DRSM - License conditions

DRSM SOFTWARE

END USER LICENSE AGREEMENT

IMPORTANT: THIS IS A LICENSE, NOT A SALE. THIS END USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU (ALSO REFERRED TO AS THE "CUSTOMER") AND DRSM THAT GOVERNS THE USE AND YOUR OBLIGATIONS REGARDING THE SOFTWARE CONTAINED IN THIS AGREEMENT. READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SOFTWARE. INSTALLING, COPYING OR OTHERWISE USING THIS SOFTWARE CONSTITUTES YOUR ACKNOWLEDGEMENT THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ITS CONTENTS.

1. Definitions

The following definitions shall apply to this Agreement:

"Authorized End User" means a) Customer if the Customer is a person, or b) if the Customer is a business, Customer's employee and Customer's contractor who works on the Customer's behalf and **is engaged in providing services to the Customer who is assigned a Software License and who is authorized by the Customer to use the Software in accordance with this Agreement.**

"Customer" means the Licensee specified on the License Certificate.

"Documentation" means the documentation accompanying the Software.

"License Certificate" means the License Certificate delivered by DRSM to the Customer that proves the Customer's Software License.

"Maintenance" means the services described in sections 7.3 to 7.8.

"Maintenance License" means the right to receive Maintenance Services as defined in Section 7 of this Agreement for the Maintenance Period.

"Maintenance Period" means the period beginning on the Start Date of the Maintenance License and normally ending on the first or second anniversary of the Start Date of such Maintenance License as determined by the duration purchased by the Customer in the applicable Accepted Purchase Order.

"Maintenance Price" means the current recommended retail prices for Maintenance Licenses published by DRSM or the Reseller as amended from time to time.

"Major version" means the first component of the software version number.

"New product" means either a completely new software product or a major revision of the software released by DRSM which DRSM consistently refers to as a "new product" rather than an upgrade.

"Reseller" means a Reseller authorized by DRSM to sell and distribute the Software and Maintenance.

"Software" collectively means DRSM Software and all upgrades and updates licensed by the Customer under this Agreement.

"Software License" means a revocable, non-exclusive, non-transferable, limited license to use the Software.

"Software Prices" means the current recommended retail prices for software licenses published by DRSM or the Reseller in the then current version.

"Start Date" means (a) for new Maintenance Licenses, the date of purchase of the applicable Software License to which a Maintenance License shall apply; and (b) for Maintenance License renewals, the expiration date of the previous Maintenance Period.

"Support" means responding to problems related to the correct functioning and recommended use of the software as described in the documentation. Support excludes support services for using the Software and alternative delivery methods that can be purchased separately as professional services.

"Term License" means a Software License with a term limited to a specified period (e.g. 1 year).

"**Update**" has the meaning described in section 7.4.

"Upgrade" means a revision of the Software released by DRSM during the Maintenance Period and consistently referred to by DRSM as an "Upgrade" rather than a new product. In most cases, an upgrade is generally characterized by an increase in the first or second component of the version number of the Software (e.g. version 5.1 to 6.0 or version 6.0 to 6.1).

2. License purchases

Nothing in this agreement shall be construed as an offer to sell a software license or a maintenance license to the Customer. The Customer must purchase the license from DRSM or a reseller and pay DRSM or the reseller an appropriate fee.

3. License
3.1 License conditions

These terms and conditions apply to software licenses and maintenance licenses purchased by the Customer from DRSM or the reseller. Any software license or maintenance license granted by DRSM is subject to the Customer's acceptance of these terms and conditions and the Customer's continued compliance with these terms and conditions. This agreement supersedes any additional or inconsistent provision in an order or elsewhere, and all such additional or inconsistent provisions are hereby expressly rejected and are not binding on DRSM. The Customer hereby agrees that if DRSM does not expressly object to any such provision presented by the Customer, it shall not constitute an acceptance by DRSM or an agreement by DRSM to waive or amend any provision of this agreement.

3.2 Prices

DRSM expressly reserves the right to change software prices and maintenance prices from time to time, and any purchase made by the Customer will be charged at the prices in effect at the time of purchase.

4. Software license

Subject to these Terms and Conditions and the Customer's continued compliance, DRSM hereby grants the Customer the following non-exclusive and non-transferable rights:

a) **The Customer is entitled to install and use as many copies of the software as the software license acquired by the Customer and documented by the license certificate permits. Where this authorized copy may only be installed and used by a single designated authorized end user, it may be installed on a single main computer and a single secondary computer (e.g. a laptop) provided that the software is not used on both the main and secondary computer at the same time. The authorized end user may also access and use the software remotely from any other computer or device on the primary and secondary computer, unless the software is stored on such other computers or devices.**

b) Software licenses may not be transferred between authorized end users more than once every ninety (90) days; and

c) Make one (1) backup copy of the software to support any copy of the software authorized by the software license purchased by the Customer as evidenced by the license certificate.

All rights not expressly granted herein are expressly reserved by DRSM.

5. Property

Except for the limited software license granted to the Customer, neither the property in DRSM's software, documentation nor the intellectual property or technology shall be transferred to the Customer.

6. Basic technical support during the warranty period

The Customer shall be entitled to technical support during the warranty period specified in Section 11 (Limited Warranty / Limitation of Liability). For more information on support, see Section 7.6.

7. Maintenance
7.1 Maintenance license

If DRSM offers maintenance licenses for the software, the Customer may purchase a maintenance license at the time of purchase of the software license or at the end of each maintenance period. Only during the maintenance period and subject to these Conditions and the Customer's continued compliance with these Conditions shall the Customer be entitled to receive the maintenance described in Sections 7.2 to 7.8 below, including upgrades and technical support based on the technical specifications. The corresponding DRSM invoice serves as proof of the scope of these services. Maintenance is only available for those software licenses for which a maintenance license has been purchased. DRSM reserves the right to discontinue the sale of new maintenance licenses for any software at any time.

7.2 Maintenance period

The maintenance license expires on the last day of the maintenance period.

7.3 Upgrades

Only for those software licenses for which a maintenance license was purchased the Customer is entitled to:

a) receive upgrades and

b) install copies of such upgrades to replace copies of earlier versions of the software.

7.4 Updates

DRSM may, at its sole discretion, develop and make available one or more errors/hotfixes, patches, minor software enhancements or other updates to the software free of charge (collectively "Updates"). Such updates may require the Customer to accept additional or alternative terms and conditions than those set forth in this agreement. If DRSM does not provide any additional license terms for the corresponding update, the license terms applicable to the software shall also apply to this update.

Nothing in this agreement shall be construed as an express or implied commitment that updates will be manufactured for DRSM's products or when such updates, if manufactured, will be available for commercial use.

An update is characterized by an increase of the third component of the version number (for example 6.1.0 to 6.1.1).

7.5 Restriction

Upgrades may require the Customer to accept additional or alternative terms and conditions not set forth in this agreement. If DRSM does not provide additional license terms for the upgrade in question, the license terms applicable to the software will also apply to the upgrade. Nothing in this agreement shall be construed to constitute any warranty for the DRSM product or to imply that upgrades will be developed for any DRSM product or, if manufactured, when such updates will be available for commercial use.

7.6 Support

The scope and procedures for DRSM support are regulated in separate support contracts.

7.7 No maintenance for earlier versions

Maintenance, including support, is available only for the most current major version of the software during the applicable maintenance period. Any version of the software may only run on hardware and operating systems that have been expressly certified by DRSM for that version.

7.8 Exclusions from maintenance

Maintenance does not include third-party software, enhancements created by the Customer, or professional services such as installation, configuration, deployment, implementation, consulting, training, and other professional services related to the software.

8. Mandatory updates

In this case, DRSM will provide the Customer with an update to remedy an imminent or actual security breach in the software, to replace technologies that infringe the intellectual property rights of third parties or for other reasons of similar importance (such updates are hereinafter referred to as "Mandatory Updates"). The Customer agrees to immediately cease using any software that has not been updated with the Mandatory Update, and in no event later than thirty (30) days after DRSM provides such Mandatory Update to the Customer. If the Customer fails to meet the deadlines set forth in this Section 8, DRSM may terminate the Customer's software license and, if applicable, the maintenance license with immediate effect upon notice to the Customer.

9. Obligations, restrictions and responsibilities of the Customer
9.1 Protection

The Customer undertakes to take reasonable steps to protect the software and documentation from unauthorized copying or use. The Customer may not disassemble, decompile or reverse engineer the software. If the Customer has the legal right to disassemble or decompile the software to obtain interoperability information with other programs, the Customer agrees that this right may not be exercised unless DRSM fails to respond within sixty (60) days to a written request to provide the necessary information.

9.2 Limitations

Except as expressly permitted in this agreement, the Customer may not rent, lease, time-share, sublicense, distribute, resell, sell, transfer, copy, reproduce, display, decompile, reverse engineer, disassemble, modify or separate the components of any part. The Customer may not upload, host, use or access the software through timeshare, a service bureau, virtualization, application hosting or other remote access arrangements and may not use the software to provide hosting, service bureau or application provider services.

The following additional restrictions apply in the circumstances set out below. In the event of any conflict between these restrictions and other terms of this agreement, the following terms shall apply:

9.2.1 Test software

If the software is identified by DRSM as test software ("Test Software"), the Customer's use of the software is limited to evaluation only and is not intended for production. The Customer's license rights to this test software expire on the last day of the period specified in the software. At the end of the test phase, the Customer's license to use the test software shall expire, unless the Customer acquires a non-trial version of the software. The Customer agrees not to attempt to circumvent any expiration date technology or time bomb mechanism or any other usage restriction mechanism contained in the test software. Such an attempt constitutes a breach of the agreement by the Customer.

The test software is provided "AS IS" WITHOUT WARRANTY, MAINTENANCE OR TECHNICAL SUPPORT OF THE TEST SOFTWARE. WITH RESPECT TO TRIAL SOFTWARE, DRSM EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF RIGHTS. THE CUSTOMER ASSUMES ALL RISKS FOR THE USE OF THE TEST SOFTWARE.

9.2.2 DRSM Server Application

If the software is the DRSM server application (the "Server Application"), the Customer may either
(a) install the server application in an independent environment; or
(b) in a clustered Java application server environment specified by DRSM that DRSM considers compatible with a single DRSM administration database context in which any number of physical or virtual machines may be used.

Any number of server processors or server processor cores can be used in both environment types. A non-production copy of the server application can be installed for backup restore purposes. If the Customer has purchased a non-production license key from DRSM, the Customer may install a non-production copy of the server application for internal testing purposes. The Customer may make one (1) backup copy of the server application to support any DRSM management database context purchased by the Customer as evidenced by the license certificate. All rights not expressly granted herein are expressly reserved by DRSM. The duration of the server application license term is specified on the corresponding license certificate.

9.2.3 Modules for server applications

9.2.3.1 Site license

With a site license, the application is limited to an organization with one site (postal code area) and any number of users.

9.2.3.2 Company-wide license

A company-wide license includes unlimited use in all areas and locations of a company. Exceptions are locations in which a company only owns shares or other participations.

9.2.4 Runtime licenses

If the software is licensed as a runtime license, the Customer's license for the software (and, if applicable, maintenance) expires at the end of the term specified on the license certificate.

9.2.5 Upgrade licenses

If the software is an upgrade license, the software is a replacement for, and not in addition to, the software license that has been upgraded.

9.3 Examination rights.

The Customer shall keep reasonable records of its use and licensing of the software in accordance with this agreement. Upon DRSM's written request, the Customer shall, within seven (7) days of the date of such request, submit to DRSM a statement signed by an authorized representative of the Customer, certifying the Customer's current use of the software.

During the term of this agreement, but only once a year or more frequently if DRSM has reason to believe that the Customer is not in compliance with the license or reporting terms of this agreement, DRSM may, at its own expense and at least forty-eight (48) hours after written notice, review the Customer's use of the software.

If the examination shows that the Customer uses the software more frequently than permissible, the Customer must immediately acquire sufficient licenses from DRSM or the reseller. If the Customer has understated the use of the software by more than five percent (5%), the Customer must also bear the costs of the examination in a reasonable amount.

9.4 Payment

The Customer undertakes to pay the respective DRSM invoices within the payment periods specified in the offers issued by DRSM and shown on the invoices adjusted accordingly.
The Customer shall pay default interest to DRSM on any overdue amounts payable to DRSM, at a minimum of
(a) one and a half percent (1.5%) per month from the due date of payment in accordance with the terms of payment set forth herein and up to
(b) the maximum percentage permitted by law.

9.5 Compliance

The Customer must comply with the applicable export laws and regulations of each authority of the Federal Republic of Germany.

9.6 Taxes

The license fees invoiced by DRSM include the VAT amounts prescribed by law in the respective country.

In case of delivery abroad, the Customer is responsible for all taxes of any kind, including but not limited to turnover and value added taxes.

9.7 Confidentiality

"Confidential Information" means all information, software, processes and materials relating to DRSM, DRSM's business activities and DRSM's software and documentation, in whatever format. The Customer shall keep all Confidential Information confidential and may use such Confidential Information only to exercise its rights or perform its obligations under this agreement and may not disclose such Confidential Information to any third party or to the Customer's employees.

Information that is generally known, available or in the public domain shall not be considered confidential information.

DRSM may not have an appropriate remedy in the event of a breach of this section. DRSM and the Customer therefore agree that DRSM may be entitled to seek remedies for an injunction, a particular service or any other form of appropriate relief deemed appropriate by a court of competent jurisdiction.

9.8 No high-risk use

The software is not fault-tolerant. The software is not designed for use in situations where failure or malfunction of the software could result in death or serious injury to any person or serious physical or environmental damage ("High-Risk Use"). The Customer has no license to use the software for use in connection with high-risk use. High-risk use is strictly prohibited.

9.9 Delivery

DRSM will deliver the appropriate license certificates for the software to the e-mail addresses provided by the Customer. For the avoidance of doubt, the Customer is responsible for the download and installation of the software and the Customer acknowledges that DRSM has no further delivery obligations with respect to the software after delivery of the license certificates. All deliveries under this agreement are electronic as described above, unless the delivery of physical media by DRSM is required. In the case of material media, the risk of loss of or damage to the material media and ownership of the material media shall be transferred from DRSM to the Customer if DRSM delivers the material media to the carrier in DRSM's shipping facility.

10. Term and termination
10.1 Concept

This agreement shall enter into force on the date specified on the license certificate and shall remain in effect until
(a) the termination of this agreement in accordance with its terms; and
(b) destruction by the Customer of all copies of the software owned by the Customer.

10.2 Termination of the agreement

DRSM shall be entitled to terminate this agreement immediately after notification to the Customer if the Customer violates this agreement.
Upon termination due to breach of contract, all rights of use to the software granted to the authorized end users shall also expire. Upon DRSM's request, the Customer shall, at its own expense, return or destroy all copyrighted information and software protected for DRSM in all formats, including, but not limited to, all abstracts, copies and extracts, owned or controlled by the Customer or its employees.

DRSM may require the Customer to confirm compliance with the provisions of this paragraph by a written statement from the management.

DRSM expressly points out that upon expiration or termination of this agreement, no waiver of any such requirement shall entitle the Customer or authorized end user to continue to use any information or software copyrighted for DRSM, or the rights of the Customer or authorized end user set forth in this agreement shall renew.

The Customer expressly undertakes to cease further use and to ensure the ceasing of further software use by the authorized end users, unless DRSM and the Customer have signed a written license agreement for such use.

11. Limited warranty / limitation of liability

11.1 DRSM warrants for a period of thirty (30) days from delivery of the software by DRSM or a reseller (the "Warranty Period") that the software will perform substantially as set forth in the documentation and the software specifications published by DRSM.

This limited warranty is only valid for the Customer and all warranty claims must be made to DRSM in writing within the warranty period.

DRSM's sole liability if this limited warranty is breached, and the Customer's exclusive remedy, shall be that DRSM, with commercially reasonable effort and at its sole discretion, will repair or replace the software within a reasonable period of time. If, in DRSM's sole discretion, such options are not reasonably practicable, DRSM shall be entitled to terminate the license under this agreement for the software in question and to reimburse any royalties paid by the Customer for the software that does not comply with this limited warranty on a pro rata basis.

The above limited warranty is void if the software failure is caused by malfunction, abuse, misapplication, abnormal use, or non-DRSM virus or worm infestation.

11.2 EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 11.1, THE SOFTWARE IS LICENSED TO THE CUSTOMER "AS IS". MAINTENANCE IS LICENSED "WITHOUT WARRANTY".   IF THE CUSTOMER RECEIVES DEFECTIVE MEDIA OR DOCUMENTATION REGARDING THE SOFTWARE FROM DRSM OR A RESELLER, THE CUSTOMER MAY RETURN THE MEDIA OR DOCUMENTATION TO DRSM FOR FREE REPLACEMENT WITHIN 30 DAYS OF THE DATE OF PURCHASE.

THE CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE SUITABLE FOR THE DESIRED RESULTS AS WELL AS FOR THE INSTALLATION, USE AND RESULTS OF THE SOFTWARE.

THE ABOVE WARRANTIES ARE THE ONLY WARRANTIES PROVIDED BY DRSM AND SUPERSEDE ANY EXPRESS OR IMPLIED WRITTEN OR ORAL WARRANTIES, STATUTORY OR DUE TO LEGAL PROVISIONS, COURSE OF DEALING, CUSTOM OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES THAT THE PRODUCT IS MERCHANTABLE, USABLE, FIT FOR A PARTICULAR PURPOSE, OF MERCHANTABLE OR AVERAGE QUALITY AND DOES NOT INFRINGE THE RIGHTS OF OTHERS. THESE IMPLIED WARRANTIES ARE ALL EXCLUDED.

DRSM OR ITS LICENSORS SHALL IN NO EVENT BE LIABLE TO THE CUSTOMER FOR INDIRECT DAMAGE, DAMAGES, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF DRSM, THE SOFTWARE, MAINTENANCE, DATA CARRIERS, DOCUMENTATION OR OTHER MATERIALS SUPPLIED BY DRSM, WHETHER IN CONTRACT OR TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) AND WHETHER OR NOT SUCH DAMAGE WAS FORESEEABLE OR NOT, WHETHER OR NOT DRSM WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

DRSM DOES NOT ACCEPT ANY LIABILITY FOR DATA AND CONTENT PROCESSED WITH THE SOFTWARE OF DRSM.

Under no circumstances shall DRSM's total liability exceed the total amount of fees paid by the Customer to DRSM or a reseller for the software in the calendar year immediately preceding the event giving rise to the claims.

Software prices are set on the condition that the above restrictions are included in this agreement.

12. Other
12.1 Binding effect / Assignment

This agreement shall be binding upon the respective representatives, successors and assignees of the parties. However, the Customer may not assign or transfer this agreement, the use of the software, or the Customer's rights and obligations under this agreement without DRSM's prior written consent, whether by operation of law or otherwise. DRSM is entitled to assign this agreement to any purchaser of DRSM rights to the software.

12.2 Legal remedies

Nothing in this agreement is intended to waive or limit any remedy or equity available to DRSM, including but not limited to any remedy available under international copyright laws.

12.3 Additional provisions

If any part of this agreement is unenforceable, the remainder of this agreement shall be deemed valid and enforceable. Any delay or failure by any party to exercise its rights and remedies under this agreement shall not constitute a waiver of any right. No modification or waiver of this agreement shall be binding unless agreed in writing by both parties.

Non-performance shall be excused to the extent that it becomes impossible due to fire, flood, acts of terrorism, earthquakes, acts or orders of government or restrictions, failure of suppliers, power failure, strikes or other circumstances beyond its control.

All notices must be addressed to the party's legal representative and sent either by registered or certified mail, requested return receipt or by commercial courier service with signature of acknowledgement of receipt or served in person.

12.4 Survival

The provisions of Sections 1, 2, 3, 4, 5, 9, 10, 11 and 12 shall survive the termination or expiration of this agreement, except that the Customer's rights under Section 4 shall terminate in the event of termination of this agreement by DRSM.

12.5 Jurisdiction and applicable law

Place of jurisdiction is the head office of DRSM. German law applies. Procedures are conducted in German.