



## **MUTUAL NON-DISCLOSURE AGREEMENT**

This **Mutual Non-Disclosure Agreement**, effective on \_\_\_\_\_ (the “**Effective Date**”), is between Nintex USA Inc. (“**Nintex**”), and \_\_\_\_\_ (“**Company**”). This Agreement is made to set forth the basis under which Nintex and the Company will furnish and/or disclose to each other certain financial, business, technical and other information in connection with a potential business relationship between them (“**Purpose**”).

Nintex and the Company agree as follows:

**Section 1. Definitions.** For purposes of this Agreement, the following terms will have the meanings specified below:

“**Affiliate**” means, with respect to either party, any individual, Company, corporation, partnership or other entity, directly or indirectly, controlling, controlled by, or under common control with, such party.

“**Confidential Information**” means all nonpublic information, data, or knowledge, in whatever form, disclosed by one Party, its Affiliates, or their agents (collectively, the “**Disclosing Party**”) to the other Party, its Affiliates, or their agents (collectively, the “**Receiving Party**”) that is designated as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential. Confidential Information includes without limitation any trade secrets, processes, financial data, business plans or projections, technical data and documentation, strategic planning, product/service specifications, prototypes, computer programs, databases, drawings, models, marketing data and client information, information that was observed while on the Disclosing Party’s premises or learned by the Receiving Party during the course of providing goods or services to the Disclosing Party, and any other information pertaining to the past, present, or future business operations or financial condition of the Disclosing Party. Confidential Information does not include information that was (i) rightfully in the Receiving Party’s possession or already known to it without the obligation of confidentiality; (ii) information that is or becomes publicly known other than through a breach by the Receiving Party of any of its obligations under this Agreement; (iii) information received by the Receiving Party, after reasonable diligence, from a third party who is not known by the Receiving Party, acting in good faith, to be under an obligation of confidence to the Disclosing Party; (iv) information that the Disclosing Party has disclosed to other parties without similar obligations of confidentiality, and (v) information that is independently developed by the Receiving Party without resort to the Confidential Information of the Disclosing Party.

**Section 2. Ownership of Confidential Information.** The Receiving Party agrees that the Confidential Information of the Disclosing Party is and will remain the property and asset of the Disclosing Party.

**Section 3. Confidentiality Obligation.** The Receiving Party will treat as confidential and will not use (other than for the Purpose), disclose or otherwise make available any Confidential Information of the Disclosing Party to any person other than employees, representatives and consultants of the Receiving Party and its Affiliates (collectively, its “**Representatives**”) who have a business need to know. The Receiving Party will instruct its employees, representatives and consultants (and those of its Affiliates) (collectively, its “**Representatives**”) who have access to the Confidential Information to keep the same confidential by using the same care and discretion that the Receiving Party uses with respect to its own confidential property and trade secrets, which will be no less than reasonable care and discretion. The Receiving Party will be responsible for the compliance of its Representatives (and those of its Affiliates) with the terms of this Agreement and liable to Disclosing Party for any breach of this Agreement terms by the Representatives. If a Receiving Party is required by applicable law, regulation, court order or legal process to disclose any Confidential Information, the Receiving Party will provide the Disclosing Party with prompt notice of such request or requirement and the Receiving Party will use reasonable efforts to ensure that all Confidential Information so disclosed is treated confidentially. Disclosure of Confidential Information in accordance with the foregoing sentence will not violate the terms of this Agreement.

**Section 4. Compliance by Affiliates.** Each of Nintex and the Company will be responsible for compliance by its respective Affiliates with the terms of this Agreement.

**Section 5. Term.** This Agreement begins on the Effective Date and will remain in effect for three (3) years thereafter. Either Party may terminate this Agreement at any time by providing written notice. The Receiving Party's obligations to protect Confidential Information received under this Agreement will survive termination or expiration of this Agreement (including any obligations to protect trade secrets which shall be until such trade secrets are no longer protected under applicable laws); however, this Agreement does not require the Receiving Party to retain the Disclosing Party's Confidential Information.

**Section 6. Non-Disclosure of Agreement.** Neither party, without the prior written consent of the other party to this Agreement, will disclose to any third person (other than its Representatives with a need to know) the existence or purpose of this Agreement, the terms and conditions hereof, or the fact that discussions are taking place and that Confidential Information is being shared, except as may be required by law and then only after first notifying the other party of such required disclosure.

**Section 7. Limitation on Obligation; No Warranties, etc.** Except for the obligation of confidentiality and the restrictions on use imposed by this Agreement upon the Receiving Party, each party acknowledges that no obligation of any kind is assumed or implied against the other party by virtue of any meetings or discussions regarding the purpose of this Agreement with respect to whatever information is exchanged. Further, this Agreement and any meetings and communications of the parties relating to the subject matter of this Agreement will not (i) constitute any offer, request, or contract among the parties to engage in any transaction, nor (ii) constitute any offer, request or contract involving a buyer-seller relationship, venture, teaming or partnership relationship among the parties. The Disclosing Party represents that it has the right to disclose Confidential Information to the Receiving Party. Otherwise, all information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy, completeness, or performance.

**Section 8. Reproduction and Return of Confidential Information.** The Receiving Party will not reproduce the Confidential Information except as reasonably necessary for the Purpose. If the Receiving Party reproduces all or any part of, or further discloses, any Confidential Information, the Receiving Party will not remove or obscure any confidential or proprietary notices or legends, if any, that appear in the originals thereof. At the request of the Disclosing Party, the Receiving Party will: (a) return to the Disclosing Party or destroy all Confidential Information disclosed to it (regardless of the form in which such information was disclosed), including all compilations, copies, notes, summaries, or abstracts of such Confidential Information, and will erase from computer storage (including all related or peripheral storage devices) any and all images, compilations, copies, summary, or abstracts of such Confidential Information and (b) certify its compliance with this Section. The Receiving Party's obligations under Section 3 will survive any return or destruction of Confidential Information.

**Section 9. Notice of Unauthorized Use.** The Receiving Party will notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the Receiving Party, and will reasonably cooperate with the Disclosing Party to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. If the Receiving Party or any of its Representatives attempt to use or disclose any of the Confidential Information in a manner contrary to the terms of this Agreement, the Disclosing Party will have the right, in addition to such other remedies that may be available to it, to seek an order enjoining such acts or attempts, it being acknowledged that legal remedies may be inadequate.

**Section 10. Independent Product Development Not Affected.** The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products or services of the same type as may be included within any Confidential Information or to enter into any business transaction with any other Company which owns or has rights to any such similar products or services, as long as such right is exercised without the use of any other party's Confidential Information in violation of this Agreement.

**Section 11. No Implied License.** Except as otherwise provided herein, nothing in this Agreement shall be deemed to constitute an implied license in favor of either party to any proprietary rights of the other party, including, without limitation, any patents, copyrights, trademarks or trade secret information. Each party agrees not to use any

trade name, service mark, or trademark of the other party or refer to the other party in any promotional activity or material without first obtaining the prior written consent of such party.

**Section 12. Notices.** All notices, requests, consents, demands and other communications provided for by this Agreement will be in writing and shall be deemed sufficient if delivered in person or by express courier or facsimile with receipt confirmed to the party to be notified. Any notice to Nintex or the Company will be delivered to the address specified under the respective signature lines below, or to such other address as the parties will advise the other in writing from time to time.

**Section 13. Miscellaneous.** This Agreement may not be changed, modified or amended except by a writing signed by each party to this Agreement, and this Agreement may not be discharged except by performance in accordance with its terms. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by either party hereto without the prior written consent of the other party. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any kind and every nature between them. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 14. Authorization of Signatories.** The individuals executing this Agreement on behalf of the Company and Nintex do each hereby represent and warrant that they respectively have been and are on the Effective Date duly authorized to execute this Agreement on behalf of their respective principals.

**Section 15. Limited Use of Confidential Information.** The Receiving Party will use the Confidential Information solely for the Purpose.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed as of the date specified below.

**NINTEX**

**COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Address for Notices:

Address for Notices:

Nintex  
411 108<sup>th</sup> Ave NE, 6<sup>th</sup> Floor  
Bellevue, WA 98004  
Attn: General Counsel

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