Enterprise Services Agreement

§1 Scope

1.1 This Enterprise Services Agreement (hereafter “Agreement”) applies to the code signing software SignPath offered as software-as-a-service by Provider and together with the Offer constitutes the contractual relationship between Provider and Customer.

1.2 The use of the Website and the Service by Users is subject to select sections of the Signpath.io Terms of Service, specifically sections 2 “Account Terms”, 3 “Acceptable Use”, 4 “API Terms” and 6 “Deletion and Termination” shall apply mutatis mutandis to Customer’s use of the Service.

1.3 This Agreement is effective as of the date that Customer accepts the Offer which references this Agreement.

1.4 The Service may be licensed directly from Provider as well as from authorized distribution partners. In case of purchase through a distribution partner, this Agreement shall apply mutatis mutandis to the contractual relationship between Customer and the distribution partner. In such cases the distribution partner is the single point of contact for Customer in all matters.

§2 Definitions

2.1 **Affiliate** refers to any entity that directly or indirectly controls, is controlled by, or is under common control with a party where "control" means having more than fifty percent (50%) ownership or the right to direct the management of the entity.

2.2 **Confidential Information** means any non-public information disclosed by either party to the other, whether in writing, orally or by other means, designated as confidential or that the receiving party knows or reasonably should know, under the circumstances surrounding the disclosure and the nature of the information, is confidential to the disclosing party. Confidential Information shall include the Software, the documentation and the applicable Offer.

2.3 **Customer** means the company or organization that has entered into this Agreement with Provider.

2.4 **Content** refers to software artifacts, certificates, private keys, audit logs, system configuration settings.

2.5 **Developers** refers to software developers who contribute source code to software projects or scripts that use the Service.

2.6 **EV Certificate** refers to the Extended Validation code signing certificate, provided by GlobalSign.

2.7 **Offer** refers to the offer document provided by SignPath which states the Subscription Plan and supplemental services being acquired, terms of use, price, and other applicable transaction details.

2.8 **Provider** refers to SignPath GmbH, Werdertorgasse 14, 1010 Vienna, Austria, as well as its Affiliates, directors, subsidiaries, contractors, licensors, officers, agents, and employees.

2.9 **Service** refers to the code signing software-as-a-service SignPath and supplemental services provided by Provider.

2.10 **Support** means technical support for the Service.

2.11 **Subscription Term** refers to the license period agreed between the parties.

2.12 **User** refers to an individual who accesses and uses the Service.

2.13 **Website** refers to the SignPath website located at signpath.io, and all Services and products provided by Provider at or through the Website.

§3 Subscription Terms

Enterprise Subscription license

3.1 The Service is provided as Software-as-a-Service and licensed to Customer for the payment of a subscription fee. The license is limited to Customer's own business purposes and is non-transferable unless expressly stated otherwise in this Agreement.

3.2 The license includes also access to future versions and features of the Software.

3.3 The license expires with the termination of this Agreement.

Number of Developers

3.4 The subscription fee for the Service is calculated based on the number of Developers.

3.5 The number of Developers may increase by up to 10% during the Subscription Term. Customer must inform Provider about any increase beyond 10% and will be billed pro rata at the end of the Subscription Term. In the subsequent Subscription Term, Customer will be upgraded to the next available subscription package according to the required number of Developers.

Number of Active User Accounts for Single Sign-on

(This section applies only if Customer uses the single sign-on feature and the Offer specifies a number of included monthly active users.)

3.6 Provider uses the identity management service Okta, which is billed according to the number of monthly active user accounts. The number of monthly active user accounts is the sum of all Users that log into the system within any respective month.

3.7 The number of monthly active user accounts for single sign-on included in the Customer's Subscription may be stated in the Offer. Otherwise, it is the same as the number of Developers.

3.8 In the event that the average number of user accounts exceeds the number included in the Offer, Provider will charge the Customer annually for the additional costs incurred.

Annual Quotas

3.9 Unless specified otherwise in the Offer, the Service includes the following annual quotas:

a) File uploads: 25 GB × Number of Developers
b) Signatures: 25.000 × Number of Developers (a signing request may cause any number of signatures according to the artifact configuration)
c) The number of signing requests (release and test-signing) and CI pipelines is not limited

3.10 These quotas represent a maximum fair use limit. Exceeding usage may be agreed upon for an extra fee.

File Retention

3.11 Unless specified otherwise in the Offer, the Service includes the following retention times for uploaded and signed artifacts:

a) Full retention: 3 months
b) Subsequent archive retention: 0 months (If purchased, archived artifacts will be retrievable through support requests. Service fees may apply.)

EV Certificate

3.12 The Service includes an EV Certificate provided by GlobalSign to Customer under GlobalSign's own terms and conditions, which Customer must accept in order to receive the EV Certificate. GlobalSign's applicable terms and agreements can be found here: https://www.globalsign.com/en/repository

3.13 GlobalSign will contact Customer for vetting and identity verification.

3.14 Upon the end of this Agreement, the EV Certificate's private key will be deleted on the Hardware Security Module (HSM) operated by Provider.

§4 Support

Basic Support

4.1 Provider will provide basic technical Support for issues with documented SignPath functions at no additional charge. Support requests must be submitted via email to support@signpath.io. If the Service is licensed through a distribution partner, support requests must be submitted to the point of contact provided by the distribution partner.

Comprehensive Support

4.2 Additionally, Customer can separately order Comprehensive Support which includes:

a) support with setup und integration
b) remote support with screen sharing
c) access to experts for specific requirements
d) consulting for advanced and new features
    i. simplification and acceleration of software build pipelines, with special regard to avoiding the delays caused by manual steps
    ii. increased security against inattention, mistakes, and active attacks of security measures
    iii. strict policy enforcement
e) support of individual development/DevOps teams

§5 Pricing and Payment

5.1 The amount of the applicable Subscription and support fees is stated in the Offer.

5.2 The applicable fees may be adjusted annually by Provider by 3% unless stated otherwise in the Offer.

5.3 Amounts payable under this Agreement are non-refundable, except as otherwise provided in this Agreement.

5.4 If Customer fails to pay any fees on time, Provider reserves the right to (i) charge interest on past due amounts at 1.0% per month or the highest interest rate allowed by law, whichever is less, and to charge all expenses of recovery, and (ii) terminate the applicable Offer.

5.5 Customer is solely responsible for all taxes, fees, duties, and governmental assessments that are imposed or become due in connection with this Agreement.

§6 Availability and Maintenance

Service Availability

6.1 Provider shall make commercially reasonable efforts to make the Service available to Customer 24 hours a day, 7 days a week, every day of the year excluding service failures resulting from:

a) Customer's acts, omissions, or misuse of the Service including violations of the Agreement
b) failure of Customer's internet connectivity
c) factors outside Provider's reasonable control, including force majeure events; or
d) Customer's equipment, services, or other technology.

System Maintenance

6.2 Provider reserves the right to interrupt or suspend the availability of the Service or some of its features for the purpose of system maintenance, especially infrastructure changes that cannot be performed transparently through the Service's redundancy and high availability setup. Provider shall provide 7 days' notice for all scheduled system maintenance activities. In the event of an emergency or an urgent issue which may negatively impact the Service and the Customer, Provider has the right to carry out unscheduled maintenance immediately without prior notice to remedy such issues.

§7 Warranties

7.1 Provider warrants that:

a) the Service shall perform substantially as described in the applicable documentation; and
b) the Service shall be provided in a professional and workmanlike manner by qualified personnel; and
c) it will use commercial industry standard methods designed to ensure the Service provided to Customer does not include any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that are intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or User data.

7.2 If at any time Provider fails to comply with the warranties in this section, Customer may promptly notify Provider in writing of any such noncompliance. Provider will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting the non-compliance is not established during such period, Customer may terminate this Agreement and receive a prorated refund for the unused portion of the Subscription Term as its sole and exclusive remedy for such noncompliance.

7.3 Except as specifically set forth in this Agreement, the Service and any supplemental services provided in connection with this Agreement are provided "as-is," without any warranties of any kind. Provider hereby disclaims all warranties, express or implied, including, without limitation, all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement.

§8 Limitation of Liability

8.1 Except with regard to the indemnification obligations of section 9, to the maximum extent permitted by applicable law, in no event will either party be liable to the other party or to any third party for any direct,

indirect, special, incidental, punitive, or consequential damages (including for loss of profits, revenue, or data) or for the cost of obtaining substitute products arising out of or in connection with this Agreement, however caused, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), strict liability or otherwise, and whether or not a party has been advised of the possibility of such damages.

§9 Indemnification

9.1 The parties will defend each other against third party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it at the defending party's expense.

9.2 The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will then reimburse the other party for reasonable out-of-pocket expenses it incurs in providing such assistance.

9.3 Provider will defend Customer from and against all claims arising out of Provider's violation of this Agreement or brought against Customer by a third party alleging that the Service, as provided by Provider to Customer under this Agreement infringes any patent, copyright, or trademark or misappropriates any trade secret of any third party.

9.4 Customer will defend Provider from and against any and all claims arising out of Customer's use of the Website and the Service contrary to the terms of this Agreement.

§10 Term and Termination

10.1 This Agreement is concluded for the duration of the Subscription Term as defined in the Offer.

10.2 Without limiting other remedies, either party may terminate this Agreement for material breach immediately if the other party fails to cure the breach within a 30-day notice period. Upon such termination:

a) All licenses granted under this Agreement will terminate immediately.
b) All amounts due under any unpaid invoices will become due and payable immediately.
c) If Provider is in breach, Customer will be reimbursed for any prepaid unused fees.

§11 Intellectual Property

11.1 Provider and its licensors, vendors, agents, and/or content providers retain ownership of all intellectual property rights of any kind related to the Website and Service. Provider reserves all rights that are not expressly granted to Customer under this Agreement or by law.

§12 Confidentiality

12.1 Each party agrees to maintain in confidence and protect the other party's Confidential Information using at least the same degree of care as it uses for its own information of a similar nature, but in any event at least a reasonable degree of care.

12.2 Each party agrees to take all reasonable precautions to prevent any unauthorized disclosure of the other party's Confidential Information, including, without limitation, disclosing such Confidential Information only to its Representatives who (i) have a need to know such information, (ii) are parties to appropriate agreements sufficient to comply with this section, and (iii) are informed of the restrictions on use and disclosure set forth in this section. Each party is responsible for all acts and omissions of its Representatives.

12.3 The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable such party to contest such order or requirement, unless such notice is prohibited by law.

12.4 Confidential Information shall not include any information however designated, that: (i) is (or subsequently becomes through no fault of the receiving party) publicly available; (ii) became known to receiving party prior to Disclosing party's disclosure of such information to receiving party pursuant to the terms of this Agreement; (iii) was lawfully received by the receiving party from a third party without such restrictions; or (iv) is independently developed by receiving party without breach of this Agreement or access to, reference to, or use of the Confidential Information.

12.5 The restrictions set forth in this section will be applicable during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement.

§13 Miscellaneous

Entire Agreement

13.1 This Agreement together with the Offer represents the complete and entire of the agreement between Provider and Customer. The following order of precedence shall be applied in the event of conflict or inconsistency between this Agreement and the Offer: (i) the Offer; (ii) this Agreement.

13.2 Any terms and conditions presented by Customer, whether referenced in a purchase order issued in connection with this Agreement or presented by Customer in any other way, are expressly rejected and will not apply.

Changes and Amendments

13.3 Provider reserves the right to change and amend the terms of this Agreement at any time and will notify Customer of the amendment at least 30 days prior to the change taking effect. If the amendment materially and adversely affects Customers rights under this Agreement as determined in Customer's reasonable discretion, Customer may terminate the Agreement on the effective date of the change and will be reimbursed for any prepaid unused fees pro rata. Otherwise, the continued use of the Service constitutes agreement with the amendments.

Product Changes

13.4 Provider has the right to make changes to the Service if such changes do not materially lessen the functionality or security of the Service. Provider may provide additional terms that apply to Customer's use of updates, new features, or related software.

Publicity

13.5 Customer grants Provider the right to use their name in materials such as case studies, marketing materials, press releases, and the Website indicating that they are a customer of SignPath.

Assignment

13.6 Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Provider may also assign its rights to receive payment and enforce Customer's payment obligations. Any other assignment of this Agreement must be approved by the other party in writing.

Affiliates and Contractors

13.7 Provider may perform its obligations under this Agreement through its Affiliates and use contractors to provide certain Services, but Provider shall in all such cases remain responsible for compliance with all terms and requirements of this Agreement.

Severability, No Waiver, and Survival

13.8 If any part of this Agreement is held invalid or unenforceable, that portion of the Agreement will be construed to reflect the parties' original intent. The remaining portions will remain in full force and effect. Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party. All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.

Dispute Resolution

13.9 In the event of a dispute or claim arising out of or relating to this Agreement, including any question regarding its existence, validity or termination, the parties shall first seek to resolve any dispute amicably via negotiations. The maximum duration for amicable negotiations between the parties shall be ninety (90) calendar days from the occurrence of such event.

Governing Law and Jurisdiction

13.10 The contractual relationship shall be governed exclusively by Austrian law to the exclusion of conflict of laws rules. The application of the UN Convention on Contracts for the International Sale of Goods is expressly excluded.

13.11 Where the dispute remains unresolved after the expiry of the timeframe for amicable negotiations, the competent court with subject jurisdiction at the place of establishment of the respective defendant shall have exclusive jurisdiction for any disputes arising from this Agreement.