Software Use & License Agreement

The gds Group (hereinafter referred to as "gds") and the purchaser/user (hereinafter referred to as "licensee") regulate the license terms for use of the acquired gds software products (hereinafter "software") in this Software Use and License Agreement (hereinafter referred to as the "License Agreement").

§ 1 Subject of the agreement

1) The subject matter of the agreement is software stored on a data medium or provided as a download via a link and any associated utilities, materials and documentation.

2) gds grants the licensee the simple, non-exclusive right of use of the acquired software according to the provisions laid down in this agreement. The software is otherwise protected under copyright law and other legislation, including international laws and intellectual property agreements.

3) The licensee expressly does not acquire ownership of the software or associated materials and programs. All rights, in particular reproduction, exploitation, publication and editing rights, are reserved by gds as the author.

4) The licensee may also choose to commission gds with the installation and configuration of the software on the licensee's hardware.

5) Software maintenance and care is expressly not part of this agreement. The licensee commissions gds with this service through the maintenance and support agreement concluded separately.

§ 2 Rights of use

1) The licensee is granted the simple, non-exclusive right to use the software on a single hardware device. If the software is to be transferred to another hardware device, the licensee agrees to remove the software completely from the hardware device previously used.

2) Simultaneous storage or use of the software on more than one hardware device is prohibited (except for operation of a test installation). If the licensee intends to avail of multiple use of this kind, the licensee must acquire the appropriate number of licenses to use the software.

3) Use of the software provided within a network is prohibited if this creates the possibility of simultaneous use of un-purchased licenses for the software. If the licensee wishes to use the software on several computer systems within a network, he or she must pay an appropriate license fee to gds, the amount of which is determined by the number of hardware devices connected to the computer system. gds will inform the licensee without delay about the license fee to be paid in a specific case as soon as the licensee has informed gds in writing of the planned network use, including the number of connected hardware devices. Use in such a network or multi-station computer system is only permitted after full payment of the appropriate license fee.

§ 3 Rights of reproduction and access protection

1) The software and all associated materials are protected by copyright. The licensee may only reproduce the acquired software in as far as the reproduction is necessary for use of the software. Necessary reproductions include storage and installation of the software on the mass storage system of the hardware used by the licensee.

2) In addition, the licensee may make a reproduction for security purposes. However, the licensee is only authorized to make and retain a backup copy. The backup copy should be marked for copyright purposes as the licensed software.

3) If, for reasons of data security or for ensuring quick reactivation of the computer system following a total failure, regular backup of the entire database is essential, including the computer programs employed, the licensee is permitted to create the number of backup copies which is absolutely necessary. The data carriers in question should be appropriately marked. The backup copies may only be used for purely archiving purposes.

4) The licensee is obliged to prevent unauthorized accessing of the software and/or corresponding documentation by third parties through suitable precautions. The original data carriers delivered and appropriate backup copies are to be kept at a safe location protected against unauthorized accessing by third parties. The licensee's employees must be informed explicitly of the obligation to observe these terms of agreement and the copyright provisions.

5) The licensee is not permitted to make any further copies, including of the output of the program code on a printer.

§ 4 Decompilation and program modifications

1) The licensee is expressly forbidden to modify, edit, transform, translate, decompile, reverse engineer or disassemble the software in any form whatsoever, either unilaterally or through third parties.

2) The execution of changes, modifications or other interventions realized personally by the licensee or a third party for maintenance purposes or to eliminate possible program errors is also inadmissible.

3) Software maintenance and servicing is realized exclusively by gds for an appropriate remuneration within the scope of the maintenance and support agreement concluded separately.

§ 5 Resale and leasing

1) The licensee is expressly forbidden to transfer the software temporarily or for an unlimited period to a third party through leasing, issuing of sub-licenses, use within an application service provider (ASP) or in any other manner.

2) In the event that the licensee selling or giving away the software completely and permanently to a third party, the licensee must first inform gds comprehensively about the sale process and the acquiring third party. Transfer of the rights of use requires the written consent of gds.

3) In the event of sale, the licensee must ensure that the acquiring third party agrees with gds to the terms of this license agreement and registers as a new user with gds. The transfer of rights of use shall be deemed ineffective if the acquiring third party does not fulfill the aforementioned provisions.

4) In the event of the sale of the software and the associated transfer of rights of use, the licensee is obliged to surrender all copies of the software, including any backup copies, to the acquiring third party and to destroy all non-transferred copies, digital backups and other software reproductions.

5) The existing right of use of the licensee expires completely as a result of the sale of the software.

§ 6 Obligation to inspect and notify of defects, acceptance

1) The licensee pledges to inspect the software provided by gds, including related utilities, materials and documentation, immediately upon receipt of the software or provision of the software download for any apparent defects, including with regard to the integrity of data media and the functionality of basic software features.

2) Defects detected here must be reported to gds within 10 working days following receipt of the software or provision of the software download. Notification of defects must be made in writing with an appropriate description and suitable evidence of the defect.

3) In the event of a breach of the abovementioned provisions relating to the obligation to inspect and notify of defects, particularly with regard to the deadline and/or formal requirement, the software shall be deemed approved with due regard for the respective defect.

4) If the licensee commissions gds with the installation of the software on the licensee's hardware, acceptance will follow installation of the software on the licensee's hardware. If the licensee fails to declare acceptance within 10 working days following installation of the software or fails to file a complaint regarding the existence of software defects in writing within this period, the software shall be deemed accepted upon expiry of the period. Insignificant defects do not entitle the user to refuse acceptance.

§ 7 Warranty

1) The warranty period for material defects is 12 months after receipt or provision of the software.

2) The licensee must notify gds of defects immediately, but no later than 10 working days after detection, in writing with an appropriate description and suitable evidence of the defect. Breaches of the specified deadline and/or formal requirement completely exclude a warranty for the defect in question.

3) gds must remedy a defect by repair or subsequent delivery (supplementary performance). gds will determine the manner of subsequent performance, taking due account of the interests of both parties, with gds being granted two attempts at subsequent performance in each case.

4) The warranty is completely excluded if changes, modifications or other interventions involving the software realized personally by the licensee or a third party pursuant to Clause 4 of this license agreement are detected. If the licensee fails to use the software in accordance with the recommended hardware and system requirements, any defects resulting from this incorrect use are also excluded from the warranty.

5) Additionally, if the licensee decides to revoke the agreement due to a legal or material defect following two failures in subsequent performance, he or she will not be entitled to claim damages because of the defect. However, the licensee will not be entitled to withdraw from the agreement in the event of only minor defects.

6) Fundamentally speaking, only the gds product description is deemed as agreed with regard to the quality of the software. In addition, statements made in public, promotions or advertisements do not represent a contractual indication of the quality of the software.

7) Only a defect recognized by gds inhibits the warranty period.

§ 8 Liability

1) Liability on the part of gds is fundamentally excluded, regardless of the legal reason. This exclusion of liability does not apply insofar as liability is mandatory, in particular under the Product Liability Act, in cases of intent or gross negligence, in the event of injury to life, limb or health or in the case of a breach of essential agreement obligations.

2) Liability for the breach of essential agreement obligations is, however, limited to the foreseeable damage typical of the agreement. Liability for indirect damage, consequential damage, loss of profit and other financial losses is expressly excluded.

3) gds is expressly not liable for damages which the licensee could have prevented by appropriate, reasonable measures, particularly data and program backups. Moreover, liability for data loss is limited to the typical recovery effort that would have occurred during regular creation of backup copies in line with the risk involved.

4) The provisions mentioned here also apply to the benefit of legal representatives, executives and other vicarious agents of gds.

5) Liability pursuant to the Product Liability Act shall remain unaffected.

§ 9 Retention of title

1) gds retains the ownership of the software delivered to the licensee until payment of all receivables from this business relationship existing at the time of delivery or occurring at a later date is realized in full and, where payment is realized by check or bill of exchange, until these are redeemed.

2) In the event of culpable arrears of payment on the part of the licensee and in the case of a significant breach of duties of due diligence and care, the assertion of the retention of title by gds does not constitute a withdrawal from the agreement, unless gds explicitly informs the licensee of such an intention.

3) If retention of title is asserted by gds, the licensee's right to continued use of the software expires. All software copies made by the licensee must be deleted.

§ 10   Use of customer data

1) gds points out to the licensee that gds will process customer data communicated in the context of this business relationship in accordance with relevant data protection regulations. Consent can be withdrawn at any time in writing by post or email with effect for the future.

§ 11   Choice of law and place of jurisdiction

1) All agreements containing an amendment or supplement to these terms of agreement or rendering them more concrete and involving particular assurances and understandings must be made in writing.

2) Should any provision of this license agreement be ineffective, the legal validity of the remaining provisions shall remain unaffected. An effective provision that comes closest to the economic intention of the parties is deemed as agreed in place of the ineffective provision. The same applies to the filling of a gap or loophole.

3) With regard to all legal relationships arising from this contractual relationship, the parties agree to apply the laws of the Federal Republic of Germany to the exclusion of the conflict of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

4) If the user is a merchant in the sense of the German Commercial Code, a legal person under public law or a special fund under public law, Warendorf shall be agreed as the place of jurisdiction for all disputes arising during handling of the present contractual relationship.

Sassenberg, 5/18/2020
gds Group