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## DATAWALK, INC. SOFTWARE LICENSE AGREEMENT

### **IMPORTANT - READ BEFORE COPYING, INSTALLING, OR USING THE SOFTWARE**

Do not use or load this software and any associated materials (collectively, the “Software”) until you have carefully read the following terms and conditions. By loading or using the Software, you accept and agree to the terms of this Agreement. If you do not wish to so agree, do not install or use the Software. DataWalk, Inc., a Delaware corporation, is referred to in this Agreement as “DataWalk”, “we”, and/or “our”. As used herein, the term “you” or “your” means the person or single entity that has purchased the rights granted under this Agreement.

#### Article 1. Definitions.

1.1. Access. The term “Access” and variants thereof shall mean to store data in, retrieve data from, or otherwise approach or make use of the Software (directly or indirectly) through electronic means or otherwise.

1.2. Confidential Information. The term “Confidential Information” shall mean all information disclosed by DataWalk to you that is identified by DataWalk as proprietary or confidential at the time of disclosure or reasonably thereafter after being notified or learning that the information has proprietary or confidential value to DataWalk. Confidential Information shall include all information concerning this Agreement, the Software, and the Documentation. Confidential information shall not include information that is: (i) already in the public domain or subsequently enters the public domain through no fault of you, (ii) already known to you as shown by your written records; (iii) independently developed by you as shown by your written records, (iv) disclosed to you by a third party who is not obligated to keep the information confidential as shown by your written records; (v) released by DataWalk without restriction, or (vi) required by court order to be released by you.

1.3. Documentation. The term “Documentation” shall mean Software release notes, the installation guide, and the user’s manual.

1.4. Unauthorized Access. The term “Unauthorized Access” shall mean any Access to the Software or the Documentation by any person not licensed or authorized to use the Software, except for the exclusive purposes of using the Software as permitted by this Agreement.

1.5. User. The term “User” shall mean your employees, contractors, and agents authorized by you to Access the Software and use the Documentation for the purposes permitted by the Agreement.

#### Article 2. The License.

2.1. Grant of License. DataWalk hereby grants to you a limited, non-exclusive, and non-transferable License to use the Software and the Documentation for the term of this Agreement solely for the purpose of use that the Software was designed to be used for which

you have paid the required license fees. DataWalk does not grant you any right to grant sublicenses, lease or distribute the Software to third parties. Other than as specifically described herein, no right or license is granted to use, access, or benefit from any of DataWalk's trademarks, patents, copyrights, trade secrets or other intellectual property rights, and DataWalk expressly retains all rights not granted herein. You shall not (i) make any statement that the Software is "certified," or that its performance is guaranteed, by DataWalk, or (ii) use DataWalk's name or trademarks in connection with any integrated product without DataWalk's prior written permission, which may be granted or withheld in its sole discretion.

2.2. Restrictions. You shall not make any copies of the Software or the Documentation, except you may make one (1) copy of the Documentation for archival purposes. You shall not resell, transfer or sublicense the Software, Documentation, or any copies thereof to any other person or entity. You shall not modify, decompile, disassemble, translate, or reverse engineer the Software, or otherwise attempt to derive any of the Software's source code. You shall not use this software, related materials, help files, support or configuration files to create or contribute to the development of a competing product. You shall not use the Software for service bureau or time-sharing purposes, or in any other way allow third parties to exploit the Software. You shall use and Access the Software in compliance with all federal, state, and local laws and regulations, including, but not limited to, any applicable export controls.

2.3. Additional Obligations. You shall prevent Unauthorized Access to the Software and the Documentation. You shall inform all Users of the scope of your license under Section 2.1, the restrictions under Section 2.2, and your confidentiality obligations under Article 3 herein.

2.4. Audits. DataWalk shall have the right to audit, at its own expense, your compliance with your obligations and restrictions under this Agreement. Any such audit shall be conducted only after reasonable notice and only during normal business hours.

2.5. Taxes. You shall pay any and all applicable taxes or VAT associated with licensing of the Software under this Agreement, excluding income taxes assessed against DataWalk.

### Article 3. Intellectual Property.

3.1. Ownership and Title. DataWalk owns exclusively all rights, title to, and interest in the Software and the Documentation. Without limitation, title to the Software and the Documentation, including ownership rights to patents, copyrights, trademarks, and trade secrets therein, is and shall remain the exclusive property of DataWalk.

3.2. Use of Confidential Information. You shall not duplicate, use, or disclose Confidential Information, except as otherwise permitted under the Agreement, or as otherwise permitted or authorized by DataWalk in writing before your duplication, use or disclosure of the Confidential Information. Upon DataWalk's prior written approval, which may be withheld at its sole discretion for any reason whatsoever, you may publish the results of your evaluation of the Software. Thirty (30) days before any proposed publication, you shall submit a copy of the proposed publication to DataWalk for its review, comments, and approval. As used herein, the terms "publish" and "publication" refer to: (i) any public disclosure or (ii) disclosure to any

person not obligated to DataWalk to keep such information confidential.

3.3. Trade Secrets. You hereby acknowledge and agree that the Confidential Information: (i) derives independent economic value (actual or potential) from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; (ii) is the subject of reasonable efforts under the circumstance to maintain its secrecy; and, (iii) therefore, contains trade secrets.

(a) Exception & Immunity. Pursuant to the United States Defend Trade Secrets Act of 2016, 18 U.S.C. Section 1833(b), you are on notice and acknowledge that, notwithstanding the foregoing or any other provision of this Agreement:

(i) Immunity. An individual shall not be held criminally or civilly liable under any United States or State trade secret law for the disclosure of a trade secret that: (A) is made (i) in confidence to a United States, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(ii) Use of Trade Secret Information in an Anti-Retaliation Lawsuit. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

3.4. Ownership of Software Modifications. If you or Users modify the Software or use it to develop computer software or other works of authorship (as defined by the U.S. Copyright Act), such modifications, developed software, or works of authorship shall be the sole and exclusive property of DataWalk, and DataWalk shall own all of the right, title, and interest in and to such modifications, works of authorship, and any resulting computer software, including, but not limited to, any and all copyrights, patent rights, trademarks, and trade secrets related thereto.

#### Article 4. Representations and Warranties.

##### 4.1. From DataWalk.

(a) Regarding Function. DataWalk represents and warrants that following installation of the Software, the Software will perform materially as described in its Documentation and other specifications.

(b) Regarding Intellectual Property Rights in the Software. Subject to the next sentence, DataWalk represents and warrants that it is the owner of the Software and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. DataWalk's representations and warranties in the preceding sentence do not apply to the extent that the infringement arises out of any of the following conditions: (a) your breach of this Agreement; (b) revisions to the Software made without

DataWalk's written consent; (c) your failure to incorporate upgrades that DataWalk provides to you that would have avoided the alleged infringement, provided that DataWalk offers you such upgrades without charges not otherwise required under this Agreement; or (d) use of the Software in combination with hardware or software not provided by DataWalk. In the event of a breach of any warranty in this Section 4.1(b), DataWalk, at its own expense, will promptly take one of the following actions: (i) secure for you the right to continue using the Software; or (ii) replace or modify the Software to make it non-infringing, provided that such modification or replacement will not materially degrade any functionality listed in the Specifications or Documentation; provided, however, that if the exercise of rights under the preceding (i) or (ii) would in DataWalk's opinion be commercially unreasonable, then, (iii) upon DataWalk's receipt of your written representation and promise that you have removed all instances of the Software and will not further use the Software: (A) if a subscription license is at issue, then DataWalk shall refund to you a pro-rata amount of the pre-paid license fees for the Software corresponding to the portion of the then-current subscription term for such Software after the date of such termination; or (B) if a perpetual license is at issue, then DataWalk shall refund to you the amortized portion of the perpetual license fees paid hereunder for such Software, based upon a straight-line three-year depreciation calculation beginning on the date of delivery of the Software under a perpetual license to you. In conjunction with your right to terminate for breach where applicable, and under the provisions of Article 5 below, the preceding two sentences state DataWalk's sole obligation and liability, and your sole remedy, for breach of a warranty in this Section 4.1(b) and for potential or actual intellectual property infringement by the Software. If DataWalk elects to refund license fees under this Section 4.1(b), it shall not be obligated to refund costs or fees paid by you for support, setup, configuration, or maintenance of the Software.

4.2. Warranty Disclaimers. Except for the express warranties in Section 4.1(a) and 4.1(b) above, *DATAWALK MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.* Except for the express warranties in Section 4.1(a) and 4.1(b) above, DataWalk does not warrant that the Software will perform without error or that it will run without immaterial interruption. DataWalk makes no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the Software made by anyone other than DataWalk, unless DataWalk approves such modification in writing; or (b) use of the Software in combination with any operating system not authorized in the specifications or Documentation or with hardware or software specifically forbidden by the specifications or Documentation.

#### Article 5. Indemnification.

5.1. Indemnified Claims. DataWalk shall defend and indemnify you and your Associates (as defined below) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging direct infringement of any patent, copyright, trade secret, or other intellectual property right by the Software. DataWalk's obligations set forth in this Section 5.1 do not apply, however, to the extent that an Indemnified Claim arises out of: (a) your breach of this Agreement; (b) you or a User's revisions to the Software made

without DataWalk's written consent; (c) your failure to incorporate Software upgrades that would have avoided the alleged infringement, provided that DataWalk offered such upgrades without charges not otherwise required pursuant to this Agreement; (d) DataWalk's modification of Software in compliance with specifications provided by you; (e) you or a User's use of the Software in combination with hardware or software not provided by DataWalk; or, (f) you or a User's use of the Software with data or intellectual property that is not authorized, licensed or permitted, or would infringe a third party's existing intellectual property rights. In the event of an Indemnified Claim, DataWalk may exercise the remedies in Sections 4.1(b)(i) through 5.1(b)(iii) above, including without limitation its right therein to terminate licenses and require return of the Software. (As used in this Article 5, your "Associates" are your owners, officers, directors, parents, subsidiaries, affiliates, agents, successors, and assigns.) DataWalk's obligations pursuant to this Section 5.1 will be excused to the extent that you or your Associates fail to provide prompt notice to DataWalk of the Indemnified Claim or you or your Associates' failure to reasonably to cooperate with DataWalk materially prejudices the defense. DataWalk shall exclusively control the defense of any Indemnified Claim, including the selection of attorneys to represent you or your Associates, appeals, negotiations, and any settlement or compromise thereof; provided, however, that you will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that you or your associates admit wrongdoing or liability or subjects them to any ongoing affirmative obligations.

5.2. Your Indemnity of DataWalk. You shall defend and indemnify DataWalk and its owners, officers, directors, parents, subsidiaries, affiliates, agents, successors and assigns against any damages, claims, losses, penalties, fines, costs, and attorney's fees arising from or related to your or a User's: (1) material breach of this Agreement, (2) use of the Software or Confidential Information that violates any individual, entity, or government agency's rights, including infringing their intellectual property, or (3) use of the Software or Confidential Information to violate any local, state or federal law, or law of another country.

#### Article 6. Limitation Of Liability.

6.1. IN NO EVENT SHALL DATAWALK OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, LOST WAGES, PRODUCTIVITY, OR MANPOWER, OR LOST INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF DATAWALK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY, EXCEPT FOR THOSE SUCH DAMAGES THAT ARE AWARDED ON THIRD PARTY INTELLECTUAL PROPERTY CLAIMS AGAINST YOU OR YOUR ASSOCIATES (AS DEFINED IN ARTICLE 6 ABOVE). SOME JURISDICTIONS PROHIBIT EXCLUSION OR LIMITATION OF LIABILITY FOR IMPLIED WARRANTIES OR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

6.2. THE LIABILITIES LIMITED BY THIS ARTICLE 6 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STATUTE, STRICT PRODUCT LIABILITY, OR OTHERWISE (SUBJECT TO THE LIMITATIONS OF SECTION 6.1 ABOVE); (c)

EVEN IF DATAWALK IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 6, DataWalk's liability will be limited to the maximum extent permissible. For the avoidance of doubt, DataWalk's liability limits and other rights set forth in this Article 6 apply likewise to DataWalk's parent companies, affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

6.3. Section 6.1 above does not apply to: (a) claims pursuant to Article 5 above; or (b) claims for attorneys' fees and other litigation costs recoverable by the prevailing party in any action.

#### Article 7. Term and Termination.

7.1. Term. For any perpetual license of the Software granted to you under this Agreement, the term of this Agreement's effect shall be for as long as you or any User uses or Accesses the Software. For any license of the Software granted to you under this Agreement for a specific period, the term of this Agreement's effect shall be for that period.

7.2. Termination for Cause. If you violate any of your obligations under the Agreement, DataWalk may send a written notice describing the noncompliance to you. Upon receiving the notice, you shall have seven (7) calendar days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required time period, DataWalk may cancel the Agreement immediately thereafter.

7.3. Termination for Bankruptcy or Insolvency. In the event you (i) terminate or suspend your business, (ii) become subject to any bankruptcy or insolvency proceeding under federal or state statute, (iii) become insolvent or become subject to direct control by a trustee, receiver, or similar authority, or (iv) have wound up or liquidated, voluntarily or otherwise, DataWalk shall have the immediate right to terminate this Agreement effective immediately and take immediate possession of the Software and the Documentation and all copies thereof, wherever located, without demand or notice.

7.4. Effects of Termination of the Agreement. Upon termination of this Agreement, you shall cease all use of and Access to the Software and delete, destroy, or return all copies of the Documentation and in your possession or control. The following provisions shall survive termination or expiration of this Agreement: (a) any of your obligations to pay fees incurred before termination; (b) Articles and Sections 2.2, 2.4, 3, 4.2, 5, 6, and 8; and, (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

#### Article 8. Dispute Resolution.

*If you are located in the United States, this Article 8 applies to you:*

Before submitting a claim or dispute arising out of or relating to this Agreement for arbitration, either party shall first notify the other party to try to resolve the claim or dispute. If the claim

or dispute is not resolved within 60 days of such notification, then a party hereto may submit it for arbitration.

You and DataWalk agree that any dispute, claim or controversy arising out of or relating in any way to this Agreement shall be exclusively determined by binding arbitration before a single, neutral arbitrator located in San Jose, California, instead of in courts of general jurisdiction. *YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND DATAWALK ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY, OR COURT, OR TO PARTICIPATE IN A CLASS ACTION. THE ARBITRATION SHALL BE ADMINISTERED BY JAMS ([HTTPS://WWW.JAMSADR.COM](https://www.jamsadr.com)) AND GOVERNED BY ITS PROCEDURES AND RULES THEN IN EFFECT FOR COMMERCIAL DISPUTES.* DataWalk and you shall jointly select the arbitrator; if unable to agree on an arbitrator, then jams shall select the neutral arbitrator. The prevailing party in any arbitration shall be entitled to an award of its costs of arbitration, its reasonable attorney's fees, taxable litigation costs, and expert witness fees expended during arbitration. Arbitration shall be private and confidential, and neither you, nor DataWalk, nor the arbitrator may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement or appeal of the arbitration award. Any decision or award by the arbitrator rendered in an arbitration proceeding shall be final and binding on each party, and may be entered as a judgment in any court of competent jurisdiction.

*YOU AND DATAWALK AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. FURTHER, UNLESS BOTH YOU AND DATAWALK AGREE OTHERWISE, THE ARBITRATOR SHALL NOT CONSOLIDATE ANOTHER PARTY(IES)' CLAIMS WITH YOUR CLAIMS, AND SHALL NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. IF THIS SPECIFIC PROVISION IS FOUND TO BE UNENFORCEABLE, THEN THE ENTIRETY OF THIS ARBITRATION PROVISION SHALL BE NULL AND VOID.*

The arbitrator shall decide any issues relating to the enforceability and/or applicability of the arbitration provisions of this Agreement. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking such relief and only to the extent necessary to provide relief warranted by that party's claims.

*If you are located outside of the United States, or if Article 8 does not apply to you or is otherwise unenforceable as adjudicated by a court of competent jurisdiction, then Sections 9.10 and 9.11 apply to you.*

#### Article 9. Miscellaneous.

9.1. Independent Contractors. The parties hereto are independent contractors and will so represent themselves in all regards. Neither party is the agent, partner, or joint venture of the other, and neither may take any actions to bind or obligate the other party whatsoever.

9.2. Notices. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if personally delivered, mailed by first class mail (postage prepaid), or by other carrier, by facsimile, or by electronic mail, to either party at their current address, fax

number, or electronic mail address or on file with the other party hereto. Each party is responsible at all times for providing the other with its most current business address (not P.O. box), telephone number, facsimile number (if any), and electronic mail address.

9.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

9.4. Assignment and Successors. You may not assign this Agreement or any of its rights or obligations hereunder without DataWalk's express written consent. Any attempted assignment or delegation without such consent will be void. DataWalk may assign this Agreement in whole or part without your consent. Except to the extent forbidden in this Section 9.4, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

9.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

9.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

9.7. Headings. The headings and captions of the Agreement are inserted for reference and convenience and do not define, limit, or describe the scope or intent of the Agreement or any particular article, section, or provision.

9.8. Government Restricted Rights. The Software may be provided with restricted rights. Use, duplication, or disclosure for or by the government of the United States, including without limitation any of its agencies or instrumentalities, is subject to restrictions set forth, as applicable: (i) in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19; or (ii) in similar clauses in other federal regulations, including the NASA FAR supplement. The contractor or manufacturer is DataWalk. You shall not remove or deface any restricted rights notice or other legal notice appearing in the Software or on any packaging or other media associated with the Software.

9.9. Bankruptcy Rights. The rights and licenses granted to you under this Agreement are licenses to "intellectual property" rights, as defined in Section 365(n) of the United States Bankruptcy Code (11 U.S.C. Sections 101, et seq.). If DataWalk is subject to any proceeding under the United States Bankruptcy Code, and DataWalk as debtor in possession or its trustee



in bankruptcy rejects this Agreement, you may, pursuant to 11 U.S.C. Section 365(n)(1) and (2), retain any and all rights granted to you under Section 2.1 above to the maximum extent permitted by law. This Section 9.9 will not be construed to limit or restrict any right or remedy not set forth in this section, including without limitation the right to retain any license or authority this Agreement grants pursuant to any provision other than Section 2.1 above.

9.10. Choice of Law; Forum for Disputes. This Agreement will be governed solely by the internal laws of the State of California, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties hereto shall litigate and adjudicate all claims and actions between them on or related to this Agreement, including without limitation tort claims, only in the exclusive jurisdiction of the federal and state courts of Santa Clara County, California.

9.11 Attorney's Fees. As between DataWalk and you, if either party prevails on any claim or cause of action arising from or related to this Agreement, then the prevailing party shall be entitled to an award of its reasonable attorney's fees, taxable litigation costs, and expert witness fees expended litigating the claim or cause of action.

9.11. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

9.12. Technology Export. You shall not: (a) permit any third party to Access or use the Software in violation of any U.S. law or regulation; or (b) export the Software or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, you shall not permit any third party to Access or use the Software in, or export it to, a country subject to a United States embargo. You shall ensure that no third party that transacts business with DataWalk has Access to or uses the Software in, or exports it to, a country subject to a United States embargo.

9.13. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

9.14. Amendment. This Agreement may not be amended except through a writing executed by authorized representatives of each party.