

# SOFTWARE TERMS

**Version: SDSG21.0**

## **1 APPLICABILITY**

The terms described herein ("Software Terms") shall only be applicable to Order Forms which incorporate them by reference, including with the specific version code. Further, the Software Terms will apply only to such products and services that are defined as or are labelled as being "Software" by Descartes on the Order Form. These terms are in addition to any other terms and conditions provided under the Agreement.

## **2 SOFTWARE**

### **2.1 Licenses to Software**

- (a) The license shall be a world-wide, non-exclusive, non-transferable license for the Term of the Agreement for Customer to Use the Software for the Permitted Use.
- (b) No license is given to the source code to the Software. Customer is prohibited from reverse engineering, disassembling or decompiling the Software or otherwise attempting to create or generate any source code version of any part of the Software, except as permitted by applicable law and to the extent that Descartes is not permitted by applicable law to exclude or limit such rights. Customer may not copy (except as permitted herein) modify, create derivative works from or merge the Software with or into other material to make an updated or different work.
- (c) The license shall be for the Software as it exists at the Effective Date and for any new releases, modifications, improvements, enhancements, updates or other changes that Customer becomes entitled to pursuant to the provisions of the Agreement. Descartes shall be under no obligation to develop new releases, modifications, improvements, enhancements, updates or other changes to the Software.
- (d) Licenses granted under the Agreement are only for the Software described in the Order Form and does not include any associated Module for that Software. Customer is only granted a license or the ability to Use a Module if that Module is specifically listed in the Order Form or any subsequent ordering document.

### **2.2 Customer Obligations**

- (a) Customer shall not pledge the Software as collateral or otherwise and shall not encumber the Software with any lien or security interest other than that of Descartes.
- (b) Customer shall be enrolled in and entitled to receive the Software Maintenance Services for Descartes Software upon payment of the fees, and pursuant to the terms and conditions, set out in the Software Maintenance Program.
- (c) Customer is responsible for providing and maintaining all required Customer Equipment and ensuring that it meets the Software's minimum system requirements, as provided by Descartes and which may be reasonably updated from time-to-time as required. Customer is responsible for managing access to any Customer Equipment which the Software is installed on and any data that the Software generates and stores on Customer Equipment.

- (d) If Customer breaches this Agreement by Using the Software beyond the Permitted Use, then Customer shall pay to Descartes on demand any amounts required to bring Customer's Use of the Software into compliance with the Permitted Use, as determined with reference to Descartes' published commercial price list for the Software. This remedy shall be in addition to, and not in lieu of, any other right or remedy that Descartes may have pursuant to the Agreement with respect to such a breach of the Agreement by Customer.
- (e) Unless a perpetual license has been provided for in the Order Form, Customer will permit the Software to connect to Descartes servers as is reasonably required by Descartes to verify the validity and currency of Customer's license. Where the Software is prevented from connecting to Descartes servers, Customer understands that the functionality of the Software may be reduced. Descartes disclaims any liability arising from any reduction or loss of functionality as a result of the Software not being permitted to connect to Descartes servers.
- (f) Customer shall not knowingly: (i) use the Software for illegal purposes, to further an illegal or criminal venture, or in any manner that might reasonably be considered as causing, inciting, encouraging, or aiding in the commission of a nuisance or criminal offence; or (ii) cause the Software to upload, transmit, or otherwise send to Descartes or any other person or entity any files that contain viruses, malware, corrupted files, or any other similar software or programs. Where Customer determines that it has violated any of the above provisions, Customer will, without undue delay, notify Descartes of the violation. Where Descartes reasonably determines that a violation has occurred, Descartes may suspend, either temporarily or permanently as is reasonable under the circumstances, any access, license, or right of use granted under this Agreement to Customer or a Permitted User until such time as the violation has been remedied and there is no reasonable basis to believe that continued violations will occur.

### **2.3 Specific Obligations for Non-Mobile Applications**

- (a) Customer shall only install Non-Mobile Applications at Designated Sites or, during the period of an extraordinary disaster which renders it impossible for Customer to access the Designated Site, then from a Disaster Recovery Site on a temporary basis as part of Customer's documented disaster recovery procedures until it is again possible to access the Designated Site.
- (b) Except for Non-Mobile Applications that require Activation or if specifically permitted in the Order Form, a single license to a Non-Mobile Application allows for a single installation on Customer Equipment, unless the Non-Mobile Application requires Activation or multiple installations are permitted in the Order Form.
- (c) Except for Non-Mobile Applications that require Activation or if specifically permitted in the Order Form Customer may make up to two (2) copies of the Non-Mobile application solely for archival and/or back-up purposes consistent with

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Customer's normal periodic back-up or disaster recovery procedures. Customer may not otherwise copy the Non-Mobile Application except as permitted by applicable law.

- (d) Where Customer wishes to move the Non-Mobile Application to different Customer Equipment, Customer will notify Descartes in advance to allow Descartes a reasonable period of time to Activate the Non-Mobile Application if Activation is required. Additional costs for Activation may apply.

## 2.4 Specific Obligations for Mobile Applications

- (a) Mobile Applications may be delivered by way of a third-party digital distribution platform including but not limited to Google Play for Android Devices or App Store for iOS devices. Customer understands and agrees that these owners and operators of these third-party digital distribution platforms are not endorsing or making any other guarantee or warranty about the Mobile Application.
- (b) Mobile Applications may be designed to connect to other Software or services maintained by Descartes. Customer is responsible for ensuring any Customer Equipment with Mobile Applications has adequate connection with the general internet or other networks as may be specified. Descartes explicitly disclaims any liability resulting from poor connectivity caused by Customer Equipment.
- (c) Mobile Applications are designed to be regularly updated to meet evolving technical and security standards. Descartes may, from time to time, release new versions of the Mobile Applications. Customer will, unless specifically permitted otherwise by Descartes in writing, Use only the most current version or the immediately preceding version. Customers who do not Use the most current version or the immediately preceding version may, at Descartes sole discretion, be excluded from any Mobile Application support or service obligations Descartes may be under or is otherwise obligated to provide and any such Use is at the Customer's own risk.

## 3 DEFINITIONS

- 3.1 "Activate", "Activated", or "Activation"** means the process by which Software that is provided in trial or other similar such limited functionality mode is authorized by Descartes to provide greater or full functionality.
- 3.2 "Agreement"** means the combination of the Order Form, these Master Terms, and any additional terms as specified in the Order Form or which the Order Form incorporates by reference.
- 3.3 "Customer Equipment"** means Customer's computer, workstation, server, mobile device, or other similar such system which the Software is intended to be installed or operated on.
- 3.4 "Descartes Software"** means software in Object Code form that is identified in the Agreement as "Descartes Software", not including Third Party Software.
- 3.5 "Designated Sites"** means the facility or facilities of Customer at which the Software may be installed that are identified in the Agreement as "Designated Sites" or as are subsequently designated in writing by written agreement of Descartes and Customer.
- 3.6 "Disaster Recovery Sites"** means the facility or facilities of Customer at which the Software may be installed for temporary Use as part of Customer's documented disaster recovery procedures, that are identified in the Agreement as "Disaster Recovery Sites" or as are subsequently designated in writing by written agreement of Descartes and Customer.
- 3.7 "Documentation"** means any end-user instructional or supplementary materials related to the Descartes Software, in human or machine readable form, that are provided by Descartes to Customer with the Descartes Software, but only to the extent that Descartes, in its sole discretion, makes such materials generally available for commercial distribution.
- 3.8 "Mobile Application" or "Mobile Applications"** means Software that is designed to be installed on a phone, tablet, or other portable device running an Android, iOS, or Windows Mobile operating system.
- 3.9 "Module"** means an add-on, module, or service which is designed to be integrated with the Software but which is not designed to be an essential component which the Software requires to function as designed.
- 3.10 "Non-Mobile Application" or "Non-Mobile Applications"** means Software that is designed to be installed on a computer, server, workstation or other such device not generally intended for portable use and running a Windows, Windows Server, Unix, Linux, or other similar such operating system.
- 3.11 "Object Code"** means computer programs assembled or compiled in magnetic or electronic binary form, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse engineering.
- 3.12 "Order Form"** means any document issued by Descartes and identified as an Order Form, Software License Agreement, or any other similar such ordering document, but for the purposes of these Software Terms does not include any documents that are incorporated by reference into the Order Form.
- 3.13 "Permitted Use"** means Use for internal business in accordance with and subject to the Agreement. Except as expressly provided the Agreement, "Permitted Use" does not include redistribution, remarketing, loaning, renting, sublicensing or otherwise making any Software available or accessible to any third party.
- 3.14 "Scope of Use"** means the scope for which the Software can be Used, including restrictions on such Use, as identified in the Agreement.
- 3.15 "Software"** means both the Descartes Software and Third Party Software, including applicable Documentation.
- 3.16 "Software Maintenance Program" or "SMP"** means the support and maintenance services, terms and conditions for the Descartes Software, as described in the Software Support Policy, as specified in the Order Form.
- 3.17 "Software Maintenance Services"** means the services provided by Descartes pursuant to the Software Maintenance Program.
- 3.18 "Term"** shall mean the period of time identified in the Order Form or other ordering document as when the Agreement is Agreement as when the Agreement is to be in force.
- 3.19 "Third Party Licensor"** means those third parties who have granted to Descartes the right to sublicense certain rights in and to the Third Party Software.

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**3.20 "Use"** means to load, execute, employ, utilize, store or display. Use is deemed to occur where any such process occurs or at any computer terminal or workstation that initiates or is activated by any such process.

[End of Software Terms.]