

Dynaway Terms and Conditions for use of software

Introduction

1. These terms and conditions are based on Dynaway's Terms and Conditions for the specific purpose of regulating the end-users' use of Dynaway software.
2. These terms and conditions apply exclusively to end-users whom have obtained a license to Dynaway Software through a Dynaway approved partner.

Definitions

1. Technical definitions
 - 1.1. The Software may include:
 - server software, which is software that provides services or functionality on your Server;
 - client software, which is software that can be installed on Devices, and which allows the Devices to access or use the Server Software or to use certain aspects of the Server Software when disconnected from the Server;
 - additional components, which may however be separately licensed in which case such terms shall apply in relation to the given component;
 - standard software, which is software developed by the Licensor independently of any specific requirements or needs of the Licensee, and which the Licensor offers to its end-users (licensees) as a standard solution;
 - or customized software, which is software developed by the Licensor to fulfil the specific requirements or needs of the Licensee, e.g. in connection with correction of errors specific to Licensee, and which has not previously been developed by the Licensor.

The term Software shall in any case be understood as the Software including:

- any documentation and manuals related to the Software, and
- updates, upgrades and supplements to the Software,

unless such parts of the Software are subject to separate terms, in which case such terms shall apply as a supplement to this agreement.

2. Other definitions
 - 2.1. Licensee/End-User/Customer: The contracting party which has obtained a license of use of the software within its own company.
 - 2.2. Partner/Distributor/Affiliate: Any legal entity that Dynaway has entered a distribution/reseller agreement with.
 - 2.3. Licensor/Supplier: Dynaway A/S.
 - 2.4. Agreement/the Agreement: The agreement entered into by Customer and Partner or Supplier.

General provisions

1. Intellectual property rights
 - 1.1. Supplier is the owner and author of all intellectual property rights in and to the Services (including any intellectual property rights created jointly with Customer), and the results thereof.
 - 1.2. Supplier grants Customer a license to the Service, as further specified in the relevant Service Terms.
 - 1.3. Notwithstanding anything to the contrary, to the extent the Agreement sets out that specific license terms or conditions apply to specific Services, the specific license terms or conditions will govern the Services provided to Customer in lieu of the beforementioned Service Terms.
 - 1.4. From the date of the Agreement, Customer grants Supplier a time-limited, nonexclusive and non-transferable right to use any services (including software) or other materials made available by Customer to Supplier from time to time as part of the performance of the Agreement. The permitted use only includes the use required for the performance of the Services and will automatically expire upon termination or expiry of the Agreement.
2. Governing law and disputes
 - 2.1. The Agreement is governed by and construed in accordance with the law where Supplier is domiciled except for (a) rules leading to the application of other law and (b) the United Nations Convention on Contracts for the International Sale of Goods (CISG).
 - 2.2. Any dispute controversy or claim arising out of or related to the Agreement must be settled by arbitration as described below, unless otherwise agreed between the parties:
 - 2.2.1. for Customer's domiciled in Denmark: Using the Danish system of simplified arbitration adopted using the Danish Institute of Arbitrations rules for simplified arbitration applicable at the initiation of the arbitration proceedings. The seat of arbitration shall be Copenhagen. The language to be used in the arbitral proceedings shall be English.
 - 2.2.2. for Customer's domiciled in any other country: Using the Danish system of simplified arbitration adopted using the Danish Institute of Arbitrations rules for simplified arbitration applicable at the initiation of the arbitration proceedings. The seat of arbitration shall be Copenhagen. The language to be used in the arbitral proceedings shall be English.

Terms of use - Software

1. Introduction
 - 1.1. These Service Terms constitute an integral part of the Agreement and apply to Supplier's provision of licensing of software (the "Software"), excluding software-as-a-service.
 - 1.2. These Service Terms apply only to the extent that the Software is not subject to separate license terms, in which case such separate license terms applies to the Software in lieu of these Service Terms in their entirety.
2. The Service
 - 2.1. The Software, including data included in the Software, is a standard software product.
 - 2.2. If the Software is provided under a subscription license, Customer is granted a time-limited, non-exclusive, non-transferable right to use the Software, including any upgrades, updates, versions, releases, and development services, etc. provided by Supplier during the license term specified in the Agreement, from the delivery date unless otherwise agreed in the Agreement and provided that Customer pays the subscription fee. Any delay in payment of the subscription fee means that Supplier may without liability suspend Customer's access to the Software.
 - 2.3. If the Software is provided under a perpetual license, Customer is granted a perpetual, non-exclusive, non-transferable right to use the Software provided by Supplier as specified in the Agreement and from the delivery date unless otherwise agreed in the Agreement and provided that Customer pays the license fee.
 - 2.4. Only Customer is entitled to use the Software. Customer can only use the Software for its own purposes.
 - 2.5. If specified in the Agreement, Customer can allow any affiliated company to use the Software for such company's own purposes on the same terms as Customer, including terms regarding acquisition of the required licenses. Customer will remain directly liable for any use of the Software and for compliance with the terms relating thereto, including for Customer's affiliated companies.
 - 2.6. The Software may be used only as expressly permitted unless otherwise permitted by mandatory legislation in force. It is expressly not permitted to:
 - 2.6.1. Break or circumvent any technical limitations;
 - 2.6.2. Reverse engineer, decompile or disassemble the Software or use any other methods to gain access to source code of the Software or any trade secrets embodied in the Software;
 - 2.6.3. Modify or change the Software or the object code;
 - 2.6.4. Allow a third party to perform changes or maintenance to the Software on behalf of Customer;
 - 2.6.5. Make the Software or the functionality of the Software available to any third party through any means (e.g. through a network or hosting service);
 - 2.6.6. Publish or enable others to copy or access the Software;
 - 2.6.7. Sell, rent, lease or lend the Software;
 - 2.6.8. Use the Software for commercial software hosting services;
 - 2.6.9. Use the Software to support the business of a third party or to operate a bureau service;
 - 2.6.10. Amend or remove any labels and/or notices regarding copyright, trademarks or other rights, or any references thereto, included in the Software or the medium on which the Software has been delivered.
 - 2.6.11. Use API or other interface tools made available or developed by Supplier to establish functionality, which is contained in, or planned for development of, the Software.
 - 2.6.11.1. Subject to Supplier's prior specific written consent, Customer is not withstanding the foregoing entitled to make the Software available to a third party operating the Software on behalf of or for the benefit of Customer (e.g. a hosting service provider or outsourcing service provider). Supplier may require such third party to enter a separate declaration concerning the rights to the Software.
 - 2.6.11.2. The source code of the Software is to be considered and treated as confidential information.
 - 2.6.11.3. Customer has no right to receive a copy of the source code to the Software. Customer only has a right to receive a copy of the object code to the extent the Software is provided for client-side installation.

2.6.11.4. If Customer uses the Software in violation of these Service Terms, Supplier may immediately and without notice cancel or terminate the Agreement with immediate effect on the grounds of material breach.

3. License metrics
 - 3.1. The license is granted pursuant to the license metrics specified in the Agreement, including the restrictions specified therein.
 - 3.2. Customer must at all time, ensure to have the appropriate number of licenses needed for Customer's actual use regardless of any organizational ties, including in terms of employment and affiliation.
4. Updates and amendments
 - 4.1. Supplier may, at its own discretion and at any time, decide to let the Software undergo upgrades, updates, releases, maintenances, development services and amendments in general, including by adding new versions, updates and amending functions, as long as such changes does not adversely affect the Software. The changes may occur without notice. Such upgrades and amendments may require planned downtime and may take place without any notice.
 - 4.2. Access to upgrades, updates, versions, releases, maintenances, development services and amendments in general may be subject to entering into a separate agreement in this regard.
5. Intellectual property rights
 - 5.1. Customer acknowledges that Supplier (or its licensors) owns all copyright and intellectual property rights or industrial property rights in and to the Software, including, but not limited to, the Software code. This also applies to any amendments, adjustments, upgrades etc. of the Software. Customer must respect such intellectual rights, and Customer is liable for any breach of such rights, including a third party's unauthorized access to the Software.
6. Warranties
 - 6.1. The Software is licensed "as-is" meaning that the Software is provided in whatever condition it presently exists.
 - 6.2. Supplier however warrants that the Software in all material aspects will work in accordance with the specifications set out in the Agreement and any original documentation provided by Supplier, and that all material functions work, provided that the Software is used for the intended purpose, in accordance with the specifications and on the computer hardware and with the operating system for which the Software has been developed.
 - 6.3. The above represents the only warranties, and Supplier provides no additional warranties of any kind, neither explicit or implicit. Supplier explicitly waives any warranties regarding marketability and suitability for a specific purpose.
7. Audit and information
 - 7.1. Supplier is at any time and without prior notice entitled to verify Customer's compliance with these Service Terms. Such verification may be in the form of electronic access to the Software and any records therein. Customer must provide reasonable assistance to Supplier with these verification tasks.
 - 7.2. Without prejudice to any other remedies for breach which Supplier may have at its disposal, and in case Customer has not been licensed correctly, Supplier is entitled to claim payment of the additional License Fee for the period when Customer has not been licensed correctly.
 - 7.3. Neither of the parties are liable for the other party's costs related to this clause 7. Regardless of the above, Customer is liable for any costs paid by Supplier if an audit reveals any non-compliance with the Service Terms on the part of Customer.
8. System requirements
 - 8.1. Customer is aware and recognizes that the Software may require and be comprised by specific system requirements and/or a software subscription. Such requirements are specified in the Agreement. Customer is responsible for complying with any such system requirements and for paying any related costs and fees. Supplier does not guarantee that the Software is compatible with any future versions of third party software.