Apposite Technology Partners PLC

END USER TERMS AND CONDITIONS v020712

These Terms and Conditions ("Terms") are incorporated by reference into the Order Form signed by Apposite Technology Partners PLC, with registered offices at Minerva House, Lower Bristol Road, Bath, BA2 9ER ("Apposite") and the customer identified in the Order Form ("Customer"). The Order Form and these Terms together shall be referred to as the "Agreement." An Order Form is not binding until it is executed by both Apposite and Customer. For the purposes of these Terms, any references to Apposite herein may refer to Apposite or its Technology Provider listed in the Order Form and the Table, as appropriate.

1. DEFINITIONS

"**Account**" means a unique account established by the Customer in order to gain access for its Authorised Users to the Hosted Services and, where applicable, other Products.

"**Authorised User**" means an individual employee or third party agent of Customer, as identified by a unique email address and user name, who is registered as a member of Customer's Account. No two persons may register access or use the Hosted Services as the same Authorised User.

"**Customer Data**" means Personal Data, Transaction Data and all other data and information concerning Customer or Customer's personnel or business clients: (a) provided by or on behalf of Customer pursuant to its use of the Hosted Services; or (b) obtained based on the use or Processing of data or information provided by or on behalf of Customer pursuant to its use of the Hosted Services.

"**Depositing Party**" refers to an Authorised User that deposits a document into the System for Processing under the Hosted Services.

"**API**" means the application programming interface that supports interoperation of applications with the Hosted Services.

"**Products**" means the products and services identified on an Order Form, including, but not limited to, the Hosted Services.

"**DPA**" the United Kingdom's Data Protection Act 1998 including any variation or addition to such act implemented from time to time.

"**eContract**" refers to a contract, notice, disclosure, or other record or document deposited into the System by a Depositing Party for Processing under the Hosted Services.

"**Envelope**" means an electronic record containing one or more eContracts consisting of a single page or a group of pages of data uploaded to the System.

"**Hosted Services**" means Technology Provider's on-demand electronic signature service, as updated from time to time, which provides on-line display, certified delivery, acknowledgement, electronic signature, and storage services for eContracts via the Internet as set forth in the Specifications and the Apposite application extension services as set forth in the Specifications

"**Order Form**" means a standard Apposite order form or any other document separately and specifically approved by Apposite in its discretion that describes the Products to be purchased by Customer, and that is signed by both Apposite and the Customer.

"**Order Start Date**" means the date set out in the Order Form from when Apposite will provide to Customer the Products described in the Order Form.

"**Personal Data**" has the meaning set out in section 1(1) of the DPA.

"**Process**" and similar terms mean to perform any operation or set of operations upon Customer Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, accessing, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

"**Technology Provider**" means the party identified as such in the Order Form.

"**Technology Provider Terms of Use**" means the terms of use identified in the Table.

"**Specifications**" means the specifications of the Hosted Services as identified in the Table.

"**Subscription Service**" means the services described in clause 4 of this Agreement.

"**System**" refers to the software systems and programs, communication and network facilities, and hardware and equipment used by Apposite to provide the Hosted Services.

"**Table**" means the document described as such appearing at the end of these Terms and which forms part of the Agreement.

"**Term**" means the period of effectiveness of this Agreement, as specified in Section 10 below.

"**Transaction Data**" means data associated with an eContract, including transaction history, eContract image hash value, information concerning method and time of eContract purge, and sender and recipient names, email addresses and signature IDs.

2.   HOSTED SERVICES

2.1   Apposite will provide the Hosted Services in accordance with the Specifications.

2.2   From the Order Start Date defined in the Order Form, Customer may obtain an Account and register Authorised Users, and subject to these Terms, such Authorised Users may log onto and use the Hosted Services in accordance with the Specifications. Customer's right to use the Hosted Services is limited to its Authorised Users, and Customer agrees not to resell or otherwise provide or assist with the provision of the Hosted Services to any other third party. Customer's and its Authorised Users' use of the Hosted Services is subject to Customer's acknowledgement and agreement that:

 a) Nothing in this Agreement will be construed to make Apposite a party to any eContract, and Apposite makes no representation or warranty regarding the transactions sought to be effected by any eContract;

 b) Apposite maintains no control or access to the contents of any eContract, and the content, quality, and format of any eContract is completely within the exclusive control of the Depositing Party and is the responsibility of Customer;

 c) The Hosted Services may provide options, if Customer elects to purchase such options, designed to verify the identity of the intended recipient of an eContract deposited into the System ("Authentication Measures"), and Apposite: (i) will apply only those Authentication Measures (if any) selected by the Depositing Party; (ii) makes no representations or warranties regarding the appropriateness of such Authentication Measures; and (iii) assumes no liability or responsibility for a party's inability or failure to satisfy any particular Authentication Measure or for any circumvention of such Authentication Measures effected by any third party;

 d) Certain types of agreements and documents are excepted from electronic signature laws, such that they cannot be legally formed by electronic signatures; additionally, various agencies or regulators may have promulgated specific regulations that apply to electronic signatures and electronic records, and Apposite assumes no responsibility to determine whether any particular eContract is an exception to applicable electronic signature laws or whether it is subject to any particular agency or regulator promulgations and whether it can be legally formed by electronic signatures;

 e) Customer is solely responsible for making available to third parties (including parties to its eContracts) all contracts, documents, and other records required by applicable law, including, without limitation, electronic signature laws and other laws that may require records relating to a transaction to be retained or made accessible for a certain period of time; and

 f) Certain laws or regulations may impose special requirements with respect to electronic transactions involving one or more "consumers." These may include, among other things, requirements that the consumer consent to the method of contracting and/or that the consumer be provided with a copy, or access to a copy, of a paper or other non-electronic, written record of the transaction. Apposite assumes no responsibility to determine whether any particular transaction involves a consumer, nor do they have any responsibility: (i) to furnish or obtain any such consents or to determine if any such consents have been withdrawn; (ii) to provide any information or disclosures in connection with any attempt to obtain any such consents; (iii) to provide legal review of, or to update or correct any information or disclosures currently or previously given; (iv) to provide any such copies or access except as expressly provided in the Specifications for all transactions, consumer or otherwise; or (v) otherwise to comply with any such special requirements. Customer expressly undertakes to determine whether any consumer is involved in any eContract presented by Customer or its Authorised Users for Processing, and, if so, to comply with all requirements imposed by law on such eContracts or their formation;

g) Customer's rights to access and use the Technology Provider's services as made available under these Terms are subject to the applicable Technology Provider's Terms of Use and the relevant service offerings set out in the applicable then current service descriptions and Customer agrees to be bound by the Technology Provider's Terms of Use by accessing, downloading, installing, activating or otherwise using the said service.

h) Apposite make no representations or warranties that the Products, when used by Customer to enter into any contract with consumers, are compliant with Directive 97/7/EC (or any relevant local implementation by an EU member state) on the protection of consumers in respect of distance contracts.

i) Apposite shall be and shall remain responsible for the provision of direct customer support to Customer in connection with the Hosted Services.

3. SUBSCRIPTION PLANS AND PER USE PURCHASES

The price, features, and options of the Products available for an Account depend on the level of service, features, and promotions selected by Customer. Hosted Services are sold on a subscription basis and may be limited by usage ("Envelope Allowance") or the number of Authorised Users ("Seats"), or both. Some optional services, such as ID check, may be purchased on a periodic or per-use basis.

4. USAGE, SEATS AND SUPPORT

4.1   The Subscription Service based on **Envelope Allowance** allows Customer to send the number of Envelopes in the Envelope Allowance specified in the Order Form during the Term. All Envelopes sent in excess of the Envelope Allowance will incur a per-Envelope charge that will be invoiced and shall be paid by Customer within 30 days of the invoice date. The total number of Envelopes sent is calculated by the sum of all Envelopes that have been sent for signature or certified delivery. Envelopes may be sent to any number of recipients who may sign in any number of places within the contents of the sent Envelope. Customer's Account will be deemed to have consumed an Envelope at the time the Envelope is sent by Customer, regardless of whether Envelopes were received by recipients, or whether recipients have performed any actions upon any eContract in the Envelope.

4.2   The Subscription Service based on **Seats** allows Customer to send a reasonable number of Envelopes from the number of Seats specified in the Order Form during the Term. If Apposite suspects that the number of Envelopes sent from a particular Seat or a group of Seats is abusive and/or unduly burdensome (by way of example, processing automated batch operations), Apposite will promptly notify Customer, discuss the use-case scenario with Customer and any continued monitoring, additional discussions and/or information required to make a final determination on the course of action based on such information. The number of Seats is determined by the total number of active Authorised Users listed in the membership of an Account at any one time. No two individuals may log onto or use the Hosted Services as the same Authorised User, but Customer may unregister or deactivate Authorised Users and replace them with other Authorised Users without penalty, so long as the number of active Authorised Users registered at any one time is equal to or less than the number of Seats purchased. The addition by Customer of more Authorised Users than the number of Seats purchased in an Order Form will result in an additional charge for one Seat per additional Authorised User for the remainder of the Term, to be invoiced immediately. The Subscription Service based on Seats explicitly excludes use of the API for sending Envelopes.

4.3   **Per use charges** are specific to the number of units of the Product(s) used during the period, and are measured at the time of use.

4.4   Subject to Customer paying the applicable fee for support, Apposite shall provide support to Customer in respect of the Products for the Term.

5. ADDITIONAL CUSTOMER RESPONSIBILITIES

5.1   Customer agrees that it will not use or permit the use of the Hosted Services to send unsolicited mass mailings outside its organization, it being understood that the term "unsolicited mass mailings" includes all statutory and other common definitions, including all 'commercial communications' as defined in the E-commerce Regulations 2003 and 'communications' and 'electronic mail' as defined in the Privacy and Electronic Communications (EC Directive) Regulations 2003 in the United Kingdom or any unsolicited commercial electronic marketing messages prohibited or regulated by the U.S. CAN SPAM Act or any analogous regulation worldwide.

5.2   Customer agrees that it is solely responsible for the nature and content of all materials, works, data, statements, and other visual, graphical, video, written or audible communications of any nature submitted by any Authorised User or otherwise Processed through Customer's Account.

5.3   Customer further agrees not to use or permit the use of the Hosted Services: (a) to communicate any message or material that is defamatory, harassing, libelous, threatening, or obscene; (b) in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability (other than contractual liability of the parties under eContracts Processed through the Hosted Services); (c) in any manner that is likely to damage, disable, overburden, or impair the System or the Hosted Services or interfere in any way

with the use or enjoyment of the Hosted Services by others; or (d) in any way that constitutes or encourages conduct that could constitute a criminal offence. Although Apposite does not actively monitor the content processed through the Hosted Services, Apposite may at any time and without prior notice suspend any use of the Hosted Services and/or remove or disable any content as to which Apposite is made aware of a reason for concern as to such use or content. Apposite agrees to exert reasonable commercial efforts to provide Customer with notice of any such suspension or disablement before its implementation, or promptly thereafter.

5.4   Customer acknowledges and agrees that where use of the Hosted Services involves use of payment channel functionality such payment channel functionality is not provided by Apposite but by third party providers and where the Customer elects to use such payment channel functionality that use shall be subject to the terms and conditions and privacy policies of such third party providers thereof and the Customer should make its own enquiries to inform itself in that regard and Apposite shall not be responsible for the privacy or security of the payment channel functionality in any way.

6.   CUSTOMER DATA

6.1   The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2   Apposite shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Apposite to perform services related to Customer Data maintenance and back-up).

6.3   Apposite shall, in providing the Products, comply with its Privacy Policy relating to the privacy and security of the Customer Data (as identified in the Table) (such document may be amended from time to time by Apposite and/or its Technology Provider in its sole discretion).

6.4   If Apposite processes any Personal Data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and Apposite shall be a data processor (as defined in the DPA) and in any such case:

   a) the Customer acknowledges and agrees that the Personal Data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to provide the Products. The Customer consents for Apposite to receive, share and transfer Personal Data arising from use of the Products and/or Hosted Services with telecommunications or other providers used in conjunction with the Products and/or Hosted Services;

   b) the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to Apposite so that they may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf;

   c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required under the DPA;

   d) the Personal Data shall be processed only in accordance with this Agreement and any lawful instructions reasonably given by the Customer from time to time; and

   e) each party shall take appropriate technical and organizational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage.

7.   INTELLECTUAL PROPERTY AND TRADEMARK LICENCE

   a) Apposite and/or its licensors, is the owner of various intellectual property and technology rights associated with the Hosted Services, its document management, digital signature, and notary system, including patent, copyright, trade secret, design right, database right trademark and service mark rights ("Intellectual Property Rights"). Except for the rights expressly granted in this Agreement, Apposite does not licence or transfer to Customer or any Authorised User or other third party any of the Intellectual Property Rights. All right, title and interest in and to the Intellectual Property Rights will remain solely with Apposite and/or its licensor as appropriate. Customer agrees that, save to the extent permitted by law, it will not, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from or about any of the the Products or technology supplied under the Agreement. Apposite agrees that data and information provided by Customer under this Agreement shall remain, as between Customer and Apposite, owned by Customer.

   b) Apposite hereby grants to users and licensees of its products and services a limited, revocable, nonexclusive and non-transferable right to use Apposite's regular trade names, trademarks, titles and logos ("Licensed Marks") solely for purposes of identifying the Apposite products and services. Details of this trademark licence are identified in: the Table.

c) Customer recognises and acknowledges Apposite and/or its licensors' exclusive ownership and title to the Licensed Marks and the goodwill related thereto and agrees that any goodwill that accrues because of the use of the Products by Customer shall become the property of Apposite (and/or its licensors' as appropriate). Customer further agrees not to contest or take any action in opposition to any Intellectual Property Right or the Licensed Marks or to use, employ or attempt to register any intellectual property right that is the same as or similar to any Intellectual Property Rights or the Licensed Marks.

8. STORAGE

8.1 **General eContract Storage and Deletion Policy**. Unless otherwise directed by Customer, Apposite will store all completed eContracts sent by Customer until the Term expires. All copies of eContracts may be deleted and purged by Apposite without prior notice after the Term expires or is terminated unless Customer elects to purchase post-Term transition services (in accordance with clause 10.4) or storage services for their completed eContracts. Where Customer elects to purchase such post-Term transition or storage services all copies of eContracts may be deleted and purged by Apposite without prior notice after the expiry or termination of those services. Copies of stored eContracts may be retrieved by Customer at any time during the Term. Where Customer has purchased post-Term transition or storage services, copies of stored eContracts may be retrieved by Customer until such post-Term transition or storage services expire or terminate. After expiration or termination of the Term and any post-Term storage services, Customer may request Apposite's assistance in retrieving completed eContracts still remaining on the System pursuant to the transition services terms described in Section 10.4. Customer may, at its option and wholly at Customer's risk, direct that any eContract be deleted or purged at a time stated by Customer and prior to the end of the Term and/or the expiry or termination of any post-Term storage or transition services.

8.2 **Uncompleted eContracts**. Apposite may at its sole discretion delete an uncompleted eContract from the System immediately and without notice upon earlier of: a) expiration of the Envelope (where Customer has established an expiration for such Envelope, not to exceed 365 days); or b) expiration of the Term.

8.3 Notwithstanding anything in the Agreement to the contrary, Transaction Data associated with deleted eContracts will be retained by Apposite permanently, and it will be maintained per the confidentiality obligations of these Terms.

9. FEES AND PAYMENT TERMS

9.1 Customer will pay Apposite the amounts agreed between them in respect of the Hosted Services as set forth in each Order Form.

9.2 **Taxes**. Other than net income taxes imposed on Apposite, Customer will bear all taxes, duties, and other governmental charges including for the avoidance of doubt any and all value added tax (collectively, "taxes") resulting from this Agreement or transactions conducted in relation to this Agreement or the Products. Customer will pay any additional taxes as are necessary to ensure that the net amounts received and retained by Apposite after all such taxes are paid are equal to the amounts that Apposite would have been entitled to in accordance with this Agreement as if the taxes did not exist.

10. TERM AND TERMINATION

10.1 **Term**. Unless sooner terminated as stated below the effectiveness of these Terms will commence upon the Order Start Date and will continue for the term specified on the Order Form (the "Term"). If no term is specified in the Order Form, the Term shall be 12 months from the Order Start Date. If no Order Start Date is specified in the Order Form, the date the Order Form was executed by both parties shall be the Order Start Date.

10.2 **Termination for Material Breach.** If either party commits a material breach or default not capable of remedy in the performance of any of its obligations under this Agreement, then the other party may terminate this Agreement by giving the defaulting party written notice of termination, however, where such material breach or default is capable of remedy the other party may terminate this Agreement by giving the defaulting party written notice of termination only if the material breach or default in performance is not cured within 30 days after the defaulting party receives notice thereof. Without limiting the foregoing, any failure by Customer to timely pay to Apposite any amounts owing under this Agreement will constitute a material breach of these Terms. If Customer fails to timely pay any amounts due for services to be performed by Apposite, Apposite may, without limitation to any of its other rights or remedies, suspend performance of such services until it receives all amounts due.

10.3 **Post-Termination Obligations.** If this Agreement expire or is terminated for any reason: (a) any and all liabilities accrued prior to the effective date of the termination will survive; (b) Customer will destroy all copies of the software, documentation, and materials supplied under this Agreement within five business days of such termination, and immediately thereafter, if requested by Apposite, provide Apposite with a written certification signed by an authorised Customer representative certifying that all copies of software, documentation, and materials have been destroyed; (c) licenses to use

Apposite software and the provision of Apposite services will immediately end; and (d) the parties' rights and obligations under Sections 1, 6, 9, 10.3, 10.4, 11.3, 12, 13, 14, and 15 will survive.

10.4   **Transition Services**. Upon expiration or termination of this Agreement for any reason, at Customer's request and at Apposite's then-current standard professional services rates plus expenses, Apposite shall provide reasonable transition services for a period not to exceed 90 days to assist Customer in moving the Customer's data to another provider or exporting eContracts to external media. As part of such transition services, Apposite shall at a minimum transfer, and cause any of its independent contractors to transfer, all data and electronic files associated with the Hosted Services. At Apposite's then-current standard professional services rates, Apposite shall at Customer's request further cooperate with Customer in the development of a transition plan and shall use reasonable efforts to assist Customer and/or another service provider in the transition. Apposite may at its discretion require advance payment or other adequate security for payment as Apposite may consider appropriate in connection with or as a condition to the provision of services described in this section.

11.   WARRANTIES AND DISCLAIMER

11.1   **Warranties**. Apposite represents and warrants that: (a) the Hosted Services, as delivered to Customer and used in accordance with the Specifications, will not infringe on any United States patent, copyright or trade secret enforceable in the United States; (b) the Hosted Services shall be performed in accordance with the Specifications in their then-current form at the time of the provision of such Hosted Services; (c) any Products that are software shall be free of all known (based upon best practice screening techniques deployed by Apposite) harmful or illicit code, trapdoors, viruses, or other harmful features; (d) the proper use in accordance with the Specifications of the Hosted Services as unmodified by Customer in the formation of an eContract will be sufficient under the Electronic Communications Act 2000 (c. 7) (the "ECA") to meet the definition of "Electronic Signature" to the extent provided in the ECA; (e) the proper use of the Hosted Services as unmodified by Customer in the formation of an eContract not involving any consumer will be sufficient under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq. (the "ESIGN Act") to support the validity of such formation, to the extent provided in the ESIGN Act; and (f) Apposite has implemented information security policies and safeguards to preserve the security, integrity, and confidentiality of Personal Data and to protect against unauthorised access and anticipated threats or hazards thereto including having achieved ISO/IEC 27001 (international standards for information security management).

11.2   **Mutual Warranties**. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitute a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorisation or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

11.3   **Disclaimer**. Except for the express representations and warranties stated in sections 11.1 and 11.2 of these Terms, Apposite makes no additional representation, condition or warranty of any kind whether express, implied (either in fact or by operation of law), or statutory, as to any matter whatsoever. Apposite expressly disclaims all implied conditions and warranties of satisfactory quality and fitness for a particular purpose. Apposite does not warrant that the Products are or will be error-free, will meet customer's requirements, or be timely or secure. Customer will not have the right to make or pass on any representation, condition or warranty on behalf of Apposite to any third party.

12.   INDEMNIFICATION

12.1   **Indemnification of Customer**.   Apposite will defend Customer, and its employees, directors, agents, and representatives ("Indemnified Customer") from: (1) any breaches of confidentiality, and/or (2) any actual or threatened third party claim for infringement of any third party intellectual property rights (each a "Customer Claim"), provided that: (a) the Indemnified Customer gives Apposite prompt written notice of the Customer Claim; (b) Apposite has full and complete control over the defence and settlement of the Customer Claim; (c) the Indemnified Customer provides assistance in connection with the defence and settlement of the Customer Claim as Apposite may reasonably request; and (d) the Indemnified Customer complies with any settlement or court order made in connection with the Customer Claim. Apposite will indemnify the Indemnified Customer against: (i) all damages, costs, and reasonable legal fees finally awarded against any of them in any Customer Claim under this Section 12.1; (ii) all out-of-pocket costs (including reasonable legal fees) reasonably incurred by any of them in connection with the defence of the Customer Claim (other than legal fees and costs incurred without Apposite's consent after Apposite has accepted defence of such claim); and (iii) if any Customer Claim arising under this Section 12.1 is settled by Apposite or with its approval, Apposite will pay any amounts to any third party agreed to by Apposite in settlement of any such Customer Claims.

12.2   **Indemnification of Apposite**.   Customer will defend Apposite, and their employees, directors, agents, and representatives ("Indemnified") from: (1) any breaches of confidentiality, and/or (2) any actual or threatened third party claim for infringement of any third party intellectual property rights, and/or (3) the nature and content of all materials, works, data,

statements, and other visual, graphical, video, written or audible communications of any nature submitted by any Authorised User or otherwise Processed through Customer's Account (each an "Apposite Claim"), provided that: (a) Apposite gives Customer prompt written notice of the Apposite Claim; (b) Customer has full and complete control over the defence and settlement of the Apposite Claim; (c) Apposite provides assistance in connection with the defence and settlement of the Apposite Claim as Customer may reasonably request; and (d) Apposite complies with any settlement or court order made in connection with the Apposite Claim. Customer will indemnify Indemnified against: (i) all damages, costs, and reasonable legal fees finally awarded against any of them in any Apposite Claim under this Section 12.2; (ii) all out-of-pocket costs (including reasonable legal fees) reasonably incurred by any of them in connection with the defence of the Apposite Claim (other than legal fees and costs incurred without Customer's consent after Customer has accepted defence of such Apposite Claim); and (iii) if any Apposite Claim arising under this Section 12.2 is settled by Customer or with its approval, Customer will pay any amounts to any third party agreed to by Customer in settlement of any such Apposite Claims.

12.3   **Transfer of Undertakings**.   The parties do not intend that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) ("TUPE") shall apply in connection with this Agreement. In the event that TUPE does apply, both parties agree to indemnify and hold the other harmless against any and all liabilities, damages, costs, claims and demands suffered by the other as a result of the transfer or alleged transfer of contracts of employment pursuant to TUPE in connection herewith, or any subsequent dismissal or termination by the other of the contracts of employment of any transferring employees.

13.   LIMITATIONS OF LIABILITY

13.1   **Disclaimer of Consequential Damages.** Except with respect to indemnification obligations of Section 12 and the provisions of Section 13.4, notwithstanding anything to the contrary contained in this Agreement Apposite shall not, under any circumstances, be liable for consequential, incidental, special, or exemplary damages arising out of or related to the transactions contemplated under this Agreement including but not limited to lost profits or loss of business, even if apprised of the likelihood of such damages occurring.

13.2   **Cap on Liability.** Except with respect to indemnification obligations of section 12 and the provisions of Section 13.4, under no circumstances will Apposite's total liability of any kind arising out of or related to this Agreement regardless of the forum and regardless of whether any action or claim is based on contract, tort, or otherwise, exceed 125% of the total amount paid by Customer to Apposite in connection with the provision of the Hosted Services during the 12 months preceding the date of the action or claim.

13.3   **Independent Allocations of Risk.** Each provision of these Terms that provides for a limitation of liability, disclaimer of warranties or conditions, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Customer and Apposite. This allocation is reflected in the pricing offered by Apposite to Customer and 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 these Terms, and each of these provisions will apply even if the warranties in these Terms have failed of their essential purpose.

13.4   **Death or Personal Injury.** Nothing in this Agreement shall limit or exclude Apposite's liability for death or personal injury caused by negligence, or for any fraud on the part of Apposite, or for any breach of its obligations implied by Section 12, Sale of Goods Act 1979 or Section 2, Supply of Goods and Services Act 1982.

14.   CONFIDENTIALITY

14.1   "**Confidential Information**" means any trade secrets or other information of Apposite or Customer which is expressed to be or is clearly of confidential nature, whether of a technical, business, or other nature (including, without limitation, in the case of Apposite, software and related information, and in the case of Customer, Customer Data and eContracts), that is disclosed to the other party (the "Recipient"). Confidential Information does not include any information that: (a) was known to Recipient prior to receiving it from the disclosing party; (b) is independently developed by Recipient without use of or reference to any Confidential Information of the other party; (c) is acquired by Recipient from another source that did not receive it in confidence from the other party to this Agreement; or (d) is or becomes part of the public domain through no fault or action of Recipient.

14.2   **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; and (c) protect such Confidential Information from unauthorised 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.

14.3   **Required Disclosure.** If Recipient is required by law to disclose Confidential Information of the other party or the terms of this Agreement, Recipient must give prompt written notice of such requirement before such disclosure and assist the disclosing party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.

14.4   **Return of Materials.** Upon the expiration or termination of this Agreement, or upon earlier request, Recipient will deliver to the disclosing party or destroy all of the disclosing party's Confidential Information that Recipient may have in its possession or control. Notwithstanding the foregoing, Recipient will not be required to return Transaction Data or other materials that it must retain in order to receive the benefits of this Agreement or properly perform in accordance with these Terms.

14.5   **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 shall not render Confidential Information non-confidential.

14.6   **Remedies**. Recipient acknowledges that any actual or threatened violation of this confidentiality provision may cause irreparable, non-monetary injury to the disclosing party, the extent of which may be difficult to ascertain, and therefore agrees that the disclosing party shall be entitled to seek injunctive relief in addition to all remedies available to the disclosing party at law and/or in equity. Absent written consent of the disclosing party, the burden of proving that the disclosing party's Confidential Information is not, or is no longer, confidential or a trade secret shall be on the Recipient.

14.7   **Existing Obligations.** The obligations in this Section 14 are in addition to, and supplement, each party's obligations of confidentiality under applicable law and/or under any nondisclosure or other agreement between the parties.

15.   GENERAL

15.1   **Relationship**. Apposite will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of this Agreement. This Agreement will not be interpreted or construed as: (a) creating or evidencing any association, joint venture, partnership, or franchise between the parties; (b) imposing any partnership or franchise obligation or liability on either party; (c) prohibiting or restricting either party's performance of any services for any third party; or (d) establishing or as a foundation for any rights or remedies for any third party, whether as a third party beneficiary or otherwise. Customer must not represent to anyone that Customer is an agent of Apposite or is otherwise authorised to bind or commit Apposite in any way without Apposite's prior authorisation.

15.2   **Assignability**. Customer may not assign its rights, duties, or obligations under this Agreement without Apposite's prior written consent. If consent is given, this Agreement will bind Customer's successors and assigns. Any attempt by Customer to transfer its rights, duties, or obligations under this Agreement except as expressly provided in this Agreement is void. Apposite may assign this Agreement without the Customer's consent.

Apposite is an authorised distributor of the Technology Provider in respect of certain of the Products. If Apposite's distributorship with the Technology Provider terminates for any reason, Customer agrees that this Agreement insofar as it relates to the Technology Provider's Products shall (subject to the Technology Provider's consent) automatically assign to Technology Provider. Alternatively at the Technology Provider's discretion, Customer agrees to promptly enter into a novation agreement with Apposite and Technology Provider to novate this Agreement insofar as it applies to the Technology Provider's Products to the Technology Provider.

15.3   **Subcontractors**. Apposite may utilise a subcontractor to perform any of its duties under this Agreement, provided: (a) the subcontractor shall be bound by confidentiality provisions at least as stringent as those to which Apposite is subject under these Terms; (b) Apposite shall not be relieved of any responsibilities or obligations under these Terms that are performed by the subcontractor; and (c) Apposite shall remain Customer's sole point of contact and sole contracting party.

15.4   **Nonsolicitation**. During the Term of this Agreement and for a period of one year thereafter, Customer will not, directly or indirectly, employ or solicit the employment or services of an Apposite employee or independent contractor, who was in a key role at Apposite and with whom Customer has had material dealings in the 12 months preceding the date on which that person left that role, without the prior written consent of Apposite.

15.5   **Notices**. Any notice required or permitted to be given in accordance with these Terms will be effective if it is in writing and sent using the certified delivery function of the Hosted Services, by certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the address set forth on the Order Form. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section. Notices are deemed given upon receipt if delivered using the Hosted Services, two business days following the date of mailing, or one business day following delivery to a courier.

15.6   **Force Majeure.** Neither party will be liable for, or be considered to be in breach of or default under these Terms on account of, any delay or failure to perform as required by these Terms as a result of any cause or condition beyond such party's

reasonable control, so long as such party uses all commercially reasonable efforts to avoid or remove such causes of non-performance or delay.

15.7 **Dispute Resolution.** If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then, except as expressly provided in these Terms, the parties shall follow the dispute resolution procedure set out in this Section:

a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documentation. On service of the Dispute Notice Apposite and Customer shall attempt in good faith to resolve the Dispute;

b) if the parties are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the senior managers of each party who shall attempt in good faith to resolve it; and

c) if the senior managers are for any reason unable to resolve the Dispute within 14 days of it being referred to them the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator. No party may commence any court proceedings, other than to seek injunctive relief which either party shall be entitled to do at any time, in relation to any dispute arising out of this Agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay. 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.

15.8 **Governing Law and Jurisdiction**. This Agreement is governed by the laws of England and both the Customer and Apposite agree to submit to the exclusive jurisdiction of the English 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 by Customer arising under this Agreement must be initiated within two years after the cause of action arises.

15.9 **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.

15.10 **Severability**. If any part of the Agreement is found by any court or competent authority to be illegal, unenforceable, or invalid, that provision shall be deemed not to be a part of this Agreement and the remaining portions of this Agreement will remain in full force and effect. If any material limitation or restriction on the grant of any licence to Customer under this Agreement is found to be illegal, unenforceable, or invalid, the licence will immediately terminate.

15.11 **Counterparts**. This Agreement may be executed in any number of identical counterparts, notwithstanding that the parties have not signed the same counterpart, with the same effect as if the parties had signed the same document. All counterparts will be construed as and constitute the same agreement.

15.12 **Entire Agreement**. This Agreement is the final and complete expression of the agreement between these parties regarding the Products. This Agreement supersedes, and the terms of this Agreement governs, all previous oral and written communications regarding these matters. Each party acknowledges that it has entered into this Agreement in reliance only on the representations, warranties, promises and terms contained or expressly referred to in this Agreement and, save as expressly set out in this Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently. This Agreement may be changed only by a written agreement signed by an authorised agent of both parties.

15.13 **Third Party Rights**. - Unless expressly provided in this Agreement no express term of this Agreement nor any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it.

15.14 **Bribery Act Compliance**. Apposite shall:

a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

c) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Section 15.14(b), and will enforce them where appropriate;

e) promptly report to Customer any request or demand for any undue financial or other advantage of any kind received by Apposite in connection with the performance of this Agreement;

f) immediately notify Customer (in writing) if a foreign public official becomes an officer or employee of Apposite or acquires a direct or indirect interest in Apposite;

g) for the purpose of this Section, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Section a person associated with Apposite includes any subcontractor of Apposite.

TABLE

TECHNOLOGY PROVIDER	TECHNOLOGY PROVIDER TERMS OF USE	SPECIFICATIONS	PRIVACY POLICY	TRADEMARK LICENCE
Apposite	http://www.appositech.com	http://www.appositech.com	http://www.appositech.com	http://www.appositech.com
DocuSign (DocuSign, Inc, a Washington Corporation, with offices at 1301 2nd Avenue, Suite 2000, Seattle, WA 98101)	http://www.docusign.com/company/terms-of-use	http://docusign.com/support/specifications.php	www.docusign.com	http://www.docusign.com/trademark-license