



## QUE TERMS OF SERVICE

*Date of Last Revision: March 7, 2025*

**IMPORTANT – READ CAREFULLY BEFORE USING THE SERVICES:** BY INDICATING YOUR ACCEPTANCE OF THESE TERMS OF SERVICE (“AGREEMENT”) OR ACCESSING OR USING THE DATACLAY SERVICES (“SERVICES”), YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICES. IF THIS AGREEMENT IS CONSIDERED AN OFFER BY US, THEN ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS. THIS IS A LEGAL AGREEMENT BETWEEN YOU AND DATACLAY.

IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THIS AGREEMENT.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN YOU ARE NOT ENTITLED TO USE THE SERVICES.

### AGREEMENT MODIFICATIONS

From time to time, Dataclay, LLC (“Dataclay”, “we”, “us” or “our”) may modify this Agreement. Changes become effective for you (“Customer”, “you” or “your”) upon our notice to you of such changes; we will notify you of the changes through communications via Customer’s Account (as defined below), email or other means. Continued use of the Services after our notice to you of such updated version of this Agreement will constitute Customer’s acceptance of such updated version.

### USE OF THE SERVICES

Dataclay will make the Services and Documentation available to Customer on a non-exclusive, limited, revocable, non-transferable and non-sublicenseable basis in accordance with the terms and conditions of this Agreement and your order (“Order”) solely: (a) during the relevant Subscription Term (defined below); (b) for use by Customer and by the authorized number of Users (as defined below), (c) for Customer’s own internal business purposes and not for resale or license to third parties, (d) subject to any applicable Usage Allowances (defined below), and (e) in accordance with any additional Services rights and limitations specified in the Order. Other rights, terms and restrictions specified in the applicable Order are incorporated by reference into this Section. Customer may permit its Contractors and Affiliates (both as defined below) to serve as Users provided that any use of the Services by each such Contractor or Affiliate is solely for the benefit of Customer or such Affiliate. Customer will be responsible for each User’s compliance with this Agreement. Subject to the terms and conditions of this Agreement, Dataclay grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to use the technical documentation and usage guides for the Services made available by Dataclay or through the Services (“Documentation”).

“User” means the persons designated and granted access to the Services by or on behalf of Customer, including its and its Affiliates’ Contractors. “Usage Allowance” means any usage limits (including the number of Users and computer or server limits and the like), quantities or other parameters specified in the Order with respect to Customer’s use or access to the Services. “Contractor” means the independent contractors and consultants permitted by Customer to serve as Users of the Services. “Affiliate” means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party. As used herein, “control” means the power to direct the management or affairs of an entity and “ownership” means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity.

You may not use or access the Services by more than the number of machines (i.e. computers or servers including virtual machines) and/or Users specified on your Order and for which you have paid the applicable fees.

Dataclay may make Sample Data available for Customer. Customer acknowledges that Sample Data is example data only, which may not be complete, current, or accurate. Customer will not (and will not permit any third party to) copy or export any Sample Data and agrees that Dataclay may delete or require Customer to cease using Sample Data at any time upon advance notice. Dataclay may also provide URL links within the Services to third party websites facilitating Customer’s procurement of Third Party Applications, at Customer’s sole discretion. Notwithstanding the foregoing, any procurement or use of Third Party Applications are solely between Customer and the applicable third party. “Sample Data” means any data (including from third party sources) provided or made available to Customer by Dataclay solely for Customer’s internal testing, evaluation, and other non-productive use of the Services during the Subscription Term. “Third Party Applications” means separate services or applications (and other consulting services related thereto), provided by a party other than Dataclay that can be used in connection with the Services.

The Services may include or require the use of certain Dataclay or third party Application Programming Interfaces (“API”) and/or Software Development Kits (“SDK”). Notwithstanding anything to the contrary herein, the end user license agreements (“EULA”) that accompany such API’s and SDK’s, if any, will apply to Customer’s use of such API’s and SDK’s. If any such API or SDK are

not accompanied by a EULA, then Dataclay hereby grants to Customer a non-exclusive, limited, revocable, non-transferable and non-sublicenseable license to use such API or SDK solely for the purpose of exercising Customer's rights granted for the Services hereunder.

In order to use the Services, Customer has to create an account ("Account"). Customer must not allow anyone other than Users to access and use the Account. Customer will (i) provide accurate and complete Account and login information, and keep such information current, (ii) keep, and ensure that Users keep, all Account login details and passwords secure at all times, (iii) remain solely responsible and liable for the activity that occurs in connection with your Account, and the activities of your Users on or relating to the Services, whether or not you know of such activity, and (iv) promptly notify Dataclay in writing if Customer becomes aware of any unauthorized access or use of Customer's Account or the Services. Customer will ensure that all Users comply with the terms and conditions of this Agreement. Customer will be liable for any violation of this Agreement by any User. You are responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. You will be solely responsible for your failure to maintain such equipment and services and Dataclay will have no liability for such failure.

The Services work with other Dataclay products and services, as specified in the applicable documentation, however this Agreement does not grant any rights to Customer with respect to such other products and services including, Dataclay's Templater™ product ("Templater").

## RESTRICTIONS

This is an Agreement for Services, and Customer is not granted a license to any software by this Agreement. Customer will not (and will not permit any third party to): (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available the Services to a third party (except as expressly set forth herein with respect to Contractors and Affiliates) or in a service bureau or outsourcing offering; (b) copy, modify or create derivative works of the Services; (c) use the Services to provide, or incorporate the Services into, any general purpose data warehousing service for the benefit of a third party; (for clarity, nothing herein prohibits Customer from exporting Customer's data from the Services into Customer's downloadable assets); (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Dataclay); (e) use or access the Services or Documentation: in order to (i) build a competitive product or service, or (ii) copy any features, functions or graphics of the Services; (f) make the Services available to anyone other than Users; (g) remove or obscure any proprietary or other notices contained in the Services; or (h) use the Services in violation of the [Acceptable Use Policy](#), which is incorporated herein by this reference.

## CUSTOMER DATA

As between the parties, Customer or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to any data or data files of any type that are uploaded by or on behalf of Customer to the Services ("Customer Data") and any modifications made thereto in the course of the operation of the Services as provided to Dataclay. Subject to the terms of this Agreement, Customer hereby grants to Dataclay a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide the Services to Customer, or to prevent or address service or technical problems under this Agreement, or as may be required by law. If Customer is using Templater in conjunction with the Services or an API to connect another third party application to the Services ("Third Party App"), then Customer acknowledges that the Services, as part of the provision of the Services, may cause certain Customer Data to be automatically uploaded from Templater or the Third Party App into the Services without Customer designating such Customer Data for uploading. In addition, the Services may download Customer Data into a Customer application, database or third party service designated by Customer without notice to Customer. In such case, as between Dataclay and Customer, the security and privacy of the Customer Data downloaded to such Customer application or database or third party service is the sole responsibility of Customer and/or such third party's privacy and security policies.

Customer will ensure that its use of the Services and all Customer Data is at all times compliant with this Agreement, Customer's privacy policies, and all applicable laws and regulations and conventions. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants that Customer has sufficient rights in the Customer Data to grant the rights granted to Dataclay in the above paragraph and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party.

## SPECIAL TERMS FOR SERVICES COVERED BY A BUSINESS ASSOCIATE AGREEMENT

If you are a HIPAA Covered Entity (as defined below) and Dataclay is your Business Associate, then the [HIPAA Business Associate Agreement](#) published as of the date that Dataclay becomes your Business Associate is incorporated in this Agreement by this reference. If you are a Business Associate of a Covered Entity and Dataclay is your Business Associate subcontractor, then the [HIPAA Business Associate Subcontractor Agreement](#) published as of the date that Dataclay becomes your Business Associate subcontractor is incorporated in this Agreement by this reference. Customer may submit PHI to the Services only by uploading it as Customer Data

"HIPAA" means the Health Insurance Portability and Accountability Act, as amended and supplemented.

"Business Associate" has the meaning given in HIPAA.

"Covered Entity" has the meaning given in HIPAA.

"PHI" means any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations.

## **CONFIDENTIALITY**

Each party (as "Receiving Party") will 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) to (i) not use any Confidential Information of the other party (the "Disclosing Party") for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, consultants, contractors and agents ("Representatives") who need that access for purposes consistent with this Agreement and who are subject to a contractual, professional or other obligation to keep such information confidential, with such obligation not materially less protective of the Confidential Information than Receiving Party's obligations herein. Receiving Party will be responsible for violation of this Confidentiality Section by its Representatives. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party will, to the extent legally permitted, provide Disclosing Party with advance written notification and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

## **PROTECTION OF CUSTOMER DATA**

Dataclay will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the [Security, Privacy and Architecture Documentation](#). Those safeguards will include measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). To the extent necessary to comply with Data Protection Laws the [Data Processing Addendum](#) ("DPA"), which is incorporated into this Agreement, will apply to Dataclay's processing of such Customer Personal Data.

## **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 conditions of any purchase orders or acknowledgements delivered by Customer to Dataclay will not apply. Any such purchase order or similar document from Customer will be for billing reference only and, notwithstanding any terms and conditions set forth therein, such document will not modify or add provisions to this Agreement and will not take precedence over this Agreement in any manner.

Dataclay has established its Services fees based on whether or not a customer is an Enterprise. For purposes of this Agreement "Enterprise" means an organization (including its Affiliates) that meets one or more of the following criteria upon the effective date of this Agreement or upon renewal of the Services Subscription Term (defined below). Customer's organization (including Affiliates) is an Enterprise if it:

- (a) employs more than 250 individuals as employees or consultants;
- (b) has annual gross revenues of \$20,000,000 or more;
- (c) intends to use the Services to auto-generate or modify more than: 1,000 videos per day; 3,000 videos per week; 10,000 videos per month; or 100,000 videos per year; and/or
- (d) is listed as a Fortune 500, Inc. 5000 company, and/or Fortune Global 500.

You represent and warrant that at the time you purchase the Services, and upon renewal of your Subscription Term, you have paid the applicable Services fees that correspond to your status as an Enterprise or non-Enterprise organization based on the above criteria. You will promptly contact Dataclay to correct an incorrect designation and pay the additional Services fees, if applicable.

If you are not an Enterprise at the time you purchase the Services, but during the Subscription Term of the Services you become an Enterprise, the Services fees due by you will not increase to the Enterprise level until renewal of your Subscription Term. Likewise, if you are an Enterprise at the time you purchase the Services, but during the Subscription Term of the Services you no longer meet the criteria for an Enterprise, the Services fees due by you will not decrease to the non-Enterprise level until renewal of your Subscription Term.

Customer will conduct such internal audits as are reasonably required to verify its compliance with this Agreement and, upon Dataclay's request from time to time, certify compliance with any use or other restrictions (the number of machines, (i.e. computers or servers including virtual machines) and/or Users), including without limitation, whether or not Customer is an Enterprise, and provide Dataclay with such certification and supporting evidence in writing within ten business days of such request.

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"). Customer is responsible for paying all Taxes associated with its purchases hereunder other than taxes based on income, property, or employees of Dataclay. If Dataclay has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, Dataclay will invoice Customer and Customer will pay that amount unless Customer provides Dataclay with a valid tax exemption certificate authorized by the appropriate taxing authority. Taxes will not be deducted from payments to Dataclay, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all

required deductions and withholdings, Dataclay receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Upon Dataclay's request, Customer will provide to Dataclay its proof of withholding tax remittance to the respective tax authority.

Dataclay will not exercise its rights of suspension under the Section below titled Term and Termination with respect to non-payment by Customer if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. If the parties are unable to resolve such a dispute within 30 days, each party will have the right to seek any remedies it may have under this Agreement, at law or in equity, irrespective of any terms that would limit remedies on account of a dispute. For clarity, any undisputed amounts must be paid in full.

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

As an alternative to the above 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
- QUE Meter requires Dataclay applications, including Templater, to run in environments with an active internet connection that can reach the que-api.dataclay.com domain.

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.

## **INTELLECTUAL PROPERTY RIGHTS**

Customer agrees that Dataclay or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Services and the Documentation, and any and all related and underlying technology and documentation; and any derivative works, modifications, or improvements of any of the foregoing, that may be incorporated (collectively, "Dataclay Technology"). Except for the express limited rights set forth in this Agreement, no right, title or interest in any Dataclay Technology is granted to Customer. Further, Customer acknowledges that the Services are offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for the Services, except (if applicable) for the Documentation in object code format.

Dataclay may (a) compile statistical and other information related to the performance, operation and use of the Services, and (b) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (collectively referred to as "Services Analyses"). Dataclay may make Services Analyses publicly available; however, Services Analyses will not incorporate Customer Data, personal information or Customer Confidential Information in a form that could serve to identify Customer or any individual and will ensure that any PHI is de-identified. Dataclay retains all intellectual property rights in Services Analyses.

## **INDEMNIFICATION**

Dataclay will defend, indemnify and hold harmless Customer and its Affiliates and its and their directors, employees and agents from and against any liability, claim, damage, cost or expense (including reasonable attorneys' fees) awarded against Customer or agreed upon by Dataclay in settlement to the extent arising out of or resulting from a claim that the Dataclay Services infringes a U.S. patent, or any copyright, or otherwise misappropriates any trade secret(s) of a third party. If such notice, suit or action occurs, or if Customer's authorized use of the Services hereunder is, or in Dataclay's opinion is likely to be, enjoined due to the type of infringement specified above then Dataclay may undertake at its sole option, and at its expense, one or more of the following: (a) procure for Customer the right to continue using the affected Services under the terms of this Agreement; (b) replace or modify the Services to render them non-infringing and substantially equivalent or better in function to the enjoined item; or (c) if options (a) and/or (b) above cannot be accomplished despite Dataclay's commercially reasonable efforts, then Dataclay may terminate this Agreement with respect to such Services and upon return or cessation of use of the Services issue a pro-rata refund or credit to Customer corresponding to the portion of the then-current Subscription Term for such Services after the date of such termination. Notwithstanding the terms of this Section, Dataclay will have no liability or obligation of any kind to the extent it results from: (i) any Services manufactured to specifications furnished by or on behalf of Customer, (ii) any infringement arising out of the use of the Services in combination with other hardware, equipment, software or materials not furnished by Dataclay (if such infringement would not have occurred but for such combined use), (iii) use of a Services in a manner not normally intended, or with respect to any patent, copyright or trade secret in which the Customer or its Affiliate has a direct or indirect interest, (iv) modification or alteration of the Services by Customer, without Dataclay's express written authorization and direct supervision; (v) Customer's continuing such allegedly infringing activity after being informed by Dataclay and provided, at no additional charge, with modifications that would have avoided the alleged infringement and reasonable time to implement such modifications, (vi) Customer's use of such Services in breach of this Agreement, or (vii) Customer's use of the Services after the then-current Subscription Term for such Services. This Section contains and limits the entire liability and obligations of Dataclay for intellectual property rights infringements by the Dataclay Services.

Customer will defend, indemnify and hold harmless Dataclay and its Affiliates and its and their directors, employees and agents from and any liability, claim, damage, cost or expense (including reasonable attorneys' fees) to the extent arising out of or resulting from (a) a claim that the Customer Data infringes a patent, copyright, or otherwise misappropriates any trade secret(s) or privacy right of a third party, (b) Customer's use of the Services or violation of this Agreement, (c) Customer's applications created or generated by Customer's use of the Services; or (d) the breach by Customer of applicable laws including HIPAA and other privacy laws.

The party seeking to be indemnified will give prompt written notice to the other party of the claim against which it seeks to be indemnified and will provide the indemnifying party, at the indemnifying party's expense, with the assistance reasonably necessary for the defense and settlement of the claim. The failure by the indemnified party to timely furnish to the indemnifying party any notice required to be furnished under this Section will not relieve the indemnifying party of its obligations under this Section, except to the extent such failure materially and adversely prejudices the ability of the indemnifying party to defend such matter. The indemnifying party will have sole control of the defense and settlement of any such claim. The indemnifying party will not be liable for any settlement of an action effected without its written consent (which consent will not be unreasonably withheld or delayed), nor will the indemnified party settle any such action without the written consent of the indemnifying party (which consent will not be unreasonably withheld or delayed). The indemnifying party will have no right to bind the indemnified party to terms other than the terms and conditions in this Agreement or admit liability by the indemnified party in any claim, or settlement thereof, without the indemnified party's prior written consent, which will not be unreasonably withheld or delayed. The indemnified party may engage counsel of its choice at its own expense.

#### **TERM; RENEWAL AND TERMINATION**

The term of this Agreement for the Services is the limited term designated in the applicable Order ("Subscription Term"). This Agreement is effective from the date your Order for the Services is accepted by Dataclay and will remain in force until the applicable Subscription Term is not renewed as provided herein, or is earlier terminated as provided herein.

If you select a recurring Services Subscription Term, then your Subscription Term will continue to automatically renew, and you will continue to be charged applicable fees for such subscription via your selected payment method, until and unless you terminate the recurring renewal of your Services Subscription Term through the termination process made available in your account. If you terminate your recurring Services Subscription Term, your subscription will continue in effect until the end of your paid Subscription Term and then terminate on that date. (For example, if your paid two-month subscription start date is on February 1 and you cancel on March 15, your subscription will continue through March 31.)

This Agreement will automatically terminate if you breach any of the terms or conditions of this Agreement. We may also terminate this Agreement for any of the following reasons: (a) your failure to pay any applicable fees, (b) our obligation to do so by law, or (c) our decision to discontinue the Services provided to you.

Upon termination or expiration of this Agreement for any reason, you will: (a) stop using and accessing the Services, and (b) destroy the Documentation (together with all copies thereof).

Upon written notice to Dataclay (which may be done by using the applicable function in the Services), Customer will have up to 30 calendar days from termination of this Agreement to access the Services solely to the extent necessary to retrieve Customer Data ("Retrieval Right"). If Customer exercises its Retrieval Right, this Agreement and the applicable Order will continue in full force and effect for the duration of the Retrieval Right. Except for the foregoing provisions of this paragraph, Dataclay will have no further obligation to make Customer Data available after termination of this Agreement and will thereafter promptly delete Customer Data. After the Retrieval Right period, Customer will have no further access to Customer Data and will cease use of and access to the Services (including any related Dataclay Technology) and delete all copies of the Documentation, any Services passwords or access codes, and any other Dataclay Confidential Information in its possession.

The Agreement Sections titled "Restrictions", "Customer Data", "Confidentiality", "Protection of Customer Data", "Intellectual Property Rights", "Indemnification", "Disclaimer", "Limitation of Liability", "Open Source Software" and "General Provisions" will survive any termination or expiration of this Agreement.

In addition to any of its other rights or remedies (including any termination rights) set forth in this Agreement, Dataclay reserves the right to suspend provision of the Services; (a) if Customer is 30 days or more overdue on a payment, (b) if Dataclay deems such suspension necessary as a result of Customer's breach of the Sections titled "Restrictions" or "Customer Data", (c) if Dataclay reasonably determines suspension is necessary to avoid material harm to Dataclay or its other customers or the Services, including if the Services are experiencing denial of attacks, mail flooding, or other attacks or disruptions outside of Dataclay's control, (d) if Dataclay reasonably determines that Customer's use of the Services poses a security risk or threat to the function of the Services, or poses a security or liability risk or threat to Dataclay or any third party, or (e) as required by law or at the request of governmental entities.

#### **SUPPORT**

At no additional charge, Dataclay will provide standard support and maintenance services to Customer with respect to the Services in accordance with Dataclay's then-current standard support and maintenance services policy.

Dataclay makes available on its website certain self-help support services such as tutorials, a knowledgebase, user-to-user forums and discussion areas ("Self-Help Support"). The Self-Help Support we make available on our website may contain information, products, and services provided by third parties and links (including advertisements) to websites made available by third parties.

This information and these products, services, and links are provided only as a convenience to users of the Self-Help Support. Dataclay does not control this information or these products, services, or websites, and Dataclay does not make any representations or warranties, express or implied, regarding this information or these products, services, or websites and will not be liable for any information or services you receive from them. Inclusion of any of the foregoing in the Self-Help Support does not constitute or imply an endorsement, authorization, sponsorship, or affiliation by or with Dataclay with respect to any third party, any third party's website or its content, or any information, products, or services provided by a third party.

Dataclay makes no representations or warranties with respect to any user-to-user forums, blogs, private messages, emails, or other electronic discussion mediums made available via the Self-Help Support (collectively, "Discussion Areas") or with respect to any messages, information, or materials contained in the Discussion Areas. Your use of, or reliance upon, any such messages, information, or materials is at your sole risk and expense. Dataclay does not, and cannot, review all of the information and materials provided in the Discussion Areas and has no responsibility or liability for any such information or materials or their use. If Dataclay becomes aware of any information or materials that it determines violate its agreements or the Discussion Areas' policies promulgated by Dataclay from time to time or that Dataclay otherwise deems inappropriate in its sole discretion, Dataclay reserves the right to delete, move, or edit any such information or materials.

You acknowledge that any ideas, inventions, suggestions for improvement or discussions submitted by you regarding any aspect of the Services or the Self-Help Support ("Feedback") that are not already subject to third party intellectual property rights may be used by us or any other user of the Self-Help Support without compensation or attribution, and you hereby grant us a worldwide, irrevocable, royalty-free, non-exclusive, sublicenseable and transferable license under all your intellectual property rights in the Feedback for any purpose.

#### **DISCLAIMER**

**TO THE EXTENT ALLOWED BY LOCAL LAW, THE SERVICES ARE PROVIDED TO CUSTOMER "AS IS" WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. DATACLAY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. DATACLAY SPECIFICALLY DISCLAIMS ANY LIABILITY FOR ANY ACTIONS RESULTING FROM CUSTOMER'S USE OF THE SERVICES. DATACLAY DOES NOT WARRANT THAT THE SERVICES WILL MEET ALL OF CUSTOMER'S REQUIREMENTS OR THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SERVICES IS ASSUMED BY CUSTOMER. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DATACLAY OR DATACLAY'S AUTHORIZED REPRESENTATIVES BEFORE CREATE A WARRANTY OR AMEND THIS WARRANTY.**

Some jurisdictions do not allow exclusions of implied warranties or conditions, so the above exclusion may not apply to Customer to the extent prohibited by such local laws. Customer may have other rights that vary from country to country, state to state, or province to province. To the extent warranties cannot be disclaimed or excluded, they are limited to the duration of the minimum warranty period required by law.

#### **LIMITATION OF LIABILITY**

EXCEPT TO THE EXTENT PROHIBITED BY LOCAL LAW, DATACLAY'S TOTAL AGGREGATE LIABILITY FOR ANY KIND OF LOSS, DAMAGE OR LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SERVICES OR DOCUMENTATION, UNDER ANY THEORY OF LIABILITY, IS LIMITED TO THE TOTAL OF THE FEES ACTUALLY PAID BY CUSTOMER TO DATACLAY HEREUNDER FOR THE SERVICES IN THE 30-DAY PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY AROSE. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

IN NO EVENT WILL DATACLAY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SERVICES OR DOCUMENTATION, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, AND WHETHER OR NOT DATACLAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

The limitations specified in this Limitation of Liability Section will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

These limitations will not apply to liability for death or personal injury resulting from Dataclay's negligence to the extent applicable law prohibits such limitation.

Some jurisdictions do not allow the exclusion or limitation of liability for incidental or consequential damages, so the above limitation may not apply to Customer to the extent prohibited by such local laws. Only those limitations and exclusions that are lawful in your jurisdiction will apply to you and, in such instances, Dataclay's liability will be limited to the maximum extent permitted by law.

Dataclay will not be liable to Customer because of any exercise of Dataclay's right to terminate this Agreement, as provided hereunder, at law or equity for compensation, reimbursement or damages on account of any loss of prospective profits on anticipated sales or on account of expenditures, investments, leases or other commitments relating to the business or goodwill of Customer, notwithstanding any law to the contrary.

## GENERAL PROVISIONS

**Assignability; Restrictions on Transfer.** If you accepted this Agreement on behalf of a company or other legal entity, then you may assign or transfer this Agreement and the Order for the Services in whole, but not in part, in connection with a change of control, change in majority ownership or the sale of all or substantially all of the assets of your company or other legal entity. Otherwise, if Customer is not a company or other legal entity, then you may not assign or transfer in whole or in part or in any manner this Agreement or any of your rights, obligations, or any interest in or under this Agreement or the Services without Dataclay's prior written express consent, which may be withheld in its sole discretion, and payment to Dataclay of any applicable fees. Any attempted assignment or transfer in violation of this section will be void.

Upon permitted assignment and transfer of the Agreement and Order for the Services, Customer will immediately cease accessing and using the Services and the Documentation. The assignee or transferee must agree in writing to the terms and conditions of this Agreement. This Agreement and Customer's Order and Subscription Term for the Services will automatically terminate upon such permitted assignment and transfer.

Dataclay may at any time and without Customer'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.** Customer agrees to indemnify Dataclay from any claim, demand, loss or damages including reasonable attorneys' and expert witness' fees, arising out of or related to Customer's use of the Services 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 Customer's use of the Services 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) incurred in any such proceeding.

**Export.** Customer will comply with all then-current export laws and regulations of the U.S. Government or foreign agency or authority pertaining to the Services. Customer certifies that it will not directly or indirectly, export, re-export, or transship the Services or related information, media, or products in violation of U.S. laws, rules, and regulations, 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. None of the Services or underlying information or technology may be accessed, used, downloaded or otherwise exported or re-exported (a) into (or to a national or resident of) any country to which the U.S. has embargoed dual use items, services or technical data; or (b) to any person or entity on the U.S. Treasury Department list of Specially Designated Nationals or the U.S. Commerce Department ("Commerce"), Denied Persons List, or the Commerce Unverified List, or the Commerce Entity List, or the U.S. Department of State list of Proliferators; or (c) for any end use set out in EAR (Part 744 and elsewhere) prohibiting uses of items, services, and technical data related to weapons of mass destruction (missiles, nuclear weapons, chemical weapons, and biological weapons) and maritime nuclear propulsion.

**Language.** We may provide translations of this Agreement as a convenience to Customers. However, no translation, if any, of this Agreement into any other language will be of any force or effect in the interpretation of this Agreement, to the extent not prohibited by local law in your jurisdiction. This Agreement has been drawn up in English at the express wish of the parties. Le présent contrat a été rédigé en anglais à la demande expresse des parties.

### Notices

- **To Dataclay:** Customer 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 Customer:** Dataclay may notify Customer by email, postal mail or other legally acceptable means using the contact information provided by Customer.

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

**Complete Understanding.** This Agreement sets forth the entire understanding and agreement between Customer and Dataclay with respect to the subject matter hereof and supersedes any prior representations, discussions, undertakings, communications, or advertising with respect to the subject matter hereof. This Agreement and each of its provisions will be binding upon the parties and, except as otherwise provided in this Agreement, no addition to or change in the Agreement will be effective or binding on either of the parties unless agreed to in writing by an authorized representative of Dataclay and Customer. In the event of a conflict between this Agreement and an Order, the Order will prevail. The terms "include," "including," "includes" and similar terms mean "including, without limitation." NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THIS AGREEMENT ABOUT THE SERVICES.

**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. Customer consents to the exclusive jurisdiction and venue of the State and Federal Courts for Travis County, Texas; provided, however, that an action for injunctive relief may be filed in a jurisdiction where the actions or party to be enjoined is located. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods. The parties expressly exclude the 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. The prevailing party in any action to enforce this Agreement will be entitled to recover costs and expenses, including fees of attorneys and experts and costs and fees on appeal.

**Headings and Captions.** Section headings are used for convenience only and will in no way affect the construction or interpretation of this Agreement.

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