



Subscription License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICE.

AGREEMENT: BY DOWNLOADING THE SOFTWARE AND/OR USING THE SERVICE, BY CLICKING NEXT TO “I AGREE,” OR BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE ENTERING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT.

This agreement is between Decision Management Solutions, a California corporation (**DMS**), and the entity or individual agreeing to these terms (**Customer**).

1. **SOFTWARE.** This agreement provides Customer access and usage of either (a) an Internet based software service (**Service**), or (b) downloadable software (**Software**), as specified on an order incorporating this agreement. The Services and Software are together referred to as “**DMS Technology**,” as further described at: www.decisionsfirst.com.
2. **USE OF DMS TECHNOLOGY.**
 - a. **Access and Usage.** Upon its continued payment of advance, non-refundable, recurring subscription fees, Customer may use the Software made available by DMS to Customer by download or otherwise, or access the Service, and may allow its contractors to access the DMS Technology, which access must be for the sole benefit of Customer. Customer is responsible for its contractor’s compliance with this agreement.
 - b. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify DMS promptly of any such unauthorized access; (iv) may use the DMS Technology only in accordance with its instructional materials and applicable law; and (v) where Customer has purchased a license to use the Software, Customer will download and install all updates, patches and maintenance releases that DMS provides from time to time. DMS may suspend the Services at any time without notice if in its reasonable discretion it believes that that Customer has violated this Subpart (b).
 - c. **Trial Version.** If Customer has registered for a trial use of the Service, Customer may access the Service for a mutually agreed upon period (unless extended by DMS in writing). The Service is provided AS IS, with no warranty during this time period. All Customer data will be deleted after the trial period, unless Customer converts its account to a paid Service.
 - d. **Free Version.** If Customer has registered for a no-charge use of the Service, Customer may allow up to three (3) employees or contractors to access the Service on Customer’s behalf, until it is cancelled by DMS upon notice [via email], or by the Customer. The Service is provided AS IS, with no warranty during the no-charge period. All Customer information will be deleted after the no-charge period ends, unless Customer converts its account to a paid Service.
 - e. **Customer Owned Data.** All data uploaded by Customer remains the sole property of Customer, as between DMS and Customer (**Customer Data**). Customer grants DMS the right to use the Customer Data solely for purposes of performing under this agreement. Customer further grants DMS the right to use Customer Data that has been scrubbed of personally identifiable information for its business uses, including statistical analysis based on aggregated data. During the term of this agreement, Customer may export its Customer Data within the Service.
 - f. **API.** DMS provides access to its application- programming interface (API), but only as part of a paid order for Services or Software. Subject to the other terms of this agreement, DMS grants Customer a non-exclusive, nontransferable, terminable license to integrate other applications, devices or systems with the Service or Software, to the extent technically enabled by the API.

(i) Customer may not use the API in a manner--as reasonably determined by DMS--that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with the API policy or with any part of the API. If any of these occur, DMS can suspend or terminate Customer's access to the API on a temporary or permanent basis.

(ii) DMS may change or remove existing endpoints or fields in API results upon at least 30 days notice to Customer, but DMS will use commercially reasonable efforts to support the previous version of the API for at least 6 months. DMS may add new endpoints or fields in API results without prior notice to Customer.

(iii) DMS will maintain and provide access to an API, unless it terminates the API for all customers with notice.

(iv) The API is provided on an 'AS IS' and 'WHEN AVAILABLE' basis. DMS has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.

3. LIMITED WARRANTY AND REMEDY.

a. **Warranty.** DMS warrants to Customer that the functionality or features of the DMS Technology may change but will not materially decrease during a paid term.

b. **DISCLAIMER** DMS DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE DMS TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, DMS DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED.

4. **PAYMENT.** Customer must pay a non-refundable recurring fee for the Software and/or Service, as specified on an order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the DMS Technology, which orders are governed by the terms of this agreement. If a credit card account is being used, DMS may obtain pre-approval for an amount up to the amount of the order. Customer must pay for the DMS Technology online, and DMS may charge its credit card for all purchases and for any additional amounts (including any taxes and late fees, as applicable) owed to DMS. CUSTOMER IS RESPONSIBLE FOR THE TIMELY PAYMENT OF ALL FEES AND FOR PROVIDING DMS WITH A VALID CREDIT CARD FOR PAYMENT WHICH THEY ARE AUTHORIZED TO USE. If Customer wants to designate a different credit card or use a bank account or if there is a change in Customer's credit card status, Customer must change its information online in its online account with DMS. If a Customer credit card changes or expires, or is revoked, disputed or not valid for any other reason, DMS may suspend, terminate, or both (without liability) Customer's use of the DMS Technology upon 5 days notice sent to Customer via email.

5. MUTUAL CONFIDENTIALITY.

a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). DMS's Confidential Information includes without limitation the DMS Technology (including without limitation the user interface design and layout, and pricing information).

b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. DMS PROPERTY.

- a. **Reservation of Rights.** The software, workflow processes, user interface, designs, know-how, and other technologies provided by DMS as part of the DMS Technology are the proprietary property of DMS and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with DMS. Customer may not remove or modify any proprietary marking or restrictive legends in the DMS Technology. DMS reserves all rights unless expressly granted in this agreement.
- b. **Restrictions.** Customer *may not* (i) share, sell, resell, rent or lease the DMS Technology or use it in a service provider capacity; (ii) use the DMS Technology to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the DMS Technology; (iv) attempt to gain unauthorized access to the DMS Technology or their related systems or networks; (v) reverse engineer the DMS Technology; (vi) access the DMS Technology or use the DMS Technology to build a competitive service or product, or copy any feature, function or graphic for competitive purposes; or (vii) access the DMS Technology for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.
- c. **Feedback.** By submitting ideas, suggestions or feedback to DMS regarding the DMS Technology, Customer agrees that: (i) such items submitted do not contain confidential or proprietary information; and (ii) Customer hereby grants DMS an irrevocable, royalty-free and full paid perpetual license to use such items for any business purpose.

7. TERM AND TERMINATION.

- a. **Term.** This agreement continues until all orders have terminated (**Term**).
- b. **Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured; provided, if Customer has not paid applicable fees in advance for access to the Services, DMS may suspend the Services.
- c. **Return of Customer Data.**
 - *Within 60-days after termination*, upon request DMS will make the Service available for Customer to export Customer Data, provided that Customer pays all applicable reinstatement fees.
 - *After such 60-day period*, DMS has no obligation to maintain the Customer Data and may destroy it.
- d. **Return or Destroy DMS Property Upon Termination.** *Upon termination of this agreement for any reason*, Customer must pay DMS for any unpaid amounts, and uninstall, and destroy or return, all DMS Technology. Upon DMS's request, Customer will confirm in writing its compliance with this requirement.
- e. **Suspension of Service for Violations of Law.** DMS may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. DMS will attempt to contact Customer in advance.

8. LIABILITY LIMIT.

- A. **EXCLUSION OF INDIRECT DAMAGES.** DMS IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF DATA, RECORDS OR INFORMATION; LOST PROFITS AND ANY FAILURE OF DELIVERY OF THE SERVICE).
- B. **TOTAL LIMIT ON LIABILITY.** DMS'S LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12 MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE LIABILITY.

9. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written,

related to this subject matter. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

- b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for force majeure events.
- e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- f. **No Additional Terms.** DMS rejects additional or conflicting terms of any Customer form-purchasing document.
- g. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- h. **Survival of Terms and no CISG.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.
- I. **Governing Law and Forum.** This agreement is governed by the laws of the State of California, without regard to conflict of law principles. Any dispute arising out of or related to this agreement may only be brought in the state and federal courts for Santa Clara County, California. Both parties consent to the personal jurisdiction of such courts and waive any claim that it is an inconvenient forum. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.