

ADLS Digital Signing Service

TERMS AND CONDITIONS OF USE

By choosing to use the ADLS Digital Signing Service (the “**Service**”) you confirm that you have read and accept the following terms:

1.0 Users of the ADLS Digital Signing Service Contract with two suppliers – ADLS and the DSSP

1.1. The ADLS Digital Signing Service involves users contracting separately with two primary and distinct suppliers:

- (1) ADLS; and
- (2) the third party digital signature service provider (“DSSP”).

1.2. Users must read and accept DSSP’s separate terms before progressing to use DSSP’s component of the services available by clicking this link <https://www.securedsigning.com/terms>

1.3. ADLS shall:

- (1) Facilitate the collection of the fees on behalf of DSSP (which are included in the digital signing fees users pay to ADLS); and
- (2) enable users to contract with the DSSP.

1.4. ADLS is not responsible nor liable for any act or omission on the part of the DSSP.

2.0 Scope of Service:

2.1. The Service enables one or more digital signatures to be placed into an electronic version of a user selected and compatible PDF document using encryption and other security measures.

2.2. ADLS provides the platform and related online services which ADLS owns and controls, being that part of the WebForms™ system which allows users to upload, manage, organise and send documents for digital signature to (and received back from) the independent digital signature service provider (the “DSSP”).

2.3. DSSP is solely responsible and liable for what it supplies. That is, the facility enabling the signature production process.

2.4. By utilising the Service users accept that ADLS does not control, and therefore is not liable for users’ documents or data once it leaves ADLS’ system gateway to the Internet for the purpose of being received, progressed and returned by the DSSP’s systems. ADLS merely facilitates the linkage between the two systems, and has developed its own systems to enable users to utilise the end-to-end service provided by each supplier. These components only constitute ADLS’ “Service”.

2.5. Further, and importantly, as the user of the Service, the user (not ADLS or the independent digital signature service provider) are responsible for ensuring:

- (1) that the identity and consent requirements set out in clauses 3.0 to 6.0 below have been fulfilled in respect of each signatory;
- (2) that the names and other details relating to each signatory are true and correct as inputted into ADLS’ online Service, and that you have full legal authority to use that information, including all related personal information; and
- (3) that the document or documents being signed using the Service are legally permitted to be signed digitally in accordance with the online settings and options selected as part of the Service. Refer clause 7.0 below for further information on this issue.

3.0 Contract and Commercial Law Act 2017

3.1. Users acknowledge that an electronic signature, as defined in section 226 of the Contract and Commercial Law Act 2017 (the “Act”):

- (1) means, in relation to information in an electronic form, a method used:
 - (a) to identify a person; and
 - (b) to indicate that person’s approval of that information (i.e. the content of the document being signed); and
- (2) meets a legal requirement for a signature if and only if it meets the requirements of section 226 (and in the case of a witness section 227) of the Act.

3.2. Accordingly, the user and not ADLS IS responsible for ensuring that:

- (1) each party receiving the information in electronic form with the electronic signature has consented to receiving the electronic signature (refer clause 4.0);
- (2) each person provided with the ability to sign has been adequately identified (refer clause 5.0); and
- (3) the identification and electronic signature is as reliable as is appropriate given the purpose for which and the circumstances in which the signature is required.

4.0 User consent

- 4.1. The user should ensure that some form of written pre-agreement (e.g. by email) is concluded between all proposed digital signatories (or their respective lawyers if represented) before the Service is used, to confirm the appropriate Service settings to be applied, the method(s) to be used for the identification of each signatory, and regarding the other requirements set out in these terms.
- 4.2. The user acknowledges that if they agree to negotiate a document using the Service, they are agreeing to read the suggested process outlined in the User Protocol, which sets out that the electronic signatures of all parties must be affixed to the document and the electronic signing process is complete (and digital certificate has been generated) before the document becomes legally binding upon the parties.
- 4.3. ADLS is not a party to any such agreement and is not in any way liable in relation to any such agreement. ADLS merely requires acceptance of these terms by each user, who must each then abide by them.

5.0 Identification of signatories

- 5.1. Further to subclauses 3.2 (2) and (3) above, it is the user's responsibility (not ADLS') to ensure that each signatory using the Service is adequately and reliably identified in the particular legal circumstances in respect of each document and related transaction the user is intending to conclude using the Service, and also has the required legal capacity to sign.
- 5.2. If the user is not represented by a lawyer, ADLS urges the user to seek independent legal advice in this regard before signing any document.
- 5.3. As part of the requirements of this clause 5.0, ADLS strongly recommends that all invited proposed digital signatories are contacted (as part of the Service) using a specific, personally aligned email address and other contact information and not a group or generic address or number which could possibly be used by any person.

6.0 Not impersonate, mislead or give a false identity, or false information

- 6.1. The user must not:
 - (1) mislead others into assuming you are not who you say you are;
 - (2) impersonate another person; or
 - (3) provide any false identity; or
 - (4) purport to sign for another person or entity if you do not have the legal authority to do so.

Such matters could have serious legal consequences. The user must ensure that all information uploaded for use as part of the Service is correct, complete, does not contain any misrepresentation and is accurate.

7.0 Legal assessment of document(s)

- 7.1. As mentioned in subclause 2.5(3) above, it is the user's responsibility to ensure that each document submitted by the user as part of the Service:
 - (1) is legally permitted to be signed digitally in accordance with the online settings and options selected as part of the Service (note some documents such as Wills, Powers of Attorneys and certain Deeds will not be legally permitted to be signed using the Service); and
 - (2) has been fully read and correctly understood by you before signing.
- 7.2. It is the user's responsibility (not the responsibility of ADLS's) to fully assess the nature, content and context of the actual legal document(s) to ensure that the user is fully satisfied with their obligations under clause 7.0.
- 7.3. ADLS encourages users to seek independent legal advice before signing any document.

8.0 Use of Service system settings

- 8.1. It is important that use of the system settings within the Service are done correctly and are part of the user's obligations under these terms.
- 8.2. The settings relate to matters such as witnessing requirements; identity verification assistance; time to complete the transaction before data may be erased as well as other important matters.
- 8.3. Users are expected to read the Service help, Protocols, and FAQ content sections, or contact ADLS for assistance if the user is unsure.
- 8.4. The settings and related options the user selects are the user's responsibility, not the responsibility of ADLS. For example, if the expiry date for completion arrives without full execution occurring then the user may be required to re-start the process.

- 8.5. ADLS does not recommend part digital and part hard copy execution of any document for evidential reasons.

9.0 Compliance with the law

- 9.1. The user must ensure that use of the Service is in compliance with all applicable laws, regulations or standards or codes of conduct at all times.
- 9.2. In particular but without limitation, the user must not use the ADLS WebForms website or ADLS Digital Signing Service for doing anything which may be or become unlawful or become objectionable or a nuisance to others, for example, and not by way of limitation, send spam and unsolicited communications of any kind, abuse, defame, stalk, threaten, bully or harass any other person or use expressions that contain or encourage racial or anti-religious prejudice or rude and objectionable language of any kind.

10.0 Privacy, data protection and confidentiality

- 10.1. The user warrants to ADLS that the user has obtained all necessary third-party consents relating to the use of the document(s), data and other information which the user inputs into ADLS' system as part of the Service, including regarding all 'personal information' as defined in the Privacy Act 1993.
- 10.2. As at Service launch in 2017, the Service is set up on a "per transaction" basis only, meaning that all documents and related user data will be erased from the DSSP's system within a few weeks following the completion (or time expiry) of the transaction as per the user's settings. ADLS will notify the user on the ADLS website if this changes.
- 10.3. The user controls the use, transfer or deletion of the user's documents when in ADLS' systems.
- 10.4. All documents and user information will be encrypted as part of the separate DSSP services (with password code access for designated authorised users) once the system settings have been completed and the user has requested activation of the Service.
- 10.5. Once sent from ADLS' systems, the DSSP is responsible for completing the digital signing process, and for using and storing the user's documents and data for that purpose.
- 10.6. The DSSP is responsible for its own systems, databases and related processes, and has its own privacy terms.
- 10.7. As with the Internet and third party systems generally, ADLS is unable to guarantee that the data supplied by the user will be free from unauthorised access at all times, or that the DSSP systems will operate continuously, correctly or as intended. The user accepts this as a risk when using the Service and have contracted separately with the DSSP for in that regard.
- 10.8. ADLS' privacy terms as displayed on the ADLS website apply to all information and data ADLS receives, stores, processes and otherwise deals with regarding the Service.

11.0 User acknowledgements and other obligations

Without limiting the remainder of these terms:

- 11.1. **Age:** The user acknowledges and confirms that all users of the Service are 18 years of age or older.
- 11.2. **Intellectual property:** The user acknowledges and confirms that all intellectual property rights relating to the Service are either owned by ADLS or ADLS' third party licensors at all times and that users only receive a limited, non-exclusive license to use that intellectual property for the sole purpose of correctly using and completing the Service for one or more documents and in return for paying the designated fees and charges, and provided that this clause does not extend to any intellectual property rights relating to documents and data which the user correctly inputs into the Service systems which may belong to the user or third parties associated with the user. The user must not copy, reproduce, reverse engineer, or use in whole or in part all or part of ADLS' intellectual property (other than as part of a valid use of the Service) without ADLS' prior written consent.
- 11.3. **User authority:** If the user is agreeing to these terms on behalf of their employer, firm or organisation, then the user warrants that they have the full authority of the employer, firm or organisation to do so, and to legally bind that organisation to these terms accordingly, and also to allow all designated personnel within the organisation to use the Service in accordance with the settings the user chooses to apply (or not apply) in relation to the Service.
- 11.4. **User access:** Use of the Service will at all times be dependent on the user's ability to access the Internet using an appropriate and compatible device. The user acknowledges that, as with technology systems, especially those accessed using the Internet, there is a risk that they will not operate on a 24/7 basis, and could endure 'blackouts' or other disruption for significant periods. The user acknowledges this risk, and accepts that the user could resort to other means of execution if the Service was unavailable for any period, or if the user's documents or data were destroyed or deleted for any reason.
- 11.5. **Use of compatible internet browser:** The internet browser which the user selects to access and use the Service is one of the following: MS Internet Explorer V 10 and above; MS Edge only on Windows 10; Google Chrome V43 and above; Mozilla Firefox V 38 and above; Apple Safari V 6.0 and above. The Service may not operate as intended if any other browser is used and any use of the Service via any unsupported method will be at the user's sole risk.

- 11.6. **Future use of the Service:** The user's acceptance of these terms will be deemed to apply to all future instances of use of the Service unless ADLS requires the user to accept these or amended terms from time to time.
- 11.7. Where a link to the third party website is provided as part of the Service, whether to the DSSP or for the use of identification verification services or otherwise, the user agrees to use such links and such services at the user's sole risk and based on the user's review and acceptance (if that occurs) of that third party's terms.
- 11.8. The user agrees to pay the Service related fees and charges as displayed by ADLS at the time and in the manner stated by ADLS.
- 11.9. If the user is a lawyer, the user acknowledges that they are satisfied that their use of the Service will ensure their compliance with the user's 'client care' and other legal obligations, and that if the user has any doubts in this regard they will make their own further enquires before using the Service.
- 11.10. ADLS may remove any data or other content supplied by the user or any other user of the Service at any time and for any reason, in ADLS' sole discretion, including (but not limited to) the following circumstances:
- (1) where the content is, or might be, objectionable, offensive, unlawful or defamatory or otherwise breaches these terms;
 - (2) where ADLS receives a takedown notice under Section 92C and Section 92D of the Copyright Act 1994 or any similar legislation in any jurisdiction; and
 - (3) where ADLS has reasonable cause to believe that the party posting the content has in the past engaged in any dishonest or unethical practices in relation to the Service or any similar web site or service, or has in the past breached these terms.
- 11.11. The user must not, without ADLS' prior written permission:
- (1) remove the copyright or trademark notice from any item constituting ADLS' intellectual property;
 - (2) form a database whether electronically or otherwise by systematically downloading or storing all or any data or other content forming part of the Service;
 - (3) deep link to, frame, spider, harvest or scrape any data or other content forming part of the Service or otherwise access the same for similar purposes;
 - (4) use any software or device that may in any way interfere with or are or may be harmful to the Service or other services offered by ADLS or any other person;
 - (5) damage ADLS' Service-related systems by introducing any virus of harmful programme and in particular will not use the Service for introducing or spreading any harmful or destructive items (however they may be described) that in any way interfere with ADLS' or any other person's network or computer system; or
 - (6) re-distribute, resell or republish the Service (or any data or other content forming part of the Service unless the user has the express right to do so).

12.0 Liability

- 12.1. ADLS accepts no responsibility and is not liable to the user or any third party if any of the user's obligations or requirements as stated in these terms are not fulfilled for any reason.
- 12.2. In particular, ADLS accepts no responsibility for and has no liability in respect of any act or omission by the DSSP or for any method of identity verification for any signatory that is selected by the user notwithstanding that the method selected may involve accessing a third-party verification service via a link within ADLS' website. The user elects to use such third-party services at their own risk.
- 12.3. If the user is using the Service for business purposes then the user agrees that the provisions of the Consumer Guarantees Act 1993 do not apply to these agreement terms or to your use of the Service. For the purposes of section 5D of the Fair Trading Act 1986, sections 9, 12A and 13 of that Act do not apply, and the user agrees that this is fair and reasonable in the context of these terms. All other terms and conditions that would otherwise be implied, by operation of law, so as to form part of these terms, are excluded to the fullest extent permitted by law.
- 12.4. ADLS (including its officers, employees and agents) are not liable to the user in any way for any indirect or consequential loss, or for any loss of profit, revenue, or data. In respect of any loss for which ADLS may be liable to the user, liability will at all times be limited to the that amount which the user has paid ADLS in respect of the relevant document signing transaction(s) completed or attempted to be completed as part of the Service.
- 12.5. ADLS will not be liable to the extent that such liability arises from any third party telecommunications failure or quality issue, or failure of electricity mains supply, or strike or other industrial unrest, or any riot, fire, explosion, flood, earthquake, volcanism or other Act of God, or any governmental action, or any other cause which is beyond ADLS' reasonable control, including in relation to the DSSP.
- 12.6. The user will indemnify and hold ADLS, including its officers, employees and agents, harmless against all costs, loss, expense and damages suffered or incurred by ADLS, or its officers, employees and agents, as a result of a breach of these term by the user, and in each case on a full indemnity basis.

13.0 Governing law and jurisdiction

Regardless of the territory from which the user is accessing this website, these terms and conditions are governed by and will be construed in accordance with New Zealand law and the user accepts that the New Zealand Courts have exclusive jurisdiction to hear and resolve any disputes or claims.

14.0 Changes to terms

ADLS may change these terms and conditions at any time and users will be bound by the then current terms and conditions as displayed at the time of use.

15.0 Assignment

The user may not assign, sub-licence or otherwise transfer any of the user's rights under these Terms of Use.

16.0 Defined terms

In these terms "ADLS" means the Auckland District Law Society Inc.; "user" means any user of the Service; and "Service" means the ADLS Digital Signing Service as provided at <https://webforms.adls.org.nz> and as explained in subclause 2.2 above; and "DSSP" means the independent digital signature service provider as described in subclause 1.2 above.

17.0 Other ADLS terms

These Service related terms apply in addition to any other contract terms that also apply to the user of ADLS' products and services generally. If there is any direct conflict, then these Service terms will prevail.