



## NINTEX MASTER SUBSCRIPTION AGREEMENT

This Nintex Master Subscription Agreement (“Agreement”) is between Nintex and the customer that has purchased a subscription to the Service (“Customer”). “Nintex” means the Nintex affiliate designated on the applicable Order Form (as defined below). If you are an individual using the Service on behalf of a corporation, partnership, or other entity, then that entity will be the Customer, and you represent and warrant that you are authorized to enter into this Agreement on behalf of such entity and bind such entity to the terms and conditions of this Agreement. Each of Nintex and Customer is a “Party” and together they are the “Parties.”

This Agreement applies only to the Service listed in the applicable Order Form or any amendment thereto. Nintex reserves the right to make other Nintex software or services available under separate agreements. This Agreement includes any attachments and referenced policies, including without limitation any applicable Order Form entered into between the Parties.

Customers are responsible for maintaining active licenses and complying with all applicable agreements for all Connected Services and Deployment Environments.

From time to time, Nintex may modify this Agreement. Unless otherwise specified by Nintex, changes become effective for existing subscription Customers upon renewal of the then-current Subscription Term. Customer may be required to click to accept the modified Agreement before using the Nintex Service in a Renewal Subscription Term, and in any event, continued use of the Service during the Renewal Subscription Term will constitute Customer’s acceptance of the version of the Agreement in effect at the time the Renewal Subscription Term begins.

**IMPORTANT: IF CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS, CUSTOMER MAY NOT ACCESS OR USE THE SERVICE. BY CHECKING THE ACCEPTANCE BOX OR INSTALLING OR USING ANY PORTION OF THE SERVICE, CUSTOMER IS ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

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### 1. SERVICE SUBSCRIPTION

**1.1 Provision of Service.** The Service is provided by Nintex on a subscription basis for a set term designated herein or in the applicable Order Form. The Service may be delivered to Customer: (a) as software to be installed on Customer’s designated on-premise server; (b) for integration with Customer’s designated Deployment Environment, (c) as an online service; and/or (d) professional services as designated in the applicable Order Form or Statement of Work.

**1.2 Trial Access.** If Nintex has made available to Customer free, trial, or evaluation access to the Service (“Trial Access”), such access is limited to evaluating the Service to determine whether to purchase a subscription from Nintex. Customer may not use Trial Access for any other purposes, including but not limited to competitive analysis, commercial, professional, or for-profit purposes. Nintex has the right to terminate Trial Access at any time. The Trial Access shall be limited to 30 days unless otherwise agreed to by Parties or unless earlier terminated for Customer’s violation of the Acceptable Use Policy. Unless Customer purchases a subscription for the Service, upon any such termination or expiration, Customer’s Trial Access will cease. If Customer purchases a subscription to the Service, all of the terms and conditions in this Agreement will apply to such purchase and the use of the Service. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NINTEX WILL HAVE NO WARRANTY, INDEMNITY, SUPPORT, OR OTHER OBLIGATIONS WITH RESPECT TO TRIAL ACCESS.

**1.3 License to Use the Service.** Nintex owns all rights, title and interest in and to the Service. Nintex hereby grants Customer a non-exclusive, non-transferable, right to access and use the Service, solely for its own Internal Business Purposes during the Subscription Term, subject to the terms and conditions of this Agreement and any restrictions and limitations designated in the applicable Order Form. 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. Customer shall retain ownership of its Customer Content, defined below. No other rights are granted to Customer hereunder other than as expressly set forth herein.

**1.4 Affiliate Use.** Nintex may permit Customer's Affiliate(s) to access and use the Service under the same terms and conditions of this Agreement provided that each Affiliate has executed a separate Order Form with Nintex for the applicable services for that Subscription Term. An Affiliate may not access or use the Services until such Order Form is executed. Customer shall remain responsible and liable for all Affiliate use. Nintex reserves the right to terminate the Services and this Agreement in the event of unauthorized use or breach of this Agreement by an Affiliate as provided in Section 10.2.

**1.5 Restrictions.** Customer 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; (c) frame or mirror any content forming part of the Service, other than on Customer's own intranet for Customer Internal Business Purposes as permitted in this Agreement; (d) 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, (e) use the Service to store or transmit Harmful Code, (f) interfere with or disrupt the integrity or performance of the Service, (g) remove any proprietary notices from the Services or Documentation; (h) use the Service for an unlawful purpose or in violation of applicable law (i) attempt to gain unauthorized access to the Service or its related systems or networks including any attempt to probe, scan, or test the vulnerability of the Services or to breach any security measure used by Nintex, (j) permit direct or indirect access to or use of the Service in a way that circumvents the Purchased Volumes or any other applicable contractual usage limit, (k) reverse engineer or decompile any portion of the Service, including but not limited to, any software utilized by Nintex in the provision of the Service, except to the extent required by applicable law; (l) access the Service in order to build any commercially available product or Service or otherwise commercially exploit the Service; or (m) copy any features, functions, integrations, interfaces, or graphics of the Service. Customer's use of the Service is subject to the Nintex Acceptable Use Policy, available at <http://www.nintex.com/legal>.

**1.6 Support.** During the Subscription Term, Nintex will provide Support in accordance with the Nintex Subscription Support Policy, available at <http://www.nintex.com/legal/subscription-support-policy> and the applicable Support Documentation. Support is subject to the terms of this Agreement, the Order Form, and the Nintex Subscription Support Policy.

## **2. PROFESSIONAL SERVICES**

**2.1 Statement of Work.** If applicable, all Professional Services will be provided in accordance with the following terms and the applicable Statement of Work between Customer and Nintex.

**2.2 Expiration and Cancellation.** Unless otherwise provided, Professional Services must be used within one year of ordering, and any unused Professional Services will expire after such one-year period. No refund will be provided. Scheduled Professional Services may be canceled and rescheduled for no charge with five days prior notice. In the event that confirmed hourly or daily confirmed Professional Services are cancelled within less than 5 working days before the scheduled start date it may result in a charge equal to 100% of the contract amount provided in the applicable Statement of Work. Additional fees may then be due for the Professional Services to be scheduled and performed.

**2.3 Change Orders.** Any change to the Professional Services as ordered by the Customer and/or a change in the assumptions and/or conditions necessary for Nintex to perform the Professional Services will require a mutually agreed-upon change order between the parties before the Professional Services may proceed. Additional fees, expenses, terms and scheduling changes may be required as part of a change order.

**2.4 Deliverable Ownership and License.** Nintex shall own all right, title and interest in any deliverables or other materials developed as part of the Professional Services, excluding any information or other materials provided by the Customer to Nintex as part of the Professional Services (the "Deliverables"). Nintex hereby grants to the Customer a nontransferable nonexclusive license to use such Deliverables for its Internal Business Purposes.

**2.5 Professional Services Warranty.** Nintex represents and warrants that the Professional Services will be performed in a good, workmanlike manner in accordance with generally accepted industry standards. NINTEX DOES NOT WARRANT OR GUARANTEE THAT THE PROFESSIONAL SERVICES OR DELIVERABLES WILL MEET THE CUSTOMER'S REQUIREMENTS, THAT THE DELIVERABLES WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT NINTEX WILL CORRECT ALL ERRORS IN THE PROFESSIONAL SERVICES OR ANY DELIVERABLE. TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND NINTEX EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. For any breach of the specified warranty, the Customer's exclusive remedy and

Nintex's entire liability shall be, at Nintex's discretion, as applicable: (a) reperformance of the Professional Services; or (b) if Nintex cannot substantially correct such breach, Nintex may terminate the Services and refund to the Customer any fees the Customer has paid to Nintex for the deficient Professional Services as provided in the applicable Statement of Work. This warranty does not extend to defects or deficiencies resulting from changes, modifications, or alterations to the professional services performed by anyone other than Nintex; Customer's failure to provide necessary cooperation, information, or resources as reasonably requested by Nintex for the performance of the Professional Services; or third-party products, software, or services not provided by Nintex.

### **3. USE OF THE SERVICE**

**3.1 Purchased Volumes.** The Service provided to Customer is subject to the Purchased Volumes and other limitations set forth in the Order Form. Customer may increase the Purchased Volumes at any time during the term of the Agreement by executing an additional Order Form.

**3.2 Excess Use.** If Customer's usage is in excess of the Purchased Volumes, Nintex shall notify the Customer of such overage and Customer shall execute an Order Form to purchase the next tier of Purchased Volumes for the Service to cover the additional quantities used in the overage. The price for the next tier of Purchased Volumes will be based on the add-on usage price set forth in the applicable Order Form, as applicable (each, an "Add-On Order Form"). Each Add-On Order Form will have a subscription period coterminous with the applicable Initial or Renewal Subscription Term. If an Add-On Order Form is not executed within thirty (30) days of notice, Customer shall be invoiced at the end of each business quarter for the excess usage at the overage rates specified in the applicable Order Form or Nintex, in its sole discretion, may suspend Customer's access to the Service.

**3.3 Customer Responsibilities and Customer Content.** Customer will use the Service solely for its Internal Business Purposes and not for the benefit of any third parties. Customer shall (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality, appropriateness, and legality of any Customer data or other business information ("Customer Content") used in the Service, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Nintex promptly of any such unauthorized access or use, and (d) use the Service only in accordance with the terms of this Agreement and applicable laws and government regulations. Customer is the sole and exclusive owner of all Customer Content. Customer grants Nintex a worldwide, non-exclusive, royalty-free right and license to host, transfer, display, perform, reproduce, modify, analyze, and distribute Customer Content, in whole or in part, in any media formats and through any media channels (now known or hereafter developed) but only for the sole purpose of providing or improving the Service to Customer and addressing any service or technical problems.

**3.4 Nintex Responsibilities.** For the duration of the Subscription Term, Nintex shall implement and maintain administrative, physical, and technical safeguards that meet then-current and relevant industry standards related to the privacy, security, confidentiality, integrity, and availability of Customer Content, including, without limitation, by maintaining a written information security program that includes applicable policies, procedures, training, and technology controls designed to protect Customer Content from unauthorized access, use, disclosure, alteration, or destruction. Nintex will use or process Customer Content consistent with this Agreement and Nintex's Privacy Policy at <https://www.nintex.com/legal/privacy-policy> (the "Privacy Policy"). The Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications provided by third parties outside this Agreement. Nintex is not responsible for any delays, delivery failures, or other damage resulting from such problems.

### **4. SUBSCRIPTION FEES AND PAYMENT**

**4.1 Fees.** Customer must pay all fees specified in all Order Forms and Statements of Work (the "Fees"). Except as otherwise stated in an Order Form or Statement of Work, all Fees are quoted and payable in U.S. dollars and are based on Service rights acquired and not actual usage. Except as otherwise stated in an Order Form or Statement of Work, or as provided herein, payments must be made on an annual basis in advance.

**4.2 Non-cancelable and non-refundable.** All payment obligations under any and all Order Forms are non-cancelable and all payments made are non-refundable. The license rights for the Purchased Volumes set forth on any respective Order Form cannot be decreased during the Initial Term. If Customer purchases a multi-year Subscription and terminates the Subscription prior to the Subscription End Date noted in the applicable Order Form for the first year of the multi-year subscription, all unpaid payments for the remaining years shall be accelerated and become immediately due and payable.

**4.3 Invoicing and Payment.** Fees for the Service will be invoiced in accordance with the relevant Order Form. The first year's Fees, as specified in each Order Form, are due and payable upon Customer's execution of such Order

Form. All other Fees due hereunder (except fees subject to good faith dispute) will be due and payable within thirty (30) days of invoice date. Customer will provide Nintex with complete and accurate billing and contact information.

**4.4 Overdue Payments.** Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at Nintex's discretion, late charges at the rate of 0.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**4.5 Non-Payment and Suspension of Service.** If Customer's account is more than thirty (30) days past due (except with respect to charges subject to a reasonable and good faith dispute), in addition to any other rights or remedies it may have under this Agreement or by law, Nintex reserves the right to accelerate Customer's unpaid fee obligation so that all such obligations become immediately due and payable, and/or suspend the Service upon thirty (30) days written notice, without liability to Customer, until such amounts are paid in full.

**4.6 Taxes.** Except as otherwise stated in an Order Form, Nintex's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, excise, use, or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its acquisitions hereunder, this Agreement, and the Service, excluding U.S. income taxes on Nintex. If Customer has an obligation to withhold any amounts under any law or tax regime (other than U.S. income tax law), Customer will gross up the payments so that Nintex receives the amount actually quoted and invoiced. If Nintex has a legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Nintex with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **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 by the Receiving Party to be confidential given the nature of the information and the circumstances of disclosure. Nintex Confidential Information includes the Service, security reports, and Documentation. Customer Confidential Information includes Customer Content. Confidential Information of each Party includes code, business and marketing plans, financial information, technology and technical information, inventions, know-how, 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.

**5.4. No Intellectual Property Rights.** THE RECEIVING PARTY ACQUIRES NO INTELLECTUAL PROPERTY RIGHTS FROM THE DISCLOSING PARTY UNDER THIS AGREEMENT, except for the restricted right to use disclosing Party's Confidential Information for the express, limited purposes described above.

## 6. LIMITED PRODUCT WARRANTY

6.1 Nintex represents and warrants that during the Subscription Term, the Service shall operate in substantial conformity with the applicable Documentation. For any breach of this limited warranty, the Customer's sole and exclusive remedy and Nintex's sole liability shall be, in Nintex's sole discretion, the correction of the non-conformity or, if Nintex cannot substantially correct such non-conformity, Nintex may terminate Customer's use of the Service and refund any prepaid but unused fees covering the remainder of the Subscription Term.

## 7. LIMITATION OF LIABILITY

7.1 EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NINTEX PROVIDES THE SERVICE "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NINTEX MAKES 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.

7.2 IN NO EVENT SHALL NINTEX'S LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THE SERVICE AND/OR THIS AGREEMENT AND/OR ANY OTHER AGREEMENT BETWEEN THE CUSTOMER AND NINTEX EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO NINTEX TO USE THE SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE CLAIM. IN NO EVENT SHALL NINTEX BE LIABLE TO ANYONE FOR ANY 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. THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS.

## 8. MUTUAL INDEMNIFICATION

**8.1 Indemnification by Nintex.** 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 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.

**8.2 Indemnification by Customer.** 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.

## 9. USAGE CERTIFICATIONS AND AUDIT RIGHTS

**9.1 Usage Certifications.** Upon written request, Customer shall furnish to Nintex a signed certification certifying that Customer is using the Service pursuant to the terms of this Agreement and the applicable Order Form. Nintex shall retain the right to collect usage telemetry and other statistics from the Service to be used to monitor compliance with applicable usage limits, and for diagnostic, operational, performance, analytics, and product improvement purposes.

**9.2 Nintex On-Premises Subscription Usage Compliance.** If the Customer has deployed the Service as software on premises, no more frequently than once in any three-month period, Customer will run a script provided by Nintex which will collect certain usage data from Customer's on-premises deployment (collectively "Usage Data"). Nintex shall provide this Usage Data to Customer upon Customer's written request.

**9.3 Audit Right.** With reasonable prior notice of at least ten (10) days, Nintex may audit Customer's use of the Service to ensure compliance with the terms of this Agreement and the applicable Order Form. All such audits shall be conducted during regular business hours and no more frequently than twice in any twelve (12) month period and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, information and personnel related to use of the Service, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Nintex with respect to such audit. Customer shall be responsible for all additional Subscription Fees for use of the Service and the reasonable costs of the audit in the event the audit reveals that Customer's use of the Service exceeded any of Purchased Volumes set forth in the applicable Order Form.

## 10. TERM AND TERMINATION

**10.1 Term.** This Agreement will commence on the Effective Date and continue for a period of twelve (12) months (the "Initial Subscription Term"), and will automatically renew at the end of the Initial Subscription Term (or any renewal term) for a period of one year (each, a "Renewal Subscription Term" and, together with the Initial Subscription Term, the "Subscription Term") unless either Party provides written notice to the other of non-renewal at least thirty (30) days before the end of the Initial Subscription Term or any Renewal Subscription Term. For the purposes of this Agreement, a decrease in the Purchase Volumes will be considered a non-renewal. In the event of non-renewal of this Agreement, any outstanding Order Forms will remain governed by this Agreement until otherwise expired or terminated.

**10.2 Termination.** Either Party may terminate this Agreement or Order Form: (a) 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 (b) 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.

**10.3 Effect of Termination.** Upon any termination of this Agreement and/or Order Form, 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. Rights and obligations under Sections 5, 7, and 8 shall survive the termination of this Agreement.

**10.4 Order Form Renewals.** Each Order Form's Service Period will commence on the Start Date through the End Date, after which the Order Form will automatically renew for one-year periods unless either Party provides written notice to the other of non-renewal at least thirty (30) days before the End Date listed in the applicable Order Form. Any such renewal will be at the list price in effect at the time of such renewal or as otherwise provided in the applicable Order Form. If an applicable Order Form for the Renewal Subscription Term is not executed before the expiring Order Form's end date, Nintex shall have the right to terminate or suspend the Customer's access to the Services. Upon Customer's request and execution of a Renewal Order Form, Nintex may reinstate terminated subscriptions during the ninety (90) day period following the termination or suspension of the Service upon payment of a 10% reinstatement fee (the "Reinstatement Fee"). The Reinstatement Fee is in addition to any fees noted in the applicable Order Form.

## 11. CONNECTED ENVIRONMENTS

**11.1 Applications on AppExchange.** Nintex Services may be provided as a managed package for the Customer's Salesforce Organization. Salesforce.com is a third-party service provider and Nintex makes no representations or warranties regarding the functionality, operability, or Customer's access to Salesforce.com. Customer's access to its Services on AppExchange is subject to the availability of Customer's Salesforce Organization and proper performance of the Customer's obligations to Salesforce.com. Should Customer's access to its Salesforce Organization be suspended due to non-payment of any amounts owed to Salesforce.com by Customer or a breach of Customer's agreement with Salesforce.com, Customer's access to the Nintex Service shall also be accordingly suspended or terminated. Nintex shall not be liable to Customer for any refund or damages arising out of such suspension or termination. Nintex shall not be liable for performance issues or downtime of the Service to the extent caused by Salesforce.com or other factors outside Nintex's control. Any unauthorized access to the Nintex Service(s) or other abuse or impermissible activity in connection with the Nintex Service(s) may result in immediate suspension or termination of Customer's access to the Nintex Service(s) pursuant to Section 10 of the Agreement.

**11.2 Applications on Other Third-Party Environments.** The Nintex offers Services that utilize connected environments provided by third-parties. Customer is required to maintain active licenses for the third-party environments which connect to the Services. If Customer utilizes these third-party service providers, Nintex makes no representations or warranties regarding the functionality, operability, or Customer's access to these third-party environments. Customer's access to such application on a third-party environment is subject to the availability of Customer's third-party platforms and proper performance of the Customer's obligations to such third-parties. Should Customer's access to its third-party platforms be suspended due to non-payment of any amounts owed to the third-party by Customer or a breach of Customer's agreement with the third-party service provider, Customer's access to the Services shall also be accordingly suspended or terminated. Nintex shall not be liable to Customer for any refund or damages arising out of such suspension or termination. Nintex shall not be liable for performance issues or downtime of the Service to the extent caused by the third-party service provider or other factors outside Nintex's control. Any unauthorized access to the Nintex Service or other abuse or impermissible activity in connection with the Nintex Service may result in immediate suspension or termination of Customer's access to the Nintex Service pursuant to Section 10 of the Agreement.

**11.3 Customer Content.** Customer's use of the Nintex Services with connected environments may result in Customer directing transmission of Customer Content outside Customer's Deployment Environments, and/or to unaffiliated third parties or third-party applications, in each case as a result of Customer's configuration of the Service. Upon such transmission of Customer Content by Customer, Nintex shall not be responsible for the privacy, security or integrity thereof. Nintex will not use or disclose Customer Content except solely in connection with processing such data in the normal course of Customer's use of the Nintex Services as otherwise provided for in this Agreement or as required by law. Nintex shall not be responsible or liable for the failure to store, deletion, correction, destruction, damage, or loss of any Customer Content on the third-party environment.

## **12. NINTEX ESIGN®**

**12.1** Nintex Sign is an electronic signature service which will allow Customer to display, deliver, acknowledge, and electronically sign documents. A person signing a document utilizing a Nintex Sign must either have a Nintex Sign account or have received a request for signature in their email account.

**12.2 Third-Party products with Nintex Sign.** Customer is solely responsible for the use of such integration or third-party service. Customer warrants that it has the rights/permissions to share the data between the Nintex Sign Services and the third party services. Third-party platforms may result in access to third party content and to third party products that have access Customer's instance of the Nintex Sign Services and export, delete or otherwise alter Customer Data (including Customer's Confidential Information). Nintex disclaims all responsibility and liability as related to third-party access to Nintex Sign Services, including any third-party modification, deletion, disclosure or collection of Customer Data.

**12.3 Customer responsibilities.** Customer is responsible for ensuring the confidentiality of any passwords for the Nintex Sign Services. If Customer's authorized User ceases employment, Customer is responsible for terminating that individual's access to its Nintex Sign account. Customer is responsible for any and all actions taken using its and its users' accounts, passwords or access credentials. Customer shall notify Nintex immediately of any breach of security or unauthorized use of its account. Accounts are solely for use by the specific Customer listed in the Order Form and should not be extended to any affiliate. Customer acknowledges and agrees that: (i) Customer maintains exclusive control of and responsibility for the content of all Customer Content, including its documents used with the Nintex Sign Services; and,(ii) certain types of documents, agreements, or contracts may be excluded from general electronic signature laws (such as wills, trusts, court orders, or family law matters), or may have specific regulations that are applicable to them; and, (iii) Customer is solely responsible for ensuring that the documents, agreements or contracts it uses with the Nintex Sign Services are appropriate for electronic signatures, and Nintex is not responsible or liable

for any such determination or use; and, (iv) Consumer protection laws or regulations may impose specific requirements for electronic transactions involving consumers, Customer is solely responsible for ensuring it complies with all such laws/regulations, and Nintex has no obligations to make such determination or assist with fulfilling any requirements therein. If Customer is using an API or third-party service that allows Customer to perform any end user/participant/signer authentication, then Customer is solely responsible and liable for such authentication.

### 13. GENERAL PROVISIONS

**13.1 Data Protection.** Nintex may process Customer Data submitted to its Services. Except during Trial Access, Nintex's handling of Customer data will be consistent with Nintex's Data Protection Addendum located at <https://www.nintex.com/legal/>. Nintex will maintain industry appropriate administrative, organizational, and technical safeguards of Customer Content submitted to the Services. Customer remains responsible for taking appropriate steps at all times to maintain the security, protection, and backup of all Customer Content and complying with applicable laws and regulations. Customer shall not submit any data that Customer does not have the right and authority to submit for the collection, use, and processing of the data by Nintex Services. Nintex will limit access to Customer Content to only employees and agents who are responsible for implementing, monitoring, and managing the Service for the Customer. Customer data may be separately analyzed by Nintex; however, such use and access is limited to (a) identifying trends and patterns to improve the functionality and performance of the Services; (b) conducting research and development to enhance existing products or develop new products; or (c) generating statistical reports and insights for internal use.

**13.2 Export Compliance.** The Service and other technology Nintex makes available, and derivatives thereof, may be subject to export control and economic sanctions laws and regulations of the United States and the import laws and regulations of foreign governments. Each party represents that it is not named on any U.S. government denied-party list. Customer agrees that: (a) all use, exports, and imports related to this Agreement will be in compliance with these laws and regulations and (b) Customer shall not allow any third party to export, re-export, or transfer any part of the Service in violation of these laws and regulations. The foregoing obligations include but are not limited to Customer or a third party exporting, transferring, or importing the Service to: (i) to any country subject to export control embargo or economic sanctions implemented by any agency of the U.S. or foreign governments; (ii) to any person or entity on any of the U.S. Government's Lists of Parties of Concern (<http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>) or applicable international specially-designated parties or economic sanctions programs; (iii) to any end-user or for any known end-use related to the proliferation of nuclear, chemical or biological weapons or missiles, without first obtaining any export license or other approval that may be required by any U.S. Government agency having jurisdiction with respect to the transaction; or (iv) otherwise in violation of any export or import laws, regulations or requirements of any United States or foreign agency or authority.

**13.3 Entire Agreement.** This Agreement and the Order Form(s) constitute the entire agreement between Customer and Nintex regarding the Service and supersede 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. The Services hereunder are not contingent on the delivery of any future functionality or features, or dependent on any oral or written comments made by Nintex regarding future functionality or features. No provision of any purchase order or other business form employed by Customer, including any electronic invoicing portals and vendor registration processes, will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

**13.4 Use of Name, Logo, and Nintex Experience.** By entering into this Agreement, Customer consents to Nintex's use of Customer's tradename, trademark, service mark, or design mark in connection with Nintex's marketing and/or promotional materials shared with the public in any medium. Customer may provide written notice to Nintex to remove its consent at any time. Nintex will procure Customer's consent prior to any publication regarding Customer's use-case of Nintex's services.

**13.5 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, in which case the assignee must be capable of performing the obligations under this Agreement and must agree to be bound by the terms and conditions of this Agreement. 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, Nintex will refund to Customer 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.

**13.6 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.

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

**13.8 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.

**13.9 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 Harmful 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.

**13.10 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 Customer is located in North or South America, (b) the laws of the state of Victoria, Australia if Customer is located in Asia or Australia, or (c) the laws of England and Wales if Customer is 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 Nintex's right to bring an action (including for example a motion for injunctive relief) against Customer in the jurisdiction where Customer's 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.

## 14. 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.

**"Botflow"** means a series of actions using automated programs which include a manual or automated start and a termination or end in a physical or virtual desktop environment.

**"Connected Service"** means any cloud service or external application that is called by the Service using a Nintex Connector.

**"Customer"** means the entity listed in the Order Form.

**"Deployment Environment"** means the environment in which Customer deploys its Purchased Volumes, including, but not limited to, Microsoft Office 365 and Salesforce.com.

**"Documentation"** means Nintex's the Acceptable Use Policy, as updated from time to time, accessible via <https://community.nintex.com>, <https://nintex.com/company/legal>, or login to the applicable Service and the product information located at <https://help.nintex.com/Content/Home.htm>, as updated from time to time.

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

**"Intellectual Property Rights"** means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.

**"Internal Business Purposes"** means the limited use of Services by Customer for tasks directly related to Customer's business activities, processes, or operations. Such activities may include management of Customer data and information; conducting internal communications and collaboration; performing administrative tasks such as HR management and permit requests; supporting decision-making processes within the organization; and automating

workflows and business processes to improve efficiency. Internal Business Purposes exclude activities such as reselling, sublicensing, providing the Service in connection with Customer's provision of services to third parties, or use in violation of Section 1.4.

**"Order Form"** means the Nintex Order Form for the Service executed by Customer.

**"Purchased Volumes"** means the applicable Workflows, Botflows, Processes, Document Generations, Users, mobile applications, and any other limits set forth in the Order Form.

**"Professional Services"** means the services identified within the applicable Statement of Work.

**"Salesforce Organization"** means the virtual space provided to an individual Customer of Salesforce.com.

**"Service"** means the products and services purchased by Customer pursuant to the Order Form(s) and made available by Nintex subject to this Agreement.

**"Statement of Work"** means the document executed by Customer and Nintex that outlines the deliverables that shall be provided to Customer.

**"Subscription Term"** means the set term designated herein or in the applicable Order Form.

**"Support"** means the support, assurance, new releases and related maintenance services for the Service described in the Support Documentation and includes the Support Documentation and all other associated Material provided by Nintex in relation to that support. "Material" means material in any form, including online, including documents, reports, products, information, data, source code, and methodologies.

**"Support Documentation"** means any documentation provided by Nintex that is incorporated in or associated with Support.

**"Users"** means the individuals who are authorized by Customer to have access to the Service.

**"Workflow"** means a series of workflow actions which include a manual or automated start and a termination or end.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

**NINTEX**

**Customer**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_