

## INKSOFT END USER LICENSE AGREEMENT

THE TERMS OF THIS END USER LICENSE AGREEMENT ("**EULA**") SHALL GOVERN YOUR USE OF THE SOFTWARE AND WEB-BASED SERVICES PROVIDED BY INKSOFT, INC. ("**INKSOFT**"), REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE, ON OTHER INKSOFT DOCUMENTS, OR ELSEWHERE ON INKSOFT'S WEBSITE. IN THIS EULA, "**YOU**" MEANS THE CUSTOMER NAMED ON THE INITIAL INVOICE TO WHICH THIS EULA IS ATTACHED AND EACH USER OF THE SOFTWARE.

**Before You download or use the Software, You must agree to and accept this EULA and the InkSoft Website [Terms of Use](#). Please read this EULA and the Terms of Use carefully. By proceeding to access or use the Software, You indicate that You (1) understand and agree to this EULA and InkSoft's Terms of Use; (2) understand and agree to InkSoft's billing and payment policies; (3) are authorized to make this purchase and bind the Customer named above to the terms of this EULA; and (4) affirmatively state that you have read, understand, and agree to be bound by the terms and conditions of this EULA and the InkSoft Terms of Use.**

### 1. DEFINITIONS

- a. **API** means a Feature consisting of an application program interface that allows interoperability between Your website and the Software.
- b. **Art** means the art, designs, clip-art, photography, graphics, other materials provided by InkSoft, or derivative works of any of the foregoing included in the Software.
- c. **Buyer** means the end customer to whom You sell or give customized or semi-customized goods or apparel for their personal use or their distribution to other individuals for personal use.
- d. **Documentation** means all documentation provided to You by InkSoft relating to the Software, as revised or supplemented from time to time by InkSoft, and which may include manuals, operation instructions, guides, release notes, and on-line help files regarding the use of the Software.
- e. **Enterprise Customer** means any company that (1) is publicly traded or affiliated with a publicly traded company; (2) has more than one hundred (100) employees; (3) has 5 or more physical locations; or (4) whose monthly volume consistently compares to that expected of an Enterprise Customer, in InkSoft's sole and absolute discretion Enterprise Customers are not eligible for the License and instead must enter into a customized and scaled Enterprise License with InkSoft.
- f. **Enterprise License** means a customized, scaled, enterprise-grade solution individually created for each Enterprise Customer.
- g. **Features** any additional options or features offered by InkSoft, that may or may not be bundled as part of a plan, and purchased by You that work with, modify, or enhance the Software and are listed, described, or otherwise identified in Your Initial Invoice (or an amendment thereof).
- h. **Fees** means all activation fees, monthly fees, and other fees described on the Initial Invoice to which this EULA is attached.
- i. **Fonts** means the fonts provided by InkSoft as part of the font library included in the Software and any derivative works thereof.
- j. **Initial Invoice** means the first invoice sent to You by InkSoft describing the Services that You purchased, the associated Fees, and that references and incorporates this EULA.
- k. **Intellectual Property** means all worldwide intellectual property rights, including, without limitation, copyrights, trademarks, service marks, patents, patent applications, trade secrets,

know-how, inventions, moral rights, and all other proprietary rights, whether registered or unregistered.

- l. **License** means the license granted in Section 3.a below
- m. **Payment Form** means a current, valid, accepted method of payment provided by You to InkSoft for payment of Fees.
- n. **Services** means the Software and any of InkSoft's web-based services that you have purchased and that are described on the Initial Invoice.
- o. **Software** means the InkSoft software, including the Online Design Studio, the Design and Clip Art library, the Art, the font library, the Fonts, and any Features, all of which are made available for Your use pursuant to this EULA by InkSoft.
- p. **Term** means the duration of the License, commencing upon Your acceptance of this EULA and the Terms of Use and terminating upon termination of this EULA according to the terms herein.
- q. **Webstore** means the Feature that allows You to customize webpages for online display of semi-custom designed apparel that You create with the Software for sale to Your Buyers.

## 2. GENERAL

The Software contains material that is protected by copyright and other applicable intellectual property laws in the U.S. and other territories and by international treaty provisions.

The rights granted under the terms of this EULA include any software upgrades that replace and/or supplement the original Software.

InkSoft reserves the right, from time to time, with or without notice to you, to change the terms of this EULA in its sole and absolute discretion. The most current version of this EULA (which can be found at <https://www.inksoft.com/about-us/policies-terms-of-use/>) supersedes all prior versions. Your use of the Software after changes are made to this EULA means that You agree to be bound by such changes. As such, You should review the EULA frequently.

You must be 18 years of age, or the age of majority in your state, province, country, or territory to use the Services. If you are older than 13 and younger than 18 (or the applicable age of majority for your geographic location), you may use the Services only with the permission and involvement of a parent or legal guardian, under such person's account, and otherwise subject to this EULA. If you are younger than 13, you are prohibited from using the Services.

## 3. PERMITTED USE AND RESTRICTIONS

- a. **License Grant.** Subject to the terms and conditions of this EULA, the Documentation, any other limitations set forth in the Initial Invoice, and to Your payment of all applicable Fees, InkSoft hereby grants to You (and, if You are a company, any of Your employees whose principal place of employment is the address stated on the Initial Invoice) a non-transferrable, non-exclusive, revocable, limited license to access and use the Software for Your internal business purposes to decorate and customize apparel and other goods by affixing, embroidering, or printing the Arts and Fonts on such apparel and goods for resale or distribution in fulfilling orders placed by Your Buyers.

InkSoft reserves the right to limit your usage or require you to upgrade your license if, at any time, your average monthly usage of the Software or Services exceeds InkSoft's expected usage at your current license level. This may include the requirement that you negotiate and enter into an Enterprise License with InkSoft.

- b. **Ownership.** The Software and Documentation, and all copies thereof, improvements, modifications, enhancements, derivative works thereof, and all Intellectual Property Rights

associated therewith, are and shall remain the sole and exclusive property of InkSoft and its licensors. You have no ownership rights in any Software or Documentation. You have a limited license to use the Services as long as this EULA is in effect. Your rights to use the Services and Documentation shall be limited to those expressly granted in this EULA. No other rights with respect to the Services or any related Intellectual Property Rights are implied. You are not authorized to use or to permit any third party to use the Services or Documentation except as expressly authorized herein.

- c. **Restrictions.** You acknowledge and agree that the Software, Features, Documentation, Services, and all associated Intellectual Property are proprietary and confidential to InkSoft and/or its licensor and are valuable assets thereof. Except as expressly permitted herein or in a writing signed by InkSoft, You may NOT (and may NOT allow or assist any third party to):
- i. download or use Art or Fonts, except for the express purpose of fulfilling a current order placed by Your Buyer;
  - ii. copy or re-use Art or Fonts that You previously downloaded;
  - iii. publish, disclose, display, rent, sell, lease, loan, license, modify, distribute or create derivative works based on the Software, Documentation, any part thereof, or any Intellectual Property related thereto;
  - iv. save, store, host, database, or distribute any Art, Fonts, image previews, product images, other materials provided by InkSoft, or derivative works thereof outside of the Software;
  - v. copy, decompile, reverse assemble, reverse engineer, disassemble, translate, adapt, decompress, un-minify, un-obfuscate, or otherwise reduce the Software to human readable form;
  - vi. attempt to create the source code from the object code of the Software;
  - vii. transmit or make the Software available over a network where it could be used by multiple computers or devices at the same time;
  - viii. make any third-party software contained in the Software a standalone product;
  - ix. take any action that infringes on the Intellectual Property or other proprietary rights of InkSoft or its licensors;
  - x. use the Software, Documentation, or Services in any way that violates any law, regulation, or the Intellectual Property or other rights of any third party;
  - xi. circumvent, remove, alter, deactivate, degrade, or thwart any of the content protections or access controls for InkSoft's Software or Services;
  - xii. use any robot, spider, scraper, or other automated means to access the InkSoft Software or Services;
  - xiii. permit any third party to use or access the Software or use the Software on behalf of or for the benefit of any third party;
  - xiv. remove any proprietary, product identification, copyright or other markings, identification, water marks, or notices contained in the Software;
  - xv. share the Software or Art, Fonts, image previews, product images, other materials provided by InkSoft, or derivative works thereof with any other person or entity;
  - xvi. use any Feature, including the API, for which you have not purchased a license;

xvii. sublicense, grant a security interest in, or assign the Software, Documentation, any part thereof, or any Intellectual Property related thereto.

InkSoft may monitor Your use and use technologies to verify Your compliance with the license granted herein and restrictions thereto.

- d. **Modification.** InkSoft continuously updates and modifies its Services, including the art and font libraries. InkSoft may also test certain Software, Services, Features, website features, and other aspects of the Services from time to time. InkSoft reserves the right to include or exclude You from these tests without notice.

InkSoft reserves the right in its sole and absolute discretion to modify the Services at any time for any reason or no reason. For the avoidance of doubt, this may include adding or removing available art or fonts from its libraries, adding or removing features from the Design Studio, modifying or deleting available website templates, or replacing or modifying the Software in its entirety. InkSoft shall endeavor to notify You of any material modifications to the Software or Services, at the time of such modification, but is under no obligation to do so. Your only recourse, in the event that you are dissatisfied with the modified Software or Services, shall be termination of the EULA under Section 4.c below.

- e. **SERVICES.** If You have selected additional Services to be provided by InkSoft, InkSoft shall provide those Services subject to the terms and conditions of this EULA and any separate services agreement entered into between You and InkSoft.

#### 4. TERMINATION

- a. **Termination for Cause.** InkSoft may terminate this EULA in its entirety effective immediately upon written notice to You if (1) You breach any provision of this EULA and fail to cure such breach within ten (10) days of receiving notice from InkSoft of such breach; (2) You fail to pay any portion of the Fees due to InkSoft under this EULA or any other agreement into which you enter with InkSoft within ten (10) days of receiving notice from InkSoft that such Fees are past due; (3) You breach any portion of Section 3 above; (4) You commit a material breach that is not capable of being cured; or (5) we believe that you are engaged in illegal or improper use of the Services.
- b. **Termination for Convenience.** You may terminate this EULA in its entirety for any reason upon thirty (30) days written notice to InkSoft for any reason. Such termination shall be effective on the last day of the month in which the thirtieth (30th) day of the notice period occurs. InkSoft may terminate this EULA and the License granted herein effective immediately for any reason or no reason, in its sole discretion.
- c. **Termination for Modification of Software or Services or Fee Changes.** In the event that InkSoft modifies the Software or Services under Section 3.d above and you are dissatisfied with the modification or InkSoft notifies you of any increase in the Fees, You may terminate this EULA effective immediately upon written notice to InkSoft.
- d. **Termination for Insolvency.** InkSoft may terminate this EULA in its entirety effective immediately upon written notice to You if You (1) terminate or suspend your business; (2) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors, or become subject to control of a trustee, receiver or similar authority; or (3) become subject to any bankruptcy or insolvency proceeding.
- e. **Effect of Termination.** Upon termination of the EULA for any reason, (1) all rights and licenses granted to You under this EULA shall immediately be terminated and cease to exist; (2) Your account and password shall be deactivated and any further attempt by You to access the Software or Services shall be deemed a material breach of this agreement and copyright infringement; (3) all information, files, and content associated with Your account shall be

removed; and (4) You must immediately discontinue all use of the Software, Documentation, Services, and related Intellectual Property and destroy all copies of Software and Documentation. InkSoft has no obligation or responsibility to retain any information or content related to Your account or use of the Services after termination of this EULA. InkSoft shall not be liable to You or any third party for any termination of Your account or Your access to the Services hereunder.

## 5. FEES AND PAYMENTS

- a. **Recurring Billing.** By accepting this EULA and providing a Payment Form, You authorize InkSoft to charge the then-current monthly fee and any other charges You may incur in connection with Your use of the Services to Your Payment Form. You acknowledge that the amount billed each month may vary for reasons that may include changes that You initiate to Your Services selection and changes to the Fees charged by InkSoft. You authorize us to charge Your Payment Form for such varying amounts. You acknowledge that Fees are billed and charged one month prior to the Services being provided and that Fees are fully earned upon payment and non-refundable.
- b. **Fees and Fee Changes.** The Initial Invoice shall set forth all Fees, including the activation fee, the monthly fee for Services, and any other applicable fees. InkSoft reserves the right to adjust the Fees for the Services or any components thereof in any manner and at any time as InkSoft may determine in its sole and absolute discretion. Except as otherwise expressly provided for in this EULA, any Fee changes will become effective after You are notified of the change by email. Your sole remedy in the event that you object to any increase in Fees is to terminate this EULA under Section 4.c above.
- c. **Billing Cycle.** On the Initial Invoice, You will be billed pro-rated Fees for the remainder of the current month and all Fees for the next month of Services. InkSoft automatically bills Your Payment Form on the first day of each month for the monthly Fees for the following month and will continue to do so until this EULA is terminated. InkSoft reserves the right to change the timing of billing, in particular, as indicated below, if Your Payment Form has not successfully settled. As used in this EULA, "billing" shall indicate a charge, debit, or other payment clearance, as applicable, against Your Payment Form. Unless otherwise stated, "month" or "monthly" shall refer to a calendar month.
- d. **Delinquent Accounts.**
  - i. If a payment is not successfully settled, due to expiration of Your Payment Form, insufficient funds, or otherwise, and You do not edit Your Payment Form information or terminate this EULA, You remain responsible for any uncollected amounts and authorize InkSoft to continue to attempt to bill Your Payment Form until payment is successfully collected. This may result in a change to Your payment billing date.
  - ii. For certain Payment Forms, the issuer of Your Payment Form may charge You a foreign transaction fee or other charges. Check with Your Payment Form service provider for details.
  - iii. In the event that any undisputed Fee is more than fourteen (14) days past due and InkSoft is unable to bill Your Payment Form for the Fees, InkSoft may suspend Your account. During such suspension, Your License to use the Software is also suspended and You will be unable to access the Software, utilize the Services, or access or view any of Your stored content. For the avoidance of doubt, while Your account is suspended, even if you are technologically able to access the Services, You do not have permission to do so. ***If Your account is suspended for ninety (90) or more days, Your content and data will be deleted permanently.*** You will be required to pay a re-activation fee in addition to all outstanding Fees due before Your account will be re-activated and the suspension of Your License lifted.

- e. **Suspension of Account by You.** If, at any time, You wish to suspend Your account, You may do so by contacting InkSoft Support at 1.800.410.3048 Ext. 1. Suspension requests cannot be made via email, voicemail, or any other means. ***If Your account is suspended for ninety (90) or more days, Your content and data will be deleted permanently.*** You will be required to pay a re-activation fee in addition to all outstanding Fees due before Your account will be re-activated and the suspension lifted.
- f. **Re-Activation Fee.** If Your account is suspended for any reason and You wish to re-activate it, You will be charged a re-activation fee of \$499. InkSoft may amend the amount of this re-activation fee at any time effective immediately without notice to You.
- g. **Charge Backs and Returned Check Fees.** In the event that You initiate a chargeback on Your Payment Form, InkSoft may assess a processing fee in the amount of \$50.00 per chargeback. InkSoft may assess a fee in the amount of \$50.00 for each returned check.
- h. **No Refunds.** PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED PERIODS.
- i. **Payment Forms.** You may modify Your Payment Form information at any time by contacting InkSoft Support at 1.800.410.3048 Ext. 1 or by logging in to Your account and updating Your billing information. InkSoft does not accept modification of Payment Form by email.

## 6. AUDITING

- a. **Records.** You shall maintain accurate records during the Term and for a period of two (2) years thereafter sufficient for demonstrating Your compliance with the terms of this EULA.
- b. **Audit Rights.** During the Term and for a period of two (2) years thereafter, InkSoft and/or its designated auditor may, with reasonable notice to You, audit Your records to confirm that Your use of the Software was and is limited to those uses authorized herein, that Your use of the Software was and is in compliance with all terms of this EULA, and that you paid all license fees due and owing to InkSoft hereunder. Audits shall be conducted during normal business hours and no more frequently than once during any twelve (12) month period. You will cooperate with all reasonable requests from InkSoft and/or its designated auditor in facilitating any such audit and you shall promptly pay to InkSoft any underpayment identified by such an audit. You will also reimburse InkSoft for all costs associated with the audit if the audit reveals (1) an underpayment of more than 5% of the fees due during any period of the Term or (2) that You have failed to accurately maintain the records described in this section.

- 7. **DISCLAIMER OF WARRANTIES.** THE SOFTWARE, DOCUMENTATION, AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND INKSOFT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, WITH RESPECT TO ANY SOFTWARE, DOCUMENTATION, SERVICES, PRODUCTS, TECHNOLOGY, INTELLECTUAL PROPERTY, MATERIALS, OR INFORMATION PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSES. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE RELIED ON NO REPRESENTATIONS OR WARRANTIES AND THAT NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF YOUR BARGAIN HEREUNDER.

IN ADDITION, TO THE FULLEST EXTENT PERMITTED BY LAW, INKSOFT DISCLAIMS ANY WARRANTIES FOR THE SECURITY, ACCURACY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SOFTWARE, DOCUMENTATION, OR SERVICES. YOU UNDERSTAND AND AGREE THAT THE USE OF THE SOFTWARE, DOCUMENTATION, AND SERVICES IS AT

YOUR OWN DISCRETION AND RISK AND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOUR CONTENT OR DATA OR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT MAY RESULT FROM THE USE OF THE SOFTWARE, DOCUMENTATION, AND SERVICES BY YOU AND THE DOWNLOAD OR UPLOAD OF ANY MATERIAL OR DATA. YOU ARE SOLELY RESPONSIBLE FOR CREATING BACK-UPS OF ANY DIGITAL CONTENT. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

**8. LIMITATION OF LIABILITY.**

- a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INKSOFT OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, COVER, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST DATA, LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST TIME, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, OR DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. INKSOFT'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE EXCEED THE LESSER OF (1) SIX (6) TIMES YOUR MONTHLY HOSTING FEE AT THE TIME OF ACCRUAL OF THE CLAIM OR (2) FIVE THOUSAND DOLLARS (\$5000). THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER INKSOFT OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- b. **Third Party Software.** Software provided under this EULA may be distributed with certain freeware, open source, or other third party components. INKSOFT PROVIDES SUCH THIRD PARTY SOFTWARE ON AN "AS IS" AND "WITH ALL FAULTS" BASIS WITHOUT ANY WARRANTY WHATSOEVER AND HEREBY EXPRESSLY DISCLAIMS WITH RESPECT TO ANY THIRD PARTY SOFTWARE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (1) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; AND (2) ALL LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, COVER, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST DATA OR LOST PROFITS, HOWEVER ARISING, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, OR ANY OTHER LEGAL THEORY, EVEN WHERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

**9. INDEMNIFICATION.** You shall indemnify, defend, and hold InkSoft and its officers, agents, affiliates, and employees harmless from and against any and all actual or threatened losses, liabilities, expenses, damages, claims, demands, proceedings, and causes of action (including without limitation, reasonable attorneys' fees and expenses) ("**Claims**") based on, arising out of, concerning, resulting from or relating to (a) Your breach of any of the terms or provisions of this EULA, or (b) Your unauthorized use or Your misuse of the Software or Services. InkSoft shall provide prompt notification to You of any such Claims.

## 10. CONFIDENTIAL INFORMATION AND PRIVACY

- a. **Confidential Information.** In connection with this EULA, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party identifies as confidential or proprietary or which the Receiving Party should reasonably expect to be confidential or proprietary based on its nature, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. Without limiting the foregoing, (a) any information that a Receiving Party collects, receives, or obtains, from or on behalf of the Disclosing Party that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located, such as the individual's name, address, social security number, credit card information, etc., and any other information relating to an identified or identifiable individual (collectively, "**Personal Information**") is and will remain the Confidential Information of the Disclosing Party and (b) the Services are and will remain the Confidential Information of InkSoft.
- b. **Exclusions.** Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this EULA; (b) was or becomes generally known by the public other than by the Receiving Party's non-compliance with this EULA; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without use of any Confidential Information.
- c. **Confidentiality and Use.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:
  - i. not access or use, or permit the access or use of, Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this EULA;
  - ii. except as may be permitted by and subject to its compliance with Section 10.d below, not disclose or permit access to Confidential Information other than to its attorneys, accountants, and other representatives who: (1) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this EULA; (2) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this EULA; and (3) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this EULA; and
  - iii. safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its own sensitive information and, in no event, less than a reasonable degree of care.
- d. **Compelled Disclosures.** If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy, or waive its rights related thereto; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.



- e. **Return or Destruction of Confidential Information.** Upon termination of this EULA and at the request of the Disclosing Party, the Receiving Party shall return or destroy all copies of the Confidential Information of the Disclosing Party in its possession or control as the Disclosing Party may request and certify that it has complied with the requirements of this section.
- f. **Data Privacy.** You agree that InkSoft may collect and process information and statistics regarding your use of the Software, including Your internet protocol address, hardware identification, operating system, application software, peripheral hardware, and personally identifiable information and that InkSoft may anonymize and use this data to provide the Services, to improve the Services, to develop new software and services, and in any other way it sees fit.
- g. **Privacy Policy.** Personally identifying information is subject to InkSoft's [Privacy Policy](#), the terms of which are incorporated herein. Please review the Privacy Policy to understand our practices.

## 11. MISCELLANEOUS TERMS

- a. **Entire Agreement.** This EULA, the Initial Invoice and any amendments thereto, and our [Privacy Policy](#) and Website [Terms of Use](#) contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties. In the event of a conflict between this EULA, the Initial Invoice, or the Website Terms of Use, the terms of this EULA shall control.
- b. **Governing Law.** This EULA is governed by the laws of the State of New Mexico and the United States of America, excluding their conflict of laws principles. The UN Convention on the International Sale of Goods shall not apply. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in Albuquerque, New Mexico.
- c. **Notices.** Any notice delivered by InkSoft to You under this EULA will be delivered via email, mail, or fax to the last email address, mailing address, or fax number that You provided to InkSoft. It is Your responsibility to update InkSoft as to any changes in Your contact information.
- d. **Waiver.** The waiver of a breach of any provision of this EULA shall not constitute a waiver of any other provision or any subsequent breach.
- e. **Severability.** If any provision of this EULA should be found to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the provision shall be enforced to the maximum extent allowable under the law so as to effect the intent of the parties, and the remaining terms of the EULA shall remain in full force and effect.
- f. **Compliance with Laws and Regulations; Export Controls.** You shall comply with all applicable international, national, state, regional, and local laws and regulations, including, without limitation, any applicable import, export, and use restrictions. You acknowledge that the Software is of United States origin and may be subject to the export controls administered by the United States and/or other countries. Diversion contrary to U.S. law is strictly prohibited. Export, re-export, or import of certain product may require action on Your behalf prior to purchase. By accessing or using the Software, Documentation, or Services, You agree to the foregoing and to comply with all applicable export control laws.
- g. **Headings.** The headings used in this EULA are for convenience and shall not affect the interpretation or construction of any provision. No representations or statements of any kind made by any party that are not expressly stated herein shall be binding on such party.
- h. **Assignment.** This EULA, the Initial Invoice, the Services, and Your rights and obligations under this EULA may not be assigned, subcontracted, or transferred by You, in whole or in part, whether voluntary, by operation of law, contract, or otherwise, without the prior written consent of

InkSoft. Any attempted assignment or transfer in violation of this EULA shall be null and void. Subject to the foregoing, this EULA will be binding upon and inure to the benefit of the parties and their respective successors and assigns.

- i. **Force Majeure.** Under no circumstances shall InkSoft be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or causes beyond its reasonable control, including, without limitation, Internet failures, computer equipment failure, telecommunication failures, other equipment failures, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, acts of God, war, acts of terrorism, governmental actions, orders of domestic or foreign courts or tribunals, or non-performance.
- j. **Survival.** The following Sections of this EULA shall survive its termination: Sections 1, 2, 3.b, 3.e, 5, 6, 7, 8, 9, 10, 11 and any other Section that by its terms should survive.
- k. **Authorization.** The individual signing below represents and warrants that s/he has all necessary right, power, and authority to enter into this EULA on Your behalf and that You have all right, power, and authority to perform the acts required hereunder.