



## **Document Management Solutions Software as a Service Terms and Conditions**

### **Background**

Document Management Solutions agrees to provide the Customer with non-exclusive rights to use Document Management Solutions Hosted Solution and to provide access thereto in accordance with these Terms and Conditions of this Agreement.

### **1 Definitions**

Where the context of these Terms and Conditions permit, the following terms shall have the following meanings as indicated:

“Confidentiality” means of confidential information as set forth in Section 6 of these Terms and Conditions, Software Terms and Conditions of Use in applicable End User License Agreement. (“Confidential Information”) includes products that contain proprietary and confidential information of the Seller, Software Vendor and Hardware Vendor (as applicable) as well as trade secrets owned by Seller, Software Vendor and Hardware Vendor (together with all pricing, quotes, or other confidential information of the Seller provided to Customer, the “Confidential Information”).

“Customer” means the person, partnership, organization, entity, or corporation buying the Products and Services from Seller for allowed use on the Hosted Platform from Seller.

“Customer Data” has the meaning set forth in Section 4.3 of this Agreement.

“Document Management Solutions Staff” means employees or contractors of Document Management Solutions or its Affiliates.

“Document Scanning Services” means scanning services including preparation, scanning, indexing/tagging, quality control, and document destruction.

“Effective Date” means the date as of which this Agreement is signed by Document Management Solution and Customer (Both Parties) and becomes legally binding.

“Hardware Vendor” means any third-party provider of hardware offered for sale by Seller as an authorized reseller for such vendor.

“Hosted Platform” means Document Management Solutions Hosted Software, and related Services, and Software.

“Invoice” means the invoice generated by Seller at the time of shipment of Products.

“Ordering Document” means a document (either in electronic or paper form) agreed to in writing by the parties that describes or specifies the Products, Hosted Platform services, and/or Professional Services to be purchased by Customer by or through Seller, such as a statement of work, purchase order, approved quote, or order form, and made a part of these Terms and Conditions.

“Both Parties” mean Document Management Solutions and the Customer.

“Professional Services” mean scoping, configuring, training, development and consultancy services in relation to the Hosted Platform.

“Products” means all goods, materials, documentation, hardware, Software or services to be provided pursuant to these Terms and Conditions.

“Purchase Order” means the purchase order sent to Seller by the Customer for the purchase of the Products specified in the Seller’s quotation or response to a request for proposal, accepted by the Seller, and made a part of these Terms and Conditions.

“Quotation” means a price quote for Products, included and made a part of these Terms and Conditions.

“Seller” means Document Management Solutions or its principal, agents or assigns that it may designate from time to time.

“Services” means Professional Services and first and second line support.



“Software” means all software offered for sale by Seller as part of a data management solution, provided to Customer in machine-readable form only, together with the accompanying documentation.

“Software Vendor” means any third-party provider of Software offered for sale by Seller as an authorized reseller for such vendor.

“Support” means the support services available to Customer as described in Section 8 and Schedule 1.

“Term” means the period which the Agreement with Document Management Solutions is in force with the customer.

## **2 Contract**

2.1 The following sets forth the Terms and Conditions applicable to sales of Products to the Customer. Unless and until these Terms and Conditions are superseded by a written agreement signed by an authorized officer of the Seller, all purchases by Customer from the Seller shall be subject to the Terms and Conditions as set forth herein. Any terms proposed in Customer's acceptance of Seller's offer which add to, vary from, or conflict with the terms herein are rejected and not made part of the agreement between Customer and Seller. Any such proposed terms shall be void.

## **3 Order Acceptance, Billing and Payment Schedule**

3.1 The Customer agrees that all sales of Products, Services, and Hosted Platform shall be documented in an Ordering Document, mutually agreed to in writing by the parties, that describes the Products to be purchased by the Customer. Once agreed to in writing by the parties, and Ordering Document may not be cancelled by the Customer. The Customer accepts that it is the non-exclusive user of the Hosted Platform and that Document Management Solutions may provide access to the Hosted Platform to other customers directly and through resellers.

3.2 Upon receipt of an Order, the Customer will appoint a primary point of contact within their organization that will coordinate with Document Management Solutions to set up the Hosted Platform for Customers as quickly as possible after an Order is made. Document Management Solutions may set up the Hosted Platform for the Customer, and configure the Hosted Platform for the Customer's solution, as quickly as possible per the quote/SOW.

3.3 An Invoice will be generated by Seller and submitted to Customer at the time of shipment. Customer shall pay the amount designated on each Invoice in U.S. dollars, unless otherwise specified, within thirty (30) days net period from the date of the Invoice. Invoices not paid in full within the stated term will incur a service charge of one and one-half percent (1.5%) per month on any outstanding balance, or the maximum legal rate allowed by law, whichever is less. Seller shall have the right, in its sole discretion, to set limits on the amount of Products ordered by Customer which have not been paid for in advance by Customer. The amount of Customer's credit limit with Seller may be adjusted from time to time by Seller in its sole discretion. Seller reserves the right to change payment terms at any time if, in Seller's opinion, Customer's financial condition or payment record so warrants.

3.4 Document Management Solutions reserves the right to defer or suspend without notice or penalty Customer's access to the Hosted Platform, or the performance of any part of the Services if any payments by Customer are 31 days overdue (i.e., if payments are not made within 61 days of invoice date).

## **4 Proprietary rights**

4.1 Customer agrees that Seller, Software Vendor and Hardware Vendor, as applicable, own all right, title, and interest in each of their respective trademarks, trade names, inventions, copyrights, know-how, and trade secrets



relating to the design, operation, or service of the Products, and that the sale conveys no right or license to duplicate or otherwise copy or reproduce any of the Products. Customer agrees not to use or disclose drawings, specifications, technical information, product documentation or other data furnished by Seller and identified by Seller as confidential or proprietary data without the prior written consent of an authorized officer of Seller. Customer agrees and acknowledges that any improvement or modification to such confidential or proprietary data shall be the sole property of the party that makes the improvement or modification unless otherwise specified in an applicable End User License Agreement. Customer further agrees to use all appropriate copyright and proprietary notices on all Products delivered hereunder regardless of their intended use. Customers recognize that such proprietary data is unique and consents to the remedy of injunction in addition to damages for violation of these provisions. Nothing in this clause, however, shall restrict Customer's right to use or disclose drawings, specifications, technical information, or other data which are generally known to the public or are rightfully obtained from other sources, without the breach of this clause by Customer.

4.2 Document Management Solutions reserves and retains title to, ownership of, and proprietary rights in the Hosted Platform. The Customer will not use the Hosted Platform for any purposes except as provided in this Agreement. The Customer will not reverse engineer, de-compile, disassemble, modify, translate or create derivative works of the Hosted Platform.

4.3 The Customer reserves and retains title to, ownership of and proprietary rights to the documents, data and metadata stored using the Hosted Platform (the "**Customer Data**"). Document Management Solutions will not access or utilize any documents or data stored using the Hosted Platform in any manner inconsistent with the training, support and maintenance provisions of this Agreement.

## **5 Term and Termination**

5.1 This Agreement will start from the Effective Date and continue for 36 months (3 years), until validly terminated or expiration, as set forth in Section 5.3.

5.2 Termination may occur in the following circumstances:

5.2.1 By either party, if after written notice of material breach of any term of this agreement to the other party, the other party fails to cure such breach within 45 days of such notice in writing.

5.2.2 By Document Management Solutions if the Customer ceases conducting business, fails to meet its becomes insolvent or bankrupt, makes a general assignment for the benefit of creditors, admits in writing to pay its debts as they mature, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under any statute of any governing authority relating to insolvency or the protection of rights of creditors. In the event of termination under such circumstances all access to the Hosted Platform and support arrangements with Customers may be terminated.

5.3 The Customer will still be obliged to pay a minimum amount depending upon time of termination.

5.3.1 If the Customer terminates within the first thirty-six months of service the Customer will owe payment for the remaining amount of the thirty-six month period based on the rate of the most recent invoice under this Agreement notwithstanding the termination of this Agreement for any reason.

5.3.2 If the Customer terminates after thirty-six months of service the Customer will owe payment for a one month period based on the rate of the most recent invoice under this Agreement notwithstanding the termination of this Agreement for any reason.





5.3.3 In the event of termination of this agreement by either party for any reason, the Customer may export all documents and data in advance of said termination. If the customer elects to export documents themselves, they will incur the hosted platform data export rates, at cost. The other option is, within thirty (30) days of notice of cancellation, request an export of all documents and data stored using the Hosted Platform for delivery to Customer by Document Management Solutions, subject to Document Management Solutions' prevailing rates for Professional Services at a minimum of two days of Professional Services. Document Management Solutions will perform said export within thirty (30) days of Customer request and will permanently delete all documents and data from Document Management Solutions systems.

## **6 Confidentiality**

6.1 Both Parties shall use all reasonable endeavors to ensure that all information received from the other party is not disclosed to any third party and is not used for any purpose other than in the proper performance of obligations hereunder. From time to time during the Term, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, that is and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, both parties may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement between Document Management Solutions and the Customer, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Both parties obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law. On termination of this Agreement for any reason both parties will destroy the confidential information it has in its possession which it received from the other party. The obligations under this Section 5 will survive the termination of this Agreement.

## **7 Representations, Warranties and Indemnities**

7.1 Document Management Solutions represents and warrants to the Customer that, to the best of its knowledge, the Hosted Platform does not infringe any US patent, or any copyright, trademark or trade secret, of any third-party and that Document Management Solutions has the full power and right to enter into and to perform fully its obligations under this Agreement.

7.2 Customer at its sole expense shall indemnify and hold Seller harmless from all claims, losses, damages, liabilities and costs arising out of third-party intellectual infringement claims, from privacy breaches or from breaches of confidentiality, as set forth in Sections 6.



7.3 Both Parties represents and warrants that it will not use the Hosted Platform or the network it uses to: (a) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative messages, whether commercial or otherwise; (b) transmit through or post on the Hosted Platform unlawful, harassing, libelous, abusive, tortuous, defamatory, threatening, harmful, libelous, invasive of another's privacy, vulgar, obscene or otherwise objectionable material of any kind or nature or material which is harmful to minors in any way; (d) transmit any material that may infringe the intellectual property rights or other rights of third parties, including trademark, trade secret, copyright or right of publicity; (e) transmit any material that contains viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs, or cancel bots; (f) interfere with or disrupt servers or networks connected to the Hosted Platform or violate the regulations, policies or procedures of such networks.

7.4 The Customer shall ensure that Customer staff is adequately trained in the use and configuration of the Software solution completed by Document Management Solutions for the Customer and that relevant staff are trained in the use of the Software.

7.5 The Customer will not undertake any activity which may lead the name and reputation of Document Management Solutions or the Hosted Platform to be discredited and will act with utmost good faith in terms of performing its obligations under this Agreement.

## **8 Support and Enhancements**

8.1 Seller will provide Customer with telephone, email, support of the Hosted Platform through secure access. Any additional training will be at the hourly rate set forth on the price list ("Professional Services").

8.2 Document Management Solutions hereby agrees to maintain the Hosted Platform in line with reasonable enhancements, which will be determined and managed by Document Management Solutions in its sole discretion. Any enhancements requested in writing by the Customer, which are considered by Document Management Solutions to be outside the scope of its support and maintenance obligations (i.e., discovery, training, custom development, implementation and other services) but which Document Management Solutions is willing to undertake by virtue of mutual agreement with the Customer through an Ordering Document, will be charged to the Customer at then current Seller's price list and payable by the Customer upon agreement.

## **9 Customer's Indemnity**

**The Customer will defend and indemnify Document Management Solutions against all damages, liability, claims, losses and expenses (including reasonable attorneys' fees) arising out of, or resulting in any way from any breach by the Customer of this Agreement.**

## **10 Limitation of Liability**

**BOTH PARTIES AGREE THAT, SAVE IN RELATION TO A BREACH OF SECTION 5 ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), WHETHER OR NOT SUCH PARTY WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, IN NO EVENT SHALL DOCUMENT MANAGEMENT SOLUTIONS' LIABILITY TO THE CUSTOMER, ITS PRINCIPALS, EMPLOYEES, OFFICERS AND AGENTS, WHETHER ARISING UNDER CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE, EXCEED IN THE AGGREGATE THE AMOUNT OF FEES PAID TO DOCUMENT MANAGEMENT**





**SOLUTIONS UNDER THIS AGREEMENT IN ANY TWELVE MONTH PERIOD PRECEEDING ANY CLAIM.**

#### **11 U.S. Government**

Products acquired with United States Government funds or intended for use within or for any United States federal agency are provided with RESTRICTED RIGHTS in accordance with Federal Acquisition Regulation 52.227.19 or as set forth in the particular department or agency regulations or rules of particular contract which provides Document Management Solutions equivalent or greater protection.

#### **12 Assignment**

**The Customer may not assign its rights or obligations hereunder without first obtaining the written consent of Document Management Solutions, such consent will not be unreasonably withheld or delayed. Document Management Solutions may assign this Agreement to any Affiliate with the consent of the Customer, such consent not to be unreasonably withheld or delayed.**

#### **13 Non-interference with staff**

Document Management Solutions and its Affiliates have spent considerable time, effort and money to train, and provide specialization and experience for Document Management Solutions Staff. The loss of Document Management Solutions Staff is materially detrimental and costly to Document Management Solutions and its Affiliates. Therefore the Customer hereby specifically acknowledges and agrees that from the date this Agreement is effective and for a period of six months thereafter, the Customer nor any affiliate company of the Customer will not, without the prior written consent of Document Management Solutions (which Document Management Solutions may withhold in its sole discretion), either directly or indirectly, solicit or employ, or consult with, hire, contract with for services, or engage with in any manner, any Document Management Solutions Staff. The provisions of this Section 13 shall survive the termination or expiration of this Agreement for any reason.

#### **14 Force Majeure**

Neither party shall be liable to the other for any failure to perform or delay in performance of its obligations hereunder, other than an obligation to pay monies, caused by (1) Act of God (2) outbreak of hostilities, riot, civil disturbance, acts of terrorism (3) the act of any government or authority (including, revocation of any license or consent) (4) fire, explosion, flood, fog or bad weather (5) default of suppliers or sub-contractors (6) theft, malicious damage, strike, lock-out or industrial action of any kind (7) any cause or circumstance whatsoever beyond its reasonable control.

#### **15 Entire Agreement and Order of Precedence**

This Agreement, including all exhibits and schedules hereto, all of which are incorporated by reference herein, constitutes the entire agreement and understanding between the parties with respect to its subject matter and may be amended only by the written mutual agreement of the parties. In the event of a conflict between the terms of this agreement and any exhibit or schedule, the terms of the exhibit or schedule shall control.

#### **16 Governing law**

This Agreement is governed by and construed under the laws of the State of Texas without regard to principles of conflict of laws and as if this both parties were domiciled within the State of Texas. All disputes, claims and controversies arising out of or related to this Agreement will be brought exclusively in the federal or state courts of Travis County, Texas. Both Parties agree that the provisions of the 1988 United Nations Convention on Contracts



for the International Sale of Goods, , a.k.a., CISG, shall not apply to these Terms and Conditions. If it becomes necessary for one party to commence an action at law or in equity against the other for failure to abide by any of the terms of this Agreement, the prevailing party in such action shall be entitled to recover all costs, including reasonable attorneys' fees associated with the action. Such relief is in addition to any other relief which may be awarded to the prevailing party.

#### **17 Severability**

If any provision or provisions of these Terms and Conditions shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Signed on behalf of**  
**Document Management Solutions**

**Signed on behalf of**  
**the Customer**

(signature).....

(signature).....

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signed By  
(Print Name): \_\_\_\_\_

Signed By  
(Print Name): \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_

Address 1: \_\_\_\_\_

Address 1: \_\_\_\_\_

Address 2: \_\_\_\_\_

Address 2: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_



## SCHEDULE 1 – Support

SUPPORT LEVEL	DEFINITION
First Line	<p>Before initializing a support service call, the Customer uses best efforts to determine proper use of the software.</p> <p>Document Management Solutions will take all first line calls for support from the Customers. This support desk will perform 'filter' support resolving problems, logging all calls, and passing those that cannot be resolved to Document Management Solutions support desk.</p> <p>The Document Management Solutions support desk will provide problem management on all calls and act on them according to the Problem Severity and priority codes.</p>
Second Line	<p>After receiving the call from the first line support which first line support is unable to resolve, second line support will confirm the problem and follow documented procedures to isolate the cause of the problem.</p> <p>Once the problem has been isolated second line support will attempt to repair the problem or to provide a workaround or temporary fix to allow normal operation to proceed, defined as Resolution.</p> <p>Second line support will then advise the Customer as to the repair, fix or workaround.</p>

## Document Management Solutions Support Desk Hours

SERVICE DESCRIPTION	DAYS	REGION	HOURS
Document Management Solutions Support Desk	Monday to Fridays	North America (US)	08:00 - 18:00 US Central Time

Note: Excluding US Public Holidays



### Severity Levels

Problem Type	Definition
Severity One	System Down – Operations cannot continue.  Document Manager software not operable from any workstation. Software hosted on database on server not responding to any client application on PC's.
Severity Two	Major part of the system not functioning – operation severely affected.  Department or site prevented from accessing one particular application or function of the system. Single component failure but can still perform some useful work. Services are degraded with some inconvenience.
Severity Three	Part of system not functioning – operation not seriously affected.  A user is prevented from accessing one particular part of the system, but can still perform some useful work. Department or site has a problem, which has a known workaround solution provided).
Severity Four	Non-urgent problems. User agrees low severity work.

### Service Levels

Service Activity	Description	Measure
Problem Response Time	The time taken for the Document Management Solutions to acknowledge receipt of a problem reported by the Customer.	All problems must be acknowledged by the Document Management Solutions Support Desk within 120 minutes during Service Hours of being reported by Customers.