pactsafe

DIGITAL TRANSFORMATION OF IN-APP

LEGAL AGREEMENTS

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INTRODUCTION

DIGITAL TRANSFORMATION AT ENTERPRISE

No business is a stranger to digital transformation. The tools you use, your process for recruiting talent, how you market your product to customers, even the product itself – all of these areas have likely been transformed by digital evolution in recent years.

Although rapid change is occurring in many different areas, there is one universal shift that rules them all: a shift in expectations. As technological advancement makes everyday processes faster and more convenient, customers have learned to expect more from companies in less time. To keep up with demand, businesses spent more than half a trillion dollars on digital experience initiatives in 2019, focusing on technologies like AI-driven engagement and ubiquitous commerce.

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One topic that is often left out of the discussion on digital experience is legal agreements. These contracts sat quietly in the back row for decades, disregarded as nothing more than a necessary hurdle for product and sales teams. But in more recent years, digital contracts have metamorphosed into a standalone technology in their own right. They're now capable of more than you'd think – and they might be just what you're missing to boost efficiency and improve customer experience.

In this eBook, you will also learn:

- How legal agreements have evolved
- Which modern signing method(s) are right for your business
- How to troubleshoot your contract ecosystem
- Why self-service contracts are the way to go

THE ONGOING EVOLUTION OF LEGAL AGREEMENTS

People have been signing contracts for as long as written language has existed. Relatively speaking, digital signing has only been around for a tiny fraction of that time; just a few decades, in fact. Yet in this relatively short period, legal agreements have undergone many critical changes as digital transformation redefines technologies and courts decide what constitutes an acceptable replacement for pen and paper.

DIGITAL SIGNATURES AS A RECOGNIZED SIGNING METHOD

Digital signatures were first made legal in the United States via the Electronic Signatures in Global and National Commerce Act (ESIGN) of 2000. The law allowed companies to collect signatures electronically in the face of a growing volume of online transactions. It was meant to provide clarity for businesses that weren't sure if digital signatures would stand up in court.

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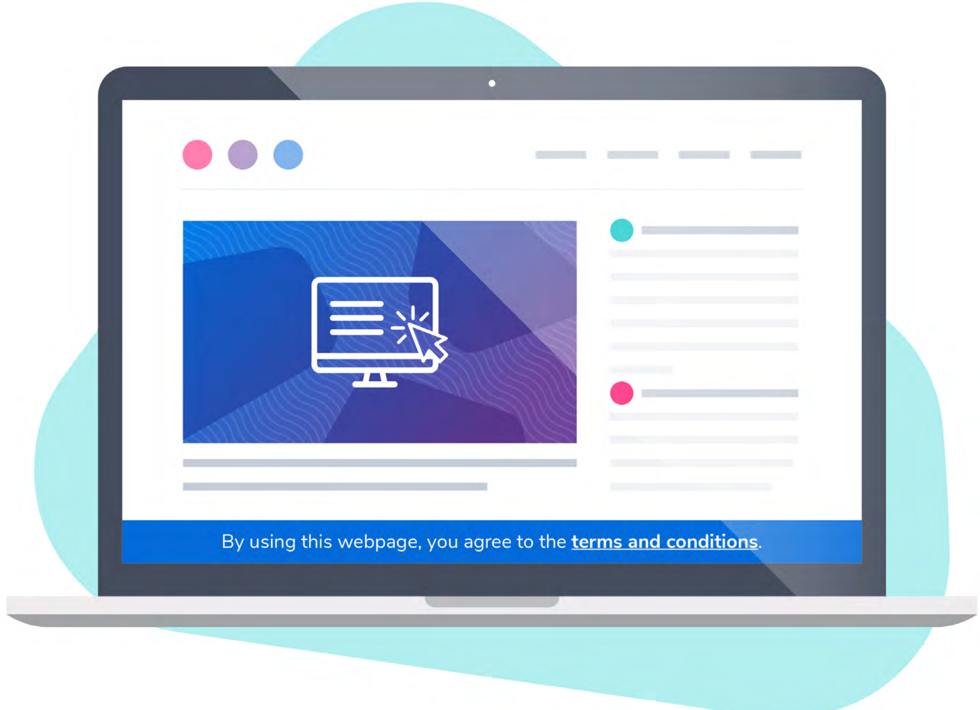
Unfortunately, that hasn't quite been the case. Defining the legal enforceability of different signing methods has been a struggle as technology continues to change. In today's digital world, the idea of providing a signature every time you use a website or sign into a social media platform is ridiculous. Innovative solutions have proven that legally recognized digital signatures can come in many different forms – even the click of a button. But the definition of a digital signature is yet to be written in stone as new signing methods are tested in court.

THE HISTORY OF SOFTWARE AGREEMENTS: FROM SHRINKWRAP TO CLICKWRAP

Just about every type of software needs some sort of user agreement to protect its developer from litigation. How these terms are presented has shifted alongside key turning points in the industry, from the first floppy disks to modern web applications.

Shrinkwrap: Early software came in physical packaging that customers could purchase in a store or order for mail delivery. When shrinkwrapping CDs for distribution and sale, manufacturers would typically attach a hard copy of their terms of use. This notice informed customers that breaking the shrinkwrap and using the included software would be considered acceptance of the terms. Of course, this delivery method no longer worked once software sales moved online and discs were phased out entirely.



Browsewrap: With no way to physically attach software agreements, developers moved their terms and conditions to equivalent virtual locations. The result was browsewrap, a type of agreement that notifies consumers of their consent to the listed terms simply by using a website or software. While it seems like a logical progression, this type of agreement only holds up legally in fewer than one out of every eight court cases. Since browsewrap agreements are typically placed in page footers where they won't interfere with user experience, most people don't even see them. Many courts have used this line of thinking to determine that consent can't be given to terms that aren't clearly presented.

Sign-in-wrap: A halfway point between browsewrap and clickwrap, sign-in-wrap agreements notify a user that signing in to use a platform indicates acceptance of the associated terms. While this method tends to be more successful than browsewrap, it has a major vulnerability. Sign-in-wrap agreements' validity often depends on specific design elements like page layout and colors. This means that their success hinges entirely on the decisions made by a design team that doesn't understand such complex legal issues.

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Clickwrap: The most modern signing method, clickwrap, is the best solution to date in terms of blending user experience with legal compliance. Users can give informed consent by clicking a checkbox or button indicating that they agree to the terms, and companies are able to guarantee compliance by requiring this action to be completed before the platform can be used. There is still some reliance on intuitive design, but to a much lesser extent than with other agreement types.

IT'S TIME TO LEAVE PDF ATTACHMENTS BEHIND

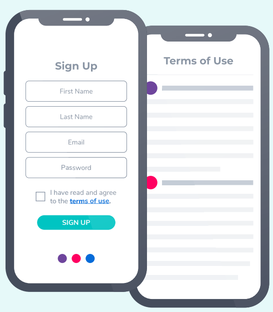
When digital signatures first came into widespread use in the early 2000s, signing contracts as a PDF attachment seemed like a major innovation. And it was – compared to the days- or weeks-long process of physically sending documents by mail to be signed in ink, that is. Decades later, the **traditional**

esignature process of sending PDFs back and forth to be signed now feels incredibly cumbersome compared to newer technologies.

Shockingly, many companies still do business this way. PDF signing not only adds time and expense to the sales cycle, it's also an easy way to lose customers who have grown to expect a more intuitive process. Many of these contracts can easily be adopted with **embedded signing**, a digital method that still allows for typed or drawn digital signatures, but in a format that is responsive across multiple devices and takes seconds to complete.

CHOOSING THE RIGHT TYPE OF DIGITAL AGREEMENT

Fast digital signing methods like clickwrap are the most convenient for both businesses and customers, but they aren't always the best solution. There are three acceptance formats that meet today's digital standards and compliance requirements: clickwrap, embedded signing, and eSignatures. Companies should choose their signing method based on the volume of contracts to be issued and the dollar value of each.



Clickwrap

Best for: Low-value, high-volume agreements

Examples: Terms of use, ecommerce checkouts, non-disclosure agreements, statements of work

Embedded signing

Best for: Mid-value, mid-volume agreements

Examples: B2B sales contracts, renewals, upsells

Traditional eSignatures

Best for: High-value, low-volume agreements

Examples: Enterprise contracts, partnerships, mergers and acquisitions

FIXING THE CONTRACT ECOSYSTEM

All too often, contract management within organizations is a tug-of-war between legal and product teams. While the former should have total ownership over terms, in practice their management tends to fall to the latter. With the technologies we currently have available, there's no need to simply make do with a broken contract ecosystem.

With a siloed approach to contract management, companies are often forced to choose between preserving enforceability and keeping up with business operations. One area that particularly seems to suffer is the sales cycle, which relies on speed and efficiency to bring in revenue.

THE BATTLE BETWEEN ENFORCEABILITY AND SPEED

With a siloed approach to contract management, companies are often forced to choose between preserving enforceability and keeping up with business operations. One area that particularly seems to suffer is the sales cycle, which relies on speed and efficiency to bring in revenue. When contracts get backlogged, sales teams have a choice between waiting out the delay (and potentially losing a customer) and moving forward without the necessary legal framework in place.

In a rapidly moving digital world, it's difficult if not impossible to stay on track with outdated contracting methods. PDF contracts may have done the job when your business only processed 100 agreements in a month, but what happens when you reach 1,000? 10,000? There simply isn't enough manpower to handle this type of volume at scale without exposing the company to legal vulnerabilities.

WHO SHOULD BE RESPONSIBLE FOR CONTRACTS?

In enterprise organizations, legal teams are responsible for writing contract terms and keeping them updated. But legal experts don't have the technical experience required to perform complex physical updates to software products. This means that product and technical teams are given too much autonomy over contracts, a responsibility for which they have neither the legal knowledge nor the bandwidth. The price is paid in lowered enforceability, an error that can cost companies dearly in court.

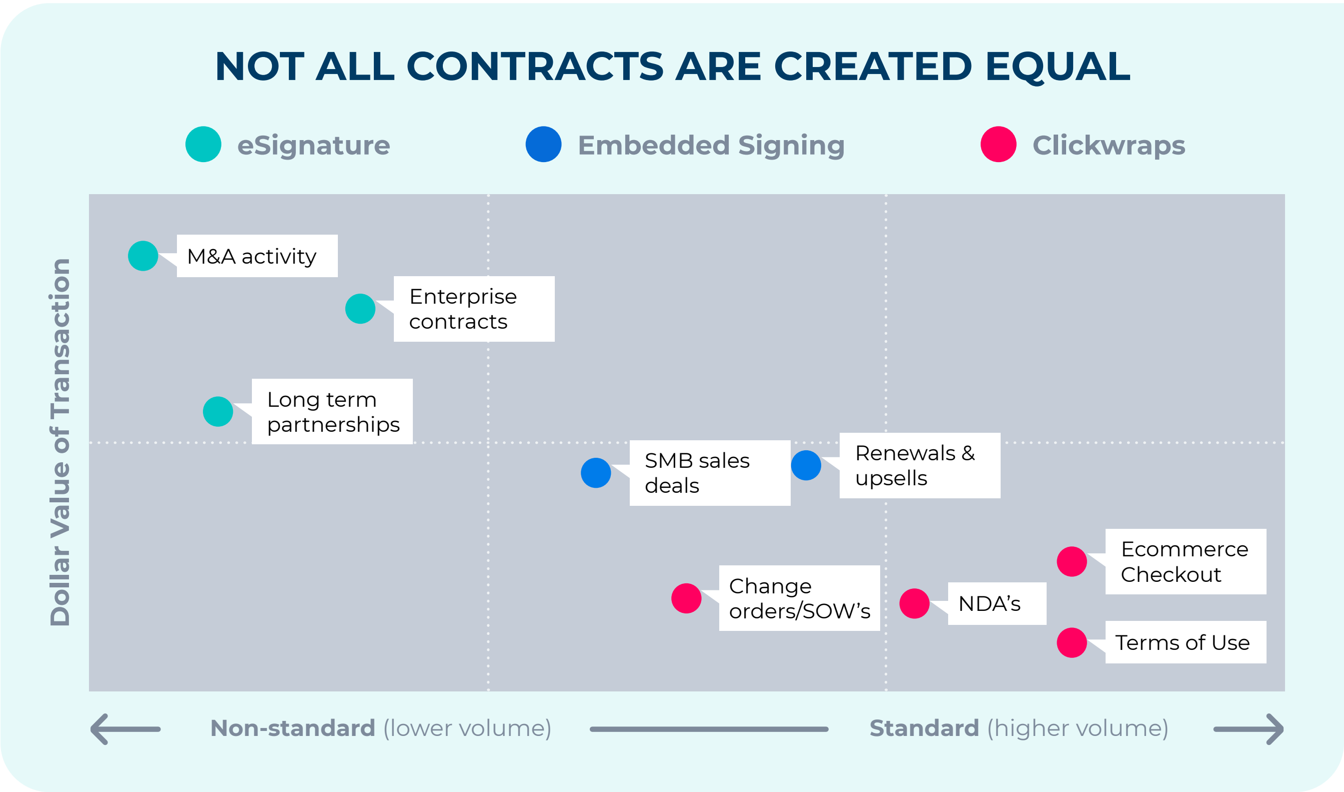
Ideally, contract management should have a hub-and-spoke structure, where the hub is the agreement template and each department forms its own spoke. Under this format, each team can perform its own tasks without requiring support from another. It should look something like this:

The **legal team** writes a contract framework that lives in a single central location where anyone can access it. When changes are made to the framework, every contract generated from that point forward uses these new terms.

The **product team** integrates the applicable framework into each product, and that's where their work ends. With a digital contracting tool like PactSafe, any updates to the terms are automatically reflected across every iteration.

The **sales team** deploys contracts as needed, giving customers the ability to sign instantly. If a personalized contract is required, the customer simply provides key details by answering a short questionnaire to generate a customized agreement. Legal doesn't need to get involved as long as the contract fits within their framework.

TYPES OF CONTRACTS THAT CAN BE MADE DIGITAL

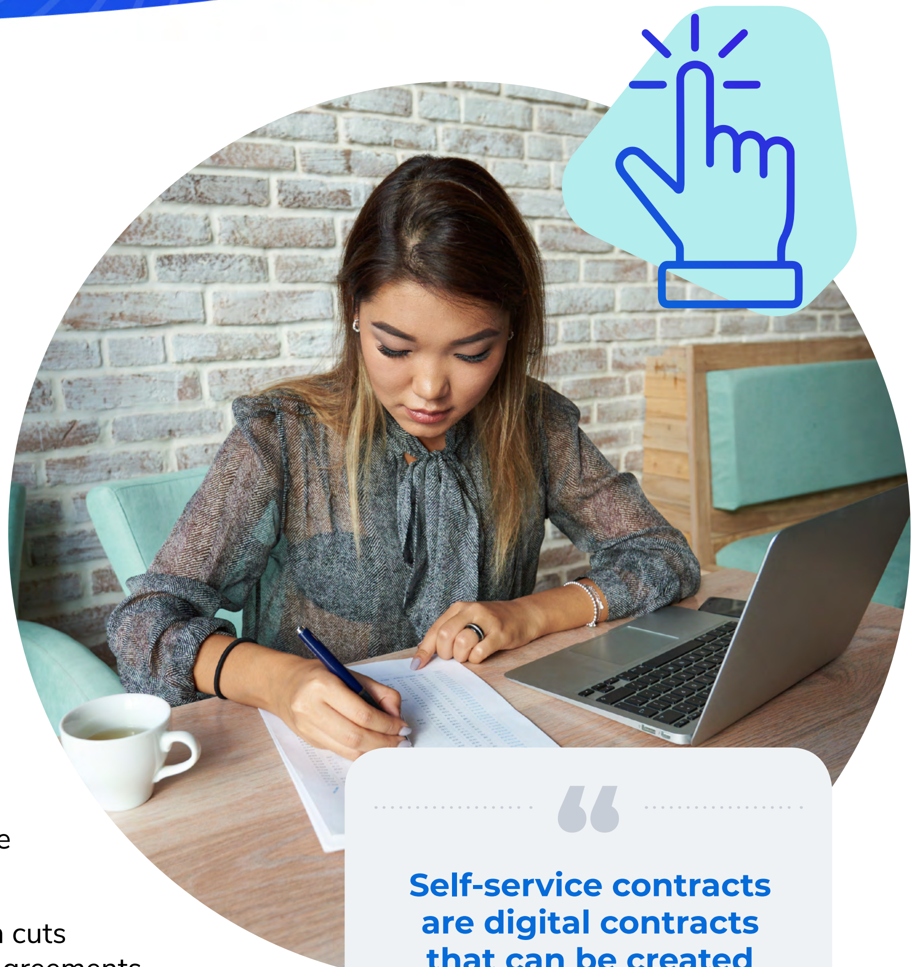


Under ESIGN, there are a few types of contracts that are specifically excluded from legal electronic signature recognition. Thankfully, the list is fairly short, consisting of high-stakes documents like court orders, repossession notices, and product recalls.

This means that the majority of contracts are fair game for digitization. These include:

- Terms of service
- Non-disclosure agreements (NDAs)
- Statements of work (SOWs) and change orders
- Sales contracts, renewals, and upsells
- Onboarding paperwork
- Partnership agreements

HOW SELF-SERVICE CONTRACTS CAN HELP



Everyone wants a contract management solution that preserves departmental ownership, meets legal standards, and provides customers with the service they expect. If that sounds too good to be true, it isn't. Self-service contracts are a dynamic way to present terms and collect digital signatures using a methodology that we call the **acceptance mindset**.

Adopting a self-service contract system cuts down on the time required to produce agreements and eliminates the need for hands-on involvement from product teams. More importantly, it delivers the seamless experience that customers look for in today's digital age.

WHAT ARE SELF-SERVICE CONTRACTS?

Self-service contracts are digital contracts that can be created on demand as employees and customers need them. When a personalized agreement is required, users fill out brief questionnaires that populate instantly within a preset framework. The legal team can deploy updates to the framework as needed without getting technical departments involved. The end result: a contract that looks and feels handmade, but isn't.

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IT'S ALL ABOUT THE ACCEPTANCE MINDSET

Since so much work goes into the creation of a traditional contract, it's often thought of as a lengthy process that requires negotiation, multiple rounds of reviews, and involvement from many different departments. This is

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When we adopt the acceptance mindset, we reframe legal agreements as a single-step process in which contracts are issued on a one-to-many basis. Once a legal team has created a set of terms, there's no need to keep rewriting these terms over and over again. With self-service, all customers need to do is accept a standardized agreement that's been generated for them without any hands-on involvement.

USE CASES FOR SELF-SERVICE FLOWS

Since self-service contracts are most commonly used in B2C sales environments, there's understandably some hesitation to adopt this method in B2B scenarios. But self-service flows have plenty of applicable uses in just about every type of enterprise. Here are just a few examples:

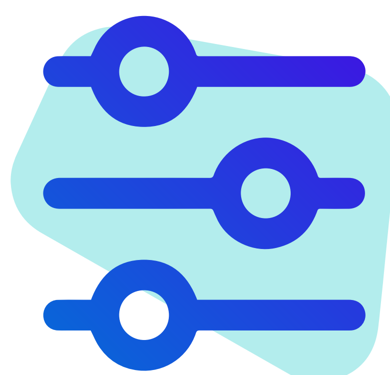
Sales contracts: Waiting for contracts can create huge bottlenecks in the sales cycle. Customers are often left waiting on salespeople, who may in turn be waiting on turnaround from the legal department. Why should each of these internal teams have to manually touch agreements that can be delivered directly to the consumer? Self-service contracts allow customers to fill in their own terms and sign instantly, improving sales velocity and reducing the chance that leads will lose interest while waiting.

MSAs and SOWs: Businesses that use a variable pricing structure frequently rely on a contracting method in which separate agreements are manually created for each client. With self-service contracts, intelligent pricing flows can be set up to automatically generate MSAs and SOWs with the correct fee information.

Onboarding paperwork: Self-service can be used to make internal processes more efficient, too. Whether you're registering a new vendor or hiring talent, standardized onboarding forms free up those departments to focus on building relationships instead of managing a mountain of paperwork.

WHY YOU NEED CLICKWRAP

Clickwrap technology and self-service workflows go hand in hand to create speedy contracting processes and enhance user experience. This type of contract takes any agreement that doesn't require a physical signature and generates legally binding documents at scale. Whether you anticipate volume in the hundreds or the millions, your legal team retains the same control over terms and receives invaluable data on every signature. If your company relies on any type of high-volume agreement like terms of use, ecommerce sales, or NDAs, you need clickwrap.



CASE STUDIES

BMC AND UPWORK USE CASES

PactSafe has a long, proven history of working with organizations to streamline contract management and support growth. These two case studies illustrate how clickwrap and self-service contract adoption are instrumental in facilitating digital transformation.

BMC: DIGITALLY SUPPORTED GROWTH TO SCALE

Software enterprise BMC came to PactSafe with a problem: they were struggling to manage the various legal terms across their SaaS product catalog in a way that could support continued growth. The legal department lacked control over contract deployment and had little insight into how terms were being accepted.

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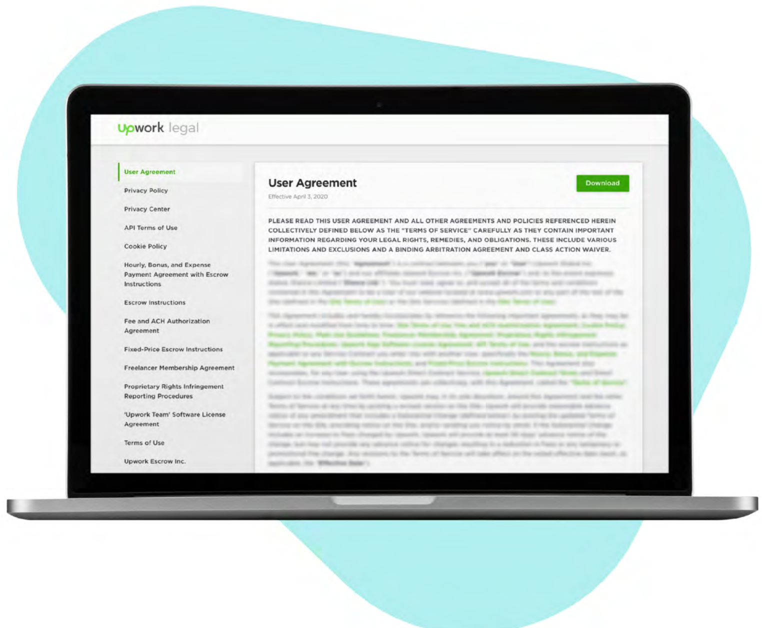
Since moving to an API-based contracting system with PactSafe, BMC has successfully collected more than 10,000 completed contracts across different 14 products. The company's legal team is able to manage all of this from a single dashboard that breaks down acceptance by product and allows for rapid updates to terms without a single line of code. Thanks to data collected from free trial agreements, BMC sales teams receive a constant stream of leads and can instantly send additional terms to those that are converted into paying customers.

UPWORK: SELF-SERVICE TERMS CUSTOMIZATION

Upwork is one of the leading platforms for freelancers to find gigs from design to development. With more than 10 million professionals registered, Upwork has a responsibility to its freelancers and the companies that hire them to facilitate enforceable contracts that are fair to both parties.

Using PactSafe's clickwrap technology, Upwork was able to overhaul its entire contracting system and replace it with self-service agreements that gave freelancers ownership of their own terms. The company now tracks 15 personalized elements of each and every contract through one centralized hub, generating a legally binding record that even records the IP address of the user who clicked accept.



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ABOUT PACTSAFE

PactSafe is the comprehensive clickwrap platform built to scale with your business. PactSafe allows customers to create, distribute, track and enforce millions of legally binding clickwrap agreements, making contracting the most efficient part of your business. Our platform helps companies like Doordash, Wayfair, Angie's List (Home Advisor), BMC and Upwork seamlessly collect acceptance of their online agreements, update terms across acceptance points, and identify and address areas of potential risk before they become an issue.