

Standard DSharp Studio license subscription agreement for businesses and organizations

Effective as of March 15th, 2024

IMPORTANT! READ CAREFULLY:

THIS IS A LEGAL AGREEMENT. BY CLICKING ON THE "I AGREE" (OR SIMILAR) BUTTON THAT IS PRESENTED TO CUSTOMER AT THE TIME OF CUSTOMER'S PURCHASE, OR BY DOWNLOADING, INSTALLING, COPYING, SAVING ON CUSTOMER'S DEVICE, OR OTHERWISE USING THE DSHARP STUDIO SOFTWARE, SUPPORT OR PRODUCT CUSTOMER BECOMES A PARTY TO THIS AGREEMENT AND CUSTOMER CONSENTS TO BE BOUND BY ALL THE TERMS AND CONDITIONS SET FORTH BELOW.

Note: In case the terms of this Agreement are in conflict with the terms of any agreement individually negotiated and agreed between DSharp and Customer, the terms of the latter shall prevail.

1. PARTIES

1.1. "DSharp" (or DS) means DSharp Oy, having its principal place of business at Yliopistonkatu 31, 20100 Turku, Finland, and the Finnish Business ID 2511558-4.

1.2. "Customer" means the sole proprietor or legal entity specified in the Subscription Confirmation. For legal entities, "Customer" includes any entity which controls, is controlled by, or is under common control with Customer. For the purposes of this definition, "control" means (i) the power, directly or indirectly, to direct or manage such entity, whether by contract or otherwise, or (ii) ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

1.3. "Reseller" means the sole proprietor or legal entity specified in the Subscription Confirmation if applicable.

2. DEFINITIONS

2.1. "Agreement" means this DSharp Studio Subscription Agreement.

2.2. "Product" means the DSharp Studio Software (DSharp Studio, DSharp Studio Modeler, DSharp Studio Viewer, DSharp Studio with Data Catalog) generally available on the market. For the avoidance of doubt, the Product is not produced to the specifications of Customer nor customized through modification or personalization and is intended for mass distribution.

- 2.3. “Device” means a computer device used by a User for running the Product. The computer device can also be a virtual computer device.
- 2.4. “Product Version” means a release, update, or upgrade of the Product that is not identified by DSharp as being made for the purpose of fixing software bugs.
- 2.5. “Bug Fix Update” for the Product Version means a software update or release that is specifically identified by DSharp as a bug fix for that Product Version.
- 2.6. The DSharp Studio Software (the Product) is part of a broader D# Toolbox used within the DSharp (D#) Methodology.
- 2.7. “DSharp Account” or “DSA” means an Internet account created by DSharp for the Customer or a single User, having a unique name and password, and enabling User management and Subscription administration and/or access to the Product in accordance with a Subscription. DSharp downloading, developer support, training and piloting areas are part of this account.
- 2.8. “Subscription Confirmation” means an email confirming Customer’s rights to access and use the Product, including Subscription plans, and the number of authorized Users.
- 2.9. “Subscription” specifies the license subscription term, the Product provided to Customer, subscription fees and payment schedules.
- 2.10 “Subscription Term” is the term of this agreement defined in section 12 below and confirmed by signing Subscription Document that is an essential part of this Agreement.
- 2.11. “User” means any named customer employee, independent contractor or other personnel obtaining access to the Product assigned by Customer and granted by DSharp.
- 2.12. “Service” refers to services directly related to the Subscription and is defined in DSharp Studio Product Description.
- 2.13 “Web Store” refers to online DSharp Webstore available in dsharp.fi where the Subscription can be purchased with most common credit cards.

3. GRANT OF RIGHTS

- 3.1. The Product is provided on a per-seat basis. If Customer complies with the terms of this Agreement, Customer has the rights stipulated hereunder for each Subscription that Customer acquires. Customer’s rights acquired in relation to the Product are limited to those necessary to enable Customer and its Users to effectively operate the Product. All other rights remain reserved to DSharp.
- 3.2. Unless the Subscription has expired or this Agreement is terminated in accordance with Section 12, and subject to the terms and conditions specified herein, DSharp grants Customer a non-exclusive and non-transferable right to use each Product covered by the Subscription as stipulated below:

(A) Customer may:

(i) Install and use any version of the Product covered by the Subscription on any number of Devices and on any operating system supported by the Product; and

(ii) Make one backup copy of the Product solely for archival/security backup purposes.

(iii) Provide access to the Product, Customer's or User's DSA or the right to use the Product to an employee of the Customer or to an employee of a subcontractor working on Customer's development;

(B) Customer may not:

(i) Allow the same Subscription to be used by any user that has not explicitly been granted access by DSharp

(ii) Rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, or transfer the Product and related Services;

(iii) Reverse engineer, decompile, disassemble, modify, or translate, or make any attempt to discover the source code of the Product; or

(iv) Remove or obscure any proprietary or other notices contained in the Product.

3.3. Customer acknowledges that no ownership right is conveyed to Customer under this Agreement, irrespective of the use of terms such as "purchase" or "sale" that may be agreed for example with reseller and that may be in conflict with this Agreement. DSharp has and retains all rights, title and interest, including all intellectual property rights, in and to the Product and any and all related or underlying technology, and any modifications or derivative works thereof, including without limitation as they may incorporate Feedback (as defined below in Section 7).

3.4. Customer can use the integrated OpenAI API at Customer's own responsibility. Customer must get their own API key from OpenAI and agree on OpenAI terms of use. By saving the API key in Product user interface or directly to settings file the Customer agrees to OpenAI's terms and policies. Customer should be aware that OpenAI saves and processes data in USA.

4. PURCHASING THROUGH RESELLERS AND WEB STORE

This Agreement applies whether Customer purchases a Subscription directly from DSharp or through a Reseller. If Customer purchases through a Reseller, the Subscription details shall be as stated in the Subscription Confirmation issued by the reseller to Customer, and the reseller is responsible for the accuracy of any such Subscription Confirmation. Resellers are not authorized to make any promises or commitments on DSharp's behalf, and Customer understands and agrees that DSharp is not bound by any obligations to Customer other than as specified in this Agreement.

If Customer purchases the Subscription through the Web Store the right to cancel the Subscription is waived. This is due to the unique nature of digital deliveries. The product is

delivered instantly and Customer is informed about the waiving of cancellation right before the purchase. Customer also acknowledges this before the purchase.

5. ACCESS TO THE PRODUCT

5.1. All deliveries under this Agreement will be electronic. Customer and its Users must have an Internet connection in order to access the DSA and receive any deliveries. For the avoidance of doubt, Customer is responsible for downloading and installing the Products, which are made available for download on DSharp's downloading and support area.

5.2. Customer and its Users may use the DSA in accordance with its documentation. Customer and its Users are solely responsible for the accuracy of any information provided via and any action taken through the DSA.

5.3. Customer may enable Users to access Products in one of the following ways:

(A) By sending an invitation from Customer's DSA to a User DSA. Customer acknowledges and agrees that the Product will periodically connect from a User Client to DSharp's servers via the Internet to confirm the User's right to use the Product;

(B) By providing an offline activation code to the User for offline Product activation. It is Customer's responsibility to apply it to the Product registration screen every time changes are made to the right of use assignment or Subscription plan, as well as whenever a subscription is renewed;

Currently with version 5.0 both options A and B are in use.

By accepting this agreement customer gives consent for DSharp to store information on DSharp's Servers:

- User's email address
- User ID (Windows user account)
- Users's computer UID (generated by the Product)
- Login timestamp.

To understand how DSharp complies with the European General Data Protection Regulation (GDPR), you can visit <https://dsharp.fi/about/privacy-policy/>

6. SUBSCRIPTION FEES AND PAYMENTS

Customer shall pay its Subscription fees in accordance with DSharp Standard Terms of Purchase unless otherwise agreed within Subscription Confirmation. The Subscription fees shall be paid in full, and any levies, duties and/or taxes imposed by Customer's jurisdiction (including, but not limited to, value added tax, sales tax and withholding tax), shall be borne solely by Customer. Customer may not deduct any amounts from fees payable to DSharp or the reseller, unless otherwise specified in the applicable terms of purchase.

Invoicing dates and payment details are agreed within Subscription Confirmation document.

7. FEEDBACK

Customer has no obligation to provide DSharp with ideas, suggestions, or proposals (“Feedback”). However, if Customer or Users submit Feedback to DSharp, then Customer grants DSharp a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, or publicly perform the Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise.

8. THIRD-PARTY SOFTWARE

The Product includes code and libraries licensed to DSharp by third parties, including open source software (“Third-Party Software”).

9. SUBSCRIPTION TRIAL FOR EVALUATION

9.1. Subject to the terms of this Agreement, Customer is granted a one-time right to install and use the Product for evaluation purposes without charge for an evaluation period separately agreed in writing (the “Evaluation Period”). Customer’s use of the Product during the Evaluation Period shall be limited to the internal evaluation of the Product for the sole purpose of determining whether the Product meets Customer’s requirements and whether Customer desires to continue using the Product.

9.2. Customer may withdraw from using the Product at Customer’s sole discretion any time before expiration of the Evaluation Period. Upon expiration of the Evaluation Period, Customer’s right to continue to use the Product will terminate, unless Customer purchases a Subscription to the Product. The Product contains a feature that will automatically disable the Product upon the expiration of the Evaluation Period.

10. WARRANTY LIMITATIONS

10.1. ALL PRODUCTS ARE PROVIDED TO CUSTOMER ON AN “AS IS” AND “AS AVAILABLE” BASIS. USE OF THE PRODUCTS IS AT CUSTOMER’S OWN RISK.

10.2. DSHARP MAKES NO WARRANTY AS TO THE PRODUCTS’ USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DSHARP (OR ITS AFFILIATES, SHAREHOLDERS, AGENTS, DIRECTORS, AND EMPLOYEES), ITS LICENSORS, SUPPLIERS (WHICH SHALL INCLUDE THE PROVIDERS OF THIRD PARTY SOFTWARE), AND RESELLERS (COLLECTIVELY HEREUNDER, “DSHARP PARTIES”) DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE;

TITLE; AND NON-INFRINGEMENT) WITH REGARD TO THE PRODUCTS AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DSHARP PARTIES DO NOT REPRESENT OR WARRANT THAT THE PRODUCTS: (A) ARE ACCURATE, RELIABLE OR CORRECT; (B) WILL MEET ANY CUSTOMER REQUIREMENTS; (C) WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; (D) ARE FREE OF DEFECTS OR ERRORS AND THAT ANY, IF FOUND, WILL BE CORRECTED; AND/OR (E) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

10.3. ANY CONTENT OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PRODUCTS ARE DOWNLOADED AT CUSTOMER'S OWN RISK; CUSTOMER AGREES IT IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS PROPERTY OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

10.4. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. THIS DOCUMENT IS NOT INTENDED TO ABROGATE SUCH RIGHTS.

11. DISCLAIMER OF DAMAGES

11.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE DSHARP PARTIES BE LIABLE TO CUSTOMER, CUSTOMER'S AFFILIATES, USERS, OR ANYONE ELSE FOR: (A) ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE; (B) ANY LOSS OR DAMAGES IN CONNECTION WITH TERMINATION OR SUSPENSION OF CUSTOMER'S ACCESS TO THE PRODUCTS IN ACCORDANCE WITH THIS AGREEMENT; OR (C) ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER (EVEN IF THE RELEVANT DSHARP PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), INCLUDING THOSE (X) RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FORESEEABLE, (Y) BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHER TORTIOUS ACTION, OR (Z) ARISING FROM ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S USE OF OR ACCESS TO THE PRODUCTS OR SUPPORT. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

11.2. THE DSHARP PARTIES' TOTAL LIABILITY IN ANY MATTER ARISING OUT OF OR IN RELATION TO THIS AGREEMENT IS LIMITED TO THE GREATER OF (A) ONE HUNDRED (100) EUROS OR (B) THE AGGREGATE AMOUNT PAID OR PAYABLE BY THE CUSTOMER DURING THE THREE-MONTH PERIOD PRECEDING THE EVENT, FOR THE PRODUCTS GIVING RISE TO THE LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE DSHARP PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF LIABILITY EXCEEDING SUCH AN AMOUNT AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. SUBSCRIPTION TERM AND TERMINATION

12.1. This Agreement will commence upon acceptance of this Agreement by Customer as set forth in the preamble above by

- (i) Signing the Subscription Confirmation that is an essential part of this Agreement or
- (ii) Accepting this Agreement within the Product's user interface.

12.2. The term of this Agreement will continue for the Product through the end of the applicable Subscription Term specified in the respective Subscription Confirmation. This Agreement will automatically renew annually with respect to the Product for a successive Subscription term unless

- (i) terminated as set forth herein or
- (ii) separately agreed upon a fixed-term contract.

12.3. Customer may terminate this Agreement at any time by cancelling its Subscription in writing to the email address sales@dsharp.fi or via Customer's DSA. If such termination occurs during a then-current Subscription Term, this Agreement will continue to be effective until the end of that Subscription Term. Such termination does not relieve Customer of the obligation to pay any outstanding subscription fees owed to DSharp, and no credits or refunds will be issued to Customer for prepaid subscription fees (except as specified in the DSharp Terms of Purchase, if applicable).

12.4. DSharp may terminate this agreement if:

- (A) Customer has materially breached this Agreement and fails to cure such breach within thirty (30) days of written notice thereof;
- (B) Customer fails to make the timely payment of subscription fees in accordance with Section 6 of this Agreement;
- (C) DSharp is required to do so by law (for example, where the provision of the Product to Customer is, or becomes, unlawful); or
- (D) DSharp elects to discontinue providing the Product, in whole or in part.

12.5. DSharp will make reasonable efforts to notify Customer via email as follows:

- (A) Thirty (30) days prior to termination of the Agreement in the events specified in Sections 12.4(C) and 12.4(D) above, and in such events Customer will be entitled to a refund of the unused portion of prepaid subscription fees, if applicable;
- (B) Three (3) days prior to termination of the Agreement in the event specified in Section 12.4(B), and in such event, Customer will not be entitled to any refund of the unused portion of prepaid subscription fees.

13. TEMPORARY SUSPENSION FOR NON-PAYMENT

13.1. DSharp reserves the right to suspend Customer's access to DSharp's Products if Customer fails to pay subscription fees on time in accordance with Section 6 of this Agreement.

13.2. If DSharp suspends Customer's access to DSharp's Products for non-payment according to Section 13.1., Customer must pay all past due amounts in order to restore its access to DSharp's Products.

13.3. Customer hereby agrees that DSharp is entitled to charge Customer for the time period during which Customer has access to DSharp Products until Customer or DSharp terminates or suspends Customer's subscription in accordance with this Agreement.

14. MARKETING

Customer agrees that DSharp may identify it as a customer of DSharp and may refer to it by name, trade name and trademark, if applicable. DSharp may also briefly describe Customer's business in DSharp marketing materials, on the DSharp website and/or in public or legal documents. Customer hereby grants DSharp a worldwide, non-exclusive and royalty-free license to use Customer's name and any of Customer's trade names and trademarks solely pursuant to this marketing section.

For the avoidance of doubt any marketing plans or activities together with Reseller and/or other DSharp partners will be agreed in separate agreements.

15. GENERAL

15.1. Entire Agreement. This Agreement, including the Third-Party Software license terms, constitutes the entire agreement between the parties concerning its subject matter and supersedes any prior agreements between Customer and DSharp regarding Customer's use of the Product and related Services. No purchase order, other ordering document or any handwritten or typewritten text which purports to modify or supplement the printed text of this Agreement or any schedule will add to or vary the terms of this Agreement unless signed by both Customer and DSharp.

15.2. Reservation of Rights. DSharp reserves the right at any time to cease the support of the DSharp Product and related Services, and to alter prices, features, specifications, capabilities, functions, terms of use, release dates, general availability or other characteristics of the Product and related Services.

15.3. Changes to this Agreement. DSharp may update or modify this Agreement from time to time, including any referenced policies and other documents. If a revision meaningfully reduces Customer's rights, DSharp will use reasonable efforts to notify Customer (by, for example, sending an email to the email address of the billing or technical contact provided by Customer to DSharp, posting on DSharp's blog, through DSA, or via the Product itself). If DSharp modifies this Agreement, the modified version of the Agreement will be effective

from the start of the next Product Subscription term. In this case, if Customer objects to the updated Agreement terms, as Customer's exclusive remedy, Customer may cancel the Subscription. Customer may be required to click through the updated Agreement to show its acceptance. For the avoidance of doubt, each Subscription Confirmation is subject to the version of the Agreement in effect on the Subscription Confirmation date.

15.4. Opportunity to Review. Customer hereby declares that Customer has had sufficient opportunity to review this Agreement, understand the content of all of its clauses, negotiate its terms, and seek independent professional legal advice in that respect before entering into it. Consequently, any statutory "form contract" ("adhesion contract") regulations shall not be applicable to this Agreement.

15.5. Severability. If a particular term of this Agreement is not enforceable, the unenforceability of that term will not affect any other terms of this Agreement.

15.6. Headings. Headings and titles are for convenience only and do not affect the interpretation of this Agreement.

15.7. No Waiver. DSharp's failure to enforce or exercise any part of this Agreement is not a waiver of that section.

15.8. Notice. DSharp may deliver any notice to Customer via electronic mail to an email address provided by Customer, its DSA, registered mail, personal delivery or renowned express courier (such as DHL, FedEx or UPS). Any such notice will be deemed to be effective (i) on the day the notice is sent to Customer via email, (ii) upon being uploaded to Customer's DSA (irrespective of when Customer actually receives it), (iii) upon personal delivery, (iv) one (1) day after deposit with an express courier, (v) or five (5) days after deposit in the mail, whichever occurs first.

15.9. Governing Law. This Agreement will be governed by the laws of Finland, without reference to conflict of laws principles. Customer agrees that any litigation relating to this Agreement may only be brought in, and will be subject to the jurisdiction of, any competent court of Finland. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

For exceptions or modifications to this Agreement, please contact DSharp at:
Address: DSharp Oy, Yliopistonkatu 31, 20100 Turku, Finland.
E-mail: sales@dsharp.fi