

Subscription Agreement

This Agreement outlining the terms and conditions relating to the use of our Subscription Software Service was last updated on 5 May 2017

DEFINITIONS

“Customer”, means any person or entity that has purchased a Subscription and has paid the applicable Subscription Fee.

“Subscription Fee”, means the fee stipulated by Numeric Computer Systems of Australia Pty Ltd (NCS), which shall be paid by the Customer, in order to receive the Subscription for the duration of the Subscription Period.

“Services”, means a unique NCS solution for the Customer distributed under the “DSD Assist” brand, the implementation of which may include, the supply of certain Software as well as the rendering of related services.

“Software”, means any software (including but not limited to software as a service (SaaS)), utility, tool, or other computer or program code, as well as the related documentation, provided by NCS to the Customer in connection with the Services. Software includes software locally installed on the Customer’s systems and web-based software accessed by the Customer through the Internet.

“Named User” shall mean a single individual who is the Customer’s employee or service provider and authorised by the Customer to use the license, for whom Subscription to the Service has been procured, and who has been supplied user identification and password by the Customer.

“Subscription” means having the right to (a) use the Software during the period for which the Customer has paid the Subscription Fee (b) receive Software updates from NCS as they are made generally available from time-to-time during the Subscription period, and (c) use the online NCS support site.

PROTECTION OF CUSTOMER’S DATA

NCS shall maintain commercially appropriate administrative, physical, and technical safeguards for the protection, security, confidentiality and integrity of the Customer’s data. NCS shall not (a) modify the Customer’s data, (b) disclose the Customer’s data except as compelled by law or as expressly permitted in writing by the Customer, or (c) access the Customer’s data except to provide the services and prevent or address service or technical problems, or at the Customer’s request in connection with customer support matters. NCS might monitor the Customer’s account in order to optimise the performance of its servers, to optimise the operation of its Services, and to ensure compliance with the provisions of this Agreement. Customer data will be retained on NCS servers for six (6) months after which time it may be purged without notice to the Customer.

CUSTOMER'S RESPONSIBILITIES

The Customer shall (i) be responsible for the Customer's Named Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of the Customer's data and of the means by which the Customer acquired that data, (iii) use commercially reasonable efforts to prevent unauthorised access to or use of the Services, and notify us promptly of any such unauthorised access or use, and (iv) use the Services only in accordance with the terms of this Agreement and applicable laws and government regulations. The Customer shall not (a) make the Services available to anyone other than the Customer's Named Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit malicious code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorised access to the Services or their related systems or networks.

GRANT OF LICENSE

Subject to the limitations and restrictions provided in this Agreement, NCS grants the Customer a limited, non-exclusive, non-sub-licensable, non-transferable, license to install and use the Software provided to the Customer in connection with the Services in accordance with this Agreement. This Agreement does not convey to the Customer any interest in or title to the Software, but only limited rights to use the Software solely in accordance with the terms and conditions of this Agreement.

MOBILE APPS

NCS provides native mobile applications that allow the Customer to access NCS web-based software on Android devices.

Mobile devices must be purchased separately and are not included in the Customer's Subscription. These mobile apps may incur data charges with the Customer's wireless carrier, including roaming charges where applicable. NCS mobile apps may collect technical data, including information about application crashes and usage statistics, and may use certain third party libraries or modules. Any such mobile apps offered by NCS shall constitute part of the Software, and as such their usage is subject to the terms and conditions of this Agreement.

Once the Customer's Subscription to the NCS web-based software expires and is not renewed, all the NCS mobile apps installed on devices of the Customer's Named Users will be disconnected from the NCS web-based software.

CHANGES TO THE SITE AND SOFTWARE

NCS shall have the right at any time to change or discontinue any aspect or feature of the Software and/or Services, including, but not limited to, content, hours of availability, and equipment needed for access or use.

INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges and agrees that the Software is a proprietary product of NCS, protected under national and international intellectual property laws. The Customer further acknowledges and agrees that any and all rights, titles, and interests in and to the Software, including associated intellectual property rights, any patents, patent applications, copyrighted material and trade secrets, and all copies, revisions, modifications, updates and/or upgrades thereto, and all derivative works thereof, whether made by NCS, the Customer or on behalf of NCS or the Customer, shall remain the sole and exclusive property of NCS.

TERMINATION

The terms and conditions contained in this Agreement, and the license terms are effective until the Subscription is terminated. The Customer's rights under this Agreement will terminate automatically without notice from us if the Customer fails to comply with the terms of this Agreement. Upon the termination of the Subscription the Customer shall cease all use of the Software and destroy all copies, full or partial, of the Software.

DISCLAIMER OF WARRANTIES

The Customer acknowledges and understands that the Software licensed is provided to the Customer "as is" without any warranties whatsoever concerning the installation, use or performance of the software. NCS expressly disclaims, and the Customer hereby expressly waives all other warranties, whether express or implied, including warranties of merchantability, fitness for a particular purpose, non-infringement, system integration, non-interference, accuracy, reliability and quality of the Software. NCS do not warrant that the Software will meet the Customer's requirements or that the operation of the Software will be uninterrupted or error-free.

LIMITATION OF LIABILITY

NCS is not liable for direct, indirect, incidental, consequential, special, punitive, exemplary, or any other damages (including, without limitation, legal fees) (collectively, the "Damages"), arising out of the Customer's use or inability to use the Software. By way of example and not of limitation, NCS is not liable for Damages for: (i) loss of revenue, anticipated profits, business, savings, goodwill or data, (ii) any failure of performance, error, omission, denial of service attack, interruption, deletion, defect, delay in operation or

transmission, computer virus, communication line failure, and (iii) third party theft of, destruction of, unauthorised access to, alteration of, or use of the Customer's information, equipment, or property. The Customer specifically acknowledges and agrees that NCS is not liable for the conduct of and information supplied by other site users or third parties (including, without limitation, defamatory, offensive or illegal conduct) and that the risk of injury from the foregoing rests entirely with the Customer.

Notwithstanding the above, if NCS is found to be liable by a final judicial ruling, NCS' liability to the Customer or to any third party shall be limited to the sums actually paid by the Customer to NCS in connection with the Software and/or the Services.

The Customer shall indemnify, defend, and hold NCS harmless from and against all Damages and liabilities that arise from a third party's claim resulting from the Customer's use of the services by violation of this Agreement or from any violation caused by the Customer of applicable law.

LINKS

NCS' website and Software may contain links to external websites or software services that are not within NCS' control. If the Customer decides to use any of these external links, the Customer will be connected to a site or service not covered by this Agreement. NCS is not responsible for the privacy, security practices or content of such websites.

JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia. The parties to this Agreement submit to the exclusive jurisdiction of the Court of New South Wales, Australia.

ACCEPTANCE

A Customer purchasing a Subscription is deemed to have accepted this Agreement, the terms and conditions contained and the provisions of the terms of the Software license, together with any updates to this Agreement that may be issued from time-to-time and notified to the Customer.