

Addendum
to the
DocuSign Master Services Agreement for Resell Customers
Version July 17, 2018

Certain terms and conditions are required by applicable North Carolina law and regulation, and are set forth below. Such terms supersede all conflicting terms in the DocuSign Master Services Agreement for Resell Customers (Licensor's Agreement) from the date of execution set forth below.

The State acknowledges that the Licensor's Agreement may include terms and conditions, hyperlinks, or similar references to additional license agreements, and that such additional license agreements address the proprietary and intellectual property rights of third parties for software or software services owned by parties other than the Licensor ("Third Parties"). The State further acknowledges that the proprietary and intellectual property rights of the Third Party are subject to a software license agreement. The Licensor shall provide the State with copies of all documentation and warranties for the Third Party software and related services offered.

- 1) The License Agreement is modified by this Addendum, and therefore, conflicts arising among the terms of the License Agreement and the terms of this Addendum shall be resolved by the following order of precedence:
 - a) This Addendum,
 - b) The License Agreement,
 - c) Terms and other documents incorporated by reference in the License Agreement.
- 2) Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of third Parties presented in Licensor's Agreement, the State shall not be obligated under the Licensor's Agreement, or other agreements, to indemnify or hold harmless the Vendor, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, legal fees, termination costs, costs of audits, or other similar costs.
- 3) General Modifications to the DocuSign Master Services Agreement for Resell Customers:
 - a) Third Party Software, Open Source Software, and flow down terms: Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of third Parties presented in Licensor's Agreement, the State has no financial obligation or liability to Vendor or such third parties under such additional license agreements. The State will not knowingly violate the licensing limitations stated in such additional license agreements.
 - b) Clickwrap / universal license by use or installation: Notwithstanding terms of the Licensor's Agreement conditioning the license grant upon acceptance of terms when downloading, installing, using, etc. the software (e.g. by using the software, you accept and agree to the terms and conditions of this agreement), such conditions shall not bind the State or its agencies, and such conditions shall be superseded by this Addendum to the License Agreement.
 - c) Notwithstanding any payment terms in the Licensor's Agreement, the State's payment obligations in its contracts with resellers shall supersede the payment terms in the Licensor's Agreement, and the State shall have no payment obligation to Licensor pursuant to the payment terms in the Licensor's Agreement.

- d) Notwithstanding terms of the Licensor's Agreement, the following Sections have no force or effect: Section 6, Section 8, Section 9, Section 10.4, Section 11, and Section 12.12.
- e) IP Indemnity – notwithstanding the Licensor's rights to defend its IP and its obligations to indemnify the State, the State shall have the right to participate in any litigation, alternative dispute resolution and settlement of such claims to the extent the State seeks to assert any immunities or defenses applicable to the State as a sovereign government. Section 9.2 By Customers is removed.
- f) Neither party to this Agreement is entitled to obtain judgment from the other party for attorney fees it has incurred in any litigation between the parties or in defense of any claim asserted by a third party. Either party may seek such equitable relief, costs and fees as permitted by applicable law. Applicable law, for the purpose of this Agreement and all services shall exclude laws of foreign jurisdictions, including but not limited to the European Union General Data Protection Regulation and its implementation in European Countries.
- g) Notwithstanding any term in the License Agreement prohibiting assignment or transfer of the agreement, transfers authorized by N.C.G.S. §143A-6 are not prohibited or limited.
- h) Notwithstanding any merger clauses in the License Agreement, this Addendum shall be read together with the License Agreement as the agreement of the Parties.
- i) Notwithstanding any term in the License Agreement providing for data transfers, no data or records may be transferred outside of the United States unless specifically authorized by the State.

4) Certain terms and conditions are required by applicable North Carolina law and regulation, and are set forth below. Such terms supersede all conflicting terms in the Licensor's Agreement from the date of execution set forth below. State Terms and Conditions:

a) By executing this Addendum, the undersigned Vendor certifies that: the Licensor's Agreement and this Addendum are entered without collusion (G.S. 143B-1354; False certification is a Class I felony), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. Furthermore, by executing this Addendum, the undersigned certifies to the best of Vendor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

b) **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.**

In accordance with N.C.G.S. §143B-1361(b), Vendor must identify the manner in which it intends to utilize resources or workers located outside the U.S. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:

The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.

The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors.

Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States.

Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Will any work under this contract be performed outside the United States? YES NO

c) E-VERIFY Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

d) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

For purposes of the exclusive remedies and limitations of liability set forth herein, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

The Vendor's liability for damages to the State arising under the contract shall be limited to fees paid, or due, according to the Purchase Order.

The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 et seq., the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:

To recover direct costs including replacement Products, if any, attributable to Vendor's delay, and

To cancel the order without incurring cancellation charges.

Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

e) TRANSPORTATION: Shipments of Deliverables shall be made by the Reseller.

f) **TRAVEL EXPENSES:** In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time.

g) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1206, or other provision of law.

h) **AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

i) **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

j) **Confidentiality:** In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in the NC Public Records Act: N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Materials must be identified as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential. The State may serve as custodian of Vendor's confidential information and not as an

arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

i) The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

ii) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.

k) **ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Any assignee shall affirm this Agreement accepting the terms and conditions and duties as previously agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

l) **TERMINATION:** Any notice or termination made under the Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

i) The parties may mutually terminate the Agreement by written agreement at any time.

ii) **Termination For Convenience Without Cause:** The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

m) **GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

Executed by authorized officials as of the day and date indicated below.

Carahsoft Technology Corp.

By: *Zak Kennedy*
Name: Zak Kennedy
Title: Team Lead
Date: 11/13/19

North Carolina Department of Information Technology

By: _____
Name: _____
Title: _____
Date: _____

DocuSign Master Services Agreement for Resell Customers

This DocuSign Master Services Agreement for Resell Customers (“MSA”) is made between DocuSign, Inc., a Delaware corporation, (“DocuSign”) and the Customer identified in the Order Form (“Customer”), together referred to as the “Parties” and each individually as a “Party.” Specific services terms, product details and any applicable license and/or subscription terms may be set forth in applicable [Service Schedule\(s\)](#), each of which become binding on the Parties and subject to this MSA upon the provisioning of any DocuSign Services (defined below) to Customer. Customer’s use of the DocuSign Services is governed by and incorporates the following documents in effect as of the date of last update of such documents, collectively referred to as the “Agreement” that consists of:

1. any attachments and/or appendix(ices) to a Service Schedule;
2. Service Schedule(s); and
3. this MSA.

The applicable attachment(s), appendix(ices), and Service Schedule(s) are determined by the DocuSign Service(s) purchased on the Order Form (Service Schedules corresponding to respective DocuSign Services may be found here: (located at <https://www.docusign.com/company/terms-and-conditions/reseller-msa-service-schedules>)). In the event of a conflict between any attachment, appendix, Service Schedule or this MSA, the order of precedence is as set out above in descending order of control. This offer by DocuSign is expressly conditioned on assent to the terms and conditions of this Agreement, and any different or additional terms or conditions specified by Customer at any time in purchase orders or other documentation are hereby rejected.

Resell Customer MSA Version: July 17th, 2018.

Each Party agrees as follows:

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1. DEFINITIONS

“Account” means a unique account established by Customer to enable its Authorized Users to access and use a DocuSign Service.

“Account Administrator” is an Authorized User who is assigned and expressly authorized by Customer as its agent to manage Customer’s Account, including, without limitation, to configure administration settings, assign access and use authorizations, request different or additional services, provide usage and performance reports, manage templates, execute approved campaigns and events, assist in third-party product integrations, and accept updated terms and conditions including privacy disclosures. Customer may appoint an employee or a third-party business partner or contractor to act as its Account Administrator and may change its designation at any time through its Account.

“Affiliate” of a Party means any entity that the Party directly or indirectly owns or controls more than fifty percent (50%) of the voting interests of the subject entity. Any legal entity will be considered a Party’s Affiliate as long as that interest is maintained.

“Authorized User” means one individual natural person, whether an employee, business partner, contractor, or agent of Customer or its Affiliates who is registered by Customer to use the DocuSign Services. An Authorized User must be identified by a unique email address and user name, and two or more persons may not use the DocuSign Services as the same Authorized User. If the Authorized User is not an employee of Customer, use of the DocuSign Services will be allowed only if the user is under confidentiality obligations with Customer at least as restrictive as those in this Agreement and is accessing or using the DocuSign Services solely to support Customer’s and/or Customer Affiliates’ internal business purposes.

“Confidential Information” means (a) for DocuSign, the DocuSign Services and Documentation; (b) for Customer, Customer Data; (c) any other information of a Party that is disclosed in writing or orally and is designated as confidential or proprietary at the time of disclosure to the Party receiving Confidential Information (“Recipient”) (and, in the case of oral disclosures, summarized in writing and delivered to the Recipient within thirty (30) days of the initial disclosure), or that due to the nature of the information the Recipient would clearly understand it to be confidential information of the disclosing Party; and (d) the specific terms and conditions of this Agreement between the Parties. Confidential Information does not include any information that: (i) was or becomes generally known to the public through no fault or breach of this Agreement by the

Recipient; (ii) was rightfully in the Recipient's possession at the time of disclosure without restriction on use or disclosure; (iii) was independently developed by the Recipient without use of or reference to the disclosing Party's Confidential Information; or (iv) was rightfully obtained by the Recipient from a third party not under a duty of confidentiality and without restriction on use or disclosure.

"Customer" means the entity that has contracted with the Reseller for the purchase of applicable DocuSign Services.

"Customer Data" means any content, eDocuments, materials, data and information that Customer or its Authorized Users enter into the DocuSign Services, including, but not limited to, any Customer personal data and information contained in eDocuments. Customer Data does not include any component of the DocuSign Services or material provided by or on behalf of DocuSign.

"Documentation" means DocuSign's then-current technical and functional documentation for the DocuSign Services as made generally available by DocuSign.

"DocuSign Cloud Service(s)" means any subscription-based, hosted solution that is supported and operated on demand and provided by DocuSign under this Agreement.

"DocuSign Service(s)" means the products and services identified in a corresponding Order Form that are provided by DocuSign.

"eDocument" refers to a contract, notice, disclosure, or other record or document deposited into the DocuSign Service by Customer for processing.

"Order Form" means the online or paper ordering document or other document between Customer and Reseller specifying the relevant DocuSign Services ordered and purchased by Customer from the Reseller; in the event of a conflict related to the DocuSign Services purchased, services terms, product details or descriptions or any applicable license and/or subscription terms (e.g., Order Start Dates and Order End Dates) between an Order Form and the corresponding order form or other ordering document between Reseller and DocuSign, the conflicting terms in the order form or other ordering document between Reseller and DocuSign will apply to Customer.

"Order End Date" means the end date for provision of a respective DocuSign Service specified in a corresponding Order Form.

"Order Start Date" means the start date for provision of a respective DocuSign Service specified in a corresponding Order Form.

"Professional Services" means any integration, consulting, architecture, training, transition, configuration, administration, and similar ancillary DocuSign Services that are set forth in an Order Form.

“Purchase Agreement” means the Order Form and any other agreement between Customer and Reseller relating to Customer’s purchase of DocuSign Services from that Reseller.

“Reseller” means an entity that has contracted with DocuSign or one of DocuSign’s authorized distributors to resell DocuSign Services and with which Customer has contracted directly to purchase applicable DocuSign Services.

“Service Schedule” means the service-specific terms and conditions applicable to a particular DocuSign Service or Services.

“Term” shall have the meaning set forth in Section 6.1 (Term).

2. USAGE AND ACCESS RIGHTS.

2.1 Right to Use. DocuSign will provide the DocuSign Services to Customer as set forth in the Order Form. Subject to the terms and conditions of this Agreement, DocuSign grants to Customer a limited non-exclusive, non-transferrable right and license during the Term, solely for its and its Affiliates’ internal business purposes, and in accordance with the Documentation, to: (a) use the DocuSign Services; (b) implement, configure, and through its Account Administrator, permit its Authorized Users to access and use the DocuSign Services; and (c) access and use the Documentation. Customer will ensure that its Affiliates and all Authorized Users using the DocuSign Services under its Account comply with all of Customer’s obligations under this Agreement, and Customer is responsible for their acts and omissions relating to the Agreement as though they were those of Customer.

2.2 Restrictions. Customer shall not, and shall not permit others to, do the following with respect to the DocuSign Services:

- (a) use the DocuSign Services, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds Customer’s authorized use or usage metrics set forth in this Agreement, including the applicable Order Form;
- (b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any portion of the DocuSign Services or Documentation available for access by third parties except as otherwise expressly provided in this Agreement;
- (c) access or use the DocuSign Services or Documentation for the purpose of developing or operating products or services intended to be offered to third parties in competition with the DocuSign Services or allow access by a direct competitor of DocuSign;
- (d) reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the DocuSign Services or technologies, unless and then only to the extent expressly permitted by applicable law, without consent;

- (e) use the DocuSign Services or Documentation in a way that (i) violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity; or (ii) effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene;
- (f) interfere with or disrupt the integrity, operation, or performance of the DocuSign Services or interfere with the use or enjoyment of it by others;
- (g) use the DocuSign Services to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumvent or disclose the user authentication or security of the DocuSign Cloud Service or any host, network, or account related thereto or use any aspect of the DocuSign Services components other than those specifically identified in an Order Form, even if technically possible; or
- (h) use, or allow the use of, the DocuSign Services by anyone located in, under the control of, or a national or resident of a U.S. embargoed country or territory or by a prohibited end user under Export Control Laws (as defined in Section 12.5).

2.3 Suspension of Access. DocuSign may suspend any use of the DocuSign Services, or remove or disable any Account or content that DocuSign reasonably and in good faith believes violates this Agreement. DocuSign will use commercially reasonable efforts to notify Customer prior to any such suspension or disablement, unless DocuSign reasonably believes that: (a) it is prohibited from doing so under applicable law or under legal process (such as court or government administrative agency processes, orders, mandates, and the like); or (b) it is necessary to delay notice in order to prevent imminent harm to the DocuSign Services or a third party. Under circumstances where notice is delayed, DocuSign will provide notice if and when the related restrictions in the previous sentence no longer apply.

2.4 Trial Usage. If Customer registers for a free trial, promotional offer, or other type of limited offer for use of the DocuSign Services ("Free Trial"), Customer may be presented with additional terms and conditions when registering for a Free Trial, and any such additional terms and conditions are hereby incorporated into this Agreement by reference as a Service Schedule and are legally binding upon the Parties. ANY DATA THAT CUSTOMER ENTERS INTO THE DOCUSIGN SERVICES, AND ANY CONFIGURATIONS MADE BY OR FOR CUSTOMER, DURING THE FREE TRIAL WILL BE PERMANENTLY LOST AT THE END OF THE TRIAL PERIOD UNLESS CUSTOMER: (a) PURCHASES A SUBSCRIPTION TO THE SAME DOCUSIGN SERVICES AS THOSE COVERED BY THE TRIAL; (b) PURCHASES AN UPGRADED VERSION OF THE DOCUSIGN SERVICES; OR (c) EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. CUSTOMER CANNOT TRANSFER DATA ENTERED OR CONFIGURATIONS MADE DURING THE FREE TRIAL TO A DOCUSIGN SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, AND IN SUCH SITUATION ANY CUSTOMER DATA OR CUSTOMIZATION WILL BE PERMANENTLY LOST. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION SECTION 7 (WARRANTIES AND DISCLAIMERS), FREE TRIALS ARE PROVIDED

“AS-IS” AND “AS AVAILABLE” AND, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY; AND DOCUSIGN’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO CUSTOMER’S USE OF THE FREE TRIAL IS \$100.

3. OWNERSHIP.

3.1 Customer Data. Customer Data processed using the DocuSign Services is and will remain, as between Customer and DocuSign, owned by Customer. Customer hereby grants DocuSign the right to process, transmit, store or disclose the Customer Data in order to provide the DocuSign Services to Customer or, subject to the terms of Section 10.2 (Required Disclosure) below, to comply with any request of a governmental or regulatory body (including subpoenas or court orders) or as otherwise required by law.

3.2 DocuSign Services. DocuSign, its Affiliates, or its licensors own all right, title, and interest in and to any and all copyrights, trademark rights, patent rights, database rights, and other intellectual property or other rights in and to the DocuSign Services and Documentation, any improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder. All deliverables provided by or for DocuSign in the performance of Professional Services, excluding Customer Data and Customer Confidential Information, are owned by DocuSign and constitute part of the DocuSign Service(s) under this Agreement.

3.3 Third-Party Services or Materials. Customer may choose to purchase or otherwise obtain from DocuSign products or services that are provided or supported by third parties (“Third-Party Services”) for use with DocuSign Services. DocuSign assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Third-Party Services. Customer may choose to access or use materials that are provided by third parties (“Third-Party Materials”) for use with DocuSign Services. Notwithstanding anything to the contrary under this Agreement and irrespective of any modifications, improvements, enhancements, additions, or derivations provided by DocuSign, Third-Party Materials are provided “AS IS” and for Customer’s convenience only, and further, neither DocuSign nor its licensors for Third-Party Materials represent and warrant in any manner that Third-Party Materials are accurate, current, or comply with laws, rules and/or regulations of, or are otherwise valid and enforceable in or appropriate for, the jurisdiction in which the Third-Party Materials are used or for Customer’s purposes.

3.4 Feedback. DocuSign encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to DocuSign Services and related resources (“Feedback”). To the extent Customer provides Feedback, Customer grants to DocuSign a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 12.2 (Assignability)), non-exclusive, irrevocable,

perpetual, worldwide right and license to make, use, sell, offer for sale, import, and otherwise exploit Feedback (including by incorporation of such feedback into the DocuSign Services) without restriction; provided that such Feedback does not identify Customer, its Affiliates, or Authorized Users, or include any Customer Data without Customer's prior written consent.

4. SECURITY AND CUSTOMER DATA.

4.1 Data Storage/Transfer. If Customer or Customer Affiliate is established in the United Kingdom, a Member State of the European Economic Area, or Switzerland, the Data Protection Attachment for DocuSign Signature found at: <https://www.docusign.com/company/terms-and-conditions/schedule-docusign-signature/attachment-data-protection> ("DPA") applies to the processing of any Personal Data (as defined in Section 1 of the DPA).

4.2 Security. DocuSign will use commercially reasonable industry standard security technologies in providing the DocuSign Services. DocuSign has implemented and will maintain appropriate technical and organizational measures, including information security policies and safeguards, to preserve the security, integrity, and confidentiality of Customer Data and personal data and to protect against unauthorized or unlawful disclosure or corruption of or access to personal data. Additional security obligations, if any, shall be set forth or referenced in the applicable Service Schedule, attachment and/or appendix.

4.3 Customer Data. Customer is responsible for Customer Data (including Customer personal data) as entered into, supplied or used by Customer and its Authorized Users in the DocuSign Services. Further, Customer is solely responsible for determining the suitability of the DocuSign Services for Customer's business and complying with any applicable data privacy and protection regulations, laws or conventions applicable to Customer Data and Customer's use of the DocuSign Services. Customer grants to DocuSign the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for DocuSign: (a) to provide the DocuSign Services; (b) to verify Customer's compliance with the restrictions set forth in Section 2.2 (Restrictions) if DocuSign has a reasonable belief of Customer's non-compliance; and (c) as otherwise set forth in this Agreement.

4.4 Use of Aggregate Data. Customer agrees that DocuSign may collect, use, and disclose quantitative data derived from the use of the DocuSign Services for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used, and disclosed will be in aggregate form only and will not identify Customer, its Authorized Users, Customer Data, or any third parties utilizing the DocuSign Services.

5. PURCHASE AGREEMENT.

Customer will comply with the terms of the Purchase Agreement. Customer acknowledges that compliance with the terms of the Purchase Agreement is a material condition under this Agreement, and if Reseller notifies DocuSign that Customer is in breach of such Purchase Agreement, DocuSign may consider the Customer to be in breach of this Agreement.

6. TERM AND TERMINATION.

6.1 Term. The term of an Order Form and any associated Service Schedule(s) is the period of time, including all renewals thereto, that begins on the Order Start Date and, unless terminated sooner as provided herein, will continue until the Order End Date, both dates as specified on the Order Form (the "Term"). The term of this MSA and this Agreement shall continue as long as an Order Form remains valid and in effect. Notwithstanding anything else contained in this Agreement, DocuSign may, in its sole discretion, immediately terminate any Order Forms, this Agreement and/or the provision of any DocuSign Services in the event Customer is in breach of any terms or conditions of the Purchase Agreement.

6.2 Termination for Breach; Termination for Insolvency. If either Party commits a breach or default in the performance of any of its obligations under this Agreement, then the other Party may terminate this Agreement in its entirety by giving the defaulting Party written notice of termination, unless the breach or default in performance is cured within thirty (30) days after the defaulting Party receives notice thereof. Either Party may terminate this Agreement in its entirety upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement, or an assignment for the benefit of creditors.

6.3 Post-Termination Obligations. If this Agreement expires or is terminated for any reason: (a) Customer will pay to DocuSign any amounts owed by Customer to DocuSign that have accrued before, and remain unpaid as of, the effective date of the expiration or termination; (b) any and all liabilities of either Party to the other Party that have accrued before the effective date of the expiration or termination will survive; (c) licenses and use rights granted to Customer with respect to DocuSign Services and intellectual property will immediately terminate; (d) DocuSign's obligation to provide any further services to Customer under this Agreement will immediately terminate, except any such services that are expressly to be provided following the expiration or termination of this Agreement; and (e) the Parties' rights and obligations under Sections 6.1, 6.3, 7.3, and 9 through 12 will survive.

7. WARRANTIES AND DISCLAIMERS.

7.1 DocuSign Service Warranties. DocuSign warrants that during the applicable Term, the DocuSign Services, when used as authorized under this Agreement, will perform substantially in conformance with the Documentation associated with the applicable DocuSign Services. Customer's sole and exclusive remedy for any breach of this warranty by DocuSign is for DocuSign to repair or replace the affected DocuSign Services to make them conforming, or, if DocuSign determines that the foregoing remedy is not commercially reasonable, then either Party may terminate this Agreement.

7.2 Mutual Warranties. Each Party represents and warrants that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of this Agreement; and (b) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement.

7.3 Disclaimer. Except for the express representations and warranties stated in this Section 7 (Warranties and Disclaimers) or a Service Schedule, DocuSign: (a) makes no additional representation or warranty of any kind -- whether express, implied in fact or by operation of law, or statutory -- as to any matter whatsoever; (b) disclaims all implied warranties, including but not limited to merchantability, fitness for a particular purpose, and title; and (c) does not warrant that the DocuSign Services are or will be error-free or meet Customer's requirements. Customer has no right to make or pass on any representation or warranty on behalf of DocuSign to any third party.

8. THIRD-PARTY CLAIMS.

Upon demand, Customer will: (1) defend DocuSign and its Affiliates and each of the foregoing's respective employees, directors, agents, and representatives (collectively, the "Indemnified Parties") from and against any actual or threatened third-party claim or legal or administrative agency action or proceeding (a "Claim") to the extent arising from or related to: (a) use of the DocuSign Services by Customer or its Authorized Users; (b) any breach by Customer of its obligations under Section 2.2 (e)-(f) (Restrictions) or Section 10 (Confidentiality); or (c) the nature and content of all Customer Data processed by the DocuSign Services; and (2) indemnify the Indemnified Parties against all settlement amounts agreed to in connection with any such Claim, all damages and costs awarded in connection with any such Claim and all costs, expenses and losses incurred by any Indemnified Party in connection with a Claim (including legal costs). Customer reserves the right, at its expense, to provide applicable Indemnified Parties with prompt written notice of its intention to assume the exclusive defense and control of any Claim (absent which DocuSign or other Indemnified Party, as determined by DocuSign, will control such defense and may defend such Claim at Customer's expense). Customer may not enter into any settlement of any Claim unless DocuSign gives its prior written approval of the settlement.

9. LIMITATIONS OF LIABILITY.

9.1 Exclusion of Damages. UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE CLAIM, SHALL DOCUSIGN (OR ITS AFFILIATES) BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS, SALES OR BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, WORK STOPPAGE OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, COVER, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH LOSSES..

9.2 Limitation of Liability. EXCEPT FOR DAMAGES RESULTING FROM DEATH OR BODILY INJURY ARISING FROM DOCUSIGN'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF DOCUSIGN (OR ITS AFFILIATES) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER TO RESELLER FOR THE DOCUSIGN SERVICE(S) GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS CUMULATIVE LIMIT. THE PARTIES FURTHER ACKNOWLEDGE THAT CUSTOMER MAY HAVE STATUTORY RIGHTS AGAINST DOCUSIGN FRANCE SAS AND CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY AMOUNTS RECOVERED BY CUSTOMER AGAINST DOCUSIGN FRANCE SAS PURSUANT TO SUCH RIGHTS SHALL BE AGGREGATED WITH ANY OTHER CLAIMS HEREUNDER FOR PURPOSES OF THE CAP ON DAMAGES SET FORTH ABOVE.

9.3 Independent Allocations of Risk. h provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Parties. This allocation is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of this Agreement, and each of these provisions will apply even if the warranties in this Agreement have failed of their essential purpose.

10. CONFIDENTIALITY.

10.1 Restricted Use and Nondisclosure. During and after the Term, Recipient will:
(a) use the Confidential Information of the other Party solely for the purpose for which it is provided; (b) not disclose such Confidential Information to a third party, except on a

need-to-know basis to its attorneys, auditors, consultants, and service providers who are under confidentiality obligations at least as restrictive as those contained herein; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature..

10.2 Required Disclosure. If Recipient is required by law to disclose Confidential Information of the other Party or the terms of this Agreement, Recipient will give prompt written notice to the other Party before making the disclosure, unless prohibited from doing so by the legal or administrative process and cooperate with the disclosing Party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.

10.3 Ownership. Recipient acknowledges that, as between the Parties, all Confidential Information it receives from the disclosing Party, including all copies thereof in Recipient's possession or control, in any media, is proprietary to and exclusively owned by the disclosing Party. Nothing in this Agreement grants Recipient any right, title or interest in or to any of the disclosing Party's Confidential Information. Recipient's incorporation of the disclosing Party's Confidential Information into any of its own materials will not render Confidential Information non-confidential.

10.4 Remedies. Recipient acknowledges that any actual or threatened breach of this Section 10 (Confidentiality) may cause irreparable, non-monetary injury to the disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the disclosing Party is entitled to (but not required to) seek injunctive relief in addition to all remedies available to the disclosing Party at law and/or in equity, to prevent or mitigate any breaches of this Agreement or damages that may otherwise result from those breaches. Absent written consent of the disclosing Party to the disclosure, the Recipient, in the case of a breach of this Section 10 (Confidentiality), has the burden of proving that the disclosing Party's Confidential Information is not, or is no longer, confidential or a trade secret and that the disclosure does not otherwise violate this Section 10 (Confidentiality).

11. GOVERNING LAW AND VENUE.

The Parties agree to the following country-specific provisions for governing law and venue for all claims and disputes arising out of or relating to this Agreement. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the following laws based on the ship-to address of the Customer reflected on the Order Form.

- (11.1) European Union. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in

accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). The provisions of the U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement.

- (11.2) Australia. This Agreement is governed by the laws of New South Wales, Australia, and both Customer and DocuSign agree to submit to the non-exclusive jurisdiction of the New South Wales courts. The provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement. Any legal action arising under this Agreement must be initiated within two years after the cause of action arises. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.
- (11.3) Singapore. This Agreement is governed by the laws of Singapore, and both Customer and DocuSign agree to submit to the non-exclusive jurisdiction of the courts of the Republic of Singapore. The provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement. Any legal action arising under this Agreement must be initiated within two years after the cause of action arises.
- (11.4) This Agreement is governed by the laws of the State of California, U.S.A., without reference to its choice of law rules to the contrary. The Parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Francisco County, California, for the purposes of adjudicating any dispute arising out of this Agreement. To the extent permitted by law, choice of law rules, the United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act as enacted shall not apply. Notwithstanding the foregoing, either Party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such Party's intellectual property rights. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.
- (11.5) To the extent allowed by law, the English version of this Agreement is binding and other translations are for convenience only.

12. GENERAL

12.1 Relationship. The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Except as set forth in this Agreement, nothing in this Agreement, expressed or implied is intended to give rise to any third-party beneficiary.

12.2 Assignability. Neither Party may assign its rights or obligations under this Agreement without the other Party's prior written consent. Notwithstanding the

foregoing, either Party may assign its rights and obligations under this Agreement to an Affiliate as part of a reorganization, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without the other Party's consent, provided that: (a) the purchaser is not insolvent or otherwise unable to pay its debts as they become due; (b) the purchaser is not a competitor of the other Party; and (c) any assignee is bound hereby. Other than the foregoing, any attempt by either Party to transfer its rights or obligations under this Agreement will be void.

12.3 Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective only if it is in writing and sent using: (a) DocuSign Services; (b) certified or registered mail; or (c) a nationally recognized overnight courier, to the appropriate Party at the address set forth on the Order Form, with a copy, in the case of DocuSign, to legal@docusign.com. Each Party hereto expressly consents to service of process by registered mail. Either Party may change its address for receipt of notice by notice to the other Party through a notice provided in accordance with this Section 12.3 (Notices). Notices are deemed given upon receipt if delivered using DocuSign Services, two (2) business days following the date of mailing, or one (1) business day following delivery to a courier.

12.4 Force Majeure. In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision (including, without limitation, for causes due to war, fire, earthquake, flood, hurricane, riots, acts of God, telecommunications outage not caused by the obligated Party, or other similar causes) ("Force Majeure Event"), the affected Party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided that the affected Party: (a) provides the other Party with prompt notice of the nature and expected duration of the Force Majeure Event; (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such Force Majeure Event; (c) provides periodic notice of relevant developments; and (d) provides prompt notice of the end of such Force Majeure Event. Obligations to pay are excused only to the extent that payments are entirely prevented by the Force Majeure Event.

12.5 Export Control. Customer acknowledges that the DocuSign Services and any related products, information, Documentation, software, technology, technical data, and any derivatives thereof, that DocuSign makes available to Customer (collectively "Excluded Data") is subject to export control laws and regulations of the United States (including, but not limited to, the U.S. Export Administration Act and the sanctions regulations administered by the U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC")) and other jurisdictions (collectively "Export Laws"). Customer represents and warrants that: (a) it is not located in, under the control of, or a national or resident of an embargoed country or territory or prohibited end user under Export Laws (including, without limitation, to any end user in a U.S. embargoed country or territory or an end user included on OFAC's listing of Specially Designated Nationals or the U.S.

Commerce Department's Entity List or Denied Persons List); and (b) it will not access, download, use, export or re-export, directly or indirectly, the Excluded Data to any location, entity, government or person prohibited by Export Laws without first complying with all Export Laws that may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction it operates or does business. Customer is solely responsible for complying with Export Laws for all Excluded Data and any of its content or Customer Data transmitted through the DocuSign Services.

12.6 Anti-Corruption. In connection with the services performed under this Agreement and Customer's use of DocuSign's products and services, the Parties agree to comply with all applicable anti-corruption and anti-bribery related laws, statutes, and regulations.

12.7 U.S. Government Rights. All DocuSign software (including DocuSign Services) is commercial computer software and all services are commercial items. "Commercial computer software" has the meaning set forth in Federal Acquisition Regulation ("FAR") 2.101 for civilian agency purchases and the Department of Defense ("DOD") FAR Supplement ("DFARS") 252.227-7014(a)(1) for defense agency purchases. If the software is licensed or the DocuSign Services are acquired by or on behalf of a civilian agency, DocuSign provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as required in FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data) and their successors. If the software is licensed or the DocuSign Services are acquired by or on behalf of any agency within the DOD, DocuSign provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in DFARS 227.7202-3 and its successors. Only if this is a DOD prime contract or DOD subcontract, the Government acquires additional rights in technical data as set forth in DFARS 252.227-7015. Except as otherwise set forth in an applicable Service Schedule, this Section 12.7 (U.S. Government Rights) is in lieu of, and supersedes, any other FAR, DFARS or other clause or provision that addresses U.S. Government rights in computer software or technical data.

12.8 Publicity. Neither Party shall refer to the identity of the other Party in promotional material, publications, or press releases or other forms of publicity relating to the DocuSign Service unless the prior written consent of the other Party has been obtained, provided, however, that DocuSign may use Customer's name and logo for the limited purpose of identifying Customer as a customer of the DocuSign Service.

12.9 Waiver. The waiver by either Party of any breach of any provision of this Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such Party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

12.10 Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

12.11 Amendment. DocuSign reserves the right to change or modify any of the terms and conditions contained in this Agreement (including, in any Schedule, appendix or attachment or by the addition of one or more Schedules, attachments or appendices) at any time and in its sole discretion upon providing notice at <https://www.docusign.com/company/terms-and-conditions/reseller>. Any changes or modifications will be effective thirty (30) days following posting of such notice; provided, no amendments, modifications or other changes will apply retroactively. Customer waives any right it may have to receive additional notice of such changes or modifications. Customer's continued use of any DocuSign Service following the posting of a revised Agreement will constitute Customer's agreement to be bound by the revised Agreement. Customer agrees that if it does not agree to any terms any revised Agreement, Customer will cease using DocuSign Services.

12.12 Entire Agreement. This Agreement is the final, complete, and exclusive expression of the agreement between the Parties regarding the DocuSign Services provided under this Agreement. This Agreement supersedes and replaces, and the Parties disclaim any reliance on, all previous oral and written communications (including any confidentiality agreements pertaining to the DocuSign Services under this Agreement), representations, proposals, understandings, undertakings, and negotiations with respect to the subject matter hereof and apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.