

NINTEX MOBILE ENTERPRISE TERMS OF SERVICE

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR NINTEX MOBILE ENTERPRISE SERVICE ("SERVICE").

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICE, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE.

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Subscription Agreement.

"Application" means any application configured and built using the Service.

"Content" means the electronic content and information submitted by or for You to the Service for use in building an Application.

"Documentation" means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible via <https://community.nintex.com> or login to the applicable Service.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"Service" means the Nintex Mobile Enterprise Service ordered by You or provided with Nintex Forms Enterprise Edition, and made available by Us on line and subject to these Terms.

"Users" means an individual who is authorized by You to use the Service.

"We," "Us," "Our" or "Nintex" means Nintex UK Ltd and each of Our Affiliates.

"You," "Your" or "Customer" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

2. LICENSE

2.1 We own all right, title and interest in and to the Service. Nintex hereby grants Customer a non-exclusive, non-transferable, right to use the Service, solely for its own internal business purposes during the Term, subject to the terms and conditions of this Agreement. Subject to the limited rights expressly granted hereunder, Nintex reserves all rights, title and interest in and to the Service, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

2.2 Restrictions. You must not (a) modify, copy or create any derivative works based on the Service; (b) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Service available to any third party, other than to Users as permitted herein; (c) frame or mirror any content forming part of the Service, other than on Your own intranet for Your internal business purposes as permitted in this Agreement; (d) sell, resell, license, sublicense, distribute, offer for download (whether free or for a fee) rent or lease any Application, (e) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (f) use the Service to store or transmit Malicious Code, (g) interfere with or disrupt the integrity or performance of the Service, (h) attempt to gain unauthorized access to the Service or its related systems or networks, (i) permit direct or indirect access to or use of the Service in a way that circumvents a contractual usage limit, (j) reverse engineer or decompile any portion of the Service, including but not limited to, any software utilized by Us in the provision of the Service, except to the extent required by applicable Law; (k) access the Service in order to build any commercially available product or service or otherwise commercially exploit the Service; or (l) copy any features, functions, integrations, interfaces or graphics of the Service.

3. USE OF SERVICE AND CONTENT

3.1 Limit on Number of Applications. Your use of the Service is subject to usage limits, including, the number of Applications to be configured and built for You by the Service. You may purchase upgraded Service or the capacity to build additional Applications within your current level of Service.

3.2 Your Responsibilities. You will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality, appropriateness, and legality of your Content and the means by which You acquired your Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Us promptly of any such unauthorized access or use, and (d) use the Service only in accordance with these Terms and applicable laws and government regulations.

3.3 License by You to use Content. You retain full ownership to your Content but grant to Us and Our Affiliates a worldwide, non-exclusive, royalty-free, limited term license to use, copy, transmit and display your Content as necessary for Us to build each Application and provide the Service in accordance with these Terms. Subject to the limited licenses granted herein, We acquire no right, title or interest from You in or to your Content. 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.

3.4 Representations and Warranties. We shall implement commercially reasonable technical and organizational measures to secure availability, confidentiality and integrity with respect to the Service, Applications, Content, and other customer data and information. However, unless explicitly otherwise agreed in writing between Parties, the Service is provided on an "as is" and "as available" basis. The Service may be subject to limitations, delays, and other problems inherent in the use of the internet and

electronic communications. We are not responsible for any delays, delivery failures, or other damage resulting from such problems. We shall retain the right to collect anonymous usage telemetry and crash statistics from the Service and each Application to be used for diagnostic, operational, performance and product improvement purposes.

3.5 Retention of Content and Applications. During the term of your subscription to the Service, we shall retain all Content you provide to us and each Application built for You in connection with the Service. We shall not be responsible or liable for the deletion, correction, destruction, damage or loss of any Content. Upon termination of your subscription to the Service, You shall retain each Application and be able to continue deployment of each Application. However, you will not be able to revise, update or reconfigure any existing Application without a current subscription to the Service. We reserve the right to delete all Content and each Application after expiration of your subscription to the Service.

4. FREE TRIAL

If You register on our website for a free trial, We will make the Service available to You on a trial basis free of charge until the earlier of (a) the end of the free trial or demonstration period for which you registered to use the Service, or (b) the start date of any Purchased Service subscription ordered by You. Your trial or demonstration license will be time-limited. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into these Terms by reference and are legally binding.

ANY CONTENT YOU ENTER INTO THE SERVICE, AND ANY APPLICATIONS MADE BY THE SERVICE FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION FOR THE SAME SERVICE AS COVERED BY THE TRIAL, OR EXPORT SUCH CONTENT, BEFORE THE END OF THE TRIAL PERIOD.

DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

5. CONFIDENTIALITY

5.1 Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, in connection with this Service, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Content. Our Confidential Information includes the Service and Documentation. Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

5.2 Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in

writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

5.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

6. LIMITATION OF LIABILITY.

6.1 WE PROVIDE THE SERVICE "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE MAKE NO (AND SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, THAT THE CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING EXCLUSIONS. IN SUCH AN EVENT SUCH EXCLUSION WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO CUSTOMER IN CONNECTION WITH THE PROVISION OF THE SERVICE.

6.2 IN NO EVENT SHALL OUR LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THE SERVICE AND/OR THESE TERMS OF USE AND/OR ANY AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU TO US TO USE THE SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE CLAIM. IN NO EVENT SHALL WE BE LIABLE TO ANYONE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OR COSTS OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, GOODWILL, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE AND/OR THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF WE HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE REASONABLY FORESEEN THEM. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS.

7. MUTUAL INDEMNIFICATION

7.1 Indemnification by Nintex. We 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 We reasonably believe it will be enjoined, We 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 Us, then use of the Service may be terminated at the option of Nintex and Our sole liability will be to refund any prepaid, but unused, Subscription Fees paid by Customer for such Service.

7.2 Indemnification by Customer. You will defend, indemnify and hold Us 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 Content or Confidential Information; (ii) alleging that the Content 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 You or Users; provided, however, that We: (a) promptly gives written notice of the Claim to You; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless it unconditionally releases Nintex of all liability); and (c) provides to You, at Your cost, all reasonable assistance.

8. GENERAL PROVISIONS

8.1. Export Compliance. The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

8.2 Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and Us regarding the Service and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

8.3 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

8.4 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

8.5 Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

8.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

8.7 Force Majeure. Neither party will be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Nintex or Customer employees, respectively), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

8.8 Choice of Law and Jurisdiction. Excluding conflict of laws rules, this Agreement shall be governed by and construed under (a) the laws of the State of Washington, U.S. if you are located in North or South America, (b) the laws of the state of Victoria, Australia if you are located in Asia or Australia, or (c) the laws of England and Wales if you located outside of North or South America, Asia and Australia. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the courts of (i) Seattle, Washington when the laws of Washington apply, (ii) Melbourne when the laws of the State of Victoria, Australia apply, or (iii) London when the laws of England and Wales apply. Nothing in this section shall restrict our right to bring an action (including for example a motion for injunctive relief) against you in the jurisdiction where your 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.