

**APPENDIX E**  
**NINTEX PTY LIMITED (ABN 67 129 119 731)**  
**End User License Agreement**  
**DIR-SDD-2190**

**READ THIS AGREEMENT BEFORE INSTALLING THE NINTEX SOFTWARE**

These are the terms on which Nintex Pty Limited (ABN 67 129 119 731) of 451 Little Bourke Street, Melbourne, Victoria, 3000, Australia (referred to as **we, our** and **us** in the Agreement) licenses you (referred to as **you** and **your** in the Agreement) to use the Software.

By installing or otherwise using the Software, you are agreeing to the following terms. If you do not agree with the following terms, do not install or use the Software.

**1. Definitions**

**IP** means:

- (a) patents, trade marks, services marks, design rights (whether registered or unregistered and including any applications for these rights);
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) trade or business names; and
- (d) know-how, confidential information and trade secrets,

and any other similar rights or obligations whether registrable or not in any country.

**License Fee** means the relevant license fee for the Software.

**Material** means material in any form, including documents, reports, products, equipment, information, data, source code, software, software tools, and methodologies.

**Software** means our software product and includes the Software Documentation and all other associated Material provided by us in relation to that software.

**Software Documentation** means any documentation provided by us which is incorporated in or associated with software.

**Software License** means a non-exclusive, non-transferable license to use the Software in accordance with this Agreement.

**Support** means the support, assurance, new releases and related services for the Software described in the Support Documentation and includes the Support Documentation and all other associated Material provided by us in relation to that support.

**Support Documentation** means any documentation provided by us which is incorporated in or associated with support.

**2. Grant of Licence**

- 2.1 In consideration of payment of the License Fee, we grant you the Software License. This license continues until terminated in accordance with this Agreement.

- 2.2 You are entitled to install the Software on 1 computer or server only, for the sole purpose of using the Software. You may make 1 copy only of the Software for back-up purposes. That copy must contain all of our proprietary notices. If you upgrade the Software, you may no longer use the previous version of the Software that you upgraded from.
- 2.3 In the event that we make available to you a software upgrade or update, add-on component, web service and/or supplement (whether in conjunction with providing Support or otherwise), the terms of this Agreement will apply.

### **3. Warranties**

- 3.1 The Software has not been written to meet your individual requirements and is supplied on an "as is" basis. A failure of any part or the whole of the Software to be suitable for your requirements will not give rise to any right or claim against us.
- 3.2 Our sole warranties in connection with the Software are that:
- (a) it will work substantially in the manner described in the Software Documentation for a period of 30 days from the first day the Software is first installed; and
  - (b) it does not infringe the IP of any person.
- 3.3 Your sole remedy for any breach of the warranties in **clause 3.2** is that we must, at our option, either:
- (a) modify the Software; or
  - (b) replace the Software with software of substantially similar functionality,
- so as to correct any defect or to render its use non infringing (as the case may be) PROVIDED THAT the identified defect or infringement has not been caused by:
- (i) any modification, variation or addition to the Software not performed by us;
  - (ii) incorrect use, abuse or corruption of the Software; or
  - (iii) the use of the Software with other software or on equipment with which it is incompatible.
- You must provide sufficient information about any defect to enable us to reproduce it on our systems.
- 3.4 You acknowledge that the Software in general is not free of errors or defects and agree that the existence of any errors or defects will not constitute a breach of this Agreement.
- 3.5 We do not warrant that the Software is free from all known viruses. Although we have used commercially reasonable efforts to check for the most commonly known viruses, you are solely responsible for virus scanning the Software.

### **4. Confidentiality**

- 4.1 To the extent allowable by the Texas Public Information Act, you acknowledge that the ideas and expressions contained in the Software 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). To

the extent allowable by the Texas Public Information Act, you undertake not to disclose this confidential information to any person other than your agents and employees and then only to enable the Software to be used in accordance with and for the purposes of this Agreement. You must ensure that these persons maintain this confidentiality.

- 4.2 You must not remove, delete or obscure any copyright notices or confidentiality notices on or in the Software.

## **5. Support**

We will provide you with Support in accordance with the Support Documentation or a separate agreement between us and you.

## **6. Intellectual Property (IP)**

- 6.1 You acknowledge that you obtain no IP in the Software or the Support. As between us, all IP in the Software and the Support vests in us.

- 6.2 You must not (except to the extent permitted by any law that cannot be excluded):

- (a) copy, modify, enhance or reproduce the Software, in whole or in part (other than in accordance with **clause 2.2**);
- (b) reverse-engineer, reverse-translate, disassemble, de-compile, or otherwise attempt to derive source code to the Software;
- (c) incorporate, embed, combine, merge or bundle the Software with any other hardware or software (except to the extent strictly necessary to use the Software in accordance with its intended purpose and these terms); and
- (d) directly or indirectly permit any third party to do any of the above.

- 6.3 If you become aware of any infringements or suspected infringements by any third party of any IP in the Software or Support, you must immediately notify us.

- 6.4 You must at our request and expense take any action as we reasonably deem is appropriate to protect our IP.

## **7. Termination**

Termination terms are detailed in DIR Contract No. DIR-SDD-2190, Appendix A, Section 10.B. Termination.

## **8. Taxes and export restrictions**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

## **9. LIMITATION OF LIABILITY AND INDEMNITY**

- 9.1 Limitation of Liability terms are detailed in DIR Contract No. DIR-SDD-2190, Appendix A, Section 9.K. Limitation of Liability.

- 9.2 WE MAKE NO WARRANTY OR REPRESENTATION TO YOU AS TO THE PERFORMANCE OR OPERATION OF THE SOFTWARE, SUPPORT OR ANY OTHER PRODUCTS OR SERVICES EXCEPT AS PROVIDED FOR IN **CLAUSE 3**. WE MAKE NO OTHER WARRANTY EXPRESS OR IMPLIED WITH RESPECT TO US, THE SOFTWARE, SUPPORT OR OTHER PRODUCTS OR 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. HOWEVER, OUR LIABILITY FOR ANY BREACH OF SUCH CONDITION OR WARRANTY WILL BE LIMITED, AT OUR OPTION, TO ONE OR MORE OF THE FOLLOWING:

(A) IF THE BREACH RELATES TO GOODS:

- (I) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS;
- (II) THE REPAIR OF SUCH GOODS;
- (III) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR
- (IV) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND

(B) IF THE BREACH RELATES TO SERVICES:

- (I) THE SUPPLYING OF THE SERVICES AGAIN; OR
- (II) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

9.6 DESPITE ANY OTHER PROVISION IN THIS AGREEMENT, WE DO NOT EXCLUDE LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT THE SAME ARISES DIRECTLY FROM OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES.

## **10. General**

10.1 DIR Contract No. DIR-SDD-2190 and this Agreement constitute 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. In the event of a conflict in terms, the terms of DIR Contract No. DIR-SDD-2190 will have precedence.

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

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 DIR or Vendor may assign the Contract without prior written approval to:  
i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written

notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

- 10.8 The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.