



1. INTRODUCTION

- 1.1 **Scope.** These terms and conditions (the “EchoSign Licensing Terms”) govern Customer’s use of the Products and Services included in the Sales Order referencing these terms. Together, the Sales Order and these EchoSign Licensing Terms constitute the “Agreement”.
- 1.2 **Product Description of the EchoSign Service.** The EchoSign Service is the On-demand Service provided for in this Agreement and hosted by Adobe enabling individual and corporate users to electronically send, sign, track, and manage Electronic Documents, as well as other functionality. The EchoSign Service may be expanded to include (i) integration of third-party services; and (ii) advanced authentication and identity verification services allowing customers to verify the identity of Parties accessing the Electronic Document
- 1.3 **Customer Usage and Consent.** Customer must only use the EchoSign Service solely for its own business purposes and will not make its passwords available to a third party, reverse engineer any part of the EchoSign Service or resell or sub-license the EchoSign Service. Customer agrees the use of Electronic Signatures is governed by the laws, policies and regulations of individual countries, regions and industries and you will abide by those, laws, policies and regulations. You agree that you will rely on independent legal counsel to determine the viability of electronic signatures for your organization. You will ensure that your use of the Electronic Signature Service is in conformance with all laws and regulations.

2. PAYMENT AND FEES

- 2.1 **Payment.** Customer must pay the fees according to the payment terms in the Sales Order. All invoices are exclusively electronically mailed to Customer.
- 2.2 **Failure to Pay.** If Customer fails to pay any amount due under this Agreement within 15 days of the date of Adobe’s notice of Customer’s failure to pay, Adobe may, in its sole discretion, terminate this Agreement, or suspend or restrict provision of the Products and Services. Adobe may charge interest at a monthly rate equal to the lesser of 1% per month or the maximum rate permitted by applicable law on any overdue fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full.
- 2.3 **Disputes.** If Customer believes in good faith that Adobe has incorrectly billed Customer, Customer must contact Adobe in writing within 30 days of the invoice date, specifying the error. Unless Customer has notified Adobe of the dispute, Customer must reimburse Adobe’s reasonable collection costs (including attorney’s fees). Customer must pay the undisputed portions of Adobe’s invoice as required by this Agreement.
- 2.4 **Taxes.** Prices do not include applicable taxes. Adobe will invoice Customer for any applicable taxes, and Customer must pay these taxes. Where applicable, Customer must provide a tax-exemption claim to Adobe before placing an order. If Customer is required to withhold income taxes from its payment to Adobe, Customer agrees to send Adobe an official tax receipt within 60 days of payment to Adobe.
- 2.5 **Delivery.** On-demand Services are deemed to be delivered and accepted on the License Term start date.

3. CONFIDENTIALITY

- 3.1 **No Use or Disclosure.** Recipient will not reproduce, use, disseminate, or disclose Confidential Information to any person, except to its employees and authorized representatives (i.e., temporary employees, consultants and contractors) who need to know the Confidential Information for the purposes of this Agreement and are bound by confidentiality obligations at least as restrictive as the confidentiality obligations set forth in this Agreement. Recipient will treat all Confidential Information with at least the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care.
- 3.2 **Required Disclosure.** Recipient may disclose Confidential Information (A) when approved in writing by Discloser; or (B) when necessary to comply with any law or valid order of a court or other governmental body, or as necessary to establish the rights of either Party — but only if Recipient (i) promptly notifies Discloser the details of the required disclosure, and (ii) gives Discloser all assistance reasonably required by Discloser to enable Discloser to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.
- 3.3 **Responsibility for Representatives and Affiliates.** Recipient is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the Recipient under this Confidentiality section of this Agreement.

4. TERM, TERMINATION, AND SUSPENSION

- 4.1 **Term.** These EchoSign Licensing Terms apply to the Products and Services set forth in the Sales Order beginning on the Effective Date. Start, End, and Expiration Dates for each particular product and service is set forth in the Sales Order, subject to early termination under these EchoSign Licensing Terms.
- 4.2 **Termination for Cause.**
  - (A) **Uncured Material Breach by Either Party.** If either Party materially breaches this Agreement, the non-breaching Party may give written notice of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate this Agreement, in whole or in part.
  - (B) **Termination Upon Notice.** If a Party is in breach of any of the following sections of this Agreement, the non-breaching Party may terminate this Agreement, in whole or in part, immediately by giving the breaching Party written notice of the breach: CONFIDENTIALITY, INTELLECTUAL PROPERTY, and LICENSE AND RESTRICTIONS. A Party may also terminate this Agreement immediately upon notice to the other Party if the latter is subject to any of the following events (or events like or analogous to the following): (1) insolvency; (2) any form of voluntary or involuntary insolvency administration or liquidation; (3) entering into a scheme or voluntary arrangement with its creditors for partial discharge of indebtedness; or (4) if required by law.
- 4.3 **Effect of Termination.**
  - (A) **Unpaid Fees.** Any fees that are unpaid as of the date of termination will be immediately due and payable.

- (B) **Transition Assistance.** Subject to Adobe's obligation to provide Customer with transition assistance described in this paragraph, upon termination or expiration of this Agreement, the license and associated rights to On-demand Services will immediately terminate. Adobe will use commercially reasonable efforts to assist Customer in transitioning Customer Data out of the On-demand Services (assuming all amounts owed by Customer for its use of the On-demand Services have been paid to Adobe). Such transition must be completed within thirty (30) days of the termination of this Agreement. Adobe reserves the right to delete any data files associated with Customer Data, personal information, or Customer's use of the On-demand Services upon termination of this Agreement.
- (C) **Survival.** The termination or expiration of this Agreement will not affect any sections of this Agreement which by their nature survive termination or expiry, including the sections that deal with the following subject matters: definitions, payment and fees, confidentiality, term and termination, intellectual property, license compliance, limitation of liability, privacy, content monitoring and the "General Provisions" section of this Agreement.

## 5. INTELLECTUAL PROPERTY

- 5.1 **Ownership.** Adobe will continue to own the Adobe Technology. As between the Parties, Customer owns all rights, title, and interest in the Customer Data, subject to Adobe's underlying intellectual property rights in the On-demand Services, Reports, and other Adobe Technology.
- 5.2 **No Modifications.** Customer will not modify, create derivative works of, adapt, translate, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code in any Adobe Technology, except to the extent permitted under the law.

## 6. LICENSE AND RESTRICTIONS

### 6.1 License Grant from Adobe

- (A) Subject to the terms of this Agreement and Customer's payment of the fees, Adobe grants Customer, during the License Term, a non-transferable, non-exclusive and worldwide license to:
  - (1) permit Users to access the On-demand Services through the applicable interfaces;
  - (2) install, implement and use the Distributed Code;
  - (3) use and distribute Reports internally within Customer's business, solely for Customer's use of the On-demand Services for its internal operations.
- (B) Nothing in this Agreement grants Customer any express or implied license to use, distribute, modify, copy, link or translate the Distributed Code, other than for Customer's use of the On-demand Services.

### 6.2 License Restrictions. Except as permitted under this Agreement, Customer will not:

- (A) copy, use, reproduce, distribute, republish, download, display, post or transmit, in any form or by any means, the On-demand Services, Distributed Code or Reports;
- (B) sell, rent, lease, host or sub-license the On-demand Services, the Distributed Code or the Reports;
- (C) make Customer's login IDs or passwords available to any third party;
- (D) use, modify, copy, link, translate, or reverse engineer the Distributed Code to enhance or enable the use of any third-party product or service (except to the extent permitted under the law);
- (E) remove, obscure or alter any proprietary notices associated with the On-demand Services, Distributed Code or Reports;
- (F) use the On-demand Services, Distributed Code or Reports in violation of any applicable law (including use on websites that contain unlawful material such as material that violates any obscenity, defamation, harassment, privacy or intellectual property laws); or
- (G) allow the use of the same login ID simultaneously by two or more Users. Unless otherwise specifically limited in the Sales Order, User passwords and login IDs for the On-demand Services will be provided to Customer in an amount mutually agreed upon by Customer and Adobe. Customer must take steps to prevent unauthorized access to its login IDs and passwords.

### 6.3 Outsourcing and Third-Party Access

- (A) Customer may allow a third-party contractor to use and access the Products and Services solely to operate the Products and Services on Customer's behalf, but only if:
  - (1) On Adobe's request, Customer provides Adobe with prior written notice;
  - (2) Customer ensures that the contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Customer;
  - (3) the use or access by the contractor is only for Customer's direct beneficial business purposes; and
  - (4) Customer remains liable for any act or omission of the contractor.
- (B) For clarification, the rights granted under this Outsourcing and Third-Party Access section do not modify the license or increase the number of licenses granted under this Agreement.

### 6.4 License Grant from Customer

- (A) Customer grants Adobe and its Affiliates, during the License Term, a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store and display Customer Data, solely to the extent necessary to provide the On-demand Services and Reports to Customer and enforce its rights under this Agreement.
- (B) Customer grants Adobe and its Affiliates a non-exclusive, perpetual, worldwide and royalty-free license to use, copy, transmit, publish, display, distribute, and aggregate (including combination with similar data of other customers of Adobe or its Affiliates) any anonymous information derived from Customer Data, such as web browser, screen resolution and mobile device type information. Such anonymous data does not include personal information of Customer or its End User or any data derived from an Electronic Document.

### 6.5 End User Terms and Conditions. The use of the EchoSign Service is conditioned on End User acceptance of the terms of use presented when using the service, including the EchoSign Consumer Disclosure and Consent terms (<http://secure.echosign.com/public/static/consumerDisclosure.jsp>).

6.6 **License Compliance.** Adobe may appoint its own personnel or an independent third party (or both) to verify that Customer's use of the On-demand Services (or other Adobe Technology used in conjunction with the Products and Services) comply with the terms of this Agreement. If the verification shows that Customer is using the On-demand Services (or other Adobe Technology used in conjunction with the Products and Services) (A) beyond any quantity that was legitimately licensed; or (B) in any way not permitted under this Agreement, so that additional fees apply, Customer must pay the additional license fees based on Adobe's then-current, country-specific list price, immediately on Adobe's notice with interest accruing at the lesser of 1% per month or the maximum rate permitted by applicable law from the date of Adobe's notice. Each month, Customers billed on a per user basis are permitted to send the number of Transactions equal to twice the average number of Transactions sent through the On-demand Service per user, per month ("Use Limitations").

## 7. PRIVACY, INFORMATION SECURITY, AND COMPLIANCE

- 7.1 **Sensitive Personal Information.** Customer represents and warrants that it will not use the On-demand Services to collect, process, or store sensitive personal information of children under the age of 13 (including any personal information as defined by child protection laws).
- 7.2 **Compliance with Laws.** With respect to Customer's use of the On-demand Services, Customer is responsible for complying with (including giving any notifications, obtaining any consents and making any disclosures required under) applicable privacy, security, electronic signature and data protection laws, guidelines, regulations or industry standards or codes.
- 7.3 **Storage and Retention of Customer Data.** Adobe will store Customer Data so long as the size of that storage is not disproportionate, unreasonable or needlessly burdensome in Adobe's discretion. However, Customer Data may be deleted if Customer fails to pay Fees due under this Agreement, if Customer instructs Adobe to do so, or if required by law. Customer agrees that Customer is solely responsible for complying with all applicable document retention laws and regulations including any duty to provide notice to third parties about retention or deletion of documents.
- 7.4 **Customer Security.** Customer is responsible for configuring and using the security features of the On-demand Services necessary to meet its obligations under applicable privacy, security, and data protection laws. Customer is responsible for the security of Electronic Documents that are emailed to Users and End Users from the On-demand Services, downloaded from the On-demand Services, or which are transferred to a non-Adobe system via a third party integration feature of the On-demand Services. Customer is liable for its damages arising out of unauthorized access to Customer's account or to Customer Data if Customer fails to follow secure password composition, management, and protection practices for its On-demand Services accounts.
- 7.5 **Adobe Security.** Adobe will maintain commercially reasonable administrative, physical, and technical safeguards to help protect the security, confidentiality, and integrity of Customer Data. Adobe's collection and use of information in connection the On-demand Services is controlled by the Adobe Privacy Policy ([adobe.com/privacy/policy.html](https://adobe.com/privacy/policy.html)).
- 7.6 **Payment Card Industry Data Security Standard (PCI DSS).** When transmitting any Account Data (including Cardholder Data, Card Verification Code or Value), you must not use the fax signature capability. Even if the data is encrypted, PCI DSS prohibits storing Sensitive Authentication Data, including Card Verification Code or Value after authorization. Capitalized terms in this Section are defined in the PCI DSS. Capitalized terms in this Section are defined by the PCI DSS.

## 8. INDEMNIFICATION

- 8.1 **Adobe's Duty to Indemnify.** Adobe will defend any third-party Claim against Customer during the License Term to the extent the Claim alleges that:
- (A) the Indemnified Technology directly infringes the third party's patent, copyright or trademark; or
  - (B) that Adobe has misappropriated the third party's trade secret ("**Infringement Claim**").
- Adobe will pay Customer the Losses (including reasonable legal fees) finally awarded by a court of competent jurisdiction against Customer or agreed to in a written settlement agreement signed by Adobe, which are directly attributable to an Infringement Claim.
- 8.2 **Adobe's Response.** In the defense or settlement of any Infringement Claim, Adobe may, at its sole option and expense:
- (A) procure for Customer a license to continue using the Indemnified Technology under the terms of this Agreement;
  - (B) replace or modify the allegedly infringing Indemnified Technology to avoid the infringement; or
  - (C) terminate Customer's license and access to the Indemnified Technology or its infringing part and refund any prepaid unused fees as of the date of termination.
- 8.3 **Conditions to Indemnification.** Adobe will have no liability for any Infringement Claim:
- (A) that arises from any:
    - (1) use of the Indemnified Technology in violation of this Agreement;
    - (2) modification of the Indemnified Technology by anyone other than Adobe or a party authorized in writing by Adobe to modify the portion of Indemnified Technology applicable to the Claim;
    - (3) failure by Customer to install the latest updated version of the Indemnified Technology as requested by Adobe to avoid infringement; or
    - (4) third-party products, services, hardware, software or other materials, or combination of these with Indemnified Technology if the Indemnified Technology would not be infringing without this combination; or
  - (B) if Customer fails to:
    - (1) notify Adobe in writing of the Infringement Claim promptly upon learning of or receiving notice of it, to the extent that Adobe is prejudiced by this failure;
    - (2) provide Adobe with reasonable assistance requested by Adobe for the defense or settlement (as applicable) of the Infringement Claim;
    - (3) provide Adobe with the exclusive right to control and the authority to settle the Infringement Claim (Customer may participate in the matter at Customer's own expense); or
    - (4) refrain from making any admissions about the Infringement Claim without Adobe's prior written consent.

- 8.4 **Sole and Exclusive Remedy.** The remedies in this Indemnification section are Customer's sole and exclusive remedies regarding the subject matter giving rise to any Claim that the Products and Service infringe any third party's intellectual property.
- 8.5 **Third-Party Claims.** Customer must defend any Claims brought by any person against Adobe, its Affiliates and third-party providers, which arise in connection with (A) Customer's breach of any of its privacy or content monitoring obligations; or (B) any violation of Customer's privacy policy, third party's rights of privacy, or privacy or data protection laws; or (C) any Customer Data. Customer will indemnify Adobe, its Affiliates and third-party providers against their Losses arising out of or in connection with the Claim. The Limitation of Liability section of this Agreement does not apply to Customer's liability or obligations under this Third-Party Claims section.

## 9. LIMITED WARRANTY, REMEDIES, AND DISCLAIMERS

- 9.1 **Adobe Warranty.** Adobe warrants that the On-demand Services as delivered to Customer will substantially conform to the applicable Documentation during the License Term to the extent the On-demand Services constitute Indemnified Technology. Customer must notify Adobe of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appeared.
- 9.2 **Sole and Exclusive Remedy.** To the extent permitted by law, Customer's sole and exclusive remedy arising out of or in connection with a breach of the warranty is limited to: (A) a replacement of the Distributed Code (as applicable); or (B) if replacement is not commercially reasonable, a termination of the applicable On-demand Service and a refund of any pre-paid unused fees for the applicable On-demand Service.
- 9.3 **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN ALL ON-DEMAND SERVICES ARE PROVIDED AS-IS AND ON AN AS NEEDED BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ADOBE, ITS AFFILIATES AND THIRD-PARTY PROVIDERS HEREBY DISCLAIM AND MAKE NO OTHER REPRESENTATION OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, GUARANTEES, OR WARRANTIES OF MERCHANTABILITY, ACCURACY, QUALITY OF THE ON-DEMAND SERVICES, OPERATION OF THE ON-DEMAND SERVICES INCLUDING THE RESULTS, SERVICE AVAILABILITY, SATISFACTORY QUALITY, LACK OF VIRUSES, TITLE, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR WARRANTIES OF ITS THIRD PARTY PROVIDERS. CUSTOMER ACKNOWLEDGES THAT (A) NEITHER ADOBE, ITS AFFILIATES NOR ITS THIRD PARTY PROVIDERS CONTROLS CUSTOMER EQUIPMENT OR THE TRANSFER OF DATA OVER COMMUNICATION FACILITIES (INCLUDING THE INTERNET); AND (B) THE ON-DEMAND SERVICES MAY BE SUBJECT TO LIMITATIONS, INTERRUPTIONS, DELAYS, CANCELLATIONS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE COMMUNICATIONS FACILITIES (INCLUDING SEARCH ENGINES AND SOCIAL MEDIA CHANNELS). ADOBE, ITS AFFILIATES AND THIRD-PARTY PROVIDERS ARE NOT RESPONSIBLE FOR ANY INTERRUPTIONS, DELAYS, CANCELLATIONS, DELIVERY FAILURES, DATA LOSS, CONTENT CORRUPTION, PACKET LOSS, OR OTHER DAMAGE RESULTING FROM THESE PROBLEMS. ADOBE SPECIFICALLY DISCLAIMS AND MAKES NO REPRESENTATION OR WARRANTY, ORAL OR IN WRITING, CONCERNING THE VIABILITY, ENFORCEABILITY, OR COMPLIANCE OF USING THE ON-DEMAND SERVICES IN A PARTICULAR COUNTRY AND/OR FOR A PARTICULAR PRODUCT OR SERVICE.
- 9.4 **Customer Legal Counsel.** CUSTOMER MUST SOLELY RELY ON ITS OWN LEGAL COUNSEL AND DETERMINATIONS AS TO THE USE AND VIABILITY OF ELECTRONIC SIGNATURES IN A PARTICULAR COUNTRY AND/OR FOR A PARTICULAR PRODUCT OR SERVICE; AND WILL ENSURE ITS USE OF THE ON-DEMAND SERVICES ARE IN CONFORMANCE AND COMPLY WITH ALL LAWS, REGULATIONS AND POLICIES RELEVANT TO A PARTICULAR COUNTRY AND/OR FOR A PARTICULAR PURPOSE.
- 9.5 **Australian Consumer Law.** If Customer is an Australian consumer, Adobe's goods come with guarantees that cannot be excluded under the Australian consumer law. Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. To make a warranty claim under this Limited Warranty; Remedies section, Customer must call the Adobe Customer Support Department at 1800 614 863.

## 10. LIMITATION OF LIABILITY

- 10.1 In no event is either Party liable for any of the following arising out of or concerning this Agreement, however caused:
- (A) special, indirect, moral, consequential, incidental, punitive or exemplary damages;
  - (B) loss of profits, use, revenue, or goodwill; or
  - (C) business interruption, loss or corruption of data, cost of cover.
- 10.2 The maximum aggregate liability of each Party for each and all Claims (individually and together) under or relating to this Agreement or its subject matter is limited to an amount equal to the aggregate of the fees that must be paid by Customer under this Agreement during the 12 months before the initial Claim.
- 10.3 This Limitation of Liability section:
- (A) applies regardless of the form or source of Claim or Loss, whether the Claim or Loss was foreseeable, and whether a Party has been advised of the possibility of the Claim or Loss; and
  - (B) does not apply to Customer's use of Adobe Technology beyond the scope of any license granted under this Agreement, or Customer's failure to pay any amounts owing to Adobe under this Agreement.

## 11. GENERAL PROVISIONS

- 11.1 **Assignment.**
- (A) Customer may assign this Agreement in its entirety to a surviving person or entity under a merger or acquisition of Customer, upon written notice to Adobe, if the assignment does not expand the scope of the license granted in the Products and Services.
  - (B) Adobe may assign this Agreement (or a part of it) to its Affiliates or a surviving person under a merger or acquisition of Adobe, upon written notice to Customer.
  - (C) Except as provided in this Assignment section Customer may not assign, voluntarily, by operation of law or otherwise, any rights or obligations under this Agreement without the prior, written consent of Adobe.
- 11.2 **Governing Law, Venue.** This Agreement is governed by and construed under the laws of the state of California, without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. The Parties irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in the County of Santa Clara, state

of California. In the event of a dispute or controversy involving the viability or admissibility of electronic signatures, the parties expressly agree that the Electronic Signatures in Global and National Commerce Act governs for questions and issues related to electronic signatures.

- 11.3 **Force Majeure.** Neither Party is liable for failure to perform its obligations under this Agreement (except for any payment obligations) to the extent that performance is delayed, prevented, restricted or interfered with as a result of any causes beyond its reasonable control, including acts of God, terrorism, labour action, fire, flood, earthquake, governmental acts, orders or restrictions, failure of third-party providers, denial of service attacks and other malicious conduct, utility failures or power outages.
- 11.4 **Injunctive Relief.** Actual or threatened breach of certain sections of this Agreement (such as, without limitation, sections on intellectual property (including ownership), license, privacy, data protection and confidentiality) will cause immediate, irreparable harm that is difficult to calculate and cannot be remedied by the payment of damages alone. Either Party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach.
- 11.5 **Notices.** Any notice given under this Agreement must be in writing and by email to the following addresses (or addresses notified in writing by either Party): (A) to Adobe: ContractNotifications@adobe.com; and (B) to Customer: at Customer's email address stated on the Sales Order, or by regular mail to any known address if no email address is listed on the Sales Order. A notice is taken to have been received by email 3 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered and 2 days after sent by regular mail.
- 11.6 **Customer Responsibility.** Customer is responsible for all acts and omissions of any person whom Customer is permitted by this Agreement to allow use or access of the Products and Services.
- 11.7 **No Agency.** Nothing in this Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership or trust between the Parties. No Party has authority to bind the other Party.
- 11.8 **Third-Party Beneficiaries.** Customer acknowledges and agrees that Adobe's licensors are third-party beneficiaries of this Agreement, with the right to enforce the obligations in this Agreement directly against Customer.
- 11.9 **Customer's Purchase Order.** Any terms or conditions in Customer's purchase order or any other related documentation submitted by or on behalf of Customer to Adobe do not form part of this Agreement and are void, unless otherwise expressly agreed in writing and signed by both Customer and Adobe.
- 11.10 **Waiver, Modification.** Neither Party's waiver of the breach of any section constitutes a waiver of that section in any other instance. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.
- 11.11 **Entire Agreement.** This Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations and warranties, both written and oral, regarding the subject matter.
- 11.12 **Counterpart.** This Agreement (or a component) may be executed in one or more counterparts, each of which constitutes an original and all of which taken together constitutes the same agreement. Each Party may sign this Agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.
- 11.13 **Severability.** If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the term and this Agreement will continue in full force and effect.
- 11.14 **Export Rules.** Customer acknowledges that the Products and Services may be subject to the U.S. Export Administration Regulations and other export laws and regulations, and Customer will comply with them.
- 11.15 **Interpretation.** In this Agreement, unless otherwise stated:
- (A) Other grammatical forms of a defined word or phrase have a corresponding meaning;
  - (B) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it; and
  - (C) All headings are for ease of reference only and not intended to affect meaning or interpretation.
- 11.16 **U.S. Government Licensing.** For US Government end users: Customer acknowledges that Products and Services are "Commercial Item(s)," as that term is defined at 48 C.F.R. Section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as the terms are used in 48 C.F.R. Section 12.212 or 48 C.F.R. Section 227.7202, as applicable. Customer agrees, consistent with 48 C.F.R. Section 12.212 or 48 C.F.R. Sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (A) only as Commercial Items; and (B) with only those rights as are granted to all other customers and end users, as set forth in these EchoSign License Terms. Unpublished rights reserved under the copyright laws of the United States.

## 12. DEFINITIONS

- 12.1 **"Adobe Technology"** means technology owned by Adobe or licensed to Adobe by a third party (including software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects, network designs, processes, know-how, methodologies, trade secrets, Products and Services, Reports, Documentation, and any related intellectual property rights throughout the world) and any of their derivatives, modifications, improvements, enhancements or extensions, whenever developed.
- 12.2 **"Adobe"** means the entity or entities identified as Adobe in the signature block of the Sales Order.
- 12.3 **"Affiliate"** means, for a Party, any other entity that controls, is controlled by or under common control with the Party. For the purposes of this definition, the term "control" means the direct or indirect power to direct the affairs of the other person through at least 50% of the shares, voting rights, participation or economic interest in this person.
- 12.4 **"Audit Log"** means certain information recorded by Adobe regarding the signing workflow of a particular Electronic Document processed using the On-demand Services, including without limitation: (i) date and time; (ii) when the Electronic Document was created; (iii) when the Electronic Document was made available or sent for electronic signature or wet ink signature via PDF or facsimile; (iv) when each User or End User either signed the Electronic Document, declined to sign the Electronic Document or delegated the signing of an Electronic Document to another user; and (v) the User's and End User's geographic location as determined by his browser or device (if supported by the browser or device).

- 12.5 **"Claim"** means a claim, action, proceeding or demand made against a person or entity, however arising and whether present or future, fixed or unknown, actual, threatened or contingent.
- 12.6 **"Confidential Information"** means non-public information (including copies, summaries and extracts) disclosed by a Party or its Affiliates (the "Discloser") to the another Party or its Affiliates (the "Recipient") which is: (A) identified in writing as confidential at the time of disclosure, whether in printed, textual, graphic or electronic form; or (B) disclosed in non-tangible form, identified as confidential at the time of disclosure and summarized in writing labelled as "confidential" and delivered to Recipient within 15 days after disclosure. Confidential Information does not include information that: (1) is or becomes generally publicly available at or after the time of disclosure through no fault of Recipient; (2) was known to Recipient, free of any confidentiality obligations, before its disclosure by Discloser; (3) becomes known to Recipient, free of any confidentiality obligations, from a source other than Discloser; or (4) is independently developed by Recipient without use of Confidential Information.
- 12.7 **"Customer Data"** means any data or information not supplied by Adobe that Customer, its Users, and End Users import into the On-demand Services or transmit via Customer's EchoSign account.
- 12.8 **"Customer Site"** means any current or future website or application: (A) that is owned and operated by Customer, or is hosted or operated by a third party or Adobe on Customer's behalf; (B) that contains Customer's brand or logo; and (C) that contains a privacy policy or data collection practices that Customer maintains and controls, or that complies with applicable privacy or data protection laws that mandate the privacy disclosures and data collection practices for such website or application.
- 12.9 **"Customer"** means the entity identified in the Sales Order as "Customer".
- 12.10 **"Distributed Code"** means code provided by Adobe for use of the On-demand Services.
- 12.11 **"Documentation"** means the technical user manual describing the features and functionalities of the service or software, if applicable, and the description of the service or software contained in this Agreement. Documentation does not include any forums or content contributed by any third party.
- 12.12 **"End User"** means any individual or company that receives, reviews, accepts, signs, approves, transmits, or delegates action to a third party regarding Electronic Documents via Customer's EchoSign account enabling use of the On-demand Services.
- 12.13 **"Effective Date"** means the effective date stated in the Sales Order.
- 12.14 **"Electronic Document"** means any document uploaded into the EchoSign Service and transmitted to a third party for review, acceptance, approval or signing.
- 12.15 **"Electronic Signature"** means the signature capability of the On-demand Services, defined to include an electronic sound, symbol, or process attached to or logically associated with an Electronic Document and executed or adopted by a person with the intent to sign the Electronic Document.
- 12.16 **"Indemnified Technology"** means On-demand Services paid for by Customer, but excludes any sample code, SDK, open source, trial or evaluation software, pre-release software, not-for-resale software and software provided free of charge.
- 12.17 **"License Term"** means the duration of the license granted for the On-demand Services, as specified in the Sales Order, or any shorter term arising from a termination of this Agreement.
- 12.18 **"Loss"** means any damage, loss, cost, expense or liability incurred by a person or entity.
- 12.19 **"On-demand Services"** means the enterprise solutions hosted by or on behalf of Adobe (and Distributed Code, where applicable), as set out in the "Adobe On-demand Services" section of the Sales Order (including the On-demand Services).
- 12.20 **"Party"** means Adobe or Customer, as applicable.
- 12.21 **"Products and Services"** means On-demand Services and Professional Services procured by Customer, as set out in the Sales Order.
- 12.22 **"Professional Services"** means any consulting, training, implementation or technical services provided by Adobe to Customer, as set out in the "Professional Services" section of the Sales Order.
- 12.23 **"Report"** means any graphical or numerical display of Customer Data that contains Adobe's proprietary design, look and feel, which is generated by the On-demand Service, including Audit Logs.
- 12.24 **"Sales Order"** means the sales order form, statement of work, purchase authorization letter or other written order for the Products and Services, which is executed between Adobe and Customer, and which references these EchoSign Terms.
- 12.25 **"Transaction"** means each time that an Electronic Document or a collection of related Electronic Documents is sent to an End User through the EchoSign Service. Each 100 pages or 10 MB is a Transaction.
- 12.26 **"User"** means Customer's employees, third-party contractors described in the "Outsourcing and Third-party Access" section of this Agreement, or those whom Customer has permitted under this Agreement to allow access to the On-demand Services (including any individual using the On-demand Services under Customer's EchoSign account).