

## Master Subscription Agreement

This Master Subscription Agreement (this “**Agreement**”) governs access to and use of DataCrest, Inc.’s Purchased Services (as defined in Section 1, below) and/or Training and Compliance Services (as defined in Section 1, below). This Agreement is made by and among DataCrest, Inc., a Delaware limited liability company (“**DC**”), and Customer (as defined in Section 1 below). This Agreement is effective as of the date the Customer executes an Order Form (as defined in Section 1, below) (the “**Effective Date**”).

### RECITALS

EXECUTING AN ORDER FORM INDICATES ACCEPTANCE OF THIS AGREEMENT AND BINDS CUSTOMER TO THE TERMS AND CONDITIONS HEREIN. THEREFORE, PLEASE READ THIS AGREEMENT, THE ORDER FORM(S), AND ANY APPLICABLE STATEMENT(S) OF WORK, CAREFULLY BEFORE EXECUTING THE SAME AND USING THE PURCHASED SERVICES AND/OR TRAINING AND COMPLIANCE SERVICES. IF CUSTOMER DOES NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CUSTOMER SHOULD NOT ACCESS OR USE THE PURCHASED SERVICES AND/OR TRAINING AND COMPLIANCE SERVICES AND SHOULD NOT EXECUTE AN ORDER FORM. If the individual entering into this Agreement, and executing an Order Form and/or Statement of Work (as defined in Section 1, below), is doing so on behalf of a company or other legal entity, said individual represents and warrants that s/he: (i) has the authority to bind said entity and its Affiliates (as defined in Section 1 below) to the terms and conditions herein; (ii) read and understands this Agreement; and (iii) agrees, on behalf of said legal entity and its Affiliates, to this Agreement.

NO COMPETITOR OF DC MAY ACCESS OR USE THE PURCHASED SERVICES AND/OR TRAINING AND COMPLIANCE SERVICES, EXCEPT WITH DC’S PRIOR WRITTEN CONSENT. LIKEWISE, CUSTOMER IS PROHIBITED FROM ACCESSING THE PURCHASED SERVICES AND/OR TRAINING AND COMPLIANCE SERVICES TO MONITOR SUCH SERVICES’ AVAILABILITY, PERFORMANCE, FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

DC may modify or amend this Agreement, and any addendums hereto, in its sole discretion. Updated versions of this Agreement will be posted on DC’s website at <https://www.mydatacrest.com/msaandsla.html> and shall become effective on the date of posting.

### **1. DEFINITIONS**

For purposes of this Agreement, the following terms, when used in this Agreement, shall have the respective meanings set forth below:

- (a) “**Affiliate**” means (i) any employee of the Customer; (ii) third party consultants or contractors of the Customer; (iii) the Customer’s clients; and (iv) any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- (b) “**ACH**” means Automated Clearing House.
- (c) “**Agreement**” means this Master Subscription Agreement, as set forth in the first paragraph hereto.
- (d) “**Beta Services**” means DC online services and/or features that are not generally available to Customers but may be offered for evaluation purposes but not for production use. Beta Services are not Purchased Services under this Agreement, are not supported, and may be subject to additional terms or limitations.
- (e) “**Claim Against Customer**” shall have the meaning set forth in Section 10.1.
- (f) “**Claim Against DC**” shall have the meaning set forth in Section 10.2.
- (g) “**Confidential Information**” shall have the meaning set forth in Section 8.1.
- (h) “**Content PDF**” shall have the meaning set forth in Section 2.2.

- (i) **“Content”** means information obtained by DC from DC’s content licensors, or from publicly available sources, and provided to Customer pursuant to an Order Form, as more fully described in the Documentation, and includes Third-Party Materials.
- (j) **“Customer Data”** means any data, information, or materials provided or submitted by or on behalf of a Customer or its End Users/Insureds to the Purchased Services, excluding Content and Third-Party Applications.
- (k) **“Customer”** means (i) the legal entity for whom the individual executing the Order Form and/or Statement of Work is acting on behalf of, including said entity’s officers, directors, agents and employees; or (ii) the individual executing the Order Form and/or Statement of Work, if doing so on his/her own behalf.
- (l) **“DC”** means DataCrest, Inc., as set forth in the first paragraph hereto.
- (m) **“DC IP”** means the Purchased Services, Documentation, and any and all intellectual property provided to Customer pursuant to the applicable Order Form. For the avoidance of doubt, DC IP also includes software, aggregated statistics and any information, data, or other content derived from DC’s monitoring of Customer’s access to, or use of, the Purchased Services. However, “DC IP” does not include Customer Data, Third-Party Applications, or Third-Party Products.
- (n) **“Disclosing Party”** shall have the meaning set forth in Section 8.1.
- (o) **“Documentation”** means DC’s online user guides and can include, documentation, SDK, API’s and help and training/marketing materials, as updated from time to time, accessible from your DC point of contact, or upon login to the applicable Purchased Services.
- (p) **“Effective Date”** means the date on which the Customer executed the Order Form, as set forth in the initial paragraph of this Agreement.
- (q) **“End User”** means any individual or entity authorized by Customer to use the Purchased Services, for whom Customer has ordered the Purchased Services, and to whom Customer (or DC at Customer’s request) has supplied a user account or other access to the services. End Users may include, for example, Customer’s employees, consultants, contractors, partners, agents, customers, and other Third Parties with whom Customer transacts business.
- (r) **“Feedback”** shall have the meaning set forth in Section 7.4.
- (s) **“Free Trial Period”** shall have the meaning set forth in the Free Trial Services Annex.
- (t) **“Free Trial Services”** means services that Customer sign-up on the DC website or which are otherwise made available to Customer by DC or DC’s Affiliates on a trial basis free of charge. Free Trial Services is further specified in the Free Trial Services Annex contained on the last page of this Agreement.
- (u) **“Indemnified Party”** shall have the meaning set forth in Section 10.3.
- (v) **“Indemnifying Party”** shall have the meaning set forth in Section 10.3.
- (w) **“Initial Term”** shall have the meaning set forth in Section 5.1.
- (x) **“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, but not limited to, viruses, worms, time bombs and Trojan horses.
- (y) **“Order Form”** means an ordering document specifying the Purchased Services to be provided hereunder that is entered into between Customer and DC or any of DC’s Affiliates, including a Proposal for DataCrest Services, a Quote, and any addenda and supplements thereto. By entering into any such Order Form, an Affiliate agrees to be bound by the terms of this Agreement.
- (z) **“Proposal for DataCrest Services”** means the document entitled “Proposal for DataCrest Services” that may be provided by DC to, and signed by, Customer and specifies the proposed Purchased Services as well as the pricing terms thereof.
- (aa) **“Purchased Services”** means the Customer’s subscription to the applicable technology platform, its online features and related consulting and associated services, as specified in an Order Form.

“Purchased Services” do not include Free Trials, Beta Services, Customer Data, or Third-Party Applications.

- (bb) **Quote**” means a document entitled “Quote” that is provided by DC to, and signed by, Customer and contains a description of the Purchased Services and the associated terms and conditions thereto. DC’s Quote may also at times be labeled as a an Order Form, or an Order.
- (cc) **Receiving Party**” shall have the meaning set forth in Section 8.1.
- (dd) **Renewal Term**” shall have the meaning set forth in Section 5.2.
- (ee) **Service Level Agreement**” is a contract between the Customer and DC, and applies to Customer’s use of the Company’s Services. The Company may amend the Service Level Agreement at any time by submitting a revised Service Level Agreement to the Customer or posting a revised version on its website.
- (ff) **Statement of Work**” means a written and signed agreement between DC and Customer for DC employees, contractors, and/or agents to perform specified training and compliance services. The Statement of Work, if provided, may includes certain terms and conditions, fees, and termination instructions.
- (gg) **Third-Party Applications**” means a web-based, or offline, software application that is provided by Customer, or a Third Party, and interoperates with a Purchased Service.
- (hh) **Third-Party Materials**” shall have the meaning set forth in Section 6.1.
- (ii) **Third-Party Products**” shall have the meaning set forth in Section 6.1.
- (jj) **Third-Party**” means any company, organization, legal entity, and/or individual that is not a party to this Agreement.
- (kk) **Training and Compliance Services**” means the services provided by DC to improve training and compliance processes as specified in the associated Statement of Work.

## 2. **PURCHASED SERVICES & CONTENT**

- 2.1 **Subscriptions.** Unless otherwise provided in the applicable Order Form.: (a) Purchased Services and Content are purchased as subscriptions; (b) subscriptions may be added during a subscription term at the same pricing as the original subscription price or a higher rate as agreed to, prorated for the portion of that subscription term remaining at the time the subscriptions are added; and (c) any added subscriptions may terminate on the same date as the underlying subscriptions.
- 2.2 **Provision of Purchased Services.** Subject to Customer’s compliance with the terms of this Agreement, DC shall make the Purchased Service and/or the Training and Compliance Services, as specified in the Order Form and/or applicable Statement of Work. DC shall, pursuant to the Service Level Agreement: (a) provide standard support (as specified within the DC Service Level Agreement) for the Purchased Services; and (b) use reasonable efforts to make the online Purchased Services available twenty-four (24) hours per day, seven (7) days per week, except for: (i) planned downtime for maintenance either during the weekend hours between 6:00 p.m. Friday and 6:00 a.m. Monday, Eastern Standard Time or as DC notifies the Customer pursuant to the terms of the Service Level Agreement, and (ii) any unavailability caused by circumstances described in Section 11.2 (Force Majeure).
- 2.3 **Protection of Customer Data by DC.** DC shall maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data (including data about their clients/customers/insureds/prospects). Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by DC personnel except: (a) to provide Purchased Services; (b) to prevent or address service or technical problems; (c) to provide Training and Training and Compliance Services; (d) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (e) as Customer expressly permits in writing.

- 2.4 Customer's Responsibilities.** Customer shall be solely responsible for ensuring Customer's Affiliates' and End Users' compliance with the terms of this Agreement and all applicable laws and regulations. Customer shall also: (a) be responsible for the accuracy, quality and legality of Customer Data including, but not limited to, the means by which Customer acquired said Customer Data; (b) use commercially reasonable efforts to prevent unauthorized access to or use of Purchased Services and Content and shall promptly notify DC of any such unauthorized access or use within 24 hours; (c) use Purchased Services and Content only in accordance with the Documentation and applicable laws and regulations; and (e) comply with terms of service of Third Party Applications with which Customer uses Purchased Services and/or Content.
- 2.5 Customer's Usage Restrictions.** Unauthorized use, resale, or commercial exploitation of any of the Purchased Services or Content is expressly prohibited. Customer acknowledges that any Purchased Services and associated Content are exclusively for use by Customer and its End Users, on behalf of Customer. Accordingly, Customer shall not, and shall not permit any legal entity or person to: (a) make any Purchased Service or Content available to, or use any Purchased Service or Content for the benefit of, any legal entity and/or individual other than Customer or its End Users; (b) sell, resell, license, sublicense, assign, transfer, lease, distribute, or rent any Purchased Service or Content, or include the same in a service bureau or outsourcing offering; (c) act in a fraudulent, tortious, malicious, or negligent manner when using the Purchased Services and/or Content; (d) use the Purchased Services to store and/or transmit infringing, libelous, or otherwise unlawful material and/or material in violation of Third-Party privacy rights; (d) use the Purchased Service to store and/or transmit Malicious Code; (e) interfere with and/or disrupt the integrity or performance of the Purchased Services and Content contained therein; (f) gain, or attempt to gain, unauthorized access to any Purchased Service, Content, and/or related system or network; (g) directly or indirectly access or use any Purchased Service or Content in a way that circumvents the Customer's Usage Limit as set forth in [Section 2.6](#) (Customer's Usage Limits); (h) copy, alter, enhance, modify, or make derivative works of a Purchased Service or any part, feature, function, or user interface thereof; (i) copy Content, except to the extent permitted by this Agreement, the Order Form, or the Documentation; (j) create internet "links" to the Purchased Services, or "frame" or "mirror" any Content on any server or wireless or Internet-based device, other than Customer's own intranet or otherwise for Customer's own internal business purposes or as permitted in the Documentation; (k) reverse engineer, reverse assemble or decompile, or otherwise attempt to derive source code from, the Purchased Services or any software component thereof, or access the Purchased Services or Content to build a competitive product or service, or copy any ideas, features, functions, or graphics of the Purchased Services or Content. In addition to DC's other remedies hereunder, DC reserves the right to suspend or terminate any End User's right to access the Purchased Services if such End User violates any of the foregoing restrictions.
- 2.6 Customer's Usage Limits.** Customer acknowledges that access to, and use of, the Purchased Services and Content are subject to those usage limits set forth in the Order Form, Proposal, Order Form, etc., including the number of End Users, licenses, accounts, digitized applications specified therein and includes limits to data usage or storage of documents in Customer's portion of the DC product(s). Unless expressly stated otherwise: (a) a quantity set forth in the Order Form refers to End Users, and the Purchased Services and/or Content may not be accessed by more than the number of End Users specified therein; (b) an End User's password may not be shared with any other individual in an effort to "share" accounts; and (c) an End User identification is permitted to be reassigned to a different individual who is replacing another individual who no longer requires ongoing use of the Purchased Services and/or Content. In the event that the Purchased Services are used in excess of the limits set forth on the Order Form, DC may engage Customer to reduce Customer's usage to conform with the limits. If, despite such efforts, Customer is unable or unwilling to abide by the usage limit, Customer shall execute an Order Form for additional quantities of the applicable Purchased Services or Content promptly upon Customer's request, and/or pay any invoice for excess usage.
- 2.7 Beta Services.** During the term of the Purchased Services, DC may invite Customer to try Beta Services at no charge, or little or no additional charge. Customer may accept or decline any such offering at Customer's sole discretion. Beta Services shall be clearly designated as "beta", "pilot," "limited release,"

“developer preview,” “non-production,” “evaluation,” or by a description of similar import and will be included an updated or amended Order Form or Quote. Any such Beta Services are: (a) for evaluation purposes only and shall not be for production use; (b) not considered Purchased Services under this Agreement; and (c) not supported and may be subject to additional terms or limitations. Unless otherwise stated, any trial period for Beta Services will expire upon the earlier of (i) the End Date specified for these Beta Service; (ii) 3 months from the start date of the Beta Services or (iii) or the date that a version of the Beta Services becomes generally available for Customer use. Beta Services may be discontinued at any time in DC’s sole discretion. DC has no obligation to develop or support the Beta Services beyond the obligations described in the applicable Order Form or Quote. DC shall have no liability for any harm or damage arising out of or in connection with the use of a Beta Service during a trial period.

### **3. TRAINING AND COMPLIANCE SERVICES**

If DC provides Customer with Training and Compliance Services, the scope, extent, cost, and termination of such services is specified in a Statement of Work provided by DC to Customer. Training and Compliance Services are also governed by the terms and conditions set forth in this Agreement and any Training and Compliance Services Addendum. For the avoidance of doubt, Training and Compliance Services are separate and distinct from Purchased Services.

### **4. FEES & PAYMENT TERMS**

**4.1 Fees.** Customer agrees to pay DC for all Purchased Services and Training and Compliance Services specified in the Order Form and/or Statement of Work.

**4.2 Payment Terms.** The initial payment terms are set forth in the Order Form. Thereafter, DC will automatically debit and/or charge Customer’s previously provided payment method (ACH or credit card) for services consumed each month for the remainder of the term. Customer authorizes DC to initiate charges pursuant to the above-specified payment method for all Purchased Services and/or Training and Compliance Services listed in the Order Form for the Initial Term and/or Renewal Term. Some charges may be made in advance as agreed upon, either annually, monthly, or as otherwise specified in the Order Form. Customer is responsible for providing complete and accurate billing and contact information to DC and for notifying DC of any changes to such information.

**4.3 Overdue Charges.** Customer agrees to pay a late charge of either (a) one and one-half percent (1.5%) or (b) the maximum interest rate permitted by law, whichever is less, for any and all amounts not paid by the due date specified in an invoice and not subject to a good faith dispute. Additionally, DC may condition future subscription renewals and Order Forms on pre-payment terms or other payment terms shorter than those specified in [Section 5.2](#) (Term of Purchased Services).

**4.4 Suspension of Purchased Services & Training and Compliance Services.** If any amount owed by Customer under this Agreement or any other agreement, or addendum, hereto for Purchased Services and/or Training and Compliance Services is overdue, DC may, without limiting its other rights and remedies, suspend the Purchased Services and/or Training and Compliance Services until such amounts are paid in full; provided, however, DC will provide Customer with ten (10) business days’ prior notice of any suspension. No such suspension shall occur if Customer remits payment within said ten (10) day notice period. However, Customer shall continue to be charged all applicable and incurred fees during the suspension.

**4.5 Payment Disputes.** If Customer has a good faith dispute with respect to any fees, charges, and/or expenses that cannot be resolved by discussions between the parties by the invoice due date, Customer agrees to pay any amounts due under this Agreement less the disputed amount. In such an instance, DC and Customer shall use diligent efforts to timely resolve any issues with respect to the disputed amount. An amount due shall be considered disputed in good faith when: (a) Customer delivers a written notice to DC on or before the date such amount is due; (b) the written notice provided to DC details the basis for said dispute and specifies the amount Customer is withholding; (c) the written statement represents that the disputed amount has been determined in good faith and after a commercially reasonable investigation

of the facts; and (d) any and all remaining amounts due from Customer, which are not in dispute, have been fully and timely paid pursuant to this Agreement. If the foregoing is satisfied, DC shall not exercise its rights under [Section 4.3](#) (Overdue Charges) and/or [Section 4.4](#) (Suspension of Purchased Services & Training and Compliance Services) with respect to the amount disputed in good faith.

- 4.6 Taxes.** All fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on DC's income, property, and employees. Notwithstanding the foregoing, if DC has a legal obligation to pay or collect any taxes for which Customer is responsible under this [Section 4.6](#) DC will invoice Customer and Customer will pay that amount unless Customer provides DC with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 4.7 Future Functionality.** The customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public statements made by DC regarding such future functionality or features.

## **5. TERM & TERMINATION**

- 5.1 Term of Agreement.** This Agreement commences on the Effective Date on the Order Form and continues until all Purchased Services and Training and Compliance Services hereunder have been completed, been terminated by either party pursuant to [Section 5.3](#) or the applicable Order Form, or upon the expiration of the term as described on the applicable Order Form.
- 5.2 Term of Purchased Services.** The term for the Purchased Services shall be as specified in the applicable Order Form ("**Initial Term**"). Except as otherwise specified in an Order Form, the Purchased Services shall automatically renew for additional periods equal to the expiring subscription term or two (2) years, whichever is longer ("**Renewal Term**"), unless either party provides the other with written notice of its intent not to renew at least ninety (90) days before the end of the current term. The per unit pricing during any Renewal Term shall be the same as that during the immediately preceding term unless DC gives Customer written notice of a pricing increase at least forty-five (45) days before the end of that term, in which case the pricing increase will be effective upon renewal and thereafter.
- 5.3 Termination.** Either party may terminate this Agreement or an Order Form for cause: (a) immediately in the event of a material breach of the Agreement, an Order Form, or a Statement of Work by the other party if such breach is not cured within thirty (30) days of written notice thereof; or (b) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency, or similar proceeding, that is not dismissed within sixty (60) days of filing. An Order Form and/or Statement of Work will automatically terminate if a suspension of the same lasts longer than thirty (30) days.
- 5.4. Effect of Termination/Expiration.** Upon termination or expiration of this Agreement, DC will not be required to provide the applicable Purchased Services and/or Training and Compliance Services to Customer, and Customer and its End Users shall cease using said Purchased Services and/or Training and Compliance Services. If DC terminates this Agreement, an Order Form, or a Statement of Work, except as set forth in [Section 5.3](#) (Termination), DC shall refund Customer any prepaid fees covering the remainder of the term of all Order Forms and/or Statements of Work after the effective date of termination. Alternatively, if Customer terminates this Agreement, an Order Form, or a Statement of Work, except as pursuant to [Section 5.3](#) (Termination), Customer shall pay any unpaid fees and/or expenses incurred as of the date of termination. Except as expressly provided herein, termination of this Agreement by either party shall be a nonexclusive remedy for breach and shall be without prejudice to any other right or remedy of said party.
- 5.5. Customer Data Portability & Deletion.** Upon termination, Customer shall no longer be able to use, access, or modify Customer Data through the Purchased Services. However, Customer may, within thirty (30) days from the date termination or expiration of this Agreement takes effect, make a written request to

DC for a copy of Customer Data. If such a request is made, DC shall make the Customer Data available to Customer for export or download as a PDF within thirty (30) days of said request. After this thirty (30) day period, DC shall have no obligation to store, maintain, and/or provide Customer Data, and may thereafter delete or destroy the same, unless legally required to maintain for a longer period. DC reserves the right to retain and anonymize Customer Data and any data provided by a Third-Party. DC shall not be liable to Customer or any Third Party for deletion of Customer Data pursuant to this Section.

**5.6. Surviving Provisions.** This [Section 5.6](#) and [Section 4](#) (Fees & Payment Terms), [Section 5.4](#) (Effect of Termination/Expiration), [Section 5.5](#) (Customer Data Portability & Deletion), [Section 7](#) (Intellectual Property Rights & Licenses), [Section 8](#) (Confidentiality), [Section 9.2](#) (Disclaimers), [Section 10](#) (Indemnification), [Section 11](#) (Limitation of Liability), and [Section 12](#) (General Provisions) shall survive any termination or expiration of this Agreement. No other provision of this Agreement shall survive the expiration or earlier termination of this Agreement.

## **6. THIRD-PARTY PRODUCTS**

**6.1 Third-Party Products.** The Purchased Services may include the utilization of embedded or integrated services by DC's licensors ("**Third-Party Materials**") as well as other Content and additional services either currently offered or to be offered in the future. The Purchased Services may also contain features designed to interoperate with Third-Party Applications (together with Third-Party Materials and Content, "**Third-Party Products**"). To use such features, Customer may be required to obtain access to Third-Party Applications from Third-Party providers and may be required to grant DC access to Customer's account(s) on the Third-Party Applications. However, if the provider of a Third-Party Application ceases to make the Third-Party Application generally available, or available to DC at its previously agreed upon price with DC, for interoperation with the corresponding Purchased Service features on reasonable terms, DC may cease providing those Purchased Service features. If Customer has prepaid for such ceased Purchased Service features, DC shall provide a pro rata refund for such payments. However, if Customer has not prepaid for any such ceased Purchased Service features, Customer shall not be entitled to any refund, credit, or other compensation.

**6.2 Third-Party Application & Services.** Customer's acquisition or use of any Third-Party Application or Third-Party services, and any exchange of data between Customer and any Third-Party Application or Third-Party service provider, is solely between Customer and said provider. DC does not warrant or support Third-Party Applications or other Third-Party Products or services, whether or not they are designated by DC as "certified" or otherwise, except as specified in the Order Form.

**6.3 Removal of Content & Third-Party Applications.** If DC is required by a licensor to remove Content or receives information that Content provided to Customer may violate applicable laws or Third-Party rights, DC may so notify Customer and, in such event, Customer shall promptly remove such Content from Customer's systems. If DC receives information that a Third-Party Application included in a Purchased Service by Customer may violate applicable law or Third-Party rights, DC may so notify Customer and, in such event, Customer shall promptly disable such Third-Party Application or modify the Third-Party Application to resolve the potential violation. If Customer fails to take the above-required action, DC may disable the applicable Content, Purchased Service and/or Third-Party Application until any potential violation is resolved. DC reserves the right to replace or otherwise end the use of any third Third-Party Applications and will notify Customer of any such changes.

**6.4 Third-Party Applications & Customer Data.** If Customer enables or purchases a Third-Party Application for use with a Purchased Service, Customer will grant DC permission to allow the Third Party providing said Third-Party Application to access Customer Data to the extent it is required for the interoperation and delivery of that Third-Party Application in conjunction with the Purchased Services. Customer acknowledges and agrees that DC is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by a Third-Party Application.

**6.5 Release of Liability for Third-Party Products.** Customer may decline the use of any Third-Party Products within the Purchase Services. DC does not make any warranties with respect to the Third-Party

Products make accessible to the Customer, its Affiliates or its End Users in connection with the Purchased Services or the Training and Consulting Services. In no event shall DC have an obligation to indemnify Customer, its Affiliates, or its End Users for any claims, demands, damages, liabilities, losses, and/or expenses resulting directly or indirectly from Customer, its Affiliates or its End User's use or reliance on the Third-Party Products. DC does not endorse nor explicitly market any Third-Party Products and in no event shall DC, or its licensors, be responsible for any content, products, or other materials on or available from other Third Parties.

## **7. INTELLECTUAL PROPERTY RIGHTS & LICENSES**

**7.1 Ownership of DC IP.** Title to and ownership of DC IP and Documentation and all applicable proprietary rights, including but not limited to, rights in patents, copyrights, author's rights, trademarks, trade names, graphic design and design elements, order of operations, algorithms, data structure, organizational features, know-how and identified trade secrets in the DC IP and Documentation if any, shall remain at all times with DC, and subject to the license granted to Customer pursuant to this Agreement. Except as set forth herein, as permitted by applicable copyright law, or as may be permitted in writing by DC, Customer or Customer Affiliates shall not reverse engineer, decompile or disassemble the DC IP or any portion thereof, nor otherwise attempt to create or derive the source code (or the underlying ideas, algorithms, graphic designs, order of operations, or any other structures or organization) of the Software. No other right or license with respect to any proprietary rights is granted under this Agreement.

**7.2 License by DC for Use of DC IP.** DC grants, and Customer accepts, a perpetual, worldwide, non-transferable and non-exclusive license to install, store and use the DC IP and Documentation, including the merging or interfacing of DC IP with other programs, subject to all the terms and conditions of this Agreement and any applicable Statements of Work, or Order Forms. The DC IP is licensed for use solely for Customer's business purposes, including the provision of data processing any other services to Customer's Affiliates, provided, however, that any such usage of the DC IP with respect to the data and information of the Customer's Affiliates shall be made only on equipment owned or controlled by Customer, and operated by Customer personnel and authorized contractors. No rights to sublicense or market the DC IP or Documentation are granted. All rights not specifically granted to Customer by this license remain in DC.

**7.3 License by Customer to Host Customer Data & Third-Party Applications.** Customer grants, and DC accepts, a perpetual, worldwide, non-transferable and non-exclusive license to host, copy, transmit and display Customer Data, and any Third-Party Applications and program code created by or for Customer using a Purchased Services, as necessary for DC to provide the Purchased Services in accordance with this Agreement. Subject to the limited licenses granted herein, DC acquires no right, title, or interest from Customer or Customer's licensors under this Agreement in or to Customer Data, any Third-Party Application, or other program code.

**7.4 Feedback.** If Customer, its Affiliates, or its End Users provide any suggestions, proposals, ideas, enhancement requests, recommendations, corrections, or improvements ("**Feedback**") to DC regarding the Purchased Services or Training and Compliance Services, Customer hereby grants to DC and DC's Affiliates a worldwide, perpetual, irrevocable, royalty-free license that is sub-licensable and transferrable to such Feedback and all intellectual property rights therein to exploit, distribute, use, and/or implement the Feedback with respect to the Purchased Services and Training and Compliance Services.

## **8. CONFIDENTIALITY**

**8.1 Confidential Information.** "**Confidential Information**" means all information disclosed by one party hereto ("**Disclosing Party**") to the other party ("**Receiving Party**"), in writing, that: (a) is designated as proprietary or confidential; or (b) reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes Customer and end users/insureds Data. DC's Confidential Information includes DC IP. Each party's Confidential Information also includes the terms and conditions of this Agreement, all Order Forms and Statements of Work (including pricing), as well as business and marketing plans, technology and



technical information, product plans and designs, and business processes disclosed by the Disclosing Party. However, information shall not be deemed Confidential Information hereunder if such information: (a) is or becomes publicly known, or otherwise publicly available, except through breach of this Agreement; (b) is known to the Receiving Party prior to its disclosure by the Disclosing Party, without breach of any obligation owed in this Section 8; (c) is or becomes known to the Receiving Party, directly or indirectly, from a Third Party source that does not have an obligation of confidentiality to the Disclosing Party; or (d) is independently developed by the Receiving Party, without use of the Disclosing Party's Confidential Information.

**8.2 Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care) (a) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (b) except as otherwise expressly authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to its and its' Affiliates' employees and contractors who have a need to know such Confidential Information for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing confidentiality protections no less stringent than those herein. Neither party will disclose the terms of this Agreement, an Order Form, or a Statement of Work to any Third Party, other than the party's Affiliates, legal counsel and accountants without the other party's prior written consent, provided that the party making such disclosure to its Affiliates, legal counsel, or accountants will remain responsible for such Affiliate's, legal counsel's, or accountant's compliance with this Section 8.2. Customer warrants and agrees that it, and its End Users, shall not use DC IP for the purposes of conducting comparative analysis, evaluation or product benchmarks with respect to the Purchased Services, and shall not publicly post any analysis or reviews of DC IP without DC's prior written approval in each instance.

**8.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to comply with an order of a court of competent jurisdiction or other governmental authority, or as otherwise necessary to comply with applicable law, provided that the Receiving Party shall first give written notice to the Disclosing Party (to the extent legally permitted) and provide reasonable assistance, at the Disclosing Party's request and expense, to obtain a protective order. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party does not contest the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **9. WARRANTIES & DISCLAIMER**

**9.1 DC Warranties.** DC warrants that, during the Initial Term and any Renewal Term: (a) the Purchased Services will perform materially in accordance with the Order Form and applicable Documentation; (b) DC will not materially decrease the overall security of the Purchased Services during a subscription term; and (c) subject to Section 6.1 (Third-Party Products), DC will not materially decrease the functionality of the Purchased Services during a subscription term. For any breach of the foregoing warranty, DC shall, at no additional cost to Customer, provide remedial services to enable the Purchased Services to conform with the warranty. Customer shall provide DC with a reasonable opportunity, but in no instance less than thirty (30) days, to remedy any such breach and reasonable assistance in doing so. If DC declines or refuses to remedy, Customer's exclusive remedies are those described in Sections 5.3 (Termination) and Section 5.4 (Effect of Termination/Expiration).

**9.2 Disclaimers.** EXCEPT AS SPECIFICALLY STATED IN SECTION 9.1, DC IS PROVIDING THE PURCHASED SERVICES, TRAINING AND CONSULTING SERVICES, BETA SERVICES, AND DOCUMENTATION "AS IS" AND THERE ARE NO WARRANTIES, COVENANTS, TERMS, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, OR OTHERWISE GRANTED FOR THE PURCHASED SERVICES, TRAINING AND CONSULTING SERVICES, BETA SERVICES, AND DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY DISCLAIMED AND CUSTOMER HEREBY ACCEPTS THE LICENSOR DISCLAIMER OF ALL OTHER

COVENANTS, REPRESENTATIONS, PROMISES AND WARRANTIES WITH RESPECT TO THE PURCHASED SERVICES, TRAINING AND CONSULTING SERVICES, BETA SERVICES, AND DOCUMENTATION, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.. AS TO THE PURCHASED SERVICES, BETA SERVICES, AND DOCUMENTATION, SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY SO SOME OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CERTAIN PURCHASED SERVICES, BETA SERVICES, AND DOCUMENTATION.

## 10. **INDEMNIFICATION**

- 10.1 Indemnification by DC.** DC will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a Third Party alleging that the use of a Purchased Service in accordance with this Agreement and the Order Form infringes or misappropriates such Third Party's intellectual property rights (a "**Claim Against Customer**"), and will indemnify Customer from any damages, attorneys' fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer, provided that Customer complies with the indemnification procedures contained in Section 10.3 (Indemnification Procedure). Excluded from the foregoing indemnification obligations are Third Party claims arising out of and/or relating to: (a) use of the Purchased Services in violation of this Agreement or applicable law; (b) Content, Customer Data, Third-Party Applications, or Third-Party Products; and (c) modification to a Purchased Services not made by DC or its employees or agents, where such claims would not have arisen except for such modification. If DC is notified about an infringement or misappropriation claim relating to the Purchased Services, DC may in its sole discretion, and at no cost to Customer: (i) modify the Purchased Services so that they no longer infringe or misappropriate; (ii) obtain a license for Customer's continued use of the Purchased Services in accordance with this Agreement; or (iii) terminate Customer's subscriptions for the Purchased Services upon thirty (30) days' written notice and refund Customer any prepaid, unused fees covering the remainder of the Initial Term or Renewal Term of the terminated subscriptions.
- 10.2 Indemnification by Customer.** Customer will defend DC against any claim, demand, suit or proceeding made or brought against DC by a Third Party alleging that Customer Data or Customer's, or End User's, use of any Purchased Service, Content, or Third-Party Application in breach of this Agreement infringes or misappropriates such Third Party's intellectual property rights or violates applicable law (a "**Claim Against DC**"), and will indemnify DC from any damages, attorneys' fees and costs finally awarded against DC as a result of, or for any amounts paid by DC under a court-approved settlement of, a Claim Against DC; provided, DC complies with the indemnification procedures contained in Section 10.3 (Indemnification Procedure).
- 10.3 Indemnification Procedure.** The party seeking indemnification (the "**Indemnified Party**") shall: (a) promptly give written notice to the party obligated to indemnify under this Section 10 (the "**Indemnifying Party**") of any claim, suit, or proceeding for which indemnity is sought, provided that failure to do so will not relieve the Indemnifying Party's obligations under this section except to the extent it is prejudiced by such late notice; (b) permit the Indemnifying Party to solely control the defense of any claim, suit, or proceeding, as well as any settlement negotiations, provided that the Indemnifying Party shall not settle any claim unless it unconditionally releases the Indemnified Party of all liability; and (c) cooperate with, and provide all reasonable assistance to, the Indemnifying Party in defending a claim, at the Indemnifying Party's expense. No indemnified party shall enter into a settlement agreement for which it will seek indemnification under this Agreement without prior written consent from the Indemnifying Party. Additionally, nothing in this Section 10.3 shall restrict the right of either DC or Customer to participate in a claim, action, or proceeding, through its own counsel and at its own expense.
- 10.4 Exclusive Remedy.** This Section 10 states the Indemnifying Party's sole liability to, and the Indemnified Party's exclusive remedy against, the other party for any type of claim described in this Section 10.

## 11. **LIMITATION OF LIABILITY**

- 11.1 Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, COVER, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT SHALL EITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS OF LIABILITY SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 4 (FEES & PAYMENT TERMS) AND SHALL NOT APPLY TO ANY LIABILITY ARISING FROM A BREACH OF SECTION 8 (CONFIDENTIALITY).
- 11.2. Force Majeure.** Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, pandemics, endemics, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, terrorism, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and within the party's power to satisfy), acts of any governmental body, failure or delay of third parties or governmental bodies from whom approvals, authorizations, licenses, franchises or permits must be obtained, or inability to obtain labor, materials, equipment, or transportation or illness of DC's technical staff. Each party shall use reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event.
- 12. GENERAL PROVISIONS**
- 12.1 Publicity.** Unless otherwise stated in the Order Form or Statement of Work, DC may include Customer's name and logo in a list of DC's customers with respect to online or print promotional, sales, or advertising materials. DC may also orally reference Customer as a customer of DC.
- 12.2 Assignment.** This Agreement shall be binding upon and for the benefit of DC, Customer, and their permitted successors and assigns. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent, which shall not be unreasonably withheld; provided, however, either party may assign this Agreement in its entirety, including all Order Forms, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.
- 12.3 Governing Law & Jurisdiction.** This Agreement, and Customer's relationship with DC under any Order Form and/or Statement of Work, and associated documents, shall be governed by the laws of the State of Pennsylvania without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Pennsylvania. Any legal suit, action, or proceeding arising out of, or related to, this Agreement or the licenses granted hereunder shall be instituted exclusively in the courts of the State of Pennsylvania, located in the City of Philadelphia, Pennsylvania. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding, except with respect to imminent harm requiring temporary or preliminary injunctive relief in which case DC may seek any such relief in any court with jurisdiction over the parties.

- 12.4 Relationship of the Parties.** DC and Customer are independent entities. Nothing in this Agreement shall be construed as creating a partnership, franchise, joint venture, agency, fiduciary or employment relationship between them. Additionally, neither DC nor Customer shall enter into any contracts, make any warranties or representations, assume or create any obligations, either express or implied, on the other party's behalf.
- 12.5 Notices.** Except as otherwise specified in this Agreement, all notices, approvals, requests, authorizations, directions, or other communications hereunder shall be in writing and shall be deemed to have been given: (a) on the date of delivery if delivered to the party to whom the same is addressed or directed; (b) seven (7) business days after mailing; (c) three (3) business days after sending by confirmed facsimile; or (d) three (3) business day after sending by email, provided that email shall not be sufficient for notices of termination or an indemnifiable claim. Any such notices directed towards DC shall be addressed to 230 Sugartown Road Wayne, #100, PA, 19087. Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer. All other notices to Customer shall be addressed to the relevant Purchased Services system administrator designated by Customer.
- 12.6 Third-Party Beneficiaries.** DC's Content licensors shall have the benefits of DC's rights and protections hereunder with respect to the applicable Content. Notwithstanding the foregoing, nothing contained in this Agreement is intended or shall be construed to confer upon any other legal entity or person any rights, benefits, or remedies of any kind or character whatsoever, or to create an obligation of a party to any such legal entity or person.
- 12.7 Export Compliance.** Customer acknowledges that any obligation of DC to provide DC IP or Documentation under this Agreement are subject in all respects to all United States laws and regulations governing the removal, transmission, export and use of same outside of the United States. Customer agrees that it shall not remove, transmit or export, directly or indirectly, any DC IP, Documentation or related information from the United States, or any other jurisdiction, without being in full compliance with all governing laws and regulations, including without first obtaining all required licenses and approvals from the appropriate government agencies.
- 12.8 Waiver & Severability.** The failure or delay by either party in exercising any right under this Agreement shall not be deemed a waiver or forfeiture of such rights. Additionally, the invalidity or unenforceability of one (1) or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.
- 12.9 Entire Agreement & Order of Precedence.** This Agreement, any addendums hereto, any Order Form, and any Statement of Work, each of which is incorporated herein by reference and made a part hereof, constitute the entire agreement between DC and Customer with respect to Customer's use of the Purchased Services, Training and Compliance Services, and Content, and supersedes all other prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between DC and Customer relating thereto and is binding upon them and their permitted successors and assigns. In the event of any conflict or inconsistency among the foregoing documents, the order of precedence shall be: (1) the applicable Order Form and/or Statement of Work; (2) this Agreement; and (3) the Documentation.
- 12.10 Anti-Corruption.** Customer acknowledges that Customer has not received, and has not been offered, any illegal or improper bribe, kickback, payment, gift, or anything else of value from any DC employee or agent in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer shall use reasonable effort to promptly notify DC's Legal Department at [info@mydatacrest.com](mailto:info@mydatacrest.com).



## **FREE TRIAL SERVICES ANNEX**

If Customer registers, or is registered, for Free Trial Services on DC's website, or was otherwise granted access to Free Trial Services by DC, its Affiliates, or a DC partner organization, this Agreement will govern such services' period of use. DC shall make one (1) or more services available to Customer on a trial basis free of charge until the earlier of: (a) the end of the trial period for which Customer registered to use the applicable service(s); (b) the start date of any Purchased Service subscriptions ordered by Customer for such service(s); or (c) termination by DC in DC's sole discretion (the "**Free Trial Period**"). Additional trial terms and conditions may appear on the free trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

Any Customer Data entered into Free Trial Services, and any customizations made to such services by or for Customer, during the Free Trial Period shall be permanently lost unless Customer: (a) enters into an Order Form for Purchased Services encompassing the same services offered in the Free Trial Services; (b) purchases upgraded services before the end of the Free Trial Period. Customer cannot transfer Customer Data entered or customizations made during the Free Trial Period to a service that would be a downgrade from that covered by the Free Trial Period.

As specified in Section 9.2 (Disclaimers) of this Agreement, Free Trial Services are provided "as is" during the Free Trial Period, exclusive of any warranty whatsoever. Without limiting the foregoing, DC, its Affiliates, and its licensors do not represent or warranty that: (a) Customer's use of the Free Trial Services during the Free Trial Period will meet Customer's requirements; (b) Customer's use of the Free Trial Services during the Free Trial Period will be uninterrupted, timely, secure, or free from error; and/or (c) any Content provided with respect to the Free Trial Services during the Free Trial Period will be accurate. Notwithstanding anything to the contrary in Section 11 (Limitation of Liability), Customer shall be fully liable under this Agreement to DC and DC's Affiliates for: (a) damages arising out of Customer's use of the Free Trial Services during the Free Trial Period; (b) any material breach of this Agreement while using the Free Trial Services during the Free Trial Period; and (c) indemnity obligations for claims arising out of Customer's use of the Free Trial Services during the Free Trial Period, in accordance with Section 10 (Indemnification) of this Agreement.

## TRAINING AND COMPLIANCE SERVICES ADDENDUM

This Training and Compliance Services Addendum, effective as of the execution date of last signature (“**Effective Date**”), by and between DC and Customer. Terms capitalized but not defined herein shall have the meaning assigned to them under that certain Master Subscription Agreement (the “**MSA**”).

WITNESSETH

**WHEREAS**, the Customer and DC have entered into that certain MSA; and

**WHEREAS**, the Customer desires to obtain certain Training and Compliance Services from DC;

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, the Customer and DC hereby agree as follows:

Section 1. Training Services. DC shall: provide qualified training, training materials and any required equipment to assist Customer, its End Users and its Affiliates with learning to use the DC IP.

Section 2. Compliance. DC shall assist Customer with meeting its compliance obligations related to the

Section 3. Fees. DC may charge Customer for the Training and Compliance Services at DC's then-current rates, or as otherwise negotiated between DC and Customer.

IN WITNESS WHEREOF, this Agreement is duly executed by an authorized representative of both parties on the days and year below written.

**DC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CUSTOMER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_