Terms of Service

FuseSign by FuseWare Pty Ltd ACN 605 751 246

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1. Terms of Service

The terms and conditions contained in this Terms of Service (**Agreement**) constitute a legally binding contract between FuseWare Pty Ltd ACN 605 751 246 (**FuseWare**, **We, Our, Us and other similar terms**) and apply to the contract with you (**Subscriber You, Your** and other similar terms) and Your use of FuseSign (**FuseSign**). FuseWorks Pty Ltd ACN 159 891 355 acts as Reseller of FuseWare's software. FuseWare's contact information is as follows:

> **FuseWare Pty Ltd ACN 605 751 246**
> Scott Barber, Director
> Melissa Voss, Director
> Level 10, 300 Ann Street,
> Brisbane City QLD 4000
> Telephone: 1300 134 134 Email address: support@fuse.work

1.1 Acknowledgment

By clicking "**I Accept**", the Subscriber:

(a) acknowledges and agrees to having had sufficient opportunity to read and understand the terms and conditions contained in this Agreement and that You are legally able to bind the Subscriber to this Agreement.

(b) acknowledges that these terms and conditions were brought to their attention prior to accepting them; and

(c) warrants that:

    (i) the information provided regarding Your contact and corporate information is accurate in all respects; and

    (ii) FuseWare may contact you to confirm information in relation to this Agreement.

> **If You are not prepared to be bound by these terms and conditions,**
> **You must immediately leave this Website.**

1.1 Prevalence of inline contract

If FuseWare and the Subscriber have signed a document substantially in the form of this Agreement, then the terms and conditions contained in that agreement as signed by the Parties prevail over those terms and conditions contained in the contract agreed to by clicking the 'I accept' button.

2. Definitions & interpretation

2.1 Definitions

In this Agreement, unless the context or subject matter require otherwise:

Account means the user name and access credentials linked to an account authorised by the Subscriber that allows its End Users and Third Party Users to access and use the Platform.

Agreement means the terms and conditions contained in this Terms of Service including any schedules or annexures or documents incorporated by reference.

Authentication means the process adopted in FuseSign for the Subcriber to use that includes inputting the Third Party Users email address, mobile telephone number and logging the IP Address of the computer where the Platform was accessed to electronically sign the respective Document or Document Bundle at the time the Electronic Signature was applied.

Automated Message System means a computer program or an electronic or other automated means used to initiate an actionor respond to data messages in whole or in part, without review or intervention by an individual each time an action is initiated or a response is generated by the Platform.

Business Day means:

(a) for receiving a Notice, means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is received; and

(b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Queensland, Australia.

Change of Control means in relation to the Subscriber, the person who Controls the Subscriber, at the date when it enters into this Agreement subsequently ceasing to have Control during the Term.

Control takes its meaning from section 50AA of the Corporations Act 2001(Cth).

Commencement Date means the date that the Subscriber agreed to be bound by these Terms and Conditions.

Consent includes a consent that can reasonably be inferred from the conduct of the person concerned, but does not include consent given subject to conditions unless the conditions are complied with.

Confidential Information means all data and information of a confidential nature relating to the business and management of the Subscriber and its End Users, the contents of Documents uploaded to the Platform but does not include information that:

(a) is generally known in the industry of the Subscriber;

(b) is now or subsequently becomes generally available to the public through no wrongful act of FuseWare;

(c) is independently created by FuseWare without direct or indirect use of the Confidential Information; or

(d) the rightfully obtains from a third party who has the right to transfer or disclose it.

Credit means the amount of money charged by FuseWare in exchange for the Subscriber being able to use the Service.

Data means any information which is reduced to electronic form and stored in any of our computer systems.

Data Breach means any unauthorised access to, unauthorised disclosure of, or loss of, personal Information held by Us where the access, disclosure or loss is likely to result in serious harm to any of the individuals to whom the information relates.

Dependent Software means any software which an End User and Third Party End Users must have installed on their respective computer in order for the Platform to operate effectively as shown at 3.4.

Document mean any electronic copy of a document uploaded by a Subscriber to the Platform for the purpose of asking Third Party Users to affix an Electronic Signature.

Document Bundle means two (2) or more electronic copies of Documents uploaded by a Subscriber to the Platform for the purpose of asking Third Party Users to affix an Electronic Signature.

Documentation means any user manual, support, guides and explanatory notes or memoranda provided in either electronic or physical form by FuseWare that may or may not be supplied with the Platform as updated from time to time.

Electronic Communication means:

(a) a communication of information in the form of data, text or images by guided or unguided electromagnetic energy; or

(b) a communication of information in the form of sound by guided or unguided electromagnetic energy, if the sound is processed at its destination by an automated voice recognition system.

Electronic Transactions Act or ETA's means each of:

(a) *Electronic Transactions Act 1999 (Cth); and*

(b) *Electronic Transactions Act 2001 (Qld); and*

(c) *Electronic Transactions (Northern Territory) Act 2000 (NT); and*

(d) *Electronic Transactions Act 2000 (NSW); and*

(e) *Electronic Transactions Act 2000 (Vic); and*

(f) *Electronic Communications Act 2000 (SA);and*

(g)   *Electronic Transactions Act 2011 (WA).*

End User means a person authorised by the Subscriber to access and use the Platform.

Electronic Signature means a method of communicating acceptance of the terms of an electronic contract in accordance with an ETA that includes a Third Party User:

(a)   pasting a copy of a signature into a Document;

(b)   signing PDF documents with a finger or stylus on a smartphone, tablet or laptop; or

(c)   using a cloud-based signature platforms like FuseSign.

Electronic Signature Terms and Conditions means the terms and conditions that apply to the application of Electronic Signatures by Third Party Users invited by Subscribers to apply Electronic Signatures via the Platform in compliance with section 10 of the ***Electronic Transactions Act 1999* (Cth)** and its state based equivalents.

Excluded Transaction means a transaction listed in Schedule 1 of each state-based ETA as amended from time to time that include:

(a)   a requirement or permission for a person to file a document with a court or tribunal for a proceeding.

(b)   requirement or permission for a person to sign a document to be filed with a court or tribunal for a proceeding.

(c)   requirement or permission for a person to produce a document - (a) to a court or tribunal in a proceeding; or (b) to a party to a proceeding for the proceeding.

(d)   requirement or permission for a person to retain a document that has been - (a) filed with, or produced to, a court or tribunal in a proceeding; or (b) admitted in evidence in a proceeding before a court or tribunal; or (c) issued by a court or tribunal for a proceeding.

(e)   requirement or permission for a document to be served personally or by post.

(f)   requirement or permission for a document to be attested, authenticated, verified or witnessed by a person other than the author of the document.

(g)   an authorisation under a state based *Trust Accounts Act 1973*.

(h)   transactions on a regulated exchange

(i)   foreign exchange transactions

(j)   inter-bank payment systems, agreements or clearance and settlement systems relating to securities or other financial assets or instruments

(k)   the transfer of security rights in the sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary

(l)   bills of exchange

(m)   promissory notes

(n)   consignment notes

(o)   bills of lading

(p)   warehouse receipts

(q)   any transferable document or other instrument that entitles the bearer or beneficiary to claim the delivery of goods or payment of a sum of money; and

(r)   any document that needs to be **signed as a deed** unless authorised by Commonwealth, State or Territory law.

Fee means the amount of money that the Subscriber agrees to pay the reseller in dollars per Credit for the right to access and use the Platform per Document or Document Bundle Electronically signed as shown on Our Website and subject to market increases from time to time.

Force Majeure means an act of God, fire, lightning, explosions, flood or other natural disaster, subsidence, act of terrorism, insurrection, civil disorder or military operations, power or gas shortage, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences or authorities, strikes, lock-outs or other industrial disputes of any kind and any other cause, whether similar or not to the foregoing, outside of the affected Party's control.

FuseSign means the software application available at the Platform which FuseWare provides to the Subscriber to access and use pursuant to this Agreement.

Insolvency Event means circumstances in which a Party takes any corporate action or any steps are taken or legal proceedings are started for:

(a)   its winding-up, dissolution, or liquidation;

(b)   the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it; or

(c)   seeking or being granted protection from its creditors, under any applicable legislation.

Intellectual Property means all industrial and intellectual property rights including, without limitation, patents, copyrights, right to extract information from databases, design rights, trade secrets, rights of confidence, and all forms of protection of a similar nature or having similar effect to any of them which may subsist anywhere in the world (whether or not any of them are registered and including applications and the right to make applications for registration of any of them).

Originator means in relation to an electronic communication, means a person by whom, or on whose behalf, the electronic communication has been sent or generated before storage, if any, but does not include a person acting as an intermediary for the electronic communication.

Party means a party to this Agreement and **Parties** means all Parties to it.

Platform means the Website that provides Subscribers and their End Users with functionality to nominate and send Electronic Communication requests via FuseSign to Third Party Users to sign Documents electronically.

Reseller means FuseWorks Pty Ltd ACN 159 891 355 that is authorised to sell FuseWare's software.

Service means the FuseSign Platform that enables End Users appointed by the Subscriber to send Communications to Third Party Users requesting Documents or Document Bundles for Electronic Signature.

Subscriber means that Party that 'agreed' to these terms and conditions as shown when accessing the Platform at www.fusesign.com or https://app.fuse.work.

Subscription means the right to access and use the Platform provided by FuseWare in exchange for the payment of the Fee.

Third Party User means a person that has been invited to access the Platform to Electronically Sign Documents and Document Bundles by the Subscriber or one of its End Users.

Term means any time that a Subscriber has unused Credits available for use on the Platform.

Trial means a free trial of the Platform where FuseWare provides the Subscriber with a fixed number of free Credits allowing it to use the Platform to invite Third Party Users to Electronically Sign documents.

Update means any modifications, new or revised versions of the Platform that are required for it to operate more efficiently as determined by FuseWare at its sole discretion.

Validation means the two (2) factor authentication method involving email address, mobile telephone number and an IP Address that is logged by the Platform for the purposes of confirming the identity of Third Party Users nominated by End Users to Electronically sign Documents and Document bundles.

Website means the website located at the URL: https://app.fuse.work/fusesign where the Platform can be accessed and used by Subscribers, their End Users and invited Third Party Users.

2.2   Interpretation

In this Agreement:

(a)   a reference to:

(i)   one (1) gender includes the others;

(ii)   the singular includes the plural and the plural includes the singular;

(iii)   a person includes a body corporate;

(iv)   a document or instrument includes the document or instrumented as novated, altered, supplemented or replaced from time to time;

(v)   a Party includes the Party's executors, administrators, successors and permitted assigns;

(vi)   a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:

I.   that Statutory Provision as amended or re-enacted from time to time; and

II.   a statute, regulation or provision enacted in replacement of that Statutory Provision;

(i)   an amount of money is an amount in Australian dollars ($AUD);

(ii)   time is to Queensland time; and

(iii)   a schedule refers to a schedule contained in this Agreement;

(b)   including and similar expressions are not words of limitation;

(c)   where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;

(d)   headings are for convenience only and do not form part of this Agreement or affect its interpretation;

(e)   where a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and

(f)   a provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for its preparation or the inclusion of the provision in it.

3.   Right to access the Platform

3.1   Commencement

(a)   The terms and conditions contained in this Agreement commence when the Subscriber agrees to be bound by its terms and acquires Credit to use the Platform or as part of a Trial.

(b)   The Term continues as long as the Subscriber has unused Credits available for use provided that the terms and conditions have not been terminated according to clause 3.7.

3.2   Terms and conditions that apply to Credits

(a)   Credits are not transferrable and cannot be redeemed for cash;

(b)   The number of Credits purchased will depend on Subscription level chosen. Credits are applied to Your account on the monthly anniversary of your Subscription start date.

(c)   With the exception of special circumstances, Credits expire at the conclusion of the monthly cycle when they were added to the Account.

3.3   Rights granted

(a)   FuseWare grants the Subscriber and its End Users a:

(i)   non-transferrable;

(ii)   sub-licensable; and

(iii)   limited

right to access and use the Platform on the terms and conditions contained in this Agreement.

3.4   Minimum system requirements

In order for FuseSign to function the Subscriber, its End User(s) and the Third Party Users must have:

(a)   Computer and processor

(i)   Windows OS: 1.6 GHz or faster, 2-core

(ii)   macOS: Intel processor

(b)   Memory

(i)   Windows OS: 4 GB RAM; 2 GB RAM (32-bit)

(ii)   macOS: 4 GB RAM

(c)   Hard disk

(i)   Windows OS: 1 GB of available disk space

	(ii)	macOS: 1 GB of available disk space; HFS+ hard disk format (also known as Mac OS Extended) or APFS Updates may require additional storage over time.
(d)	Display	
	(i)	Windows OS: 1280 x 768 screen resolution (32-bit requires hardware acceleration for 4K and higher)
	(ii)	macOS: 1280 x 800 screen resolution
(e)	Operating system	
	(i)	Windows OS: Windows 10, Windows 8.1, Windows Server 2019, Windows Server 2016
	(ii)	macOS: One of the three most recent versions of macOS. When a new major version of macOS is released, the macOS and the previous two versions.
	(iii)	For the best experience, use the most current build of any operating system specified above. Product functionality and feature availability may vary on older systems (Search Microsoft Lifecycle Policy).
(f)	Browser (Desktop)	
	(i)	The current version of Microsoft Edge, Internet Explorer, Safari, Chrome, or Firefox.
(g)	Browser (Mobile)	
	(i)	The current version of mobile Safari or mobile Chrome.

3.5 Trial use

(a) FuseWare will provide the Subscriber with Trial access to the FuseSign Platform by providing a number of free Credits as provided on Our Website. Use of Credits is in accordance with clause 3.2.

(b) The terms and conditions contained in this Agreement apply to Subscriber's use of FuseSign during the Trial Period.

(c) FuseWare has the right to determine the Subscriber's eligibility for a Trial and to withdraw or modify a Trial at any time without prior notice.

(d) After the Credits have been used or on their expiry in accordance with clause 3.2 the Subscriber will be required to pay to acquire more Credits to continue using FuseSign.

3.6 Use of FuseSign by a Subscriber's End Users

(a) The Subscriber agrees:

    (i) to authorise its End Users to use FuseSign only for the purposes which a subscription was obtained;

    (ii) that it is authorised to initiate an Electronic Communications to Third Party Users to use the Platform because of a pre-existing contract with them from which Consent can be inferred in compliance with the *Spam Act 2003* (Cth)

    (iii) not to initiate Electronic Communications asking Third Party Users for Electronic Signatures for Prohibited Documents;

    (iv) to use the Documentation only for the purpose for which it is provided; and

    (v) otherwise comply in all respects with its obligations contained in this Agreement.

3.7 Payment

(a) The Subscriber agrees to pay the Fee for Credits in exchange for its End Users and Third Party Users use of FuseSign during the Term.

(b) The Subscriber agrees to the pay the Fee shown on Our Website at the time it agrees to purchase Credits and has agreed to be bound by the terms contained in this Agreement.

(c) The Subscriber must pay the Fee for the number of Credits selected at the price per Credit shown on our Website.

(d) The Subscriber have an active Subscription in order to maintain any current transactions with its End Users and Third Party Users.

3.8 Extension of the Term

The Subscriber can extend its right to access the Platform at any time by purchasing more Credits.

3.9 Cancelling the Account

(a) The Subscriber may cancel its Account at any time by providing FuseWare with Notice of its intention to cancel.

(b) Cancelled Accounts will not allow a Subscriber to purchase more credits, however it will be able to access the Platform and view the Documents which have already been Electronically Signed.

(c) At the conclusion of the Subscription Period cancelled Accounts will not allow new Document Bundles to be sent and any pending transactions with Third Party Users will not be able to be finalised.

(d) Credits purchased are not able to be redeemed, transferred or cashed out.

3.10 **Service levels**

    (a)   Subscriber's use of FuseSign is subject to the following service levels contained in the following contracts which apply to this Agreement:

        (i)   Amazon EC2 Service Level Agreement;

4. Use of Accounts

4.1 **User names and passwords**

The Subscriber, its End Users and Third Party Users must keep all usernames and passwords used to access the Platform strictly confidential.

4.2 **Security obligations**

    (a)   The Subscriber agrees that its End Users and Third Party Users will keep all End User Account information confidential.

    (b)   The Subscriber is responsible for:

        (i)   activities directly linked to its access of the Platform, whether authorised or not; and

        (ii)   ensuring the accuracy of Data entered into FuseSign regarding Third Party Users and their email addresses and mobile telephone numbers.

4.3 **Use of Account information**

Each End User authorised by a Subscriber is:

    (a)   responsible for ensuring that it is the sole person accessing the Platform using its access credentials; and

    (b)   expressly prohibited from sharing its Account information with any third party that is not authorised by the Subscriber.

    (c)   expressly prohibited from sharing methods to access the Platform including unique email links which are sent to them by the Platform.

5. Rights in relation to Intellectual Property

5.1 **Intellectual Property**

    (a)   The Subscriber does not obtain any express or implied Intellectual Property rights, in the Platform beyond the right to access and use it during the Term as described in this Agreement.

    (b)   The Subscriber retains ownership of the Data and the Documents uploaded by its End Users to the Platform and provides an irrevocable licence to FuseSign to use the Data and Documents for the purpose of providing its Service to Third Party Users.

5.2 **Support**

FuseWare will provide reasonable levels of support for the Platform via a self-service knowledge base and an email ticket system on its Website.

5.3 **Scheduled maintenance**

    (a)   If it is necessary to interrupt the Subscriber's use of the Platform, FuseWare will endeavour to provide with reasonable notice (where possible) of when it is anticipated that FuseSign will be unavailable.

    (b)   The Subscriber acknowledges that access to FuseSign may be changed, interrupted or discontinued for many reasons beyond FuseWare's control and that during this time FuseWare may make upgrades which may change the interface and manner in which FuseSign functions.

    (c)   The Subscriber agrees that FuseWare are not liable for any loss, foreseeable or not, arising from any interruption to the Subscriber and its End Users access to the Platform.

6. Confidential Information

6.1 **Use and disclosure of Confidential Information**

FuseWare must:

(a)   use any Confidential Information uploaded to the Platform only for the purposes of providing the Service to the Subscriber and its End Users; and

(b)   keep the Confidential Information confidential and not disclose it or allow it to be disclosed to a third party except:

(i)   with the prior written approval of the Subscriber;

(ii)   to employees, officers or legal advisors to FuseWare and employees or advisers of the Subscriber (and its Related Bodies Corporate) who have a need to know (and only to the extent that each has a need to know) and are aware that the Confidential Information must be kept confidential;

(iii)   to the professional advisors of FuseWare for the purpose of obtaining professional advice in connection with this Agreement; or

(iv)   as required by law or by any judicial, legislative, administrative or other governmental body, provided that if it is possible to do so, FuseWare must give reasonable prior notice to the Subscriber so as to allow the Subscriber to oppose disclosure.

6.2   Protection of Confidential Information

FuseWare must take, or cause to be taken, all reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information. In any case, the standard of precautions taken by FuseWare must not be less than that of a diligent person.

6.3   Ownership of Confidential Information

In relation to this Agreement FuseWare has no rights, title or interest in any Confidential Information uploaded to the Platform. All Confidential Information uploaded to the Platform by End Users will remain the exclusive property of the Subscriber, and FuseWare has no interest in it.

6.4   Compliance with policy

FuseWare will act in accordance with any Confidential Information policies or guidelines set by the Subscriber and supplied to FuseWare prior to entering into this Agreement. In the event of an inconsistency between a policy provided by the Subscriber and Our Privacy Policy, the terms contained in the Privacy Policy prevail to the extent of any inconsistency.

7.   Use of personal information

7.1   Privacy policy

The Subscriber, its End Users and Third Party Users acknowledge that Data stored in FuseSign is stored on servers within Australia and in accordance with FuseWare's Privacy Policy. The Privacy Policy as amended from time to time, is available on Our Website at https://www.fusesign.com/info/privacy-policy/.

7.2   Obligations in the event of Data loss

(a)   The Subscriber warrants that:

(i)   if it becomes aware that an unauthorised third party has been given access to FuseSign by any of its End Users; or

(ii)   is notified by any of its customers that their personal information has been disclosed to a third party without their consent; then

(iii)   it must report this Data loss to FuseWare; and

(iv)   that it will follow reasonable directions provided by FuseWare so that it can comply with its obligations under the *Privacy Act 1988* (Cth) in relation to it assessment and reporting obligations contained in sections 26WA to 26WT of the *Privacy Act 1988* (Cth).

8.   Express prohibitions on use

(a)   The Subscriber and its End Users agree they must not:

(i)   infringe FuseWare's Intellectual Property rights in FuseSign;

(ii)   represent that they are associated with or otherwise endorsed by FuseWare other than to state that they subscribe to use its Platform;

(iii)	pass themselves off as the owner of FuseSign which they are not authorised;	

(iv)   create Documents and Communications:

    I.   which are offensive, defamatory or pornographic;

    II.   include third party advertising of any kind;

(v)   use FuseSign in any way that could damage the reputation of FuseWare or the goodwill or other rights FuseWare enjoys;

(vi)   permit any third party to obtain access to FuseSign, or the Documents other than for the express purpose of using the Platform;

(vii)   reproduce, make error corrections to or otherwise modify or adapt the Intellectual Property in FuseSign or create any derivative works based on FuseSign and the Documentation;

(viii)   de-compile, disassemble, decrypt, or otherwise reverse engineer FuseSign or permit any third party to do so;

(ix)   transfer, sublicense, rent, lease, lend, license or otherwise transfer or assign the Intellectual Property in FuseSign; and

(x)   modify or remove any copyright or proprietary notices incorporated with FuseSign.

The Subscriber and its End Users agree that doing any of the above acts is a breach of an essential term of this Agreement which may result in termination in accordance with clause 11 at FuseWaress sole discretion.

9.   Disclaimer of warranties

9.1   FuseWare's warranty

(a)   FuseWare warrants that FuseSign will be free of defects during the Term.

(b)   To the maximum extent permitted by law, FuseWare disclaims all warranties in relation to FuseSign not expressly made by FuseWare and incorporated into this Agreement.

(c)   You expressly acknowledge and agree that, to the maximum extent permitted by law subject to the FuseWare's compliance with the obligations contained in the *Competition and Consumer Act 2010* (Cth)(**ACL**) its officers, employees and agents expressly disclaim all warranties of any kind, whether express or implied, except the warranties that FuseSign is provided with clear title, is of acceptable quality, is fit for the particular purpose for which it were supplied and that it complies with its description (**Non-Excludable Provisions**).

(d)   We make no warranty that:

(i)   FuseSign will meet the Subscriber's exact requirements;

(ii)   the performance of FuseSign will meet Subscriber expectations.

9.2   Subscriber warranties

(a)   The Subscriber and its End Users warrant that:

(i)   FuseSign has been obtained at Subscriber's own discretion and risk;

(ii)   it will not use FuseSign to:

    I.   initiate requests for Electronic Signatures unless Consent can be inferred because of a contractual relationship with the Third Party User;

    II.   initiate requests for Electronic Signatures for Excluded Transactions;

(iii)   it will use FuseSign strictly as required by any guidelines or recommendations provided by FuseWare from time to time;

(iv)   it has made its own investigations into the suitability of FuseSign and is not relying on any representation not expressly made by FuseWare;

(b)   no advice or information, whether oral or written, obtained from FuseWare in relation to FuseSign creates any warranty not expressly stated herein.

10. Limitation of liability

10.1 Exclusion of liability

FuseWare is not liable to the Subscriber, its End Users or any Third Party Users for any claim, loss, expense or damages, whether arising in contract, in tort (including negligence), in equity, by operation of law or otherwise arising out of or in connection with this Agreement.

10.2 Exclusion of consequential losses

(a)   Subject to any claims made because of a breach of a non-excludable provision available under the Australian Consumer Law (**ACL**), FuseWare its employees, officers and agents are not liable for any loss or damage, including, but not limited to, direct, indirect or consequential losses including any form of consequential loss such as any third party loss, loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss and an increased operating cost, personal injury or death, however suffered or sustained in connection with:

    (i)   any inaccurate or incorrect information provided about FuseSign;

    (ii)   the Subscriber's and its End Users use of FuseSign;

    (iii)   any failure or delay including, but not limited to, the use or inability to use FuseSign; and

    (iv)   any interference with or damage to Subscriber's or its End User's computers or those of Third Party Users which occurs in connection with use of FuseSign.

10.3 Limitation of liability

Any loss or damage which is or may be suffered by the Subscriber in connection with the use of FuseSign is expressly disclaimed by FuseWare. FuseWare limits its liability for breach of a warranty under this Agreement, or for a breach of a condition or warranty it cannot lawfully exclude to the extent permitted by law, and is fair and reasonable for FuseWare to do so, to:

(a)   resupplying the number of Credits to FuseSign associated with those that were affected;

(b)   the price of the right to access FuseSign granted to the Subscriber; or

(c)   paying the amount of the Fee to the paid for the total amount of Credits used for one (1) year, by the Subscriber; whichever is the lesser.

Nothing in this Agreement attempts to limit or exclude liability of FuseWare in compliance with section 64 of the ACL.

11. Indemnity

(a)   The Subscriber indemnifies, and must keep indemnified, FuseWare and its employees, officers and agents, against any actions, liability, claim, loss, damage, proceeding, expense (including legal costs) suffered or incurred by the FuseWare, arising from or in connection with, either directly or indirectly the Subscriber's breach of any of its obligations contained in this Agreement, including, but limited to, the making of a warranty that is inaccurate or incomplete.

(b)   The Subscriber and its End Users indemnify, defends and holds harmless FuseWare in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal fees on a full indemnity basis), in connection with:

    (i)   any breach of a provision of this Agreement;

    (ii)   the Subscriber and its individual End Users' use of FuseSign including any negligent acts or omissions; or

    (iii)   use of FuseSign, including any third-party claims made in connection with, or arising out of, Subscriber's use of FuseSign.

12. Termination

12.1 Termination by FuseWare

FuseWare may terminate this Agreement without notice if:

(a)   it no longer has the right to provide FuseSign to Subscribers for any reason whatsoever;

(b)   the Subscriber commits a breach an essential term of this Agreement which is not capable of being remedied, after first notifying Subscriber of such breach; or

(c)   it is notified, after having made reasonable inquiries, that Subscriber;

(i)   is reverse engineering or otherwise creating derivative works based on the Intellectual Property contained in FuseSign; and

(ii)   is attempting to circumvent any technological protection measure which limits the   Subscriber's End Users' ability to access multiple instances of FuseSign or to otherwise circumvent the correct method of acquiring and using and consuming Credits.

(iii)   is engaged in behaviour which may lead to damage to reputation of FuseSign, for example disclosing confidential information or Intellectual Property to a third party.

(d)   The Subscriber is using FuseSign for a purpose other than what is was designed for or is otherwise consuming resources well above what is considered normal or usual.

12.2 Termination for non-payment

The payment of the Fee is an essential term of this Agreement. To use the Platform the Subscriber must have valid

Credits available to be used with a Communication sent to a Third Party User requesting an Electronic Signature of a

Document of Document Bundle.

12.3 Actions upon termination or expiry of the Credits

(a)   On termination of this Agreement for whatever reason:

(i)   The Subscriber, its End Users and Third Party Users will not be able to send Communications requesting Electronic Signatures;

(ii)   The End Users and Third Party Users will be unable to access or electronically sign any Electronic Signature transactions currently in progress.

(iii)   The Subscriber will be able to access the Platform to see its historical use for the period of twelve (12) months after the last Credit has been used or expires.

12.4 Notices and other communications

(a)   For all correspondence including Notices in relation to this Agreement please contact FuseWare at the address shown at the commencement of this Agreement.

(b)   If required, FuseWare will contact the Subscriber via the contact details it has retained in its records. If FuseWare has multiple contact details for Subscriber, it will use the most recent contact information to provide any Notices required.

13. General provisions

13.1 Access to FuseSign outside the Jurisdiction

No representation or warranty is made that the Content in FuseSign complies with the laws of any country outside of

Australia.

13.2 Cooperation with law enforcement

FuseWare will cooperate with law enforcement agencies when required to do so by an authority of competent and

recognised jurisdiction in relation to Data and Documents held in FuseSign Platform.

13.3 Event of Force Majeure

A Party who is prevented from performing any obligation under this Agreement (except an obligation to pay an amount of

money) by the occurrence of an Event of Force Majeure is excused from the performance of any such obligation until they

are no longer affected by the Event of Force Majeure. This clause does not apply to any obligation to pay money.

(a)   **Approvals and consents** - Except where this Agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

(b)   **Assignment** – Either Party may assign its rights and obligations under this Agreement by notifying the other of the terms of such an assignment.

(c)   **Counterparts** – This Agreement may be executed by the Parties in any number of identical counterparts. Each counterpart is deemed to be validly executed if it is signed by a Party and sent by electronic mail to the other Party. It comes into effect when all identical counterparts have been validly executed. For the purpose of executing this Agreement or any document required by it, the Parties agree that any signature is valid and the

document is validly executed if it is produced by an electronic communication as provided by the *Electronic Transactions Act 2001 (Qld).*

(d)   **Entire agreement** – This document contains the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements and understandings except as otherwise provided herein.

(e)   **Further assurances** – Each Party must do anything (including execute any document) and must ensure that its personnel do anything (including execute any document), the other Party may reasonably require to give full effect to this Agreement.

(f)   **Governing law and jurisdiction** – This Agreement is governed by the laws of Queensland, Australia and each Party irrevocably submits to the non-exclusive jurisdiction of the Courts of Queensland, Australia.

(g)   **Severance** – If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in full force and effect.

(h)   **Survival** – Any clause which is expressed to survive, or which by its nature is intended to survive termination of this Agreement, survives termination.

(i)   **Variation** – An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

(j)   **Waiver** – A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is not effective unless it is in writing and signed by the Party giving it.