



# Independent Software Vendor Agreement

Last updated: 18-09-2025

# INDEPENDENT SOFTWARE VENDOR AGREEMENT

This Agreement (as defined in Section 1 below) is a binding contract by and between Nitro (as defined in Section 1) and the legal entity identified in the Nitro ISV Order Form or the Nitro Partner Portal (as each term is defined in Section 1), as applicable, as the independent software vendor ("ISV"). Nitro and ISV may be referred to herein collectively as the "Parties" or individually as a "Party".

NITRO APPOINTS ISV AS AN INDEPENDENT SOFTWARE VENDOR SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT AND ON THE CONDITION THAT ISV ACCEPTS AND COMPLIES WITH THEM. BY SIGNING THIS AGREEMENT OR CLICKING THE "ACCEPT" OR "I AGREE" BUTTON YOU OR ON THE CREATION OF A NITRO ISV ORDER FORM (AS SET OUT IN SECTION 4.3) INCORPORATING THE INDEPENDENT SOFTWARE VENDOR AGREEMENT BY REFERENCE, YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) ACCEPT THIS AGREEMENT AND AGREE THAT ISV IS LEGALLY BOUND BY ITS TERMS; AND (C) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF ISV AND BIND ISV TO ITS TERMS. IF ISV DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, NITRO WILL NOT AND DOES NOT APPOINT ISV AS AN INDEPENDENT SOFTWARE VENDOR.

## BACKGROUND

- (A) Nitro develops and/or licenses software which enhances document productivity and workflow management with features and functionalities that enable End Customers and their Users to manage PDF workflows, sign documents electronically or to identify individuals in an online environment through its Services (as defined in Section 1); and,
- (B) ISV designs, develops, markets, and/or licenses software to which it wishes to integrate with Nitro's Services.
- (C) ISV wishes to obtain from Nitro a license to integrate the Services (as defined in Section 1) with the ISV Software (as defined in Section 1) to make the Integrated Solution (as defined in Section 1) for licensing of such Integrated Solution to End Customers in accordance with the terms and conditions of this Agreement; and,
- (D) Nitro is willing to appoint ISV as its non-exclusive independent software vendor and to grant to ISV a non-exclusive license to integrate the Services with ISV Software to make the Integrated Solution and to license and distribute such Integrated Solution on and subject to the terms and conditions of this Agreement.

**NOW, THEREFORE,** the Parties agree as follows:

## AGREED TERMS:



## 1. INTERPRETATION

1.1 For purposes of the Agreement, the following terms have the following meanings:

**"Affiliate"** of a Party means any other entity that, directly or indirectly, Controls, is controlled by, or under common control with, that Party; **"Annex"** means any annex to the present Data Processing Addendum;

**"Aggregated Statistics"** has the meaning given in Section 14.2;

**"Agreement"** means this Independent Software Vendor Agreement, any Schedules attached hereto, the Nitro ISV Order Form(s) and any information incorporated by reference herein from the Nitro Partner Portal (if applicable).

**"API"** means Nitro's application programming interface and any related Documentation made available to ISV by Nitro, including any Updates thereto, to access and use the Services as integrated with ISV Software.

**"API Key"** means the security key Nitro makes available for ISV to access the API;

**"Business Day"** means (a) if the Nitro contracting entity is Nitro Software Inc., a normal working day from 9.00 a.m. to 5.00 p.m. Pacific Time (PT) from Monday to Friday, excluding United States federal holidays; or (b) subject to the application of Section 2, if the Nitro contracting entity is Nitro Software Belgium NV, a normal working day from 9.00 a.m. to 5.00 p.m. (Central European (Summer) Time zone) from Monday to Friday, excluding Belgian public holidays;

**"Confidential Information"** has the meaning given in Section 13.1;

**"Control"** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be interpreted accordingly;

**"Data Processing Addendum"** has the meaning given in Section 12.1;

**"Data Protection Laws"** includes the applicable laws regarding Personal Information and/or Personal Data including but not limited to the EU GDPR, the CCPA (as those terms are defined in the applicable Data Processing Addendum);

**"Disclosing Party"** has the meaning given in Section 13.1;

**"Documentation"** means the applicable most recent version of the official technical and functional product information for the Services, which may also include technical specifications for the Services, that Nitro generally makes available from time to time to its customers as published online at the following web addresses, or its successor website(s), which may be amended from time to time in Nitro's sole discretion:

a) for 'Nitro PDF or 'Nitro Sign': <https://developers.gonitro.com/docs>

b) for 'Nitro Sign Enterprise Verified or 'Nitro Identity Services': <https://apidocs.sign.gonitro.com>

**"Effective Date"** means the effective date of this Agreement as identified as the date the initial Nitro ISV Order Form is last signed between the Parties;

**"End Customer"** means a Person that licenses the Integrated Solution from ISV for its own use and not for transfer or resale of any kind;

**"End Customer Agreement"** means terms and conditions between ISV and End Customer covering the sublicensing of the Services incorporated in or integrated with an Integrated Solution that will at least reflect the terms and conditions and protective provisions of Nitro's then current applicable 'Terms of



Service' setting forth the terms and conditions of an End Customers' and its Users' permitted use of the Services (including all additional documents incorporated by reference therein including without limitation data processing addendum and product specific terms) incorporated in or integrated with an Integrated Solution. A copy of Nitro's then current applicable 'Terms of Service' for the Services is available at the following website, or its successor website, which may be amended from time to time in Nitro's sole discretion;

- a) for 'Terms of Service - Nitro PDF & Nitro Sign: <https://www.gonitro.com/legal/pdf-sign/terms-of-service>.
- b) for 'Terms of Service - Nitro Sign Enterprise Verified & Identity Services <https://www.gonitro.com/legal/nitro-sign-enterprise/terms-of-service>

**"End Customer Data"** means information, data, and other content that is submitted, posted, or otherwise transmitted by or on behalf of End Customer, or a User to, and processed by, the Services. For example, End Customer Data may include End Customer generated documents, documents uploaded for signature and contact details uploaded into the Services. End Customer Data does, however, not include End Customer Information, or Aggregated Statistics;

**"End Customer Information"** means any information collected, received, processed, or maintained by or on behalf of ISV from or relating to any End Customer, including the identification of the End Customer or other information and records related to End Customer's account;

**"Fees"** means the applicable fees that are payable by ISV to Nitro for Services as set out in the relevant Nitro ISV Order Form;

**"Force Majeure"** means a temporary or permanent inability of a Party to fulfil its obligations, resulting from unavoidable, unforeseeable and external facts and circumstances reasonably beyond the control of that Party. Force Majeure shall include without limiting the foregoing: acts of god, tsunami, war or war risk, insurrection or public revolt, fire caused by an outside calamity, an import or export embargo imposed by the government, internet failure, hosting failure, cyberattacks or DDOS attacks, floods, explosion, fire, earthquake, weather conditions, epidemics or pandemics, strike or social action, or any other circumstances mutually agreed by both Parties to be a Force Majeure;

**"HIPAA"** has the meaning given in Section 6.3;

**"Implementation and Activation Services"** means such implementation and activation services offered by Nitro to ISV for ISV's or its End Customer's benefit, as further set out in a Nitro ISV Order Form, where applicable;

**"Initial Term"** has the meaning given in Section 19.1;

**"Integrated Solution"** means any and all software made by or on behalf of ISV that incorporate or include one or more ISV Software and all or a portion of the Services. The Integrated Solution is identified in the Nitro ISV Order Form or in the Nitro Partner Portal, as applicable, which may be modified from time to time by the Parties' mutual written agreement;

**"Intellectual Property Rights"** means any intellectual property rights including but not limited to: (i) copyright, moral rights, patents, database rights and rights in trademarks, designs, know-how and trade secrets (whether registered or unregistered); (ii) applications for registration, and the right to apply for registration, renewals, extensions, continuations, divisions, reissues, or improvements for or relating to any of these rights; and, (iii) all other intellectual or industrial property rights and equivalent or similar forms of protection existing anywhere in the world;

**"ISV"** has the meaning given in the preamble;

**"ISV Software"** means any and all components provided by the ISV for the Integrated Solution (and at all times excluding the Services);



**"Loss" or "Losses"** means any losses, damages, liabilities, costs (including reasonable legal fees);

**"Mark"** means any trademark, service mark, trade name, logo, domain name, or other indicator of source, affiliation, or sponsorship, whether registered or unregistered;

**"Module Extension"** means an addition to the Services which provides one or more significant new functionalities or architectures which none of the existing modules of the Services already contained before, or only contained in a limited form before and therefore cannot be considered as a New Version;

**"New Version"** means any new improved, modified, revised, corrected, upgraded, enhanced or updated version of the Services that Nitro may from time to time introduce that is not a Module Extension;

**"Nitro"** means Nitro Services Inc., a company incorporated under the laws of the United States, with offices at 447 Sutter St, STE 405 #1015, San Francisco, CA 94108, United States or subject to the application of Section 2 the relevant Nitro Affiliate entity;

**"Nitro Brand Guidelines"** means the then-current Nitro brand guide located at <https://www.gonitro.com/brand-guide>, or its successor website, which may be amended from time to time in Nitro's sole discretion;

**"Nitro Marketing Materials"** means any advertising, promotional, or marketing materials for or relating to the Services or Integrated Solution that Nitro may make available to ISV from time to time during the Term;

**"Nitro Partner Portal"** means the web-based interface at <https://partnerportal.gonitro.com> (or its successor website, which may be amended from time to time in Nitro's sole discretion) operated and maintained by Nitro that enables ISV to access and interact with information, and functions related to ISV's role under this Agreement, including possibly the submission and management of orders, registration of prospective customers, Rate Card, training materials, tracking of orders, level of independent software vendor in accordance with Nitro Certified Partner Program (if applicable), accessing documentation and other information, request for Quotes from Nitro and communication for support. For clarity and to avoid any doubt, Nitro reserves the right, in its sole discretion, to provide any information or notices that would typically be made available through the Nitro Partner Portal in another written format to ISV (e.g., via email) and ISV agrees to receive such information via the Nitro Partner Portal. In such cases, the provision of information or notices by Nitro in this manner shall be considered equivalent to delivery through the Nitro Partner Portal for all purposes under this Agreement;

**"Nitro IP"** means any and all of the Services, Documentation, Nitro Trademarks, Nitro Marketing Materials, Nitro's Confidential Information, Results, APIs, and other technologies, information, and materials provided by Nitro to ISV to enable ISV to develop, make or have made, market, license, or provide maintenance, support, or other services for, Integrated Solution;

**"Nitro ISV Order Form"** means a Quote signed or accepted by ISV and Nitro in accordance with Section 4.3;

**"Nitro Trademarks"** means Nitro's registered Marks together with any further trademarks which Nitro may permit or procure permission for ISV by express notice in writing to use in respect of the Services;

**"Nitro's ESG Policies"** means Nitro's ESG related policies on ethics, anti-bribery and anti-corruption located at <https://www.gonitro.com/security-compliance/esg> or its successor website, which may be amended from time to time in Nitro's sole discretion;

**"Notification Email Address"** means the email address(es) designated by ISV in the Nitro ISV Order Form. Any changes to the Notification Email Address may be notified in writing to Nitro's relationship manager or via the Nitro Partner Portal;



**"Party", "Parties"** has the meaning given in the preamble;

**"Permitted Purpose"** has the meaning given in Section 5.1.;

**"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity;

**"Personal Data"** or any equivalent term (such as Personal Information) has the meaning given in the Data Protection Laws or where no such laws apply, means any information that by itself or when combined with other information (e.g., such as telephone number or e-mail address) can be used by Nitro to identify a specific natural person;

**"PHI"** has the meaning given in Section 6.1.;

**"Quote"** has the meaning given in Section 4.1.;

**"Quote Request"** means a non-binding order request (which may be in electronic form, including as generated online through the Nitro Partner Portal) at a minimum:

- a) the Services to be provided by Nitro;
- b) the Fees and any other amounts due and payable by ISV to Nitro;
- c) End Customer name, registered office address and company number (if applicable);
- d) where applicable to the Services: the number of Users, number electronic signatures or any other commercial relevant information including the subscription term; and,
- e) any other commercial terms agreed by the Parties relating to the Services.

**"Rate Card"** means the list prices for the Services as set out in the Nitro Partner Portal, or as otherwise provided by Nitro to ISV, as applicable, and as amended by Nitro from time to time via email to ISV or via updates to the list prices in the Nitro Partner Portal;

**"Reasonable Use"** means using the Services in a fair and normal way, based on factors such as the number of Users, transactions, data storage, bandwidth or processing power and within the limitations of the relevant Documentation or ISV Order Form. Reasonable Use also means that ISV's usage patterns do not deviate significantly from the average or expected usage levels for each authorized independent software vendor or End Customer or its Users, and that ISV's use of the Services does not negatively affect the performance, availability, security, or integrity of the Services or other customers' or authorized independent software vendors' use of the Services. Nitro reserves the right to define what constitutes Reasonable Use at its sole discretion;

**"Receiving Party"** has the meaning given in Section 13.1.;

**"Renewal Term"** has the meaning given in 19.1.;

**"Results"** means any results offered by Nitro for the benefit of ISV or its End Customer, as applicable, as a result of the Implementation and Activation Services;

**"Sensitive Data"** has the meaning given in Section 6.3.;

**"Services"** means the object code version of the software products identified in the Nitro ISV Order Form or in the Nitro Partner Portal, as applicable, that Nitro is making available and which are: (i) being managed by Nitro for the ISV as reflected in the Nitro ISV Order Form; and (ii) accessible for the ISV and its End Customers and their Users via API over the internet. Services may also include Module Extensions (where applicable) and APIs (where applicable); any Updates or New Versions and all related Documentation, and any Implementation and Activation Services provided by Nitro including the Results;

**"Services Suspension"** has the meaning given in Section 19.2.;

**"SLA"** has the meaning given in Section 10.2.;





**“Support”** means the support services related to the Services provided by Nitro to ISV as set out in Section 10.2;

**“Term”** has the meaning given in Section 19.1;

**“Territory”** means the geographical area described in the Nitro ISV Order Form or in the Nitro Partner Portal, as applicable.

**“Third-Party Claim”** means any third-party claim, suit, action, or proceeding (excluding any claim, suit, action or proceeding by an End Customer);

**“Third-Party Materials”** means, other than the Nitro IP (and excluding ISV Software), all materials and information in any form or medium or other software, documents, data, content, specifications, products, equipment, or components, of or relating to the Services, that are not proprietary to Nitro;

**“Update”** means any update, upgrade, release, or other adaptation or modification of the Services, including any updated Documentation, that Nitro may provide to ISV from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Services, but does not include any New Version or new Module Extension.

**“User”** means End Customer's employees, consultants, contractors, and agents: (i) who are authorized by End Customer to access and use the Services within the Integrated Solution under the rights granted to End Customer pursuant to the End Customer Agreement. Each User shall be an individual person.

**“White Labeling Rights”** has the meaning given in Section 3.1(c).

## **2. CONSOLIDATION OF NITRO ISV ORDER FORMS AND DESIGNATION OF CONTRACTING ENTITY; ASSIGNMENT OF ISV ORDER FORMS TO A NITRO AFFILIATE**

**2.1.** This Agreement sets the terms under which ISV acts as an Independent Software Vendor of the Services. Nitro may, at its sole discretion, designate a Nitro Affiliate to accept one or more Nitro ISV Order Forms for certain Services or regions. All Nitro ISV Order Forms entered into between ISV and the same Nitro contracting entity form a single contractual relationship between that entity and ISV governed by the Agreement (rather than separate agreements for each Nitro ISV Order Form) and all Services under such Nitro ISV Order Forms remain subject to this Independent Software Vendor Agreement. Any Nitro ISV Order Form between a newly designated Nitro Affiliate and ISV shall form an independent agreement between those parties which shall be governed and incorporate the terms of the Independent Software Vendor Agreement. The applicable Nitro contracting entity will be identified in the Quote provided to ISV.

**2.2.** Notwithstanding anything to the contrary, Nitro may, in its sole discretion, assign or transfer this Agreement, in whole or in part (including any individual Nitro ISV Order Form or the performance of Services), to any of its Affiliates. Following such assignment, the designated Nitro Affiliate becomes the contracting entity with ISV for the affected Nitro ISV Order Form(s) and Service(s) and assumes Nitro's rights and obligations under the Independent Software Vendor Agreement incorporated by reference and will form a separate agreement between ISV and that Nitro Affiliate for the relevant Services.



**2.3.** Subject to the application of this Section 2 and for the avoidance of doubt, any reference to 'Nitro' in this Agreement shall mean the resulting Nitro Affiliate entity in the relevant Nitro ISV Order Form(s) per Section 2.1 or the resulting entity upon Nitro's application of Section 2.2.

### **3. APPOINTMENT OF INDEPENDENT SOFTWARE VENDOR**

**3.1** Non-Exclusive Independent Software Vendor. Subject to and conditioned on ISV's compliance with the terms and conditions of this Agreement, Nitro hereby:

- (a) appoints ISV as Nitro's non-exclusive independent software vendor in the Territory during the Term;
- (b) except where White Labeling Rights have been permitted, authorizes ISV, during the Term, to describe itself in promotional, advertising, and marketing materials relating to the Integrated Solution as an "Authorized Independent Software Vendor" of the Services solely as part of the Integrated Solution; and,
- (c) if permitted by Nitro in the Nitro ISV Order Form or in the Nitro Partner Portal, where applicable, or in writing by Nitro, and provided Nitro approves of such quality standards for exercise of the rights in this subsection, ISV shall be provided with a white label version (as to removing certain Nitro information such as name, logos, marketing materials, etc.) of the Services to which ISV shall have the ability to rebrand the Services with the ISV's (or End Customer's) own branding, logos, and Marks, subject to any other specific details as shall be specifically set forth in the Nitro ISV Order Form, the Documentation or in the Nitro Partner Portal, where applicable, to otherwise exercise its rights in accordance with this Section 3 and Section 5 (collectively, "**White Labeling Rights**").

**3.2** Acceptance and Conditions of Appointment. ISV hereby accepts Nitro's appointment pursuant to Section 3.1 and agrees, as a condition to such appointment and the continuation of ISV's authorization as Nitro's independent software vendor under this Agreement, to perform all of ISV's obligations under the Agreement. For the avoidance of doubt: (a) ISV's appointment under this Section 3 only grants to ISV a right to embed or integrate and resell the Services with ISV Software for the Integrated Solution, and does not transfer any other right, title, license or interest to any such Services to ISV or its End Customers; and (b) to qualify as an Integrated Solution, the combined offering must deliver substantial and core additional functionality beyond what the Services provide.

### **4. ORDER PROCESS**

**4.1** ISV shall submit a Quote Request to Nitro for the desired Services with the information required by Nitro to develop such a quote. Such Quote Request shall be sent in writing via email to Nitro or sent via the Nitro Partner Portal. Upon receipt of the Quote Request, Nitro shall provide ISV with a non-binding quote that will detail the costs for the requested Services (the "**Quote**").

**4.2** ISV shall accept a Quote by: (a) submitting a signed Quote via email to Nitro or (b) by accepting and submitting such Quote electronically in the Nitro Partner Portal or (c) by ISV issuing a purchase order to Nitro referencing the unique Quote identifier, as applicable. ISV's acceptance of a Quote in





accordance with this Section 4.2 shall be an offer from ISV to purchase Services from Nitro under the terms and conditions of this Agreement.

**4.3** Nitro may, in its sole discretion, accept or reject any Quote signed or accepted by ISV and submitted by ISV to Nitro. Nitro may accept any Quote by electronically accepting the order or by countersigning the Quote or by confirming in writing acceptance of ISV's purchase order referencing the Quote's reference number. Upon ISV and Nitro signing or electronically accepting the Quote, the Quote shall be deemed to be a Nitro ISV Order Form. For the avoidance of doubt, no Quote (even if accepted or signed by ISV) shall be considered an offer by Nitro and no Quote shall become a binding contract until it becomes a Nitro ISV Order Form and such Nitro ISV Order Form is accepted by Nitro as set out in the second sentence of this Section 4.3.

**4.4** ISV has no right to cancel or amend any signed Quote submitted by it.

## **5. LICENSE GRANTS**

**5.1** Services and Documentation; Trademark License. Subject to and conditioned on ISV's compliance with the terms and conditions of the Agreement, and solely in connection with ISV's appointment and for the purposes of its operation as a non-exclusive authorized independent software vendor pursuant to Section 3, Nitro hereby grants ISV, a limited, non-exclusive, non-transferable, and non-sublicensable license in the Territory during the Term solely to: (a) integrate the Services via the API for purposes of embedding the Services into the Integrated Solution; (b) demonstrate, market, and distribute the Services to End Customers in the Territory solely for such End Customers' and their Users to use under the End Customer Agreement as so incorporated in or bundled with the Integrated Solution; (c) use the Services internally for testing, servicing, and supporting the Integrated Solution and reproduce the Services in the quantities and to the extent necessary for these purposes and in accordance with the Nitro Terms of Service; (d) incorporate the Documentation, in whole or in part, into the documentation for the Integrated Solution, reproduce such quantities of the Documentation as are necessary solely for purposes of such incorporation, and distribute to End Customers such Documentation as incorporated in the Integrated Solution documentation; (e) reproduce and distribute Nitro Marketing Materials solely to market and promote the Integrated Solution under this Agreement in accordance with Nitro's then current Nitro Brand Guidelines (each of the foregoing items, (a) through (e), a "**Permitted Purpose**"). ISV shall be solely responsible for configuring, securing, marketing, making, packaging and shipping (where applicable) the Integrated Solution.

**5.2** API Key. ISV must obtain an API Key through the registration process made available by Nitro to use and access the API. ISV may not share the API Key with any third party, must keep the API Key and all log-in information secure, and must use the API Key as ISV's sole means of accessing the API. ISV shall be solely responsible for its ISV Software and integrating (and securing and maintaining the integration) between the Services and the ISV Software.

**5.3** Trademark Use; White Labelling Rights.

- (a) All uses of the Nitro Trademarks, and all goodwill associated therewith, shall inure solely to the benefit of Nitro. Except where Nitro has agreed to provide ISV with White Labeling Rights, ISV shall not advertise, promote, market, or distribute Integrated Solution using any Marks other than the Nitro Trademarks and ISV's Marks without Nitro's written pre-approval.
- (b) ISV shall not directly or indirectly engage in any unfair, unethical, misleading, or deceptive acts or practices that are or might be detrimental to the public or the goodwill or reputation of Nitro



or Nitro IP, including any dissemination, display, or use of any false, misleading, or deceptive representations, depictions, or materials for or in connection with any advertising, promotion, marketing, or distribution of the Integrated Solution.

**5.4** No Implied Rights. Nitro IP is provided to ISV solely for the Permitted Purpose under the express terms of the licenses granted in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to ISV or any third party, any Intellectual Property Rights or other right, title, or interest in or to any of the Services or other Nitro IP. All uses in this Agreement of the terms "sell," "sale," "resell," "resale," "purchase," "price," and the like mean the purchase or sale of a license: (a) in the case of ISV, under this Agreement; and (b) in the case of End Customers, under the End Customer Agreement. Nothing in this Agreement grants or conveys, or permits ISV to grant or convey, any ownership right in any of the Nitro IP or Third-Party Materials, or any article or copy thereof or Intellectual Property Rights therein.

## **6. RESTRICTIONS**

**6.1** ISV shall not, and shall not permit any other Person to, access, use, or perform any other act on or relating to any Nitro IP except as expressly permitted by this Agreement and, in the case of any licensed Third-Party Materials, the applicable (if any) third-party license agreement.

**6.2** Without limiting the foregoing, except as otherwise expressly permitted in this Agreement, ISV shall not at any time, directly or indirectly:

- (a) market, distribute, license, or otherwise make available any Nitro IP, including as a single product, on a standalone basis, or in any form other than incorporated in or otherwise as an integral part of an Integrated Solution;
- (b) use any Nitro IP for ISV's own internal business operations unless it enters into a separate license agreement with Nitro permitting such use;
- (c) market, distribute, license, or otherwise make available any Integrated Solution that it has not tested in accordance with Section 7.1;
- (d) make, market, distribute, license, or otherwise make available, or provide support or other services for, any Integrated Solution outside the Territory or for any actual or potential use outside the Territory;
- (e) copy, modify, or create any derivative works or improvements of any Nitro IP;
- (f) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of any Nitro IP or any part thereof;
- (g) bypass, breach, or disable any security device, copy control, or digital rights management tool, or other protection used by any Nitro IP, or induce or assist any Person to do so;
- (h) make any representations, warranties, guarantees, indemnities, claims, or other commitments: (i) actually, apparently, or impliedly on Nitro's behalf; or (ii) concerning or relating to any Nitro IP that are in addition to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, claims, or other commitments in this



Agreement, the End Customer Agreement, the Documentation, or any written documents provided or made available by Nitro to ISV that concern or relate to that Nitro IP;

- (i) access or use the Nitro IP for purposes of benchmarking or competitive analysis of such Nitro IP or allow a Nitro competitor to use Nitro IP;

**6.3 Prohibited Information.** ISV represents, warrants, and covenants that neither it nor its End Customers will provide, disclose to, or allow Nitro to access any protected health information as defined by applicable law, including to the extent applicable law the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) (collectively “**PHI**”) unless Nitro has agreed in writing and any required agreement (e.g., business associate agreement) is in place and ISV further confirms it is not a “covered entity” or “business associate,” under applicable law and Nitro will not act as one. ISV also agrees not to provide, disclose, or allow access to End Customer Data containing social security numbers, government-issued IDs, biometric information, online account passwords, financial credentials, tax data, credit or consumer reports, payment card information subject to PCI DSS, information under the Gramm-Leach-Bliley Act or Fair Credit Reporting Act, special categories of personal data under Data Protection Laws, or any data about children under 13 or otherwise protected under child data laws (“**Sensitive Data**”), without Nitro’s prior written consent. ISV shall defend, indemnify, and hold harmless Nitro, its Affiliates, and their respective directors, officers, employees, and consultants from any Losses arising from or related to any PHI or Sensitive Data provided in violation of this Section 6.3.

**6.4 Reasonable Use.** ISV permits and Nitro reserves the right (but shall have no obligation to) monitor ISV’s and End Customer’s and their Users usage on an ongoing basis to identify any deviation from Reasonable Use. If Nitro decides, at its sole discretion, that Reasonable Use of the Services has been exceeded, Nitro will have the right to throttle or suspend such use of the Services. In extreme circumstances, as determined by Nitro in its sole discretion, Nitro will have the right to terminate the Agreement, or a particular ISV Order Form, provided that Nitro will make reasonable efforts to provide ISV in advance with a description of the excessive or abnormal usage and an explanation of why it violates Reasonable Use.

**6.5 Unauthorized Access.** ISV shall prevent unauthorized access to the Services, including without limitation by protecting its passwords and other log-in information. ISV shall notify Nitro immediately of any known or suspected unauthorized use of the Services or breach of its security and shall use best efforts to stop said breach.

## **7. DATA SUBJECT RIGHTS**

**7.1 Integration.** ISV is solely responsible for configuring, assembling, making, securing, marketing, packaging, and delivering the Integrated Solution and its respective documentation. ISV shall conduct all testing that may be necessary to successfully confirm that the Integrated Solution



operates in accordance with the Documentation. At termination of the Agreement, ISV shall be responsible for removing and ceasing API access to the Services.

**7.2** Right to Change Services. Nitro is entitled in its sole discretion to make changes to the Services or Documentation, and shall give written notice, or notification via the Nitro Partner Portal, of such changes to ISV as soon as reasonably practicable. Nitro is entitled on giving written notice to ISV, or via notifying ISV via the Nitro Partner Portal or to the Notification Email Address, to vary or exclude from this Agreement one or more of the Services if for any reason the provision of such Services have been permanently discontinued.

**7.3** Right to Suspend. Nitro reserves the right, in its sole discretion, in the event of a breach or suspected breach of this Agreement (or the Nitro Terms of Service to the extent the Services are accessed and used by ISV) by ISV, to suspend ISV's right to resell the Services and Nitro's maintenance, or support of such Services, and ISV's access to the Services, for the duration of time that the breach remains unremedied.

## **8. ISV OBLIGATIONS**

**8.1** Production, Marketing, and Distribution. At all times during the Term, ISV shall, in accordance with the terms and conditions of this Agreement and at its own cost:

- (a) design, develop, and produce the Integrated Solution in accordance with the Documentation;
- (b) ensure that End Customers receive, are aware of, and accept the terms and conditions of the End Customer Agreement before using the Integrated Solution and promptly report to Nitro in writing any actual or suspected End Customer Agreement non-compliance;
- (c) advertise, promote, market, and distribute the Integrated Solution to End Customers using ISV's reasonable efforts to maximize the distribution of, licensing revenues from, and End Customer satisfaction with the Integrated Solution;
- (d) promptly give Nitro written notice of and investigate and address any notice, complaint, or claim of which ISV becomes aware concerning any data breach or security incident, to have been caused, in whole or in part, by the Integrated Solution, any use of an Integrated Solution, or any act or omission of ISV under or in connection with this Agreement; and
- (e) conduct business in accordance with applicable law and in a manner that is consistent with good business practice and reflects favorably at all times on the Services, Integrated Solution and the good name, goodwill, and reputation of Nitro.

**8.2** End Customer Information and Data Law Compliance. ISV shall at all times during and after the Term provide to Nitro, in such written, electronic, or other form as Nitro may reasonably request for purposes of performing Nitro's obligations under the Agreement all relevant End Customer Information collected or received by ISV and, for any End Customer Information consisting of or reflecting Personal Data: (i) notify and, where required by applicable law, obtain the written consent of, all End Customers (and Users, if applicable) that their information may be transferred or disclosed to Nitro and third parties for the foregoing purposes; (ii) maintain appropriate administrative, physical, and technical safeguards for the protection of the privacy, security, confidentiality, and integrity of such End Customer Information; and (iii) comply, and ensure that its employees, agents, and contractors comply, with all applicable laws regarding data privacy and security, required data breach notifications, Personal Data.



**8.3 ISV Certification.** At all times during the Term, ISV shall have and maintain all required certifications, credentials, licenses, registrations, approvals, and permits necessary to lawfully conduct business in accordance with the Agreement.

## **9. NITRO OBLIGATIONS**

**9.1** Subject to and conditioned on ISV's compliance with the terms and conditions of this Agreement, during the Term Nitro may:

- (a) at a cost to be predetermined between the Parties in writing before any training commences, train ISV's personnel to provide customer service and technical support and,
- (b) provide at Nitro's cost, such Nitro Marketing Materials as Nitro, in its sole discretion, may deem appropriate for ISV's marketing of the Integrated Solution in accordance with this Agreement.

## **10. INTERNATIONAL DATA TRANSFERS**

**10.1 End Customer Support.** Except as expressly provided otherwise in Section 10.2, ISV is solely responsible for providing technical support to End Customers for the Integrated Solution, including Services incorporated in or used with the Integrated Solution. ISV shall ensure to maintain an adequate number of trained, capable, and qualified ISV technical personnel with sufficient knowledge of the Integrated Solution and the Services.

**10.2 Nitro Technical Support.** At ISV's request, provided that ISV is then-current in its payment of all Fees and charges due Nitro hereunder, Nitro will only provide third-level technical support to ISV solely to the extent necessary to assist ISV to resolve the End Customer's support requests for such Services that ISV cannot itself resolve after performing its own first and second-level technical support obligations ("**Support**"). ISV hereby grants Nitro a license to perform such Support under all rights necessary or reasonably desirable for these services' lawful performance, including the rights to reproduce, modify, test, and use the Integrated Solution and ISV Software to the extent necessary or reasonably desirable for these purposes. All Nitro Support under this Section 10.2 will be performed for and in accordance with the service levels, and other terms of Nitro's then current standard support level agreement, a current copy of which is available at Nitro's website at <https://www.gonitro.com/legal/pdf-sign/service-level-agreement/overview>, as may be amended from time to time, which are incorporated herein by reference (with any reference to 'Customer' therein to be interpreted to mean ISV) (the "**SLA**"). Notwithstanding the foregoing or any other provisions of this Agreement, Nitro has no obligation to provide technical support for when any of the exclusions in the SLA apply to either ISV or End Customer.

**10.3 Support Contact.** ISV shall appoint one individual within ISV's organization who shall have the authority to act on behalf of ISV in matters pertaining to the ISV's support requests and to serve as the primary contact between ISV and Nitro with respect to ISV's receipt of Nitro's Support. ISV shall initiate all support inquiries and requests through this individual and ensure that they have the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. ISV shall inform Nitro with reasonable notice in writing before changing its support contact. Upon Nitro's reasonable written request, ISV shall promptly replace ISV's support contact.

**10.4 Evolution of Services.**

- (a) During the Term, Nitro may make available to ISV at no additional cost copies of any Updates to the current version of the Services as and when Nitro generally releases or makes such



Update available to Nitro's other customers and/or its authorized independent software vendors and ISV shall promptly incorporate in the production of Integrated Solution all Updates that Nitro makes available to ISV;

- (b) ISV shall regularly develop and distribute to End Customers all maintenance releases, updates, patches, bug fixes, security fixes, and other modifications to the ISV Software required for the Integrated Solution' operation in accordance with the Documentation and prepare and deliver or make available to End Customers any updates to the Integrated Solution' documentation that are necessary to ensure the Integrated Solution' performance in accordance with the Integrated Solutions' functional specifications when implemented and used by End Customers as directed by such documentation;

## 11. FEES AND PAYMENT

**11.1. Fees.** ISV shall pay Nitro all corresponding Fees for any Services in the amounts set forth in the applicable Nitro ISV Order Form. ISV shall make all payments of Fees in accordance with Section 11.5.

**11.2 Rate Card.** The Rate Card sets out the then-current applicable standard Nitro rates, is for information purposes only and is non-binding, and is subject to change from time to time in Nitro's sole discretion. Nitro will notify ISV of changes to its applicable Rate Card (ISV agrees to receive such notification via the Nitro Partner Portal if Nitro desires), and such changes will become effective upon such notification provided that no pricing shall be binding upon Nitro an ISV Order Form is created with the applicable Fees therein.

**11.3 Expenses.** Except where otherwise expressly provided in this Agreement, each Party is solely responsible and liable for all costs and expenses it incurs in entering into and performing this Agreement.

**11.4 Taxes.** Fees and other amounts due under the Agreement are payable to Nitro net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source (collectively, "**Sales Tax**"). Except as forbidden by applicable law, Nitro may require that ISV submits applicable Sales Taxes to Nitro. However, the preceding sentence does not apply to the extent that ISV is tax exempt, provided it gives Nitro a valid tax exemption certificate within thirty (30) days of the Effective Date. Nitro's failure to include any applicable tax in an invoice will not waive or dismiss the Parties' rights or obligations pursuant to this Section 11.4. If applicable law requires withholding or deduction of Sales Taxes or any other tax or duty, ISV shall separately pay Nitro the withheld or deducted amount, over and above fees due. For the avoidance of doubt, this Section 11.4. does not govern taxes based on Nitro's net income.

**11.5 Payment.** Unless otherwise agreed in a Nitro ISV Order Form, ISV shall make all payments when due under this Agreement as follows:

- (a) within thirty (30) days following the date of Nitro's invoice sent to ISV's email address (specified in the Nitro ISV Order Form or the Nitro Partner Portal) or via the PEPPOL network, if applicable. ISV explicitly accepts electronic invoicing;
- (b) ISV shall make all payments in the currency and payment method specified in the Nitro ISV Order Form;





- (c) ISV shall pay all amounts due under this Agreement without setoff, deduction, recoupment, or withholding of any kind, whether under this Agreement, applicable law, or otherwise and whether relating to Nitro's breach, bankruptcy, or otherwise. ISV bears all credit risk regarding, and is solely responsible for collecting payment for, all sales and distribution of the Integrated Solution. ISV's inability or failure to collect the fees for any Integrated Solution does not affect ISV's obligation to pay Nitro in strict accordance with this Section 11; and,
- (d) All payments of invoices issued by Nitro to the ISV under the Agreement shall be final and non-refundable.

**11.6 Late Payment.** If ISV fails to make any payment of any undisputed amounts due to Nitro under the Agreement by the due date for payment, then, without limiting Nitro's other remedies under this Agreement, ISV shall pay interest on the overdue amount at the rate that is the lower of one percent (1%) per month/twelve percent (12%) per annum or the highest rate permissible under applicable law. In addition, ISV shall also pay all reasonable costs incurred by Nitro as a result of the enforcement of ISV's payment obligations, and/or Nitro may disable, or withhold, suspend, or revoke its grant of a license of, or performance of services relating to, any Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to ISV or any other Person by reason of any such action.

**11.7 Recordkeeping and Reporting.** ISV shall during the Term and for at least one (1) year thereafter (or longer if required under applicable law):

- (a) maintain books, records, accounts and Customer Information for all transactions and activities covered by this Agreement and permit full examination thereof by Nitro and its representatives in accordance with Section 11.7(b); and
- (b) upon request by Nitro, submit to Nitro in a format acceptable to Nitro, then-current, complete, and accurate certified reports sufficient to verify the End Customer Information ISV has collected or otherwise acquired and any other information referenced in Section 11.7(a) or any other relevant information Nitro may reasonably require.

**11.8 Remote Usage Verification.**

- (a) ISV acknowledges and agrees the Services may include real-time built-in volume counters and other reporting tools which are necessary for Nitro to monitor the exact (volume) usage of the Services by End Customer and Users. Such usage controls/tools enable Nitro to invoice the relevant Fees.
- (b) If such usage control or audit shows that an End Customer or Users are using the Services beyond the quantity or scope that was legitimately licensed under the Agreement and therefore ISV has underpaid the amount of Fees due to Nitro, without prejudice to any other rights and remedies available to Nitro, ISV shall promptly pay the amount of such underpayment to Nitro, together with interest in accordance with Section 11.6. If such underpayment exceeds five percent (5%) of that which is payable under the Agreement, ISV shall pay Nitro's reasonable costs of conducting the verification and any related audit under Section 11.8, in addition to paying the additional Fees due.

## **12. DATA PROTECTION COMPLIANCE**

**12.1** Both Parties agree to comply with all applicable Data Protection laws in relation to the handling, processing, and storage of any Personal Data. The applicable data processing agreement ("**Data Processing Addendum**") is incorporated here and forms an integral part of the Agreement.



**12.2** When the Services (as identified in the Nitro ISV Order Form), include Nitro Sign Enterprise Verified and/or Nitro Identity Services, the EU GDPR P2P Data Processing Addendum Nitro Sign Enterprise Verified and Nitro Identity Services made available at <https://www.gonitro.com/legal/isv/nsev/eu-data-processing-addendum> shall apply.

**12.3** When the Services include Nitro Sign and/or Nitro PDF;

- (a) the EU GDPR P2P Data Processing Addendum for Nitro Sign and Nitro PDF made available at <https://www.gonitro.com/legal/isv/pdf/eu-data-processing-addendum> shall apply when the processing of Personal Data and/or the processing by the ISV of Personal Data is subject to the EU GDPR;
- (b) the Global/US P2P Data Processing Addendum for Nitro Sign and Nitro PDF made available at <https://www.gonitro.com/legal/isv/pdf/global-data-processing-addendum> shall apply when the processing of the Personal Data and the processing by the ISV of Personal Data is not subject to the EU GDPR;

**12.4** ISV shall ensure that any Personal Data provided to Nitro is done so in compliance with all applicable Data Protection Laws, including but not limited to obtaining any necessary consents, legal grounds of processing or authorizations required for Nitro to fulfil its obligations under the Agreement.

## **13. CONFIDENTIAL INFORMATION**

**13.1** “Confidential Information” of a Party means any information disclosed by a Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), whether before or after the Effective Date and, whether in written, oral, electronic or in any other form, and which: (i) is explicitly marked as confidential or proprietary or similar marking; (ii) should reasonably be considered confidential given the nature of the information and/or the circumstances surrounding its disclosure; or (iii) is traditionally recognized to be of a confidential nature, regardless of whether or not it is expressly marked as confidential, including but not limited to, information and facts concerning business plans, customers, prospects, personnel, suppliers, partners, investors, affiliates or others, training methods and materials, financial information, Rate Cards, pricing, marketing plans, sales prospects, customer lists, inventions, program devices, discoveries, ideas, concepts, know-how, techniques, formulas, blueprints, software (in object and source code form), documentation, designs, prototypes, methods, processes, procedures, codes, and any technical or trade secrets, including all copies of any of the foregoing or any analyses, notes, studies or reports that contain, are based on, or reflect any of the foregoing. The Services’ software structure, organization and code are the valuable trade secrets of Nitro (or its licensors, as applicable) and Nitro (and its licensors, as applicable) retain exclusive ownership of the software and the Trademarks.

**13.2** From time to time during the Term, either Party may disclose or make available to the other Party Confidential Information. Each Receiving Party shall treat all Confidential Information received from Disclosing Party as confidential, keep secret and protect such Confidential Information with not less than a reasonable degree of care and shall not disclose it to any third party other than its Affiliates, agents, employees, advisors or consultants (or with respect to Nitro its suppliers and licensors and, where applicable, an End Customer), and only where: (a) such disclosure is necessary for the performance of Services or with respect to the Agreement; and, (b) such Affiliates, agents, employees, advisors or consultants (or with respect to Nitro its suppliers and licensors and, where applicable, an End Customer) are bound by a confidentiality obligation at least as strict as included in this Section



13. Confidential Information disclosed under the Agreement shall not be used by the Receiving Party (or any other person or entity permitted to receive it under this Section 13) for any purpose other than as required for the performance of its obligations under the Agreement. The Receiving Party shall take precautions to maintain the confidentiality of the Disclosing Party's Confidential Information.

**13.3** Confidential Information shall not include information which:

- (a) is published or comes into the public domain other than by a breach of the Agreement;
- (b) can be proven to have been known by the Receiving Party before disclosure by the Disclosing Party;
- (c) is lawfully obtained from a third party other than by a confidentiality breach of such third party; or,
- (d) can be shown to have been created by the Receiving Party independently of the disclosure and without use of the Disclosing Party's Confidential Information.

**13.4** A Party that receives Confidential Information may disclose such Confidential Information to the extent required in accordance with a judicial or other governmental order, provided that the Receiving Party:

- (a) gives the Disclosing Party reasonable notice prior to such disclosure to allow it a reasonable opportunity to seek a protective order or equivalent, unless the Receiving Party is legally prohibited from doing so;
- (b) reasonably cooperates with the Disclosing Party in its reasonable efforts to obtain a protective order or other appropriate remedy;
- (c) discloses only that portion of the Confidential Information that is legally required to disclose; and,
- (d) uses reasonable efforts to obtain reliable written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available under applicable law or regulation.

**13.5** The obligations in this Section 13 shall replace any prior non-disclosure agreement signed between the Parties covering the same subject matter relating to the Agreement (if applicable) and shall survive during the Term and for five (5) years after the termination or expiration of the Agreement; provided however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

## **14. INTELLECTUAL PROPERTY RIGHTS**

**14.1. Intellectual Property Ownership.** All right, title, and interest in and to the Nitro IP and Third-Party Materials, including all Intellectual Property Rights therein, are and will remain, respectively, with Nitro and the respective rights holders in the Third-Party Materials. ISV has no right or license with respect to any Nitro IP or Third-Party Materials except as expressly licensed under Section 5.1, Section 5.2, or the applicable third-party license, in each case subject to the requirements and restrictions set forth in this Agreement. All other rights in and to the Nitro IP and Third-Party Materials are expressly reserved by Nitro and the respective third-party licensors.



**14.2 Usage Data.** ISV acknowledges and agrees that Nitro generates, compiles, stores and uses aggregated data and system usage, analytics and diagnostic information (“**Aggregated Statistics**”) to monitor and improve the Services, assist in the delivery of Support, and for the creation of new products and services. As between Nitro and ISV, all right, title and interest in the Aggregated Statistics and all Intellectual Property Rights therein, belong to and are retained solely by Nitro. ISV acknowledges that Nitro will be compiling Aggregated Statistics based on End Customers’ and Users’ use of the Services and ISV agrees, and ISV will obtain the necessary rights where required so, that Nitro may: (a) make such Aggregated Statistics publicly available; (b) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify ISV or its Confidential Information; and, (c) use such information for industry benchmarking, to understand usage, improve the Services and Support, develop new products and services, and for any other business purpose. The Aggregated Statistics are not considered End Customer Data or ISV’s Confidential Information.

**14.3 Feedback.** If ISV, End Customer or any User provides feedback or suggestions about any aspect(s) of the Nitro IP or any other Nitro goods or services, by mail, email, telephone, or otherwise, including without limitation, suggesting new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“**Feedback**”) then ISV will obtain the rights to, and hereby, grant Nitro a non-exclusive, royalty-free, transferable, sub-licensable, irrevocable and perpetual worldwide license to use, profit from, disclose, publish, keep secret and/or otherwise exploit such Feedback in any medium without further obligation or compensation to ISV, End Customer or any User. Feedback will not constitute ISV’s Confidential Information.

**14.4 End Customer Data.**

- (a) ISV will obtain the rights to hereby grant to Nitro a non-exclusive, royalty-free, worldwide license, license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the End Customer Data and otherwise use and display the End Customer Data and perform all acts with respect to the End Customer Data to the extent reasonably required to provide the Services and Support to ISV and End Customer and for the performance of Nitro’s obligations and the exercise of Nitro’s rights under this Agreement and the End Customer Agreement. ISV will obtain the rights to also grant to Nitro the right to sub-license these rights to its subcontractors (such as for example hosting, connectivity and telecommunications service providers) to the extent reasonably required for the performance of Nitro’s obligations and the exercise of Nitro’s rights under this Agreement.
- (b) ISV acknowledges and agrees that for the performance of the Agreement and in order to use the functionalities of the Services, specific End Customer Data may be disclosed to recipients and third parties (for example but without limitation, for processing PDF documents, for the creation and signing of documents, implementation of signature workflows or for the



identification of Users). Notwithstanding Section 13 (Confidential Information), such disclosure shall explicitly not constitute a breach of confidentiality and is permitted.

**14.5** ISV Cooperation and Notice of Infringement. ISV shall, during the Term: (a) safeguard the Nitro IP (including all copies thereof) from infringement, misappropriation, theft, misuse, and unauthorized access; (b) at Nitro's expense, take all such steps as Nitro may reasonably require to assist Nitro in maintaining the validity, enforceability, and Nitro's ownership of the Intellectual Property Rights in the Nitro IP; (c) promptly notify Nitro in writing if ISV becomes aware of (i) any actual or suspected infringement, misappropriation, or other violation of Nitro's Intellectual Property Rights in or relating to any of the Nitro IP or (ii) any claim that any Nitro IP, including any production, marketing, distribution, licensing, sale, use or other disposition of any Services, whether or not as incorporated in the Integrated Solution or under the Nitro Trademarks, infringes, misappropriates or otherwise violates the rights of any third party; and (d) fully cooperate with and assist Nitro in all reasonable ways in the conduct of any Third Party Claim described in Section 16.

## **15. REPRESENTATIONS AND WARRANTIES**

**15.1** Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power, and authority to enter into, and to perform its obligations and grant the rights and licenses it grants, or is required to grant, under this Agreement;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and
- (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

**15.2** DISCLAIMER OF WARRANTIES EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN 0, ALL SERVICES AND OTHER NITRO IP, AND ANY THIRD-PARTY MATERIALS, OR RESULTS PROVIDED BY NITRO ARE PROVIDED "AS IS" AND NITRO HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, AND NITRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, NITRO MAKES NO WARRANTY OF ANY KIND THAT ANY SERVICES OR OTHER NITRO IP, OR ANY THIRD-PARTY MATERIALS OR RESULTS OF THE USE THEREOF, WILL MEET ISV'S, THE END CUSTOMER'S, OR ANY OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SERVICES, SYSTEM, OR OTHER SERVICES OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.



## 16. INDEMNIFICATION

### 16.1 Nitro Indemnification.

- (a) Nitro shall indemnify, defend, and hold harmless ISV from and against any and all third party Losses incurred by ISV resulting from any Third-Party Claim that the Services, or any use of the Services in accordance with this Agreement infringe any such third party's patents, copyrights, or trade secrets, provided that ISV promptly notifies Nitro in writing of the claim, cooperates with Nitro, and allows Nitro sole authority to control the defense and settlement of such claim.
- (b) If a Third-Party Claim is made, or in Nitro's determination is likely to be made, ISV agrees that Nitro may, at Nitro's sole discretion: (i) modify or replace the Services, or component or part thereof, to make it non-infringing; or (ii) obtain the right for ISV to continue to use the Services. If Nitro determines that neither alternative is reasonably available, Nitro may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to ISV and Nitro will provide ISV with a pro-rata refund of any Fees pre-paid by ISV that are related to that specific infringing part of the Services for the period during which ISV or an End Customer was not able to use the Services due to such termination by Nitro.
- (c) This Section 16.1 will not apply to the extent that the alleged infringement arises from: (i) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Nitro or authorized by Nitro in writing; (ii) misuse of the Services by ISV, the End Customer or Users; (iii) modifications to the Services not made by Nitro; or (iv) arises from ISV's, the End Customer's or Users' failure to use the latest version; or, (v) any breach of this Agreement by ISV; or (vii) a breach by an End Customer or its Users of the End Customer Agreement.

**16.2** SECTION 16.1 AND 16.2 SETS FORTH ISV'S SOLE REMEDIES AND NITRO'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE NITRO IP INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. THE EXCLUSIONS AND LIMITATIONS AS SET OUT IN SECTION 18 (LIMITATION OF LIABILITY) APPLY TO NITRO'S LIABILITY FOR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 16.1.

## 17. INDEMNIFICATION BY ISV

**17.1** ISV shall indemnify, hold harmless, and, at Nitro's option, defend Nitro, its Affiliates and each of their respective directors, officers, employees and consultants from and against any Losses resulting from any third party claim with respect to (a) any alleged or actual act or omission or misrepresentation of ISV or its directors, officers, employees and consultants or (b) any breach of this Agreement by ISV or its directors, officers, employees and consultants or (c) any breach of applicable law by ISV or its directors, officers, employees and consultants (or its End Customers) or (d) any breach of the End Customer Agreement by End Customers or (e) any Integrated Solution or ISV Software, provided that, where such Integrated Solution or ISV Software incorporate or are combined with any Services, such Losses do not arise solely out of or relate solely to the Services or (f) ISV's non-compliance with any Documentation or directions provided by or on behalf of Nitro or (g) the





performance of any support or other services by ISV to End Customers or (h) ISV's wilful misconduct, fraud or gross negligence.

## **18. LIMITATIONS OF LIABILITY**

**18.1** TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NITRO'S AGGREGATE LIABILITY (PER EVENT OR SERIES OF CONNECTED EVENTS) ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED (I) THE FEES PAID OR PAYABLE BY ISV TO NITRO UNDER THIS AGREEMENT FOR THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (II) ONE THOUSAND UNITED STATES DOLLARS (\$1,000 USD), WHICHEVER IS GREATER.

**18.2** NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS (OR ITS AGENT'S OR SUBCONTRACTOR'S) NEGLIGENCE, OR FOR THEFT OR MISAPPROPRIATION OF FUNDS OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

**18.3** TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NITRO BE LIABLE UNDER OR IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY INDIRECT, PUNITIVE, SPECIAL CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING BUT WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS, LOST REVENUE, LOSS OR CORRUPTION OF DATA, LOSS OF ISV'S AND CONTRACTS, LOSS OF GOODWILL, THE COSTS OF PROCURING REPLACEMENT GOODS OR SERVICES OR OTHERWISE HOWSOEVER, AND THIRD PARTIES' CLAIMS, IN EACH CASE ARISING OUT OF OR RELATED TO THE AGREEMENT, REGARDLESS OF WHETHER NITRO WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE OR EVEN IF ISV'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. NITRO SHALL ALSO NOT BE LIABLE FOR DAMAGES CONNECTED TO OR AS A RESULT OF OUT OF SCOPE USE OF THE SERVICES BY THE ISV, END CUSTOMERS, THEIR BENEFICIARIES AND/OR USERS.

**18.4** THE LIABILITIES LIMITED BY THIS SECTION 18 APPLY TO THE BENEFIT OF NITRO AND ITS AFFILIATES AND EACH OF THEIR RESPECTIVE LICENSORS, SUPPLIERS, ADVERTISERS, AGENTS, SPONSORS, DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, OTHER REPRESENTATIVES, OFFICERS, AND THIRD PARTY CONTRACTORS HOWEVER IF PERMITTED BY APPLICABLE LAW, BOTH PARTIES HEREBY ACKNOWLEDGE AND AGREE TO EXCLUDE ANY EXTRA-CONTRACTUAL LIABILITY RELATED TO THE FORMATION, EXECUTION, PERFORMANCE AND TERMINATION OF THIS AGREEMENT AND GUARANTEES THAT ITS AFFILIATED PERSONS EXCLUDE THIS WITH RESPECT TO ANY OTHER PARTY AND THE EMPLOYEES, DIRECTORS, SHAREHOLDERS AND DIRECT OR INDIRECT AUXILIARY PERSONS OF SUCH OTHER PARTY AND IT AFFILIATES PERSONS TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, INCLUDING GROSS NEGLIGENCE.

**18.5** ISV ACKNOWLEDGES AND AGREES THAT NITRO HAS BASED ITS PRICING ON AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND DISCLAIMERS OF WARRANTIES AND DAMAGES AS SET OUT IN THIS AGREEMENT AND THAT SUCH TERMS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION 18, NITRO'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.



## 19. TERM, SUSPENSION AND TERMINATION

**19.1 Term.** This Independent Software Vendor Agreement shall commence on the Effective Date. Unless terminated earlier in accordance with the terms of the Independent Software Vendor Agreement, this Independent Software Vendor Agreement shall continue for one (1) year (“**Initial Term**”) and shall automatically extend for successive twelve (12) month periods (“**Renewal Term**”) at the end of the Initial Term and at the end of each Renewal Term (the Initial Term and any Renewal Terms shall collectively be the “**Term**”) unless either Party gives written notice to the other Party, not later than thirty (30) days before the end of the then current Initial Term or the then current Renewal Term, to terminate this Independent Software Vendor at the end of the Initial Term or the relevant Renewal Term, as the case may be. For the avoidance of doubt and notwithstanding the foregoing, each ISV Order Form entered into pursuant to this Independent Software Vendor Agreement shall have its own term as set forth therein. To the extent that the term of any ISV Order Form extends beyond the Term of this Independent Software Vendor Agreement, such ISV Order Form shall continue to be governed by the terms and conditions of this Agreement unless such ISV Order Form is terminated in accordance with the terms of the Agreement.

**19.2 Suspension.** Without limiting Nitro’s other rights and remedies, and notwithstanding anything to the contrary in this Agreement, Nitro may suspend or terminate a ISV’s, End Customer’s or other User’s access to any portion or all of the Services at any time if: (i) Nitro reasonably determines that: (a) there is a threat or attack on any of the Nitro IP; (b) ISV’s, End Customer’s or any User’s use of the Nitro IP disrupts or poses a security risk to the Nitro IP or to any other customer or vendor of Nitro; (c) ISV, End Customer, or any User, is using the Nitro IP for fraudulent or illegal activities; (d) subject to applicable law, ISV or End Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or, (e) Nitro’s provision of the Services to ISV, End Customer or any User is prohibited by applicable law; (ii) any vendor of Nitro has suspended or terminated Nitro’s access to or use of any third-party services or products required to enable ISV and/or End Customer to access the Services; (f) ISV fails to pay to Nitro any undisputed amount due hereunder and ISV fails to cure such failure to pay within ten (10) days from the date of a written notice of default from Nitro to ISV; (g) Nitro ceases to be able to own/operate the Services for any legal or regulatory reason(s); or, as otherwise set out in the Agreement (collectively, a “**Services Suspension**”). Nitro will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that ISV, End Customer or any User may incur as a result of a Service Suspension. In the event Nitro is entitled to terminate the Agreement for cause as per Section 19.3, Nitro may alternatively, at Nitro’s option, suspend the right of use and licenses granted hereunder instead of immediately terminating the Agreement, without any formalities or indemnities being required and without prejudice to any other right or remedy available to Nitro pursuant to the Agreement or under applicable law.

**19.3 Termination.** Without affecting any other right or remedy available to it:

- (a) Nitro may terminate this Agreement, or a particular ISV Order Form(s), upon notice to ISV if (i) ISV fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than ten (10) days after being notified in writing to make such payment (ii) there is a change of Control of ISV to a direct competitor of Nitro; (iii) ISV purports to assign any of its rights or obligations under this Agreement to a direct competitor of Nitro.
- (b) Either Party may terminate this Agreement, or particular impacted ISV Order Form(s), effective on written notice to the other Party, if the other Party materially breaches this Agreement, and



such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or (C) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, liquidator or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**19.4 Effect of Expiration or Termination.** Upon any expiration or termination of this Agreement:

- (a) ISV shall immediately cease to represent itself as Nitro's authorized Independent Software Vendor of the Services and otherwise desist from all conduct or representations that might lead the public or trade to believe that ISV is authorized by Nitro to sell or distribute the Services or Integrated Solution;
- (b) all licenses granted to ISV in the Agreement will also expire or terminate;
- (c) ISV shall cease all use of Services and other Nitro IP, and all copies thereof, in whole and in part, including in any production, marketing, distribution, licensing, sale, maintenance, support, or use of the Integrated Solution;
- (d) ISV shall promptly return to Nitro, or otherwise delete or dispose of as Nitro may instruct, any Nitro IP and Confidential Information and other items relating to Nitro's business (and copies of them) which ISV may have in its possession or under its control and, in the case of destruction or deletion, ISV shall certify the same to Nitro;
- (e) unless ISV terminates the Agreement in accordance with Section 19.3(b)(A) or 19.3(b)(B), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and ISV shall pay such Fees, together with all previously-accrued but not yet paid service charges and reimbursable expenses, immediately. For the avoidance of doubt, this means the payment date of all monies due to Nitro for the full duration from any then-existing Nitro ISV Order Forms shall automatically be accelerated so that they shall become due and payable (in the entirety for the fixed commitment set out in such Nitro ISV Order Forms) on the effective date of termination, even if longer payment terms had been previously provided.
- (f) if ISV terminates this Agreement pursuant to (b)(A) or (b)(B), Nitro shall on a pro rata basis refund to ISV any Fees ISV has paid in advance hereunder to the extent, if any, those Fees are applicable to Services that were to be performed after the effective date of termination;

**19.5 Surviving Terms.** The provisions set forth in the following Sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration



of this Agreement, will survive any expiration or termination of this Agreement: Sections 2, 6, 11, 12, 13, 14, 15.2, 16, 17, 18, 19.4, 19.5 and 20.

## 20. MISCELLANEOUS

**20.1 Compliance with Rules of Conduct.** ISV will comply with all applicable anti-bribery and anti-corruption laws and regulations, adhere to Nitro's ESG Policies, and maintain effective internal policies to enforce compliance. Additionally, ISV promises that any of its representatives and subcontractors performing services under this Agreement will abide by terms of this Agreement and ISV accepts full liability for any breaches by such persons and subcontractors. Any violation of applicable anti-bribery and anti-corruption laws and regulations or adherence to Nitro's ESG Policies will constitute an incurable material breach of this Agreement by ISV.

**20.2 Insurance.** Throughout the Term, ISV will maintain commercial property, casualty, cybersecurity and liability insurance in amounts customary for businesses operating in ISV's industry and, in any event shall carry Commercial General Liability Insurance, to include contractual liability, with a minimum limit of one million dollars (\$1,000,000). All liability insurance will designate Nitro as an additional insured. All such insurance must be primary and require the issuer to respond and pay prior to any other available coverage. ISV agrees that ISV and anyone claiming by, through, under, or in ISV's behalf will have no claim, right to action, or right of subrogation against Nitro based on any loss or liability insured against under the foregoing insurance. ISV will provide Nitro with certificates or adequate proof of the foregoing insurance within thirty (30) days after the Effective Date and thereafter promptly upon Nitro's request. Such insurance policies or endorsements will entitle Nitro to receive notice at least thirty (30) days prior to any cancellation (including for nonrenewal) or change.

**20.3 Further Assurances.** Upon a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

**20.4 Relationship of the Parties.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture or franchise between any of the Parties, constitute any Party the agent of another Party, nor authorize any Party to make or enter into any commitments for or on behalf of any other Party. If any provision of this Agreement is deemed to create a franchise relationship, or ISV alleges such a relationship with Nitro arising out of or in connection with this Agreement, Nitro may immediately terminate this Agreement or Nitro may request the Parties shall negotiate in good faith to modify this Agreement so as to reflect as closely as possible their original intent in entering into this Agreement in order that the transactions contemplated hereby be consummated pursuant to an independent contractor and not a franchise relationship. Without prejudice to the foregoing or any other provision in this Agreement and if permitted under applicable laws, ISV hereby waives and relinquishes to the full extent permissible under applicable law any rights or claims under franchise or similar laws arising out of or in connection with this Agreement.

**20.5 Public Announcements.** Neither Party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, in the case of ISV, except as expressly permitted under Section 5.3, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, affiliation, or sponsorship, in each case, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided, however, that each Party may truthfully and non-



misleadingly disclose to third Parties its relationship to the other Party as software licensor and authorized independent software vendor, respectively, under this Agreement and Nitro may, without requiring ISV's consent, include ISV's name in its lists of Nitro's current or former authorized ISV independent software vendors in promotional and marketing materials.

**20.6 Notices.** Nitro may send legal notices pursuant to this Agreement to ISV's address or the ISV's Notification Email Address as provided for by ISV in the Nitro ISV Order Form or the Nitro Partner Portal, as applicable. In case no such Notification Email Address is provided, legal notices will be served to ISV's registered email address or physical address. ISV may send notices to Nitro pursuant to the Agreement to [legalnotices@gonitro.com](mailto:legalnotices@gonitro.com). All legal notices shall be deemed to have been given either: (a) if by email, on the first Business Day after the email was sent with proof of delivery (such as a 'read receipt'); or, (b) if sent by commercial courier (e.g., FedEx), on the first Business Day after delivery, or if sent by registered or certified mail, on the fifth (5th) Business Day following the day such mailing is made. For the avoidance of doubt, non-legal communications in the usual course of business or any other communications specifically referenced in this Agreement as being permitted to be sent via email, or made available via the Nitro Partner Portal, need not be sent to the foregoing address for legal notices. For the avoidance of doubt, ISV shall be solely responsible for determining if any legal notices or non-legal communications provided by Nitro to ISV should result in further communications from ISV to End Customers.

**20.7 Interpretation.** In this Agreement, unless a contrary intention appears: (a) the terms, "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular portion hereof and include any Agreement supplemental hereto; (b) words importing a singular number only shall include the plural and vice versa; (c) the term "including" means "including without limitation"; (d) other grammatical forms of defined words or expressions have corresponding meanings; (e) a reference to an article, section, document or Agreement, including this Agreement, includes a reference to that section, document or Agreement as amended from time to time, as permitted hereunder; and, (f) the division of this Agreement into sections and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this Agreement. The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either Party by reason of authorship.

**20.8 Subcontracting.** ISV acknowledges and agrees the Services may contain functionalities provided by Nitro's third party subcontractors which are engaged by Nitro to perform specific parts of Nitro's contractual obligations under the Agreement (for example but without limitation, hosting providers, SMS-sending providers, third party signing method providers, etc.).

**20.9 Language.** The Agreement is in the English language only which language shall be controlling in all respects. Furthermore, all communications and notices made or given pursuant to the Agreement shall be in the English.

**20.10 Dispute Resolution.** It is the Parties' intention that any dispute between them in relation to this Agreement should be settled amicably, by consultation, negotiation, and mutual agreement. The Parties shall use reasonable efforts to resolve any dispute arising out of this Agreement. If the Parties are unable to resolve a dispute, either Party may escalate the dispute to the senior executive level. If the senior executives of both Parties are unable to resolve the dispute within ten (10) days after escalation, the Parties shall be permitted to use all legal avenues available to them.





**20.11 Time for Claims.** Where permitted by applicable law, ISV hereby agrees that any claim by ISV in connection to the Services or this Agreement must be brought within six (6) months of the act giving rise to the claim.

**20.12 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**20.13 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express clauses of the Agreement. In the event of a conflict, in the documents that make up the Agreement the order of precedence is as follows (a) ISV Order Form (b) Schedules, (c) Independent Software Vendor Agreement (d) Nitro Partner Portal information intended by the terms herein to form part of the Agreement.

**20.14 Assignment.** ISV may not assign this Agreement or any of its rights or obligations hereunder without Nitro's explicit written consent, which may not be unreasonably withheld. Nitro may assign or transfer its rights, obligations and duties under the Agreement to its Affiliates or to any other third party. Except to the extent forbidden in this Section 20.14, this Agreement will be binding upon and inure to the benefit of the Parties' respective permitted successors and assigns.

**20.15 Force Majeure.** Except for ISV's payment obligations, neither Party will be responsible or liable for any failure or delay in the performance of its obligations under the Agreement arising out of or caused by Force Majeure.

**20.16 No Third-Party Beneficiaries.** Except as expressly set out in this Agreement, this Agreement benefits solely the Parties and their respective permitted successors and permitted assigns, and nothing in this Agreement, express or implied, confers on any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**20.17 Waiver.** The Agreement may be modified or amended only by written agreement executed by a duly authorized representative of both Parties hereto. Any term or condition of the Agreement may be waived only by a written document signed by the Party entitled to the benefits of such term or condition. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given and shall not constitute a continuing waiver or consent. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

**20.18 Severability.** To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

**20.19 Governing law; Submission to Jurisdiction.** If the Nitro contracting entity is Nitro Software Belgium NV, then this Agreement shall be governed by and construed in accordance with the laws of Belgium and the Parties hereto submit to the exclusive jurisdiction of the courts of Antwerp, division Antwerp. Conversely, if the contracting entity is Nitro Software Inc., then the laws of California and any





applicable federal laws of the United States shall govern and the Parties agree to submit exclusive jurisdiction of the courts of San Francisco, California. The application of the United Nations Convention for the International Sale of Goods is expressly excluded from this Agreement. Moreover, the Parties agree to waive and opt out of any application of the Uniform Computer Information Transactions Act (UCITA), or any version thereof, adopted by any state in the United States. This Section 20.19 dictates the governing law for all claims arising out of or related to this Agreement, including, but not limited to, tort claims.

**20.20 Equitable Relief.** Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 12, or Section 13 or, in the case of ISV, ISV's obligations under Section 5, Section 6, Section 8 or Section 14, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

**20.21 No Reliance on Future Functionality.** ISV acknowledges and agrees that, in entering into this Agreement, ISV is not relying on any future enhancements, updates, or additional functionalities related to the Nitro IP that may be provided by Nitro or any third-Party licensor. Unless otherwise expressly stated in this Agreement, any obligations undertaken by Nitro to provide such enhancements or updates to the Nitro IP are at their sole discretion and may be subject to separate agreements or fees.

**20.22 Attorneys' Fees.** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party hereto against the other Party arising out of or related to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.

**20.23 Compliance with laws and Regulations.** ISV shall be responsible for obtaining any import or export licenses or permits necessary for the entry of the Services into the Territory, or their delivery to End Customers, and ISV shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Services. ISV represents and warrants that it shall not ship, transfer, or export any Services to any nation embargoed by the European Union, Australia or the United States as such prohibitions and restrictions being subject to change during the Term.

**20.24 Cumulative Remedies.** Unless expressly stated otherwise in this Agreement, all rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or later be available at law, in equity, in any other agreement between the Parties or otherwise.

**20.25 Counterparts.** This Agreement may be executed in one or more counterparts and may be signed by means of an electronic signature or accepted by ISV via a click-through acceptance



procedure via the Nitro Partner Portal or via incorporation by reference into a ISV Order Form. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

