Terms of Service

Description of services

Through its network of Web properties, Nintex UK Ltd and its global affiliates ("Nintex" or "We") provides a variety of resources, including but not limited to hosted software, APIs, mobile apps, information pages, community forums, and support services (collectively "Services").

Agreement

The Services, including any updates, enhancements, new features, and/or the addition of any new Services, are subject to these terms and conditions (Terms). Your continued use of the Services constitutes an affirmative acknowledgment and agreement by you that you accept and agree to abide and be bound by these Terms. If you represent a company, organization or other legal entity (Entity), you warrant that you have the authority to bind such Entity and its affiliates to these Terms, in which case the terms "Customer," "You," "Your" or related terms herein shall refer to such Entity and its affiliates. If you do not have such authority, or if you object to any of these Terms or any subsequent modifications your only recourse is to immediately discontinue your use of the Services.

Subscription services

The Services may be offered in a range of Service Plans which define, for example, fees and charges (including the absence of fees for trial or other free Plans), product features, number of users, service levels, subscription term, and usage limits.

We will make the Services available to you according to the Service Plan(s) you order using the prescribed web pages, electronic or paper forms (collectively "Order Form"), upon our processing and acceptance of your Order Form, which constitutes the beginning of your Subscription.

Any additional terms and conditions specified in an Order Form or the Service Plan(s) specified therein form part of these Terms and apply to your Subscription despite any conflict with these Terms.

Privacy

Nintex's privacy policy available at http://www.nintex.com/en-US/Pages/Privacy.aspx applies to the provision of the Services, and forms part of these Terms.

Permitted uses

You may use the Services for your own internal business purposes only in accordance with these Terms.

All other uses are excluded, including without limitation:

- accessing the Services for the purpose of developing or marketing any competing services or related products; attempting to discover the source code, trade secrets, designs, methods, or other intellectual property of Nintex; benchmarking or performance testing the Services;
- any resale, rental, lease, transfer, assignment, time share, or in any other way to commercially exploit or make the Services available to any third party;

- engaging in or promoting any surveys, contests, pyramid schemes, chain letters, unsolicited e-mailing or spamming;
- impersonating any person or entity;
- using the Services to upload, post, e-mail, transmit or otherwise make available any material that you do not have a right to make available under any law or contractual obligation, or which contains viruses, or other computer codes, files or programs designed to interrupt, limit or destroy the functionality of other computer software or hardware;
- breaching any applicable laws or regulations, including without limitation, U.S. export restrictions, and laws regulating the transmission of electronic data between the U.S. and the countries in which you or your end users are located.

Nintex has no obligation to monitor any use of the Services, however we retain the right at all times to monitor, retain and disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request.

You will indemnify Nintex if Nintex suffers any loss or damage or incur any costs in connection with any breach of these conditions or any other legal obligation by you or your use of or conduct on the Services.

Member account, password, and security

If any of the Services requires you to open an account, register, or pass secure credentials, you must complete such process by providing current, complete and accurate information. You are entirely responsible for maintaining the confidentiality of your account details including any passwords or other security keys. Furthermore, you are entirely responsible for any and all activities that occur under your account. You agree to immediately notify us of any unauthorized use of your account or any other breach of security. We will not be liable for any loss that you may incur as a result of someone else using your password or account, either with or without your knowledge. However, you could be held liable for losses incurred by Nintex or another party due to someone else using your account or password. You may not use anyone else's account at any time.

Number of users

If you select a Service Plan based on the number of users, you agree to provide us with accurate and up-to-date information regarding the applicable user count, and to notify us immediately if your user count exceeds the number of users allowed by your current Service Plan. You agree and acknowledge that we may take any reasonable action to ascertain or verify the user count.

Third party services

Websites and web service APIs operated by third parties (collectively "Third-party Services") may be accessed from or through the Services. These Third-party Services are not under our control and we accept no responsibility for the contents, operation, availability, or accuracy of any such Third-party Services. If you access any such Third-party Services you do so entirely at your own risk.

Content IP

You retain full ownership to your Content, but you agree to grant us a worldwide, non-exclusive, irrevocable, transferable, perpetual, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, edit, translate, make derivatives, display and

distribute such Content in connection with providing the Services to you and other users according to these Terms.

You agree and acknowledge that you are wholly responsible for your Content.

While we have no obligation to monitor user Content, we reserve the right to suspend, disable, or remove your Content if your Content is or is likely to be, in our absolute discretion, in violation of these Terms.

Nintex IP

All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Nintex and its licensors.

The Nintex name, branding, product names, logos, insignias and other distinctive marks are the property of Nintex. Other trademarks are displayed on the Services and these may be the property of third parties. Nothing displayed on the Services should be construed as granting any licence or right of use of any logo, masthead or trade mark, without the express written permission of the relevant owner.

Confidentiality

You acknowledge that the ideas and expressions contained in the Services and any modifications or particulars of them that may be provided to you by us are confidential (except to the extent that they have entered the public domain other than through a breach of this Agreement by you). You undertake not to disclose this confidential information to any person other than your agents and employees and then only to enable the Services to be used in accordance with these Terms.

Fair use

You acknowledge that the Services depend on finite resources shared amongst many customers. You agree not use the Services excessively or unreasonably.

Our Service Plans may or may not specify or limit specific consumption measures such as attachment size, bandwidth, transactions, completed processes, or similar measures. The omission of any such limit does not imply a literally unlimited consumption allowance, even if the term "unlimited" is used by us or others in describing any aspect of the Service Plans.

Excessive consumption of the Services may be identified with reference to significant variations from the average consumption by comparable customers. If you are found to be consuming the Services excessively we will contact you. We may make recommendations regarding, for example, system design and configuration, user training, your internal support procedures, or, if heavy usage is expected to continue, upgrading to a more suitable Service Plan. You agree to make good faith efforts to remedy excessive consumption.

Fees and taxes

Unless expressly stated to the contrary, all fees and charges related to the Services are quoted exclusive of all taxes, duties and imposts. If we are or will be liable for any taxes, duties or imposts (including goods and services tax or value added tax, sales tax, or withholding taxes) on or relating to the provision of the Services to you, then you must pay us an amount equal to that liability at the time that you pay any fees, costs or charges to which the liability relates.

Term and Termination

This Agreement will commence on the Effective Date and continue for a period of twelve (12) months (the "Initial Term"), and will automatically renew at the end of the Initial Term (or any renewal term) for a period of one year (each, a "Renewal Term" and, together with the Initial Term, the "Term") unless either party provides written notice to the other of non-renewal at least ninety (90) days before the end of the Initial Term or any renewal term. Any such renewal will be at the list price in effect at the time of such renewal.

Either party may terminate this Agreement: (i) upon thirty (30) days prior written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such notice period; or (ii) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

Upon any termination of this Agreement, Customer must, as of the date of such termination, immediately cease accessing or otherwise utilizing the Service and Nintex Confidential Information. Termination for any reason will not relieve Customer of the obligation to pay any fees accrued or due and payable to Nintex prior to the effective date of termination. Upon termination for cause by Nintex, all future amounts due under all Order Forms will be accelerated and become due and payable immediately.

Disclaimer of Warranties

WE MAKE NO WARRANTY OR REPRESENTATION TO YOU AS TO THE PERFORMANCE OR OPERATION OF THE SERVICES. WE, ON BEHALF OF OURSELVES, MICROSOFT, WIRELESS CARRIERS OVER WHOSE NETWORK THE SERVICES ARE DISTRIBUTED, AND OUR AND THEIR RESPECTIVE AFFILIATES, VENDORS, AGENTS, AND SUPPLIERS ("DISTRIBUTORS"), GIVE NO EXPRESS WARRANTIES, GUARANTEES, OR CONDITIONS UNDER OR IN RELATION TO THE SERVICES. WE MAKE NO OTHER WARRANTY EXPRESS OR IMPLIED WITH RESPECT TO US, THE SERVICES PROVIDED BY US AND, SUBJECT TO THIS CLAUSE, ANY CONDITION OR WARRANTY WHICH WOULD OTHERWISE BE IMPLIED IN THIS AGREEMENT IS HEREBY EXCLUDED. WHERE LEGISLATION IMPLIES IN THIS AGREEMENT ANY CONDITION OR WARRANTY, AND THAT LEGISLATION AVOIDS OR PROHIBITS PROVISIONS IN A CONTRACT EXCLUDING OR MODIFYING THE APPLICATION OF OR EXERCISE OF OR LIABILITY UNDER SUCH CONDITION OR WARRANTY, THAT CONDITION OR WARRANTY WILL BE DEEMED TO BE INCLUDED IN THIS AGREEMENT.

Liability

IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY LOST PROFITS, LOST SAVINGS, DELETION OR CORRUPTION OF ELECTRONICALLY STORED INFORMATION, LOST DATA, OR OTHER SPECIAL, DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SOFTWARE OR OTHER PRODUCTS OR SERVICES FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT OR THE USE THEREOF, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. YOU AGREE NOT TO SEEK TO RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES FROM ANY DISTRIBUTOR.

OUR AGGREGATE LIABILITY UPON ANY CLAIMS HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SOFTWARE OR OTHER PRODUCTS OR SERVICES FURNISHED OR TO BE

FURNISHED BY US UNDER THIS AGREEMENT WILL IN ANY EVENT BE ABSOLUTELY LIMITED TO THE AMOUNT PAID BY YOU TO US UNDER THIS AGREEMENT FOR THE APPLICABLE SOFTWARE OR OTHER PRODUCTS OR SERVICES.

YOU ACKNOWLEDGE THAT WE HAVE SET OUR PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY SET OUT IN THIS AGREEMENT, AND THAT THESE FORM AN ESSENTIAL BASIS OF THE BARGAIN REACHED BETWEEN THE PARTIES. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY WILL SURVIVE AND APPLY EVEN IF ANY CLAUSE IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THIS, NOTHING CONTAINED IN THIS AGREEMENT WILL LIMIT OUR LIABILITY FOR OUR OWN WILFUL OR WANTON CONDUCT.

Mutual Indemnification

Nintex will defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the use of the Service as contemplated hereunder infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; provided, however, that Customer: (a) promptly gives written notice of the Claim to Nintex; (b) gives Nintex sole control of the defense and settlement of the Claim (provided that Nintex may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Nintex, at Nintex's cost, all reasonable assistance. Nintex will not be required to indemnify Customer in the event of: (w) modification of the Service by Customer, or Users in conflict with Customer's obligations or as a result of any prohibited activity as set forth herein; (x) use of the Service in a manner inconsistent with the Documentation; (y) use of the Service in combination with any other product or service not provided by Nintex; or (z) use of the Service in a manner not otherwise contemplated by this Agreement. If Customer is enjoined from using the Service or Nintex reasonably believe it will be enjoined, Nintex will have the right, at its sole option, to obtain for Customer the right to continue use of the Service or to replace or modify the Service so that it is no longer infringing. If neither of the foregoing options is reasonably available to Nintex, then use of the Service may be terminated at the option of Nintex and Nintex's sole liability will be to refund any prepaid, but unused, Subscription Fees paid by Customer for such Service.

Customer will defend, indemnify and hold Nintex harmless from any Claims made or brought by a third party: (i) based upon breach of this Agreement by Customer, its employees and Users resulting in the unauthorized disclosure of Confidential Information; (ii) alleging that the Customer data or business information infringes the rights of, or has caused harm to a third party; or (iii) in connection with a claim arising from use of the Service in breach of this Agreement by Customer or Users; provided, however, that Nintex: (a) promptly gives written notice of the Claim to Customer; (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless it unconditionally releases Nintex of all liability); and (c) provides to Customer, at Customer cost, all reasonable assistance.

General provisions

This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications in connection with that subject matter. The parties acknowledge that, except as expressly stated in this Agreement, they have not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to this Agreement.

This Agreement may only be amended in writing signed by both parties.

Each party warrants that it has the authority, power and capability to enter into and to perform its obligations under this Agreement and that its obligations under this Agreement are binding and enforceable.

Neither party will be liable for any failure to perform its obligations under this Agreement (other than an obligation to pay money) if the party is prevented from doing so by any cause beyond its reasonable control.

Each term of this Agreement must be interpreted in such manner as to be effective and valid under applicable law. If any term of this Agreement is held to be prohibited by or invalid under applicable law, that term is ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

A term of this Agreement may not be waived except in writing signed by the party granting the waiver. The waiver by a party of a breach by another party of any term of this Agreement does not operate as a waiver of another or continuing breach by that party of that term or any other term of this Agreement.

You must not assign or novate any of your rights or obligations under this Agreement without our prior written consent (which we may withhold in our absolute discretion).   We may assign or novate any of our rights or obligations under this Agreement to any person by notice to you.

Excluding conflict of laws rules, this Agreement shall be governed by and construed under the laws of the state of Washington. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the state or federal courts located in King County, Washington, U.S.A. Nothing in this section shall restrict Nintex's right to bring an action (including for example a motion for injunctive relief) against Customer in the jurisdiction where Customer place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.