

# Court Support for Electronic Signatures in Brazil

**Electronic signatures are a recent phenomenon in Brazil—even though the legal basis for them dates back to 2001. Electronic signatures with the right technology can provide as much evidence as ink or “wet” signatures. In addition, documents that are digitally sealed with industry-standard technology are able to certify that the electronic signature is valid and that the document has not been tampered with since the time of signing. As evidence of the act of electronically signing a document, an automated history of each and every action taken during the signing process (e.g, viewing, printing, sending, signing or declining activity) is essential to creating a reliable certificate of completion or audit trail. This certificate includes information to establish the who, what, when, and how of the electronic document-signing process.**

The term “electronic signature” in Brazil is defined as any type of signature that is capable of electronically evidencing the authenticity and integrity of a document. Such electronic signatures are mainly governed by the Provisional Measure No. 2,200-2/2001 (“MP 2200-2/2001”)—which authorizes the general use of electronic signatures. Specific technology is not required for an electronic signature to be considered valid under Brazilian law. However, use of secure and auditable electronic signatures is strongly advisable to help ensure the enforceability and admissibility of such electronic signatures.

Moreover, in certain specific circumstances of government-regulated use cases, one may be required to use a heightened type of electronic signature, one which is secured with a digital certificate (also called a “digital signature”). For these cases, Brazil established a robust Certificate Authority infrastructure based on the Brazilian Public Key Infrastructure (“ICP-Brasil”), a centralized digital certificate chain framework managed by the National Institute of Information Technology for issuing these digital certificates. However, due to the high cost of acquiring and maintaining card or token-based digital certificates, the use of these ICP-Brasil-backed electronic signatures with digital certificates are generally limited to certain cases, such as the performance of professional activities (e.g., accountants and lawyers), high-value transactions including foreign currency exchange transactions, factoring (accounts receivable) among other specific use cases.

Due to the general popularity of standard electronic signatures (ones that do not use ICP-Brasil digital certificate), this paper focuses on case precedents related to the general definition of electronic signature, not ICP-Brasil digital signature. Specifically, this document surveys the enforceability and validity of electronic signatures when they properly meet the key requirements provided in Article 10, §2 of MP 2200-2/2001, which are:

- the ability to evidence authenticity and
- the integrity of the signed documents

In addition to those requirements, the MP 2200-2/2001 provides that the means for signing electronically must be accepted as valid by the involved parties. Some recent case precedents emphasized this factor when ruling for the validity and enforceability of electronically signed documents. Accordingly, some Brazilian companies are adopting a more conservative approach by including contractual provisions that make clear the parties are agreeing to use electronic signatures to formalize their agreement. In fact, adding such a clause and expressly providing that the contracting parties accept the use of standard electronic signatures in the terms of Article 10, §2 of MP 2200-2/2001 can help to demonstrate the validity of the electronically signed contract before Brazilian courts.

More recently, the Brazilian Congress approved Federal Law No. 14,063/2020, which establishes a framework for the use of electronic signatures in interactions with public sector entities (as well as in public health-related matters). Clearly inspired by the current law in the European Union, Regulation (EU) No. 910/2014 (eIDAS), this statute proposes a tiered approach and defines 3 types of electronic signatures: (i) standard electronic signatures (identifies the signatories by association of data in electronic form); (ii) advanced electronic signature (identifies the signatory through non-ICP-Brasil digital certificates or by other tamper-proof means that uniquely identifies the signatories, with a high level of trust), and (iii) qualified electronic signature (identifies the signatory through ICP-Brasil digital certificates, thus equivalent to the digital signature under MP 2200-2/2001).

Also, it establishes certain use cases where each type of electronic signature must be used in documents and interactions with public sector entities, authorizing federal, state, and municipal entities to further determine such use cases within their competences. In addition, the Brazilian Federal Government issued the Federal Decree 10,543/2020, further regulating the use of standard, advanced, and qualified electronic signatures by entities of the federal public administration.

Such findings demonstrate that documents that are signed electronically with the right technology are typically admissible as evidence when enforced in the Brazilian courts. More importantly, they support that contracts executed through electronic signature systems can be binding and enforceable in Brazil.

## General comments on the Brazilian Judicial System

Brazil is a civil law jurisdiction and its court system is established by the Brazilian Federal Constitution. The Brazilian Judicial System is composed by state and federal courts, with common or specialized jurisdiction, both subject to the Superior Court of Justice (“**STJ**”) for matters related to federal law and the Federal Supreme Court (“**STF**”) regarding constitutional matters. The federal courts have jurisdiction over specific subject matters, as provided in the Constitution (e.g., cases where the Federal Union or its entities are the plaintiff, the defendant or an interested party, cases involving foreign countries or international organizations, enforcement of letter rogatory, among others) and the state courts have residual competence over all remaining subject matters.

Article 5, LV of the Constitution establishes the adversarial principle and wide defense as a fundamental right of litigators in administrative or judicial procedures. Consequently, decisions issued by lower courts (first instance) are generally appealable to the courts of appeals (second instance). Also, if a second instance decision meets the requirements set forth by the applicable procedural law, it may also be subject to review by a higher court (whether STJ, STF or both, depending on the case).

As a civil law jurisdiction, decisions issued by the Brazilian courts affect only the parties involved in a certain case and are generally not binding upon third parties (except for some types of binding decisions issued by higher courts, as provided in the applicable procedural law). In any case, the litigating parties and the judges usually rely on precedents to construe their arguments in other cases. Hence, in practice, uniform precedents tend to be more persuasive and exercise a greater influence over future decisions.

Please note that the Brazilian Judicial System has been struggling to address and resolve the high volume of claims under review by its courts. A 2019 report<sup>1</sup> from the Brazilian Council of Justice (“**CNJ**”) revealed that the average time for a claim to be finally awarded before state courts is 6 years and 2 months, and that federal courts may take more than 8 years to reach a final decision.

1 [https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/2019/08/justica\\_em\\_numeros20190919.pdf](https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/2019/08/justica_em_numeros20190919.pdf)

## Rulings that support documents electronically signed

Broad use of electronic signature in Brazil is relatively new. Consequently, only recently have a significant amount of cases involving the use of standard electronic signatures been presented before Brazilian courts, but many of the decisions that have been issued to date support the enforceability and admissibility of standard electronic signatures.

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### 1/ Ticket Soluções Hdfgt S/A. v. M V Pinheiro Transportes EIRELI et. al.

Lawsuit No. 1012526-11.2019.8.26.0068,  
1st Civil Court of the City of Barueri,  
State of São Paulo (February 2021)

This case refers to a collection claim filed by Ticket (the plaintiff) against M V Pinheiro and the company's partner, Morgana Vanda Pinheiro (the defendants). The first defendant did not present defense. The second defendant alleged that she was not a partner of the company, so she could not act as a legal representative. Also, she affirmed that the document was fraudulent, claiming that she did not sign any agreement with the plaintiff via DocuSign eSignature. Further, she alleged that the graphic representation of its signature, as generated by DocuSign eSignature, did not correspond to her handwritten signature. The plaintiff emphasized that the technical evidence generated by electronic signature system and the invoices issued in the name of the defendants evidencing the duly provided services were sufficient to deem the contract as valid between the parties.

The Court decided in favor of the plaintiff, since the electronic signed agreement and other presented in the claim were capable to demonstrate that the plaintiff provided its services for both defendants. Therefore, the agreement was recognized as a judicial title, enforceable before Court. This decision became final and unappealable.

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### 2/ Condomínio Residencial Garden Placê v. Companhia Ultragaz S/A.

Lawsuit No. 1015456-32.2018.8.26.0037,  
1st Civil Court of the City of São Araraquara,  
State of São Paulo (January 2021)

In this case, Condomínio Residencial Garden Placê (the plaintiff) filed a claim against Ultragaz (the defendant) to seek a judicial declaration on the inexistence of the debts related to an amendment signed between the parties using DocuSign eSignature. The plaintiff claimed it had not signed the amendment, and requested a forensic investigation of the graphic representation of the signature generated by the DocuSign eSignature. Also, the plaintiff sought to have the agreement immediately terminated and defendant to be held liable for both moral and material damages. In its turn, the defendant refuted all the plaintiff's arguments, filed a counterclaim alleging that the document was duly executed and that all unpaid amounts are due.

The Court designated a forensic expert to investigate the authenticity of the electronic signatures in the agreement. The expert concluded that the electronic signatures as provided by DocuSign eSignature were valid in accordance with Article 10, §2 of MP 2200-2/2001. Also, the expert affirmed that a graphic representation of the electronic signatures should not be confused with a handwritten signature, as such representation simply corresponds to an image chosen by the party within the process of electronically signing the agreement.

Considering the conclusions of the forensic investigation, the Court denied all plaintiff's requests, confirmed the authenticity of the electronic signatures generated by DocuSign eSignature, and ordered the plaintiff to pay the amounts due and unpaid. Also, the judge observed that there was no evidence of fraud, so plaintiff could not refrain from performing its contractual obligations under the amendment. This decision became final and unappealable.

### 3/ Ticket Soluções Hdfgt S/A. v. Eva Luana Rodrigues Gonçalves ME et. al.

Lawsuit No. 1051268-09.2019.8.26.0100,  
13rd Central Civil Court of the Capital of  
the State of São Paulo (November 2020)

This case refers to a collection claim filed by Ticket (the plaintiff) against Eva Luana Rodrigues Gonçalves (the defendant). The defendant alleged that she had no business relation with the plaintiff and that she never signed the agreement in discussion, since her company supposedly did not have the means to sign electronically (according to the defendant, the company did not “own a digital signature”). In its turn, the plaintiff emphasized that the technical evidence generated by DocuSign Signature were sufficient to deem the contract as valid between the parties.

The Court decided in favor of the plaintiff, who was able to demonstrate the existence of an agreement between the parties. Also, the judge reputed the forensic investigation of the signatures' graphic representations as unnecessary, acknowledging that the electronic signature process generated a stylized signature not supposed to be compatible with the defendant's handwritten signature. This decision became final and unappealable.

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### 4/ Ticket Soluções Hdfgt S/A. v. R.D. Comércio de Acessórios para Veículos Ltda.

Lawsuit No. 1018222-29.2019.8.26.0100,  
Court of Appeals of the State of São Paulo  
(July 2020)

This case refers to a collection claim filed by Ticket (the plaintiff) against R.D. (the defendant), where the defendant alleges that it did not sign an agreement with the plaintiff using DocuSign eSignature, thus claiming that the document was fraudulent. The defendant further alleged that the graphic representation of its signature, as generated by DocuSign eSignature, did not correspond to its handwritten signature. The plaintiff, in its turn, emphasized that the technical evidence generated by electronic signature system were sufficient to deem the contract as valid between the parties.

The Court decided in favor of the plaintiff, admitting that the electronically signed agreement was legally binding, and that the collection claim was legitimate. In its decision, the Court clarified that the difference between the graphic representation of the signature generated by DocuSign eSignature and the defendant's handwritten signature was not sufficient to rebut the evidence of the electronic signature of the document. Moreover, the Court also relied on the fact that the plaintiff successfully provided evidence that the services were indeed performed to the defendant. The defendant appealed against this decision.

The Court of Appeals denied the appeal filed by the defendant and maintained entirely the first instance decision. Accordingly, in its decision, the Court of Appeals recognized that there is no need for a forensic expert to investigate the graphic representation of signature generated by the DocuSign eSignature, since both the agreement and the signatures are electronic. Moreover, it acknowledged that the evidence provided by the plaintiff—including the electronically signed agreement—are sufficient to demonstrate the existence of a relationship and a debt between the parties.

**5/  
Banco Bradesco  
Financiamentos S.A.  
v. Emerson Rodrigues Pereira**

Interlocutory Appeal No. 0043279-  
67.2021.8.13.0000,

Court of Appeals of the State of Minas  
Gerais (February 2021)

In this case, Banco Bradesco (the plaintiff) filed an interlocutory appeal to reverse a first instance decision that denied its request to seize Emerson Rodrigues Pereira's (the defendant) vehicle, which was offered as collateral in a loan agreement electronically signed between the parties. The plaintiff claimed that the electronic signatures in the loan agreement were valid and provided all information necessary, such as date and local of the signatures.

The Court of Appeals granted plaintiff the right to seize the defendant's vehicle since agreements signed electronically are valid and the parties are free to determine the form of this type of agreement. Also, the Court emphasized that MP 2200-2/2001 authorizes electronic documents to be signed through means that allows the verification of the document's authenticity.

**6/  
West Investment Fomento  
Mercantil Ltda. et. al.  
v. Consertina Brasília Ltda.  
ME et. al.**

Appeal No. 0715703-91.2019.8.07.0001,

Court of Appeals of Distrito Federal  
(February 2021)

This case refers to an enforcement claim filed by West Investment (the plaintiff) against Consertina Brasília (the defendant) for debt collection related to an amendment electronically signed between the parties. The defendant challenged the validity of the electronic signatures in the amendment and alleged that the document did not constitute an extrajudicial title<sup>2</sup>, since it failed to meet the legal enforceability requirements and could not be directly enforced before courts. The first instance decided in favor of the defendant in the sense that the electronically signed amendment could not be enforceable as an extrajudicial title, so the plaintiff filed an appeal.

The Court of Appeals reformed the first instance decision, since electronic signatures that are in accordance with the requirements of Article 10 of MP 2200-2/2001 are valid. Also, it emphasized that the defendant expressly agreed to sign the amendment electronically. Based on these arguments, the agreement was recognized as an extrajudicial title, thus directly enforceable before courts.

**7/  
Supermercados Campo  
Grande Ltda. and Nourival  
Schomwambach v. Ulend Gestão  
De Ativos Ltda.**

Interlocutory Appel No. 2196934-  
96.2020.8.26.0000,

Court of Appeals of the State of São Paulo  
(December 2020)

In this case, Supermercados Campo Grande (the plaintiff) filed an interlocutory appeal against Ulend (the defendant) to revert a first instance decision that recognized an electronically signed documentary credit (in Brazil, *cédula de crédito bancário*) as an extrajudicial title directly enforceable before courts. The defendant challenged the validity of the documentary credit by affirming that the electronic signature provider was not accredited under the ICP-Brasil. Also, the defendant alleged that documentary credits are not subject to the rules of MP 2200-2/2001.

The Court of Appeals confirmed the first instance decision and concluded that by formalizing the documentary credit electronically, the plaintiff has accepted the validity of electronic signature, regardless of any accreditation under the ICP-Brasil. Therefore, the Court has ruled for the validity of electronic signatures and allowed the defendant to proceed with the enforcement action against the plaintiff.

<sup>2</sup> In Brazil, extrajudicial titles can be directly enforced before the courts. Article 784 of the Brazilian Civil Procedure Code contains an exhaustive list of the documents that may be deemed as extrajudicial titles and corresponding requirements. Documents that do not fulfill such requirements need to be converted into a judicial title before being judicially enforced, which requires the parties to go through a pre-judgment discovery phase before the courts. Hence, in practice, extrajudicial titles enable a fast track for a party to enforce its rights under a document before a court, such as collection.

## 8/ VetSolutions Treinamento Empresarial Ltda. v. Camila De Oliveira Malfatti

Appeal No. 1001802-70.2020.8.26.0016,  
Court of Appeals of the State of São Paulo  
(October 2020)

This case refers to an enforcement action filed by VetSolutions (the plaintiff) against Camila de Oliveira Malfatti (the defendant) for debt collection under an electronically signed agreement. The Court dismissed the enforcement action by not accepting the agreement as an extrajudicial title, since the electronic signature provider used to sign the document was not accredited before the ICP-Brasil. The judge also pointed out the lack of signature by two witnesses, a formal requirement to enforce a document before courts.

The plaintiff filed an appeal, and the Court of Appeals reversed the first instance decision by confirming that the defendant's electronic signature in the document is legitimate and sufficient to be enforceable as an extrajudicial title. The decision emphasized that ICP-Brasil certification is not the only means to evidence authenticity and integrity of electronically signed documents, thus accepting standard electronic signatures as valid. Also, the Court exceptionally dismissed the two witnesses requirement and accepted the agreement as an extrajudicial title, on the basis that electronic signatures can grant the security and authenticity necessary for the document to be enforceable.

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## 9/ Caetana de Jesus da Costa Silva v. Banco Cetelem S/A.

Appeal No 1002040-84.2020.8.26.0438,  
Court of Appeals of the State of São Paulo  
(August 2020)

This case originally concerns the validity of loan agreement electronic signed between Caetana (the plaintiff) and Banco Cetelem (the defendant). The plaintiff alleged that the graphic representation of its signature did not correspond to its handwritten signature, so the agreement was fraudulent. After denying the plaintiff's request for forensic investigation of the graphic representation of electronic signature included in the agreement, the Court rejected the plaintiff's allegations and reputed the agreement as legally binding. The plaintiff filed an appeal to nullify the first instance decision based on the denial to conduct a forensic investigation.

The Court of Appeals denied the appeal and sustained the first instance decision in its entirety. The Court acknowledged that since electronic signatures were used, the electronically signed agreement was sufficient to demonstrate the existence of a relationship between the parties and there was no need for a forensic investigation.



**10/  
Banco BTG Pactual S/A.  
v. Marcos Cerino Barbosa**

Interlocutory Appeal No 2132753-86.2020.8.26.0000,  
Court of Appeals of the State of São Paulo  
(August 2020)

In this case, Banco BTG (the plaintiff) filed an interlocutory appeal against Marcos Cerino Barbosa (the defendant) to revert a first instance decision that converted the enforcement action moved against the defendant into a common procedure (thus subject to a discovery phase). The Court had ruled that the electronically signed agreement could not be deemed as an extrajudicial title since it was not signed through an ICP-Brazil accredited electronic signature provider.

The Court of Appeals reformed the first instance decision by recognizing the extrajudicial title requirements were present in the document executed with standard electronic signatures in accordance with MP 2200-2/2001, which allows the use of other electronic means capable to evidence the authenticity and integrity of electronic documents. Furthermore, the Court highlighted that the underlying agreement contained an express provision where the parties agreed upon the use of electronic signature to form an extrajudicial title. Based on this, the Court allowed the plaintiff to proceed with the enforcement action against the defendant.

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**11/  
Ivonete Silveira Americo  
v. Banco do Brasil S.A.**

Appeal No. 0010460-41.2020.8.21.7000,  
Court of Appeals of the State of Rio Grande  
do Sul (April 2020)

In this case, a consumer, Ivonete Silveira Americo (the plaintiff), claims that she did not contract certain banking services from Banco do Brasil (the defendant) and was unduly charged for such services. The plaintiff requested that the charged amounts were refunded in double, plus indemnification for moral damages. The defendant, in its turn, presented the agreement electronically signed by the plaintiff during the proceedings, as to demonstrate that collection was not undue nor abusive. The Court decided in favor of the defendant and the plaintiff appealed against such decision.

The Court of Appeals recognized that the banking services were properly contracted by the plaintiff by means of electronic signature. Hence, the Court has decided that there was no improper collection or amount to be refunded by the defendant.

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**12/  
Marcos Aurelio Pereira Lisboa  
Lopes v. Banco Do Brasil S.A.**

Appeal No. 0737478-20.2019.8.07.0016,  
Court of Appeals of Distrito Federal  
(January 2020)

This case also refers to a consumer, Marcos Aurelio Pereira Lisboa Lopes (the plaintiff) who sought a refund from Banco do Brasil (the defendant) for banking services he claims were not contracted. The plaintiff alleged that he has never adhered to such services, but the defendant presented evidence that he electronically signed the corresponding agreement. The Court recognized the plaintiff's rights to refund based on the lack of evidence regarding the underlying contract. The defendant appealed against such decision.

The Court of Appeals ruled for the validity of the electronic agreement executed with plaintiff's electronic signature, acknowledging that banking services agreements do not necessarily have to be executed in printed format, and that electronic signatures have been widely used and accepted.

**13/  
Hermite Perfumes e Cosméticos  
Ltda. v. Nexos do Brasil Gestão  
de Ativos Ltda.**

Lawsuit No. 1010028-16.2019.8.26.0011,  
2nd Civil Court of the Regional Forum of  
Pinheiros, City of São Paulo, State of São  
Paulo (November 2019)

In this case, Hermite (the plaintiff) filed an opposition action against an enforcement action moved by Nexos (the defendant), who was seeking the collection of a loan made in favor of the plaintiff under a documentary credit (in Brazil, *cédula de crédito bancário*). In its opposition, the plaintiff challenged the validity of the documentary credit by affirming that the electronic signature provider was not certified before the Brazilian Public Key Infrastructure (ICP-Brasil).

The Court emphasized that Provisional Measure No. 2200-2/2001 authorizes electronic signature by other means that evidence authenticity and integrity of the documents, regardless of using digital certificates issued under ICP-Brasil. Also, it has concluded that by formalizing the documentary credit electronically, the plaintiff has accepted the validity of electronic signature, regardless of any ICP-Brasil certification. Therefore, the Court has ruled for the validity of electronic signatures and allowed the defendant to proceed with the enforcement action against the plaintiff.

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**14/  
Aymoré Crédito, Financiamento  
e Investimento S.A.  
v. Bernardete Recalcatti**

Lawsuit No. 0302055-33.2018.8.24.0014,  
Court of Appeals of the State of Santa  
Catarina (November 2019)

This case refers to a claim filed by Aymoré (the plaintiff) to seize Bernardete Recalcatti's (the defendant) vehicle, offered as fiduciary lien to guarantee a loan granted to the defendant under a documentary credit (*cédula de crédito bancário*), electronically signed. In the course of first instance proceedings, the Court requested the plaintiff to present the original documentary credit, who dismissed the case due the absence of physically signed, printed document.

The plaintiff appealed against such decision to have the validity of the electronically signed documentary credit acknowledged. The Court of Appeals ruled for the validity, legality and authenticity of the documentary credit, on the grounds that electronic documents can be used as evidence, that they dismiss a tangible media and that electronic means used to sign within the defendant's application were capable of generating valid and authentic signatures.

## Adoption in Brazilian Courts

Brazilian Federal Law No. 11,419/2006 governs the use of electronic means for conducting judicial proceedings, communicating judicial acts and filings of procedural documents. Based on this statute, the Brazilian Judicial System authorizes petitions, appeals and other acts to be (a) digitally signed, upon the use of digital certificates as issued under ICP-Brasil, or (b) electronically signed, provided that the signatory completes its/his or her registration before the relevant branch of the Brazilian Judicial System, in accordance with the internal rules of the applicable Court.

The Brazilian Civil Procedure Code (Federal Law No. 13,105/2015) has further regulated this matter and authorized judges at all jurisdictional levels to electronically sign their decisions and acts—thus reinforcing the legal validity of electronic signature in the Brazilian Judicial System.

Each Brazilian court, whether at a state or federal level, is responsible for providing an adequate system for the public to access and handle electronic judicial proceedings. The electronic systems made available by most of Brazilian courts can only be accessed and used through a digital certificate; the interested parties and the judges are required to have a digital certificate and to digitally sign their acts in such systems. Some courts, however, use electronic signature-based systems. Such electronic systems require the interested parties and judges to fill out a registration before the court and obtain credentials (e.g., login and password) to access the system and electronically sign their acts.

## Conclusion

Electronic signatures are rapidly becoming a de facto standard in business and consumer transactions in Brazil. As the cases above illustrate, electronic signatures offer real benefits when the technology used is designed to comply with key requirements, including those of MP No. 2200-2/2001. Electronic signatures can form contracts that are binding and enforceable, and also can provide the same amount of admissible evidence as would be provided by a paper-based signature.

Visit the [DocuSign eSignature Legality Guide](#) to learn more about electronic signature-related laws from around the world.

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### Disclaimer

The findings included in this White Paper are limited to decisions issued until March 18, 2020 and reflect the current status of the publicly available proceedings until such date. This White Paper is for informational purposes only and should not be deemed as legal advice. Please address any questions or concerns with your trusted legal advisor.

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### About DocuSign

DocuSign helps organizations connect and automate how they prepare, sign, act on and manage agreements. As part of the DocuSign Agreement Cloud, DocuSign offers eSignature: the world's #1 way to sign electronically on practically any device, from almost anywhere, at any time. Today, over a million customers and hundreds of millions of users in over 180 countries use the DocuSign Agreement Cloud to accelerate the process of doing business and simplify people's lives.

DocuSign, Inc.  
221 Main Street, Suite 1550  
San Francisco, CA 94105

[docuSign.com](https://www.docuSign.com)

For more information  
[sales@docuSign.com](mailto:sales@docuSign.com)  
+1-877-720-2040