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2.3 On DataRay's written request, Customer will furnish to DataRay: (a) a certification signed by an officer indicating whether the Software is being used in accordance with this Agreement; and (b) a copy of any usage reports generated from the Software, if applicable. DataRay may engage an independent auditor to review Customer's Software usage and related records during Customer's normal business hours to confirm compliance with this Agreement.

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The Software is provided to Customer at no charge. DATARAY AND ITS LICENSORS SHALL HAVE NO LIABILITY FOR ANY DAMAGES WHATSOEVER. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL DATARAY OR ITS LICENSORS BE LIABLE FOR DIRECT, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST DATA, LOST PROFITS OR SAVINGS) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF DATARAY OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer acknowledges that the Software is provided at no charge, reflecting the allocation of risk set forth in this Agreement and that DataRay would not enter into this Agreement or offer the Software at no charge without these limitations on its liability. Some jurisdictions do not allow the exclusion or limitation of liability for certain damages for certain types of claims, so the above limitation may not apply to you to the extent prohibited by such local laws.

5. TERM AND TERMINATION.

This Agreement remains effective until terminated. This Agreement will immediately terminate upon notice if Customer exceeds the scope of license granted or otherwise fails to comply with Sections 1 or 2. For any other material breach under this Agreement, DataRay may terminate this Agreement upon 30 days written notice if Customer is in material breach and fails to cure such breach within the 30 day notice period. Customer may terminate this Agreement at any time by providing written notice to DataRay. On termination of this Agreement or any Software license under this Agreement, Customer shall ensure that all use of the affected Software ceases, and shall certify the destruction of all copies of the Software used by Customer to DataRay's reasonable satisfaction. The following sections will survive any termination of this Agreement: 1-4 and 6-7.

6. EXPORT.

Customer agrees to comply with all international and national laws that apply to the Software, including, but not limited to, the U.S. Export Administration Regulations, economic sanctions regulations administered by the Office of Foreign Assets Control, as well as similar restrictions issued by U.S. and other governments, which prohibit the provision of Software to specified destinations, end-users and end uses. Customer specifically represents and warrants that it will not export, re-export, sell, supply or transfer the Software to any country or person to which the United States has embargoed or restricted the provision of the Software, nationals of those countries, or to any other embargoed or restricted destination or person.

7. **GENERAL TERMS.**

This Agreement shall be governed by and construed under the laws of the State of California, USA, excluding choice of laws rules. Any action or proceeding arising from or relating to this Agreement, must be brought in a federal court in the Northern District of California or in state court in Shasta County, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding; however, this provision shall not restrict DataRay's right to bring an action against Customer or its subsidiary in the jurisdiction where Customer's or its subsidiary's place of business is located. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. This Agreement may only be modified in writing by authorized representatives of the parties. All notices required or authorized under this Agreement must be in writing and shall be sent, as applicable, to Customer's legal department. Waiver of terms or excuse of breach must be in writing and shall not constitute subsequent consent, waiver or excuse.