



## PROJECTOR END USER LICENSE AGREEMENT

*Date of Last Revision: December 5, 2024*

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## **LICENSEE DATA; DATACLAY OTHER PRODUCTS**

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You are solely responsible for maintaining backups and copies of your data used with the Software.

## **LICENSE FEES**

All fees and payment terms are as set forth in the applicable Order. Except as expressly set forth in this Agreement, all payment obligations are non-cancelable, and fees are non-refundable. Any terms and

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Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, any sales, use, GST, value-added, withholding, or similar taxes, whether domestic or foreign, or assessed by any jurisdiction (“Taxes”). You are responsible for paying all Taxes associated with your purchases hereunder.

### **QUE METER CREDITS FOR DATACLAY SUITE OF PRODUCTS**

As an alternative to the above License Fees section and to give you the opportunity to try all of our suite of products and services, you may elect to purchase QUE Meter credits which may be used for any Dataclay suite of products and services including Templater, QUE Services and Projector. The rules for QUE Meter credits include the following:

- You must create a QUE account
- You must purchase a perpetual Templater Rig software license
- QUE Meter credits may only be used for output as determined in Dataclay’s sole discretion
- QUE Meter credits will expire 1 year after purchase; however, if you purchase additional QUE Meter credits then the expiration date for all QUE Meter credits (the new credits as well as the existing QUE Meter credits) will be 1 year from the new QUE Meter credit purchase date
- You may only purchase and maintain the maximum number of QUE Meter credits specified on your Order

Additional rules for QUE Meter credits may be included on your Order. In the event of a conflict between this Section and any other section of this Agreement, this Section will prevail.

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Dataclay may at any time and without Licensee's consent assign this Agreement or all or a portion of its rights and obligations under this Agreement. This Agreement and all of its provisions will inure to the benefit of and become binding upon the parties and the successors and permitted assigns of the respective parties.

**Indemnity.** Licensee agrees to indemnify Dataclay from any claim, demand, loss or damages including reasonable attorneys' and expert witness' fees, arising out of or related to Licensee's use of the Software or violation of this Agreement.

**No Waiver.** No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of Dataclay. No waiver of any past or present right arising from any

breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

**Severability.** If any provision in this Agreement is held invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

**Non-Exclusive Remedy.** Except as otherwise expressly stated herein, termination, expiration or cancellation of this Agreement and/or Licensee's use of the Software will be a non-exclusive remedy of Dataclay and will be without prejudice to any other right or remedy of Dataclay. Except as otherwise expressly stated herein, Dataclay's rights and remedies are cumulative and not alternative.

**Attorneys' Fees.** In the event of any legal proceeding between Dataclay and you arising out of or related to this Agreement, Dataclay will be entitled to recover, in addition to any other relief awarded or granted, its costs and expenses (including reasonable attorneys' and expert witness' fees and arbitration fees) incurred in any such proceeding.

**U.S. Government End Users.** The Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein. Contractor/Manufacturer is Dataclay, LLC, 6425 Living Place, Suite 200, Pittsburgh, PA 15206.

**Export.** Licensee will comply with all applicable export laws, restrictions, and regulations of any United States or foreign agency or authority. Licensee will not export or re-export or allow or authorize the export or re-export of the Software and Documentation, or any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations including to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time but currently includes Crimea Region of Ukraine, Cuba, Iran, North Korea, Russia, Sudan, Syria, and Venezuela.

**English Language Controls.** We may provide translations of this Agreement as a convenience to licensees. However, in the event of a conflict or inconsistency between the English and any non-English versions, the English version of this Agreement will govern, to the extent not prohibited by local law in your jurisdiction.

#### **Notices**

- **To Dataclay:** Licensee may send notices to Dataclay at the following address: Dataclay, LLC, 6425 Living Place, Suite 200, Pittsburgh, PA 15206, as it may be updated from time to time on the Dataclay website.
- **To Licensee:** Dataclay may notify Licensee by email, postal mail or other legally acceptable means using the contact information provided by Licensee.



**Marketing.** Dataclay may use and display Licensee's name, logo, trademarks, and service marks on Dataclay's website and in Dataclay's marketing materials in connection with identifying Licensee as a customer of Dataclay. Upon Licensee's written request, Dataclay will promptly remove any such marks from Dataclay's website and, to the extent commercially feasible, Dataclay's marketing materials.

**Governing Law.** This Agreement will be governed by, and interpreted in accordance with, the laws of the State of Texas (U.S.A.) exclusive of its choice of law provisions. This Agreement expressly excludes application of the United Nations Convention on the International Sale of Goods and UCITA (the Uniform Computer Information Transactions Act) as it may be enacted in the applicable jurisdiction. If the below Arbitration Section does not apply to you, then any legal suit, action or proceeding arising out of or relating to this Agreement or any dispute will be commenced in the appropriate state or federal court in Austin, Texas, and you and we irrevocably consent to the exclusive jurisdiction of such courts and venue in Austin, Texas for any such proceeding, and we each waive any right to a jury trial.

**Arbitration.** Subject to the Governing Law Section, any controversy or dispute arising out of or relating to this Agreement, or the breach of this Agreement, that is not promptly resolved by negotiation between the parties, will be resolved by binding arbitration conducted in the English language in accordance with the arbitration rules of the American Arbitration Association ("AAA") and United States Federal Arbitration law without reference to state arbitration law, except that you may assert claims in small claims court if your claims qualify. Judgment upon the award rendered by the arbitral tribunal may be entered in any court having jurisdiction thereof. The arbitration tribunal will consist of a single arbitrator mutually agreed by the parties, or in the absence of such agreement within 30 calendar days from the first referral of the dispute to the AAA, designated by the AAA. The place of arbitration will be in Travis County, Texas unless the parties have agreed to another location within 15 calendar days from the first referral of the dispute to the AAA; the parties agree that any arbitration hearings will, to the extent possible and consistent with the AAA arbitration rules, be conducted remotely (i.e. Zoom, phone, and the like). The arbitral award will be final and binding. Each party retains the right to seek judicial assistance: (a) to compel arbitration; (b) to obtain interim measures of protection prior to or pending arbitration, (c) to seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect the unauthorized disclosure of its proprietary or confidential information, and/or (d) to enforce any decision of the arbitrator, including the final award. The arbitration proceedings contemplated by this Section will be as confidential and private to the extent permitted by applicable law. To that end, the parties will not disclose the existence, content or results of any proceedings conducted in accordance with this Section, and materials submitted in connection with such proceedings will not be admissible in any other proceeding, provided, however, that this confidentiality provision will not prevent a petition to vacate or enforce an arbitral award, and will not bar disclosures required by law.

You agree that all dispute proceedings (whether in court or by arbitration) will be only on an individual basis and not heard on a class, representative or consolidated basis.

**Complete Understanding.** This Agreement sets forth the entire understanding and agreement between Licensee and Dataclay with respect to the subject matter hereof and supersedes any prior representations, discussions, undertakings, communications, or advertising relating to the Software. This Agreement may be amended only in writing signed by an authorized representative of Dataclay. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED TO

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**Construction.** The headings of Sections of this Agreement are included solely for convenience of reference and are not to be used to interpret, construe, define, or describe the scope of any aspect of this Agreement. The terms “include,” “including,” “includes” and similar terms mean “including, without limitation.” Each party represents that it has had the opportunity to participate in the preparation of this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in connection with the construction or interpretation of this Agreement. Unless otherwise expressly stated to the contrary herein, all remedies are cumulative and the exercise of any express remedy by either party does not by itself waive such party’s right to exercise its other rights and remedies available at law or in equity.

**Counterparts.** This Order referencing this Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together will constitute one single agreement between the parties. This signed Order referencing this Agreement or counterparts may be exchanged electronically or stored electronically as a photocopy (such as in .pdf format). The parties agree that electronically exchanged or stored copies will be enforceable as original documents and consent to the use of electronic and/or digital signatures for the execution of the Order referencing this Agreement and further agree the use of electronic and/or digital signatures will be binding, enforceable and admissible into evidence in any dispute regarding this Agreement.

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