

# SOFTWARE TERMS

**Version: SDSG20.1**

## **1 APPLICABILITY**

The terms described herein ("Software Terms") shall only be applicable to Agreements 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 Agreement 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 under the Agreement, 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 Software may automatically Deactivate. Descartes disclaims any liability arising from any Deactivation as a result of the Software not being permitted to connect to Descartes servers.

### **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 or Software License, 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 or Software License Agreement.
- (c) Except for Non-Mobile Applications that require Activation or if specifically permitted in the Order Form or Software License, Customer may make up to two (2) copies of the Non-Mobile application solely for archival and/or back-up purposes consistent with 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 provided 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

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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, 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.

## 2.5 Licenses to Third Party Software

In addition to the terms and conditions of the Agreement and the other terms and conditions herein, any licenses to Third Party Software granted to Customer under the Agreement shall be subject to the Third Party Software Terms, attached as Appendix A. Descartes represents and warrants that it has sufficient rights to grant Customer the license to the Third Party Software.

## 3 REGULATORY COMPLIANCE

**3.1 Applicability.** The obligations described under this section shall only apply to the specific Software which are identified in the Documentation as being designed by Descartes to facilitate compliance with the specific requirements of a Regulatory Authority.

**3.2 Maintaining Regulatory Compliance.** Where a Regulatory Authority issues a new or updated Regulatory Authority Requirements, within a reasonable period of time, Descartes will use commercially reasonable efforts, as part of Support Services provided under the Agreement, to: a) provide an update to the Software which allows it to materially comply with the Regulatory Authority Requirements; or b) provide a workaround to enable the Software to meet the Regulatory Authority Requirements.

**3.3 Limitations on Regulatory Compliance.** Customer understands and agrees that, unless expressly stated in the Order Form or any statement of work, the obligations described in section 3.2 shall be Descartes sole obligation regarding the Regulatory Authority Requirements. Further, notwithstanding anything to the contrary in this Agreement, Descartes shall not be obligated to: i) make any changes to the interface of any Software to allow or enable Customer's system or Customer Equipment to communicate with the Descartes GLN; ii) change or update the Software to account for any Regulatory Authority converting or migrating to a new system or program, including but not limited to any introduction of new declaration flows; iii) make any changes to any Customer specific configurations of the Software, including but not limited to any Customer specific mapping; iv) add any additional business validations related to any applicable Regulatory Authority declaration system; or v) update, modify, or provide any workaround for

any version of the Software which is older than the then current version of the Software.

**3.4 Customer Required to Update.** Customer is solely responsible for ensuring that it deploys an update, patch, or workaround designed to allow the Software to comply with Regulatory Authority Requirements. If Customer chooses not to deploy the update, patch, or workaround that is recommended by Descartes, Customer will be deemed to waive Descartes obligations described in section 3.2.

**3.5 Non-Compliance.** If Customer reasonably believes the Software does not comply with an applicable Regulatory Authority Requirement, Customer will first notify Descartes in writing, in accordance with the notice provision of the Agreement, and provide sufficient details of the alleged non-compliance to allow Descartes to identify the specific rule or part of the Regulatory Authority Requirement with which the Software does not comply with. Descartes shall have fifteen (15) days to review, verify, and remedy any established non-compliance with a Regulatory Authority Requirement. If Descartes is unable to remedy the non-compliance with the Regulatory Authority Requirement, as determined by the Regulatory Authority or an individual with expertise in the Regulatory Authority Requirement, Customer may terminate this Agreement on thirty(30) days' notice to Descartes without prejudice to any other lawful rights or remedies available to Customer.

## 4 DEFINITIONS

**4.1 "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.

**4.2 "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.

**4.3 "Deactivate" or "Deactivation"** means the process by which Activated Software has its functionality limited or stopped entirely.

**4.4 "Descartes Software"** means software in Object Code form that is identified in the Agreement as "Descartes Software", not including Third Party Software.

**4.5 "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.

**4.6 "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.

**4.7 "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.

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- 4.8 "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.
- 4.9 "Module"** means an addon, 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.
- 4.10 "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.
- 4.11 "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.
- 4.12 "Order Form"** means any document issued by Descartes and identified as an Order Form, Software License Agreement, or any other similar such ordering document.
- 4.13 "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.
- 4.14 "Regulatory Authority"** means a country-specific, government agency, customs authority or other official entity sanctioned by the government of that country to in connection with regulatory program receive messages or other material generated by the Software within the scope of Modules subscribed to by Customer pursuant to an Agreement.
- 4.15 "Regulatory Authority Requirement" or "Regulatory Authority Requirements"** means a technical requirement of a Regulatory Authority's filing system set out in the applicable Regulatory Authority's message implementation guidelines, technical, or functional specifications, as well as any revisions made by the Regulatory Authority to said technical requirement.
- 4.16 "Scope of Use"** means the scope for which the Software can be Used, including restrictions on such Use, as identified in the Agreement.
- 4.17 "Software"** means both the Descartes Software and Third Party Software, including applicable Documentation.
- 4.18 "Software Maintenance Program" or "SMP"** means the support and maintenance services, terms and conditions for the Descartes Software, as described in an appendix to the Agreement.
- 4.19 "Software Maintenance Services"** means the services provided by Descartes pursuant to the Software Maintenance Program.
- 4.20 "Support Services"** means support services in respect of Software licensed to Customer pursuant to an Agreement and described in the Software Support Policy.
- 4.21 "Term"** shall mean the period of time identified in the Order Form, Software License Agreement, or other ordering document as when the Agreement is Agreement as when the Agreement is to be in force.
- 4.22 "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.
- 4.23 "Third Party Software"** means the software and data of a party other than Descartes that is provided in Object Code form and that is identified in the Agreement as "Third Party Software".
- 4.24 "Third Party Software Terms"** means a Third Party Licensor's terms and conditions for Use of Third Party Software or, in the absence of the Third Party Licensor providing such terms and conditions, the terms and conditions attached as Appendix "A" to the Master Terms.
- 4.25 "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 terms, appendixes immediately follows.]

## APPENDIX A – THIRD PARTY SOFTWARE TERMS

The following special terms and conditions are applicable to any Third Party Software licensed in conjunction with the Software under the Agreement:

1. The Third Party Software is licensed as part of the Software and is the copyrighted and proprietary property of the applicable Third Party Licensor who has granted to Descartes the contractual right to grant sublicenses to Customer.
2. The license granted for the Third Party Software and its related documentation is perpetual, nonexclusive and nontransferable, and the granting of any further sublicense by Customer is prohibited.
3. Customer agrees not to modify, decompile, disassemble, or reverse engineer any portion of the Third Party Software, and Customer may make one (1) copy of the Third Party Software for archival or backup purposes only. Any such copy must display the copyright notice and information relating to proprietary rights as they appear on the original delivered copy of the Third Party Software including without limitation, any "limited rights" legend.
4. Third Party Licensor has the right to enforce its ownership and proprietary rights in the Third Party Software as against Customer as if Third Party Licensor were a party to the Agreement under which the right of use is granted, including the right to preliminary and permanent injunctive relief.
5. Except to the extent the Third Party Software includes a written warranty in its packaging, neither Descartes nor the Third Party Licensor makes any warranties or representations, either express or implied, with respect to the Third Party Software or any service to be provided to Customer. Without limiting the foregoing, in respect of the Third Party Software, Descartes and the Third Party Licensor expressly disclaim any warranties of quality, performance, merchantability or fitness for a particular purpose or non-infringement, and those arising by statute or otherwise in law or from a course of dealing, usage or trade.

[End of appendix.]