

Customer Agreement

Data Management Solutions Pty Ltd

Please read carefully before agreeing to this Customer Agreement. By agreeing to this Customer Agreement, a binding contract will form between you and us (being Data Management Solutions Pty Ltd ABN 59 159 133 883 (DMS) ACN 159 133 883).

1. SERVICES

We offer the following Services under this agreement:

- a fully-hosted installation of the Apti Library™ software product;
- a fully-hosted installation of the Apti Agenda™ software product; and
- a fully-hosted installation of the Apti Projects™ software product.

All Services are managed via our customer account portal and the administrative functions within the software products themselves. All Services are subscribed to and charged for on a periodic basis (monthly and/or yearly) according to the level of service chosen (users, storage, etc.). A detailed break-down of service costs are provided on our website, and during the checkout process when purchasing our Services.

2. SIGN UP

In order to sign up for Services, you will be required to create your own customer account which grants you the right to access and use the Services in accordance with this agreement.

You may be entitled to a free trial period of 30 days (Trial Period) if you are using one of our Services for the first time. Qualification for the Trial Period is at DMS's sole discretion. No credit card details are required to initiate a Trial Period for one of our Services. It is the responsibility of the Customer to upgrade to paid plan on or before the expiration of their Trial Period.

When you sign up for any Services for which we charge fees (as indicated on our website), or before the expiration of any applicable Trial Period, you will be asked to provide credit card details. In doing so and in providing us with details of any replacement credit card, you authorize DMS to automatically charge the monthly charges for the Services and all other amounts due and payable to us to that credit card or the replacement credit card. This authorization remains in effect until all the charges and other amounts are fully paid, despite the expiry or termination of this agreement. You are responsible for ensuring that the credit card details (as supplied to DMS) are kept up to date, accurate and complete.

3. CHANGES TO THE AGREEMENT

We may modify this agreement by posting an updated version on our website. The modified agreement will apply once posted, and by continuing to use the Services after the effective date of the modifications, you will be deemed to have accepted and agreed to be bound by the modifications. Please check our website regularly for any updates. We will endeavor to notify you by email in advance of any material changes to the Customer Agreement. This agreement was last updated with effect from **06 October 2013**.

4. YOUR ACCOUNT AND PERMITTED USE

You can use the Services to operate and/or otherwise utilise the hosted software product, in accordance with its designed purpose. You must comply, and ensure that all Authorised Users of your installation comply, with our Acceptable Use Policy when using the Services.

5. RESPONSIBILITIES

You are fully responsible and liable for the acts and omissions of Authorised Users, including any breach of this agreement, as if they were your own acts and omissions. You must ensure that the terms of your agreements with Authorised Users (if any) are consistent with this agreement.

6. TERM

The term of this agreement commences when you click "Sign Up" and continues until:

- you close your account via the customer account portal; or
- we notify you in writing that we are terminating the agreement.

You will continue to be liable to pay all the charges for the Services which you incurred up to the later of your account closure or the point of termination.

7. SUSPENSION AND TERMINATION

We may suspend your right to use the Services or terminate this agreement immediately if we have reason to believe that:

- you have breached our Acceptable Use Policy or any other policies posted on our website;

- you (or anyone with access to your account) have engaged in fraudulent or unlawful use of the Services;
- your use of the Services poses a security risk to the Services or any third party, or may adversely impact on the Services or the systems or content of any of our other customers;
- we are required to do so in order to comply with any applicable law or contractual obligation, or any order or direction of a government or regulatory authority;
- you have breached this agreement, including the payment terms; or
- you have become insolvent or bankrupt.

Your payment obligations, provisions relating to disclaimer and indemnity and any other provisions that are by nature intended to survive will survive the expiry or any termination of this agreement.

8. ACKNOWLEDGMENTS

You acknowledge that:

- the Services may not be free from fault or interruption and we do not warrant that they will be;
- the Services may be unavailable during planned outages or unscheduled maintenance periods;
- we do not warrant the security, availability or privacy of the Services, or that the Services will be free from viruses and other harmful code; and
- you are responsible for all of the contents and materials that you and the Authorised Users publish using the Services.

9. YOUR OBLIGATIONS

You are responsible for:

- controlling access to and use of the Services including controlling access to and use of passwords;
- ensuring the Services are used in accordance with this Agreement and the Acceptable Use Policy;
- ensuring that your and the Authorised Users' use of the Services complies with all applicable laws, including the laws of Australia and the United States of America (if you have selected the option to use US-based servers) and of any jurisdictions in which the Authorised Users may be located;
- payment of all charges for the Services that are used under your account irrespective of who is responsible for incurring those charges;

- ensuring that all the information you provide to us remains current, accurate and complete; and
- promptly informing us in writing of any change to any information, including credit card details and contact information.
- When entering into this agreement and using our Services, you must not:
- provide any false, inaccurate or misleading information; or
- act fraudulently in any way.

10. REPRESENTATIONS & WARRANTIES

You represent and warrant that:

- all of the information you provide to us is and remains current, accurate and complete throughout the term of this agreement;
- if you are entering into this agreement on behalf of an entity (e.g. the company you work for), you have legal authority to bind that entity to this agreement;
- you are the account holder of the credit card used to pay for Services or you are properly authorized to use the credit card to pay for Services; and
- you will not use the Services in a way that infringes any third party right or violates any applicable laws.

11. SUSPENSION

Without limiting our rights under clause 6, we may also suspend your use of the Services if:

- there is a planned outage;
- it is necessary due to an event beyond our control; or
- we consider it necessary for repair, maintenance or service.

12. SERVICE LEVEL AGREEMENT

We do not currently provide a Service Level Agreement (SLA); however, in future, any service level commitments offered by Ninefold are set out in our Service Level Agreement (SLA). A breach of the SLA is not a breach of this agreement, and any rebates specified in the SLA are your sole and exclusive remedy, and our sole liability to you, in respect of our failure to meet the service level commitments in the SLA.

13. PAYMENT TERMS

- DMS accepts credit cards and will automatically charge your credit card monthly or yearly, depending upon which the Billing Term you select when purchasing one of our Services. If any fee is not paid in a timely manner, or DMS is unable to

process your transaction using the credit card information provided, DMS reserves the right to revoke access to your Services and associated data. If you do not bring your DMS balance current within five (5) days after DMS provides you with notification that your account is in arrears, DMS reserves the right to use our discretion to delete some or all of your User Data.

- The transmission, storage and handling of your credit card details are governed by our Payment Card Security Policy.
- DMS may change the fees and charges in effect, or add new fees and charges from time to time, but we will give you advance notice of these changes by email.
- If you want to use a different credit card or if there is a change in your credit card validity or expiration date, you may edit your information by accessing your "My Profile" page within your customer account portal. If your credit card reaches its expiration date, your continued use of the DMS constitutes your authorization for us to continue billing that credit card and you remain responsible for any uncollected amounts. It is your responsibility to keep your contact information and payment information current and updated.
- DMS Services are prepaid and are non-refundable. **DMS DOES NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL MONTHS OR YEARS.** You may cancel your DMS Services at any time, and cancellation will be take effect at the end of your current prepaid term (or immediately, by request). If you wish to cancel one or more of your Services your you may do so via your "My Products" page in your customer account portal. Should you elect to cancel one of your Services, please note that you will not be issued a refund for the most recently (or any previously) charged monthly fees.
- In the event of a dispute regarding an invoice for Services, you must contact us and attempt in good faith to resolve the dispute with us before requesting your credit card issuer to make a chargeback. If you fail to do this and the dispute is resolved in our favor, then you must promptly reimburse us upon demand for all the costs and expenses we have incurred due to the chargeback in addition to paying the outstanding amount to us.

14. TAX CLAUSE

All Services charges and any other fee set out on our website are exclusive of any applicable Tax.

You are liable for any Tax, subject to DMS outlining and including those charges during the checkout process. An invoice of tax-related charges will be available in your account activity. Tax means any tax (including goods and services tax but excluding any tax on DMS's income), duty, levy and other similar charge (and any related interest and penalty), however designated, imposed under the laws of Australia or any jurisdiction

outside Australia, with respect to the provision of any Services or on any charges. Any such Tax will be payable by you in accordance with clause 12.

15. PRICING

All references to currency, or use of the \$ symbol refer to Australian dollars.

If you are paying for one or more of the Services with a credit card denominated in a currency other than Australian dollars, you understand that exchange rates in effect at the time of payment are beyond the control of DMS. Fluctuations in currency/card issuer's exchange rates may result in changes to your monthly charges even if your service level is unchanged.

We reserve the right to adjust pricing when necessary and will notify you at least 5 days in advance of any pricing adjustments by email or by posting a notice on the portal which will be visible when you log on.

16. PRIVACY

You consent to us collecting, using, disclosing and otherwise dealing with your details (including personally identifiable information) in accordance with our Privacy Policy.

17. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR ACCESS TO AND USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". WITHOUT LIMITING THE FOREGOING, AND TO THE EXTENT PERMITTED BY LAW, ALL EXPRESS OR IMPLIED REPRESENTATIONS, CONDITIONS, WARRANTIES, GUARANTEES OR OTHER PROVISIONS THAT ARE NOT CONTAINED IN THE TERMS (WHETHER BASED IN LEGISLATION, THE COMMON LAW OR OTHERWISE) ARE EXCLUDED, INCLUDING ANY REPRESENTATIONS, CONDITIONS, WARRANTIES OR GUARANTEES AS TO ACCEPTABLE QUALITY, FITNESS FOR PURPOSE, NON-INFRINGEMENT OR TIMELINESS.

IF ANY CONDITION, WARRANTY, GUARANTEE OR OTHER PROVISION IS IMPLIED OR IMPOSED IN RELATION TO THE LEGAL AGREEMENT BETWEEN YOU AND DMS (WHETHER BASED IN LEGISLATION, THE COMMON LAW OR OTHERWISE) AND CANNOT BE EXCLUDED (A NON-EXCLUDABLE TERM), AND WE ARE ABLE TO LIMIT YOUR REMEDY FOR A BREACH OF SUCH A NON-EXCLUDABLE TERM, THEN OUR LIABILITY FOR SUCH A BREACH OF THE NON-EXCLUDABLE TERM IS LIMITED TO ONE OR MORE OF THE FOLLOWING AT OUR OPTION:

- IN RELATION TO GOODS, THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, THE REPAIR OF THE GOODS, THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; OR
- IN RELATION TO SERVICES, THE SUPPLYING OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

18. LIMITATION OF LIABILITY

SUBJECT TO OUR OBLIGATIONS UNDER THE NON-EXCLUDABLE TERMS, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE MAXIMUM AGGREGATE LIABILITY OF DMS FOR ALL CLAIMS ARISING UNDER OR IN RELATION TO THIS AGREEMENT, OR OTHERWISE AS A RESULT OF YOUR ACCESS TO AND USE OF THE SERVICES, DURING ANY 12 MONTH PERIOD IS LIMITED TO THE AMOUNTS (IF ANY) PAID BY YOU TO NINEFOLD FOR THE SERVICES DURING THE RELEVANT 12 MONTH PERIOD.

SUBJECT TO OUR OBLIGATIONS UNDER THE NON-EXCLUDABLE TERMS, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT IS NINEFOLD LIABLE UNDER OR IN RELATION TO THIS AGREEMENT OR ITS SUBJECT MATTER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND, NOR FOR ANY LOSS OF PROFITS, REVENUE, ANTICIPATED SAVINGS OR GOODWILL, OR FOR ANY LOSS OR CORRUPTION OF YOUR DATA OR CONTENT, EVEN IF SUCH LOSS OR DAMAGE WAS REASONABLY FORSEEABLE.

THE LIMITATIONS AND EXCLUSIONS IN THIS CLAUSE 17 APPLY REGARDLESS OF WHETHER THE LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE), IN EQUITY, UNDER STATUTE, UNDER AN INDEMNITY, OR ON ANY OTHER BASIS.

19. INDEMNITY

You agree to indemnify and hold harmless us, our Related Corporate Bodies as defined in the Corporations Act 2001 (Cth) and their respective directors, officers, employees, contractors, licensors and agents against any loss, damage, claim, proceeding, liability and cost (including legal costs on an indemnity basis) suffered or incurred in connection with a claim against any of them by a third party (including any Authorised User) arising out of or relating in any way to: (i) your or any Authorised User's use of the Services; (ii) any content, data or other materials stored, transmitted, accessed, downloaded or used by you or any Authorised User via the Services (including where such materials are alleged to infringe any intellectual property or other rights); (iii) any breach of this agreement or any of our policies including the Acceptable Use Policy; or (iv) any breach of applicable laws.

20. MISCELLANEOUS

You acknowledge that DMS may respond to alleged copyright infringement notices served in accordance with the Digital Millennium Copyright Act 1998, by taking any action required or permitted by law, including but not limited to removing the alleged infringing material.

This agreement is governed by the laws of New South Wales, Australia, and both of you and us agree to submit to the exclusive jurisdiction of the courts of New South Wales, Australia. Both of you and us may give notice to each other by sending an email as follows:

to us – you can send an email to support@datamanagementsolutions.com.au; and
to you – we can send an email to the email address then associated with your account. A recipient is deemed to have received a notice sent by email one business day after it was given by the sender, unless the sender is aware the notice could not be delivered.

Neither party is liable for any delay or failure in performance of any part of the agreement, other than for a delay or failure to pay money, to the extent that such delay or failure to pay is attributable to a Force Majeure Event. A Force Majeure Event means an event beyond a party's reasonable control including, but not limited to; fire, flood, explosion, strike or governmental requirement.

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