt and without derogating from the foregoing, Licensee may not use the Software in order to engage, directly or through any third party, in development of any product which is or may constitute a derivative work of the Software or may infringe upon Licensor's Intellectual Property rights.

In the event of a license to the US Government the following shall apply: As defined in FAR section 2.101, any software and documentation provided by Licensor are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement. Government technical data and software rights related to the Software and any related services include only those rights customarily provided to the public as defined in this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Licensor to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**9. Licensee Data.** All data stored or managed by means of the Software, including the results of data analysis embodied in the Virtual Command Centers and any other reports and outputs generated from the Software, is "**Licensee Data.**" Licensee Data will be imported from different source systems that Licensee uses and may need further transformation such as defining of relationships between tables that come from different databases. Licensee is required to have legal access to all Licensee Data. Licensee is required to comply with data protection laws and regulations and with the terms and conditions regarding the different source systems that Licensee uses. Under no circumstances will

Licensor be liable for any destruction or corruption of or damage to Licensee Data or any data that is transferred or used by Licensee by means of the Software. Except for express obligations of Licensor as part of the 3Data Cloud, which are applicable only if 3Data Cloud is purchased by Licensee, it is explicitly agreed that all Licensee Data shall always reside on Licensee's own servers and systems and Licensee is solely responsible for back up of Licensee Data. As between Licensor and Licensee, all Licensee Data is deemed Licensee's property.

**10. Protection of Licensee Data.** If and to the extent it is agreed by the parties that Licensee will grant Licensor access to Licensee Data, Licensor shall employ and maintain commercially reasonable safeguards to protect the security and confidentiality of Licensee Data. Those safeguards will include, but will not be limited to, measures for preventing unauthorized access to or disclosure of Licensee Data. Licensor will not use or disclose Licensee Data except: (a) as required to provide Support Services, (b) as required by law, or (c) as Licensee expressly permits Licensor in writing. Unless Licensor specifically agrees otherwise, the protection obligation stated in this Section 10 is Licensor's exclusive data protection obligation with respect to Licensee Data. Licensee shall be solely responsible for ensuring that granting Licensor access to Licensee Data as set forth in this Section 10 does not violate applicable laws governing the use of Licensee Data, including but not limited to the rights of data subjects whose information is included in the Licensee Data. If required, Licensee shall be responsible for removing or redacting data subject to security restrictions or anonymizing personally identifiable information. If Licensee purchases 3Data Cloud, the Licensee Data that Licensor accesses or processes as part of 3Data Cloud will be handled in accordance with the applicable 3Data Cloud Terms and Conditions.

**11. Intellectual Property.** Licensee acknowledges and agrees that the Software and the Documentation, including any related services and any revisions, corrections, modifications, enhancements and/or upgrades thereto, are Licensor's or its licensors' property protected under copyright laws and treaties. Licensee further acknowledges and agrees that all right, title, and interest in and to the Software, including associated Intellectual Property rights evidenced by or embodied in and/or attached/connected/related to the Software (including, without limitation, the code) Documentation and any related services, are and shall remain with Licensor. This Agreement does not convey to Licensee an interest in or to the Software, but only a limited right of use revocable in accordance with the terms of this Agreement. Nothing in this Agreement constitutes a waiver of Licensor's Intellectual Property rights under any law. Licensee understands and acknowledges that the Software contains or includes proprietary confidential information and trade secrets of Licensor.

**12. Confidential Information.**

12.1. Each party agrees that "**Confidential Information**" includes, without limitation, all technical and non-technical information provided by a party ("**Disclosing Party**") to the other party ("**Receiving Party**") that is either: (a) designated as confidential by the Disclosing Party at the time of disclosure; or (b) should reasonably be considered, given the nature of the information or the circumstances surrounding its disclosure, to be confidential. Each party, as a Receiving Party will not: (1) use any Confidential Information except for the sole benefit of the Disclosing Party and only to the extent necessary to perform its obligations under this Agreement; or (2) disclose any Confidential Information of the Disclosing Party to any person or entity, except to the Receiving Party's own employees, consultants and agents who are involved in performing this Agreement, have

a need to know, and are subject to non-disclosure obligations with terms no less restrictive than those herein.

12.2. The duties described in Section 12.1 will not apply to any information that: (a) is now or subsequently becomes generally available in the public domain through no fault or breach of this Agreement by the Receiving Party (b) is rightfully known by the Receiving Party prior to disclosure by the Disclosing Party; (c) is rightfully obtained by the Receiving Party without restriction from a third party not known by the Receiving Party to be subject to restrictions on disclosure; or (d) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party. Receiving Party may disclose Confidential Information if and only to the extent it is required to be disclosed by law or court order, so long as, if permitted under applicable law, Receiving Party provides advance notice to the Disclosing Party as promptly as possible and reasonably cooperates with the Disclosing Party's efforts to obtain a protective order regarding such disclosure at Disclosing Party's expense.

12.3. Both parties hereby agree that the Confidential Information to be disclosed hereunder is of a unique and valuable character, that damages to the Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate and that such party agrees to waive any claim or defense that the Disclosing Party has an adequate remedy at law. The parties further agree that the Disclosing Party shall be entitled to obtain injunctive relief (without the posting of any bond or other security) preventing the further use and/or disclosure of any Confidential Information in violation of the terms hereof.

12.4. Upon expiration or any termination of this Agreement the Receiving Party will promptly destroy or (if requested) return the Disclosing Party's Confidential Information and all copies thereof, provided that the Receiving Party shall not be obligated to erase Confidential Information contained in archived computer system backups in accordance with the Receiving Party's security and/or disaster recovery procedures, provided further that any such Confidential Information retained by the Receiving Party shall continue to be protected by the confidentiality obligations of this Agreement.

**13. Support Services and Professional Services.** For any purchased license and subject to payment of applicable fees, Licensor shall provide standard support and maintenance services ("**Support Services**") in accordance with the terms available at <http://3data.io/downloads/3Data-Support-Services-Addendum.pdf> (as amended from time to time, the "**Support Terms**"). The Software includes the Remote Support Analysis Module which automatically connects Licensee's computer to Licensor's server to verify successful installation of the Software and its updates. Through operation of the Remote Support Analysis Module, Licensor obtains: (i) non-personally identifiable information, such as manner, consistency, duration, usage pattern, statistics, memory, bandwidth and other information identifying the ways in which Licensee uses the Software; (ii) metadata such as logs, how many requests Licensee issued, commonly used data sources, size of Licensee database, modules used, etc. and (iii) the login id (including email address) for the Licensee representative who licensed the Software. In order to further facilitate troubleshooting of support issues, the Remote Support Analysis Module includes a feature to trace activity to specific user logins. The Remote Support Analysis Module (or the activity tracing feature) can be disabled as part of the Software configuration or can be set to scramble potentially sensitive

data that might otherwise be collected at Licensee's sole control and discretion. If the Remote Support Analysis Module is disabled, Licensee acknowledges that Licensor's ability to provide the Support Services may be impaired.

From time to time, Licensee and Licensor may agree that Licensor shall provide Licensee with professional services, the scope, fee and terms of which shall be set forth in a separate Sales Order and subject to Licensor's Professional Services Terms and Conditions in accordance with the terms available at <http://3data.io/downloads/3Data-Professional-Services-Addendum.pdf> as may be amended from time to time.

In addition, Licensor may provide remote assistance with the initial implementation of the Software ("Onboarding Services") during an initial period and limited to the number of hours of effort as set forth on the applicable Sales Order. Further, Licensor offers basic training to Licensee's Personnel through online interactive training programs established by Licensor from time to time, and such online interactive training programs are included in the subscription to the Software licensed hereunder. Any other training shall be provided at such times and location(s), on such subjects and for such fees as are mutually agreed by the parties on the applicable Sales Order.

**14. Assignment.** Licensee may not assign, delegate, or otherwise transfer any or all of its rights or obligations under this Agreement without the prior written consent of Licensor. Notwithstanding the foregoing, Licensee may from time to time assign this Agreement to: (i) one or more of its then consolidated affiliates; or (ii) an acquirer of all or substantially all of its business or assets; and to the extent of any such assignment, the relevant references in this Agreement to Licensee shall apply to such affiliate or acquirer, as the case may be, provided that such affiliate or acquirer assumes all of the obligations hereunder in writing and such assignment or acquisition shall not expand the scope of the license as set forth on the applicable Sales Order nor shall the Software be permitted to be used by any business operations other than as specified on the applicable Sales Order and as were using the Software immediately prior to such assignment or acquisition.

**15. Payment Terms.** Unless otherwise specified in the applicable Sales Order, payment for all Software and services ordered from Licensor by Licensee and taxes shall be made in US Dollars by wire or ACH transfer to Licensor and are due within thirty (30) days of the date the invoice was received by Licensee. Except as expressly provided in this Agreement, all payments made hereunder are non-refundable. Failure of Licensee to make any payment when due which is not remedied within 15 days after notice by Licensor shall constitute sufficient cause for Licensor to immediately suspend its performance under this Agreement. Payments of amounts made under this Agreement after their due date will incur interest at a rate equal to one percent (1%) per month (i.e., 12% per annum) or the highest rate permitted by applicable law, whichever is less. Standard support services are included within the license fee. Premium support services are optionally available to Licensee subject to payment of applicable fees as set forth on the applicable Sales Order. All taxes or customs duties, except income or corporate taxes imposed on Licensor, will be borne by Licensee. If any such tax or duty has to be withheld or deducted from any payment under this Agreement, Licensee will increase payment under this Agreement by such amount as shall ensure that after such withholding or deduction Licensor shall have received an amount equal to the payment otherwise required.

**16. Term, Termination.** The term of this Agreement shall commence on the Effective Date and continue until no Sales Orders remain outstanding hereunder unless otherwise terminated as stated below. The license term granted under a Sales Order (referred to therein as the "Subscription Period")

shall be as set forth in such Sales Order and if no such term is set forth, the license shall continue in force for one (1) year from the date of such Sales Order (“**Initial Term**”). To avoid unintended service interruptions, at the end of the Initial Term, and at the end of each Renewal Term thereafter, the license term granted under each Sales Order shall automatically renew for an additional one (1) year term (each, a “**Renewal Term**”), unless either party shall provide written notice to the other party, not less than sixty (60) days prior to such date of expiration, of its election not to renew such license term. The applicable Subscription Period or Initial Term and each Renewal Term are collectively referred to as the “**Term.**” This Agreement may be terminated by either party, at any time prior to the expiration of the then-current Term if the other party has committed a material breach of any of its obligations hereunder that has not been cured within thirty (30) days after receipt of written notice. This Agreement terminates automatically, with no further action by either party, if: (i) a receiver, manager, administrator, administrative receiver or similar figure under the law of any jurisdiction is appointed for either party or its property; (ii) either party proposes or is subject to a general assignment for the benefit of or compromise or arrangement with its creditors or any class of its creditors; (iii) any proceedings are commenced by, for, or against either party under any bankruptcy, insolvency, or debtor’s relief law for the purpose of seeking a moratorium, rescheduling or reorganization of such party’s debts, and such proceeding is not dismissed within sixty (60) calendar days of its commencement; (iv) either party is liquidated, wound up or dissolved; or (v) Licensee breaches any obligation related to Licensor’s Intellectual Property rights which has not been cured within fourteen (14) days from written notice pertaining to such breach (or if incapable of being cured then immediately upon such written notice being given). In the event that the license is terminated for Licensee’s breach of this Agreement, all outstanding Sales Orders shall be immediately terminated. Within fifteen (15) days after termination Licensee shall irrevocably erase, or return to Licensor, the Software and the Documentation and all copies and portions thereof, and shall provide written certification to Licensor that such destruction or return has been completed. Sections 4 (Limitation of Warranty), 5 (Disclaimer), 6 (Indemnification), 8 (Limitations), 11 (Intellectual Property), 12 (Confidential Information), 16 (Term, Termination), 17 (Limitation of Liability), 19 (Miscellaneous) and 20 (Definitions) will survive the termination or expiration hereof.

**17. Limitation of Liability.** EXCEPT IN CASE OF WILLFUL MISCONDUCT, BREACH OF THE LICENSE SCOPE GRANTED UNDER SECTION 7 HEREOF OR THE INFRINGEMENT INDEMNIFICATION SET FORTH IN SECTION 6 HEREOF, IN NO EVENT SHALL EITHER PARTY’S TOTAL MONETARY OBLIGATION AND LIABILITY TO THE OTHER PARTY OR ANY OTHER PARTY UNDER THIS AGREEMENT, EXCEED THE PAYMENTS MADE BY LICENSEE TO LICENSOR FOR THE SOFTWARE AND/OR SERVICES THAT GAVE RISE TO THE ACTION OR CLAIM DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT, AND IF NO SUCH SOFTWARE OR SERVICES ARE SO APPLICABLE THEN THE MAXIMUM LIABILITY FOR EITHER PARTY SHALL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID BY LICENSEE TO LICENSOR HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT.

SUBJECT TO THE REQUIREMENTS AND LIMITATIONS, IF ANY, OF APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTIES FOR INDIRECT, SPECIAL, CONSEQUENTIAL, COLLATERRAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE OR INJURY TO BUSINESS EARNINGS, LOST PROFITS, DATA OR GOODWILL SUFFERED BY ANY PERSON ARISING FROM AND/OR RELATED TO THIS AGREEMENT OR RELATED AND/OR CONNECTED TO ANY USE OF THE SOFTWARE, EVEN IF THE PUTATIVELY LIABLE PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



**18. Use of Name and Trademarks; Press Release Cooperation.** Unless otherwise requested by Licensee, Licensor may reference Licensee name and use Licensee logo and trademarks as well as indicate that Licensee is a Licensor customer in Licensor's business development and marketing efforts and materials (both printed and online), including without limitation its website. Further, promptly after execution of this Agreement, the parties shall work together in good faith to issue a press release announcing the relationship created hereunder.

**19. Miscellaneous.** If the Sales Order Licensee executed was accompanied by a modified version of this End User License Agreement which was executed by both Licensee and Licensor, then such modified End User License Agreement will govern the use of the Software and not this Agreement. This Agreement represents the complete agreement concerning this license and it supersedes any prior proposal, representation, or understanding between the parties. This Agreement may be amended only by a writing executed by both parties. THE ACCEPTANCE BY LICENSOR OF ANY SALES ORDER IS EXPRESSLY MADE CONDITIONAL ON LICENSEE'S CONSENT TO THE TERMS SET FORTH HEREIN. In the event of a conflict between the terms of a Sales Order and the terms of this Agreement, the terms of the Sales Order shall prevail with respect to that Sales Order only, unless the provision on the Sales Order expressly amends the terms of this Agreement. Except for the foregoing, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. This Agreement and all matters arising out of or in connection with it shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of Texas, United States of America, without regard to the conflict of laws principles thereof. The parties hereby expressly submit to the exclusive jurisdiction of the federal and state courts located in the County of Travis, State of Texas for resolution of all disputes arising under the terms of or in connection with this Agreement (including non-contractual claims) and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Licensor, in its sole discretion, shall have the right to seek a preliminary, interim or preventative injunction in respect of any breach of its Intellectual Property rights in any jurisdiction and court. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

Except for payment obligations, neither party shall have any liability under the Agreement to the extent that the performance of its obligations is delayed, hindered or prevented by Force Majeure. If the period for which a party's performance is delayed, hindered or prevented by an event of Force Majeure continues for more than thirty (30) days, then either party may terminate the Agreement immediately by written notice to the other party and such termination shall not be deemed a termination due to breach. In the event of any termination as a result of this paragraph, Licensee's obligation to irrevocably erase or return the Software shall remain in effect.

At Licensor's discretion and upon reasonable advance notice, and no more than once per calendar year, Licensor reserves the right to conduct periodic reviews and audits to ensure compliance with the terms of this Agreement.

All notices and demands hereunder shall be in writing and shall be served by personal service or by mail at the address of the receiving party set forth in this Agreement (or at such different address as may be designated by such party by written notice to the other party). All notices or demands by mail shall be certified or registered mail, return receipt requested, by nationally-recognized private express courier, or sent by electronic transmission, with confirmation received, to the email address specified below, and shall be deemed complete upon receipt.

**Licensor:** [legal@3data.io](mailto:legal@3data.io)

**Licensee:** the address and contact information listed in the applicable Sales Order.

**20. Definitions.** For purposes of this Agreement (including any and all Sales Orders, Schedules and amendments made to or incorporated herein now or in the future), the following capitalized terms shall have the following meaning:

- 20.1. **“Administrator(s)”** means the Authorized User(s) who are Personnel of Licensee who have the authorization and access for server, user and data management.
- 20.2. **“Authorized Users”** means individual users granted access to use the Software on a named basis. Each Authorized User shall receive a personal login and password which shall be maintained securely by Licensee from unauthorized use. The number of Authorized Users licensed hereunder is specified on the Sales Order(s) executed hereunder.
- 20.3. **“Authorized Servers”** means the number of Licensee’s servers on which the Software may be installed as specified in the applicable Sales Order. For purposes of this Agreement, each Authorized Server shall be licensed for a specific number of Cores as specified on the applicable Sales Order.
- 20.4. **“Backup/Development Server”** means a Software instance that is to be used for the sole purpose of development, backup, staging and other non-production uses and may not be used in any way for production use.
- 20.5. **“Core”** shall be a collection of one or more processor threads and a set of shared execution resources. A processor thread is the architectural state within a processor that tracks execution of a software program thread/task. Hyperthreading and other current and future technologies that materially expand the processing capacity of a Core shall not be permitted to increase the licensed processing capacity of the Core-based licenses granted under this Agreement unless otherwise agreed by the parties.
- 20.6. **“Creator(s)”** means the Authorized User(s) who are Personnel of Licensee that are authorized to create, edit and share data models and Virtual Command Centers.
- 20.7. **“Documentation”** means the standard documentation and user manuals provided or made accessible to Licensee along with the Software and also available at <https://3data.io/docs>.
- 20.8. **“Force Majeure”** means fire, storm, flood, earthquake, adverse weather conditions, explosions, Acts of God, terrorism or the threat thereof, nuclear, chemical or biological contamination, compliance with any law, governmental controls, restrictions or prohibitions, general strikes, lock-outs, industrial action or employment dispute not caused by or specific or limited to the affected party, protests, public disorder, general interruptions in communications or power supply, failure or malfunction of computer

systems or any other event or circumstance outside the reasonable control of a party to this Agreement.

- 20.9. **“Intellectual Property”** means all intangible legal rights, titles and interests evidenced by or embodied in or connected or related to all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets and all other proprietary rights belonging to a party in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.
- 20.10. **“Personnel”** shall mean employees and contractors of Licensee where such personnel’s access to the Software is controlled by Licensee.
- 20.11. **“Professional Services”** means those services described in Section 14 and in the applicable Sales Order.
- 20.12. **“Software”** means one or more of Licensor’s proprietary software products listed in the applicable Sales Order in object code format, and shall include the Documentation and all Updates and Versions of the Software to the extent supplied by Licensor under this Agreement.
- 20.13. **“Support Terms”** shall have the meaning given such term in Section 14.
- 20.14. **“Update”** shall have the meaning given such term in the Support Terms.
- 20.15. **“Version”** shall have the meaning given such term in the Support Terms.
- 20.16. **“Viewer(s)”** means the Authorized User(s) who are Personnel of Licensee that are authorized to view the Virtual Command Centers that Creators share with them via a standard web browser. An Unlimited Viewer license allows unlimited Viewers to be authorized to access the specified Authorized Server. Please note that while there is no legal limit to the number of Viewers, the technical capacity of the server may limit the number of Viewers that may actually access the Authorized Server.
- 1.17. **“Virtual Command Centers”** means the virtual spaces containing the graphic representations of data extracted from the Datasource(s) as designed and created by Creators and/or Administrators using the Software in accordance with this Agreement.

LICENSEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD THIS LICENSE AGREEMENT AND AGREES TO BE BOUND BY ALL OF THE TERMS.