



SOFTWARE LICENSING SUPPLEMENT

DSM and Vendor agree that the following terms and conditions are supplemental to and become part of the Standard Terms and Conditions. Any capitalized terms detailed in this supplement shall have the meaning as defined in DSM Standard Terms and Conditions

DSM shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the provisions of this Supplement, whether or not such term or condition will materially alter the Agreement. Vendor commencement of performance, or acceptance of this Agreement in any manner, shall conclusively evidence agreement to the Agreement as written.

Opening of a software package or the performance of any other act that would otherwise constitute acceptance of terms and conditions in Vendor's end-user License agreement shall have no effect whatsoever.

DEFINITIONS

The following words and phrases will have the following meanings:

"Application Software" means the Software, together with such modifications and customizations as required to be performed by the Vendor under the Agreement and any approved statement of work;

"Critical Program Error" means any Program Error or Key, whether or not known to DSM, that has or may have substantial adverse impact on the operations of DSM or on use of the Software.

"Functional Specifications" means the functional requirements that the Deliverables must meet, as may be described in the Agreement;

"Future Release" means periodic releases or new versions of the Software containing material improvement in the functionality of the existing version of the Software or introducing additional features and improved capabilities or that correct defects or deficiencies found in the Software;

"Go Live" means bringing the Software or System as the case may be, into operational status following testing. There can be multiple Go Live events for a single System;

"Key" means any key, node lock, time-out, or other function, whether implemented by electronic, mechanical, or other means that restricts or may restrict exercise of any of the licenses granted under this agreement, based on residency on certain computing equipment, frequency, or duration of use, or other limiting criteria;

"License" means the irrevocable, non-transferable, fully-paid license under all applicable patents, trade secrets, copyrights, or other intellectual property and its Documentation that has been authorized for DSM uses as defined by the terms of this Agreement;

"Operating Software" means the operating system programs and all related utility programs normally furnished to users;

"Program Error" means code in any program or information contained in any Documentation that makes the Licensed Software inoperable or that produces unintended results or actions or that produces results or actions other than those described in the Documentation or this agreement. Program Error includes, without limitation, any Critical Program Error;

"Software" means each and every copy of the computer program or programs and all corrections, updates, new releases, and new versions of such programs, if any, ordered under this Agreement, in any form in one (1) or more of the following computer software programs as may be described in the Agreement:

- (i) the Application Software;
- (ii) Third Party Software;
- (iii) Operating Software;

"System" means the integrated combination of the Software and documentation all as described in the Agreement or an approved Statement of Work;



“**System Requirements**” means the Functional Specifications, performance specifications and security requirements that the Deliverables must meet, as may be described in the Agreement;

“**Third Party Software**” means commercially available software developed and licensed by a Third Party to DSM or to the Vendor.

Any other capitalized terms detailed in this supplement shall have the meaning as defined in DSM Standard Terms and Conditions

1. **LICENSE**

- a. **Grant.** With respect to all copies of the program in object code form, and all copies of the Documentation in any form, Vendor hereby grants and shall grant to DSM a non-exclusive, perpetual, worldwide license to:
- (1) Use the program on any computing equipment. This use right includes the right to share use of the program by multiple central processing units or by multiple users, provided DSM tenders the applicable license fee, if any, to Vendor.
 - (2) DSM entitlement to all future releases, enhancements and modifications to the Software and all related documentation and written information of a technical and/or proprietary nature at no charge during at minimum the warranty period.
 - (3) Transfer the program between computing equipment.
 - (4) Make additional copies of the Licensed Software as reasonably necessary for backup or archival purposes or for benchmark or other temporary testing.
 - (5) Combine the program with one or more other programs, provided any portion of the program involved continues to be subject to the terms and conditions of this Agreement.
 - (6) Make, or have made, as many additional copies of the Licensed Software as may be required to satisfy DSM requirements within the Site, provided the Contract specifies "Site License. "
 - (7) Change the form of the Documentation. This conversion right includes the right to edit and reformat any of the Documentation.

This license includes the right to authorize employees of DSM, Vendors, or sub contractors who are performing work for DSM on DSM premises to perform any of the activities described in paragraphs 1.a.(1) through (6) above.

- b. **License of Prior Releases or Versions of Licensed Software.** Vendor hereby grants DSM the right and option to license a release or version of the Licensed Software that it has previously licensed, if other than the current release or version and if no longer available from Vendor.
- c. **Surplus or Disposal.** No license granted under this Agreement is transferable except to another party in connection with the surplus or disposal of any computing equipment, provided the transferee agrees to assume and comply with all of DSM's obligations under this Agreement with respect to the Licensed Software involved or has a license agreement with Vendor covering the Licensed Software.
- d. **Object Code.** DSM is not obligated to keep the Licensed Software, in object code or written form, confidential. Nothing in the Agreement is intended to establish, or should be construed as establishing, any kind of confidential relationship between DSM and Vendor with respect to the Licensed Software in object code form, regardless of any markings, screen display, or other notices given by Vendor at any time. DSM shall refrain from any reverse engineering to obtain the Licensed Software in source code form.
- e. **Availability of Source Code.** In the event any proceeding, voluntary or involuntary, is commenced relative to Vendor pursuant to a statute relating to bankruptcy, insolvency, reorganization of debts, liquidation, winding-up or dissolution, Vendor agrees to work with DSM to license to DSM upon reasonable terms and conditions the source code corresponding to the Licensed Software. This obligation to license the source code shall only apply if:
- (1) DSM makes a written request for such a license from Vendor.
 - (2) Vendor, at the time of the request, had a support and/or maintenance obligation to DSM that it was unable or unwilling to fulfill.



- (3) Vendor is unable to obtain the services of a Third Party to fulfill Vendor's support and/or maintenance obligation; and
- (4) Vendor, after reasonable inquiry and effort, is unable to fulfill the support and/or maintenance obligations through a Third Party.

In the case of a voluntary or involuntary bankruptcy, to the extent the court allows such a license:

- (1) Any source code license shall be limited to use by DSM on DSM's central processing units to provide support and/or maintenance obligations.
- (2) This license includes the right to authorize employees or agents of DSM's Vendors or sub contractors who are performing work for DSM on DSM premises to perform any of the activities described above.

f. No Restrictions. Except for the functions and features expressly disclosed in the Agreement, Vendor represents and warrants that the program:

- (1) Contains no hidden files.
- (2) Will not replicate, transmit, or activate itself without control or a person operating the computing equipment on which it resides.
- (3) Will not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides.
- (4) Contains no key.

Provided and to the extent the program has any of the foregoing attributes, Vendor further represents and warrants that this Agreement provides DSM with the algorithms, specifications, and other code or information required to exercise any license granted under this Agreement without restriction. In the event Vendor breaches either of these warranties for any reason and fails to cure the breach within the first six hours of its normal prime shift period, Monday through Friday, following receipt of DSM's deficiency notice, DSM may reverse compile, disassemble, or otherwise obtain such algorithms, specifications, other code, or formation from the Licensed Software or any other program materials, and then may use them to conform to restore the Licensed Software to the condition first warranted.

g. Misuse of Licensed Software. In the event Vendor has knowledge or has reason to believe that DSM is using the Licensed Software beyond the scope of the license granted under this Agreement, Vendor shall notify DSM of the alleged misuse, in writing, in accordance with the clause entitled "Notices." DSM shall provide Vendor with a written report that summarizes the results of DSM's investigation into the alleged misuse and what actions DSM took to correct it. THIS IS VENDOR'S SOLE AND EXCLUSIVE REMEDY FOR MISUSE OF THE LICENSED SOFTWARE SO LONG AS DSM PERFORMS ITS INVESTIGATION AND MAKES PAYMENT TO VENDOR IN A TIMELY FASHIION.

2. SOFTWARE

2.1 For each portion of the project that includes the DSM's acquisition of a System, the provisions of this Section shall apply.

2.2 Except as specifically set out in this Section, the Vendor shall be fully responsible for the supply of the System as a whole, including, without limitation:

- (a) integrate and make compatible all of the System components to permit the System and all its components to meet the System Requirements;
- (b) if interfaces and component modifications are included in this Agreement, supply and install all interfaces and component modifications necessary to meet the System requirements;

2.3 Unless this Agreement provides otherwise, the Vendor shall furnish to the DSM the same documentation for the Operating Software as it provides to other purchasers of Software, and shall include all amendments, revisions and adjustments to that documentation to the date of delivery of the Software.



3. WARRANTIES

- 3.1 Vendor warrants to DSM that during the warranty period, the Deliverables shall possess the functions and features contemplated by the Agreement and shall be compatible with the operating system, application programs, computing equipment, and networks within DSM environment(s).
- 3.2 If DSM will be using licensed Software from the Vendor, the Vendor also represents and warrants that:
- (a) the Vendor has all rights as are necessary for it to grant DSM a license for use of the Software;
 - (b) DSM will hold and have the license rights granted to it and will have the license rights granted to them without any claim, interference or demand whatsoever by the Vendor or any Third Party or their respective successors; and
 - (c) other than as expressly set out in the Agreement, no other Software components are necessary to fulfill the System Requirements.
- 3.3 The Vendor further represents and warrants that all documentation provided by the Vendor under this Agreement:
- (a) contains sufficient detail, in combination with classroom training, to permit DSM, as the case may be, to operate, test and use all functions of the Software to which the documentation relates; and
 - (b) is and will continue to be accurate and complete and will reflect all modifications and enhancements made to the Software by the Vendor under that Agreement or as a result of remediation of deficiencies discovered during Acceptance Testing.
- 3.4 DSM shall provide notice of any defect covered by the warranty. Promptly after receipt of such notice, Vendor shall either:
- (i) replace the defect at no charge to DSM including covering all costs related to such replacement;
 - (ii) provide patch/fix/upgrade at no cost to DSM;
 - (iii) refund to DSM all costs incurred/paid for the System of the defected portion thereof.
- 3.5 If Vendor fails to proceed with reasonable promptness to accomplish repair of any defect, DSM may accomplish such repair, and Vendor shall reimburse DSM for the cost of the repair by, at DSM's election, a direct payment or a reduction in any amount otherwise payable under the Contract. In the event of the above Breach of Warranty, Vendor shall reimburse to DSM all reasonable costs incurred related specifically to downtime.
- 3.6 Any portion of the System which fails in excess of five (5) times in the first year can be returned for a full refund or exchange at no charge. Vendor will be responsible for all additional costs incurred by DSM as a result of the exchange or replacement. Any item received in such an exchange shall have a warranty that begins when it passes incoming inspection by DSM. Failures resulting from user negligence or unfamiliarity do not constitute failures in this regard.