

Exclaimer Cloud – Email Signatures Software: Terms and Conditions

The following terms of service (collectively, the “Terms”) govern the use of the Exclaimer hosted email signature services and provision of technical support and maintenance services related thereto (the “Services”) and any associated use of the Exclaimer technology offered or made available by Exclaimer Ltd (CRN: 04938619) registered office is located at 250 Fowler Avenue, Farnborough, Hampshire GU14 7JP (below referred to as “we”, “our” or “us” or “Exclaimer”).

BY USING THE SERVICES OR UNDERLYING SOFTWARE OR BY CLICKING ON THE “I AGREE” BUTTON, YOU CONSENT TO BE LEGALLY BOUND BY THESE TERMS.

FROM THE MOMENT YOU CLICK “I AGREE” ANY TRIAL SERVICE AND TRIAL TERMS WILL IMMEDIATELY END AND CEASE TO HAVE EFFECT AND THESE TERMS WILL BE BINDING ON YOU AND US.

IF YOU ARE ENTERING INTO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU WARRANT AND REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” OR THE “CUSTOMER” SHALL REFER TO SUCH ENTITY, IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST NOT ACCEPT THESE TERMS AND MUST NOT USE THE SERVICES.

YOUR ATTENTION IS DRAWN TO **CLAUSE 9** WHICH CONTAINS IMPORTANT LIMITATIONS AND EXCLUSIONS OF LIABILITY.

SUBJECT TO **CLAUSE 7**, THESE TERMS INCLUDE THE SCHEDULES AND APPENDICES. ANY REFERENCES TO THESE TERMS INCLUDES A REFERENCE TO THE SCHEDULE AND THE APPENDICES. REFERENCES TO CLAUSES ARE TO CLAUSES OF THE MAIN BODY OF THESE TERMS AND REFERENCES TO PARAGRAPHS ARE TO PARAGRAPHS OF THE SCHEDULE.

TO THE EXTENT THAT THE SCHEDULE APPLIES TO THESE TERMS PURSUANT TO **CLAUSE 7** THE PARTIES ACKNOWLEDGE AND AGREE THAT IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE TERMS OF THESE TERMS AND THE SCHEDULE TO THESE TERMS (INCLUDING THE APPENDICES) IN RELATION TO THE PROCESSING OF PERSONAL DATA (AS THOSE TERMS ARE DEFINED IN THE SCHEDULE) THEN (I) THE TERMS OF THE SCHEDULE SHALL PREVAIL TO THE EXTENT OF SUCH CONFLICT OR INCONSISTENCY AND (II) THE PROCESSOR SHALL BE DEEMED NOT TO BE IN BREACH OF THESE TERMS AS A RESULT OF COMPLYING WITH THE TERMS OF THE SCHEDULE. THESE TERMS SUPERCEDE ANY PRIOR TERMS APPLICABLE TO THE PARTIES UNLESS SPECIFICALLY AGREED IN WRITING.

1. SUBSCRIPTION TO AND USE OF THE SERVICES

- i. By accepting these Terms and subscribing to the Services, we grant you a non-exclusive, non-transferable, and, other than as permitted in clause 1(ii), non-sub-licensable right for you and your staff to use the Services, the associated documentation and on-line guides, and the underlying software solely for your internal business operations during the term of these Terms.
- ii. You are prohibited from allowing access to the Services to third parties. However, you may choose to offer access to and use of the Services to your affiliates (meaning any entity that directly or indirectly controls, is controlled by, or is under common control with you) (“Permitted Access”) provided that where you offer such Permitted Access (a) you shall ensure that all such use and access complies with these Terms; (b) you shall remain the contracting party with us and you shall be responsible for the payment of all subscription fees including (without limitation) any fees payable in respect of the Permitted Use; (c) you shall retain full responsibility for all acts and omissions of such persons in relation to such access to and use of the Services and you shall be liable for all acts and omissions of those with Permitted Access as if they were your own acts or omissions.

- iii. You agree that neither you nor your affiliates with Permitted Access shall take any action intended to interfere with or disrupt the Services or any other user's use of the Services.
- iv. You agree to notify us immediately upon becoming aware of any unauthorised use or access of the Services or the underlying software.
- v. You agree on demand to indemnify us from and against all losses, costs, demands, damages, judgments, claims, settlements, interest, fees and expenses (including but not limited to legal fees and other professional fees) arising out of or in connection with a breach by you of or failure by you to fully comply with clause 1vi.
- vi. You agree that you will not:
 - a) use or access the Services for illegal, immoral or improper purposes;
 - b) use or access the Services to create products or services which compete with the Services or underlying software;
 - c) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services or underlying software in any form or media or by any means;
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services or the underlying software;
 - d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or underlying software available to any third party except those with Permitted Access;
 - e) allow Services or the underlying software to become the subject of any charge, lien or encumbrance;
 - f) in respect of any custom fonts which are uploaded to our systems by you (or on your behalf) for use in connection with the Services: (i) breach the terms of the licence between you and the third-party grantor in respect of the use of such fonts or (ii) upload any such fonts unless you have in place at the time of upload and maintain in place for the duration of these Terms a license authorising use of such fonts in connection with the Services;
 - g) use the Services for bulk marketing purposes or in connection with automated mailing systems;
 - h) use the Services and the underlying software in any manner which will or may breach any laws, rules, regulations and/or codes which are legally binding and which are applicable to the use of the Services (and underlying software) including (without limitation) any laws applicable to the protection of personal data; and
 - i) use the Services in any manner or for a purpose not permitted by applicable export laws, regulations or sanctions; nor export or re-export the Services to any country, region, organisation or individual that is named as a restricted area or person on any applicable export laws, regulations or sanctions.

2. SUBSCRIPTION DURATION, FEES, BILLING AND RENEWAL

- i. We shall provide the Services to you in accordance with these Terms. Any technical support and maintenance services included in the Services are provided on the terms set out at www.exclaimer.com/support/software-maintenance-agreement
- ii. The minimum subscription period for the Services is twelve (12) months from and including the date that you start to use the Services under and/or in connection with these Terms ("Initial Period"). Following the expiry of the Initial Period your subscription shall continue automatically unless and until cancelled in accordance with clause 4 ii, or otherwise in accordance with these Terms.
- iii. By subscribing to the Services, you agree to pay the applicable subscription fees (as selected by you during the online subscription process) plus any applicable taxes and duties, if any.

- iv. Exclaimer reserves the right to change the subscription fees at the end of the Initial Period and each anniversary thereafter. Any such change shall be stated on Exclaimer's renewal invoice at the time but in no event shall any such increase be more than eight per cent.
- v. Unless otherwise agreed in writing by us our subscription fee is payable monthly in advance based on;
 - (a) In respect of the first month: the number of your users and your Permitted Access' users in your Office 365 tenancy or G Suite tenancy (as applicable) as at the start of the Initial Period;
 - (b) In respect of subsequent months: the maximum number of your users and your Permitted Access' users in your Office 365 tenancy or G Suite tenancy (as applicable) during the previous month; or
 - (c) Where you have exercised your right to terminate the Terms in accordance with clause 4 ii: the subscription fee for the notice period shall be calculated by reference to the highest number of your users and your Permitted Access' users in your Office 365 tenancy or G Suite tenancy (as applicable) during your subscription period.
 - (d) "users" means the number of unique email addresses the Service adds signatures to.
- vi. Each month we will verify the number of users in your Office 365 tenancy or G Suite tenancy (as applicable) and invoice you in advance on the basis described in clause v above.

3. PAYMENT

- i. During the registration process, we may ask you to choose i) your preferred subscription fee structure and ii) one of the payment methods accepted by us for your subscription fees being either a) credit or debit card or b) direct debit. If your card details change, you must notify us failing which your subscription could be suspended or terminated.
- ii. If your subscription is cancelled by either you or us for whatever reason, we will not provide a refund or credit for any unused subscription period as we will incur costs as a result of the cancellation.
- iii. We use a third-party intermediary to manage credit and debit card processing. This intermediary is not permitted to store, retain or use your billing information except as required to process your credit or debit card payment for us. You give us authority to share your information (including without limitation credit and debit card details) with the third-party intermediary for such purposes.
- iv. We will email you with a copy of our invoice for the relevant payment period. It is your responsibility to ensure that we are updated on the email address to which you require invoices to be sent.
- v. You shall pay each invoice submitted to you by us in full and cleared funds within fourteen (14) days of the date of the relevant invoice (the "Due Date"). Where you choose to pay by credit or debit card, you authorise us to charge your payment method automatically for the subscription fees payable under these Terms.
- vi. You are responsible for paying any taxes (including without limitation any sales, use or withholding taxes now or hereafter enacted), and any duties, levies, excises or tariffs (together "duties"), that are applicable to receipt of the Service. All payments hereunder shall be made without deduction for taxes or duties of any kind or nature.
- vii. If you fail to pay any amount due from you under these Terms on or before the Due Date for such amount, you shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.
- viii. We may suspend all Services until all overdue payments have been made in full.

4. TERM AND TERMINATION

- i. These Terms will remain in force for the duration of the usage of the Services.

- ii. You may cancel your subscription at the end of the Initial Period by giving us 30 days prior notice in writing effective at the end of the Initial Period. After the end of the Initial Period, you may cancel your subscription at any time by giving us 30 days' notice in writing.
- iii. Without affecting any other right or remedy available to us, we may terminate these Terms for convenience at any time by giving you not less than 60 days' notice in writing.
- iv. Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving written notice to the other party if:
 - a) the other party commits a material breach of any term of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - e) person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - f) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses (b) – (f) inclusive above.
- v. Without affecting any other right or remedy available to us, we may terminate these Terms with immediate effect by giving written notice to you if you fail to pay any amount due under these Terms on the Due Date for payment and remain in default not less than 14 days after being notified in writing to make such payment.
- vi. On termination of these Terms:
 - a) all licences granted under these Terms shall immediately terminate and you shall immediately cease all use of the Services and the underlying software and shall procure that all those with Permitted Access cease the use of the Services and the underlying software; and
 - b) you shall immediately pay all sums due and / or invoiced by us in respect of fees payable under these Terms; and
 - c) we may raise a further invoice which shall be payable immediately in respect of fees payable pursuant to these Terms in respect of which we have not previously raised an invoice
- vii. Termination of these Terms shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry.
- viii. Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination or expiry of these Terms shall remain in full force and effect.

5. INTELLECTUAL PROPERTY RIGHTS

- i. You acknowledge that we (or where applicable our licensor) own all rights, title and interest in and to all intellectual property rights in the Services, the associated documentation and on-line guides, and the underlying software used to provide the Services. These Terms do not grant you any rights to the same other than the rights expressly set out in these Terms.

- ii. You agree not to remove any copyright or proprietary notices used in connection with the Services. Certain marks, words and logos displayed as part of the Services, which may or may not be designated by a “TM” “®” “SM” or other similar designation, constitute trademarks, trade names, or service marks belonging to us or our suppliers. You are not authorized to use any such marks. Ownership of all such marks and the goodwill associated with them remains with us or our suppliers.
- iii. If any third party brings any claim or action or otherwise alleges that the use of the Services (or any part thereof) infringes any intellectual property rights of that third party (a “Claim”) or you become aware of any intention by a third party to make a Claim then you shall immediately:
 - a) give us written notice of the Claim, specifying in reasonable, clear, full and accurate detail the nature of the Claim;
 - b) not make any admission of liability, agreement or compromise in relation to the Claim without our prior written consent (which we may in our sole and absolute discretion withhold);
 - c) give us and our advisors access to your premises and your officers, representatives, directors, employees, sub-contractors and to any relevant documentations and records which are within your control and allow us and our advisors to take copies for the purposes of assessing the Claim;
 - d) procure that we and our advisors are given access to those with Permitted Access on terms equivalent to those set out in clause 5(iii)(c) above;
 - e) provide such assistance in managing, negotiating, settling and resolving the Claim as we reasonably request; and
 - f) allow us to have full conduct of the Claim including without limitation its management, negotiation, settlement and resolution.

6. CONFIDENTIALITY

- i. The parties may not disclose or make available information which is proprietary or confidential and which is marked as “Confidential” or which would be regarded as confidential by a reasonable business person (the “Confidential Information”). Confidential Information shall include (but not be limited to) details of the Services, the associated documentation, on-line guides, and the technology and software used to provide and use the Services.
- ii. The parties agree not to use the Confidential Information of the other party for any purpose other than the use of or provision of the Services in accordance with these Terms. The parties agree not to disclose the Confidential Information of the other party to third parties and agree that they will restrict its disclosure to their employees who need to have the Confidential Information in order to carry out their employment duties. We may disclose your Confidential Information to persons of the type detailed in clause 11vi where we exercise our rights thereunder. Where we do this, we will put in place with such persons confidentiality obligations equivalent to those set out in this clause 6.

7. DATA PROTECTION

- i. Each of the parties agrees to comply with all relevant data protection laws. If you are in the UK or the EEA, the following paragraphs of clause 7 and Schedule 1 shall apply to you.
- ii. The following definitions are used in this clause 7 and the Schedule hereto:
 - a) “Data Controller” has the meaning set out in the Data Protection Legislation or if there is no such definition in the relevant Data Protection Legislation it shall have the meaning given to the phrase which most closely resembles the definition of “data controller” in the GDPR.
 - b) “Data Protection Legislation” means in each case as applicable to the activities undertaken by the respective parties under or in connection with these Terms (i) the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then any successor legislation to the GDPR applicable in the UK and (ii) any local laws, rules, regulations, legal requirements, legislation, subordinate legislation, and binding judgements which relate to the protection of an individual’s Personal Data.
 - c) “Data Subject” means an individual who is the subject of Personal Data.

- d) “GDPR” means the General Data Protection Regulations (EU 2016/679).
 - e) "Personal Data" has the meaning set out in the Data Protection Legislation or if there is no such definition in the relevant Data Protection Legislation it shall have the meaning given to the phrase which most closely resembles the definition of “Personal Data” in the GDPR. Personal Data relates only to personal data, or any part of such personal data, in respect of which you are the Data Controller and in relation to which we are providing Services under these Terms.
 - f) "Processing" and “process" have the meanings set out in the Data Protection Legislation or if there is no such definition in the relevant Data Protection Legislation it shall have the meaning given to the phrase which most closely resembles the definition of “processing” and “process” in the GDPR.
- ii. You and we acknowledge that for the purposes of the Data Protection Legislation, you are the data controller and we are the data processor in respect of any Personal Data.
 - iii. You shall comply with all obligations, responsibilities and duties imposed on you by the Data Protection Legislation in respect of any Personal Data which you pass to us.
 - iv. We agree that we will not, when performing the Services, process Personal Data outside of the jurisdiction(s) in which the data centre(s) you choose when you set up the Services is / are located, or the jurisdiction(s) in which such other data centre(s) as you may subsequently specify from time to time is / are located.
 - v. You warrant to us that you have taken all steps that are required to enable us to process the Personal Data in compliance with all Data Protection Laws and any other applicable laws, enactments, regulations, orders, standards and other similar instruments, including without limitation that you have in place the necessary consents from Data Subjects for you to lawfully transfer their Personal Data to us and for us to process use and transfer such personal data in connection with the provision of the Services.
 - vi. The parties acknowledge and agree that the provisions of the Schedule (including the Annexes) shall only apply to these Terms to the extent that the Data Protection Legislation applies to the processing of any Personal Data pursuant to or in connection with these Terms.

8. SERVICE LEVELS AND WARRANTY

- i. We will use reasonable skill and care in providing the Services. Support and maintenance is provided subject to these Terms as detailed at <https://www.exclaimer.com/support/software-maintenance-agreement>
- ii. The availability of the Services is dependent on the availability of Microsoft Azure or Google Cloud Platform (as applicable) services and the service levels offered by Microsoft or Google (as applicable) for those services. If the Microsoft Azure or Google Cloud Platform (as applicable) services relevant to the Services are unavailable Exclaimer shall exercise its rights under such service levels but the Services may be unavailable as a result.
- iii. If the Services are unavailable or defective in any way then to the extent that such defect or unavailability is caused by a breach of these Terms by us, we will, at our expense, use reasonable endeavours to correct any such unavailability or defect promptly. Such correction is your sole and exclusive remedy for i) the unavailability of the Services and ii) any breach of the undertaking set out in clause 8i.
- iv. Notwithstanding the foregoing, we:
 - a) do not warrant that use of the Services will be uninterrupted or error-free; and
 - b) are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including without limitation the internet, and you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications networks and facilities.
- v. Save as expressly provided for in these Terms, all warranties or conditions of any kind including, but not limited to, the implied warranties or conditions of satisfactory quality, fitness for a particular purpose and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are excluded.

- vi. We provide no assurance or guarantee that the Services will provide a solution to your specific needs.
- vii. The Services are not bespoke or tailored to you and we do not warrant that the Services will meet your requirements. We offer no refund where you purchase the Services and then decide that they are not suitable for your requirements or are not required for any reason. We offer a trial service which allows you to evaluate the Services - we recommend you use this prior to purchasing the Services. Where you do not use the trial service to evaluate the suitability of the Services prior to purchase, you will still not be entitled to a refund where you purchase the Services. For more information relating to our trial service, please use this link:- www.exclaimer.com/exclaimer-cloud/signatures-for-office-365/free-trial or <https://www.exclaimer.co.uk/exclaimer-cloud/signatures-for-gsuite/free-trial> (as applicable).

9. OUR LIABILITY

- i. Nothing in these Terms shall limit or exclude our liability for:
 - a) death or personal injury caused by negligence;
 - b) fraud or fraudulent misrepresentation; or
 - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - d) any other liability which cannot be limited or excluded by applicable law.
- ii. Subject to clause 9 i, we shall not be liable to you, whether in contract, tort (including without limitation negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms for:
 - a) loss of profits;
 - b) loss of sales or business, business opportunity or goodwill;
 - c) loss or corruption of data or information;
 - d) loss of agreements or contracts;
 - e) loss of anticipated savings;
 - f) loss of or damage to goodwill;
 - g) loss of use or corruption of software, data or information; or
 - h) any indirect, special or consequential loss.
- iii. Subject to clauses 9 i and 9 ii, our maximum liability to you per claim or series of connected claims under or in connection with these Terms, whether in contract, tort (including without limitation negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms shall be limited to the greater of (a) 125% of the fees paid by you to us in the 12 months' period preceding the date of the incident(s) giving rise to the relevant claim and (b) £10,000 (ten thousand pounds).
- iv. Any email disclaimer texts provided or made available by us are purely for example purposes and we do not warrant the legality or accuracy of these examples or accept any liability for them.

10. FORCE MAJEURE

- i. The following definition is used in this clause 10:
 - a) "Force Majeure Event" means any circumstance not within a party's reasonable control including, without limitation:
 - 1) acts of God, flood, drought, earthquake or other natural disaster;
 - 2) epidemic or pandemic;
 - 3) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 4) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - 5) collapse of buildings, fire, explosion or accident;
 - 6) any labour or trade dispute, strikes, industrial action or lockouts;

- 7) non-performance by suppliers or subcontractors; and
 - 8) interruption or failure of utility service or telecommunications network.
- ii. Provided it has complied with clause 10 iii, if a party is prevented, hindered or delayed in or from performing any of its obligations under these Terms by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of these Terms or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- iii. The Affected Party shall:
 - a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under these Terms; and
 - b) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- iv. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 days, the party not affected by the Force Majeure Event may terminate these Terms by giving not less than 14 days' written notice to the Affected Party.

11. GENERAL

- i. No failure or delay by us in enforcing our rights or remedies shall prejudice or restrict any rights or remedies available to us. No waiver of any rights or remedies available to us or of any breach of any contractual terms by you shall be valid unless in writing signed by one of our directors. A waiver shall not be deemed a waiver of any subsequent breach or default.
- ii. Subject to clause 2iv, we may amend these Terms from time to time at our discretion. All revised Terms will be displayed when you first log in after we have made the change, will be published on our website at <https://www.exclaimer.com/company/legal/eula> and shall be effective immediately on publication. If you do not agree with the revisions made to our Terms, you will have the right to terminate the subscription by giving us 30 days' notice in writing any time thereafter.
- iii. The parties agree to comply with all applicable anti-bribery, corruption and anti-money laundering laws and regulations.
- iv. Save as set out in clause 2iv, 2v and 11ii, no variation of these Terms shall be effective unless in writing and signed by the parties (or their appointed representatives).
- v. If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.
- vi. These Terms are personal to you and you shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of your rights and obligations under these Terms.
- vii. We may at any time assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of our rights under these Terms. Where we subcontract any element of the Services, we shall be responsible for the acts and omissions of our subcontractors as if they were our own. You agree that you shall, on request, provide reasonable assistance to us as required to give effect to this clause 11 vi.
- viii. Unless expressly stated to the contrary in these Terms (including without limitation under clause 11ii), all notices given to a party under or in connection with these Terms shall be in writing and shall be delivered by hand, by pre-paid recorded delivery or by pre-paid tracked airmail at its registered office (if a company) or its principal place of business (in any other case). Notices shall be deemed to have been received:
 - a) when delivered, if delivered by hand;
 - b) on the fourth day after posting if sent by pre-paid recorded delivery; or

c) on the tenth day after posting, if posted by pre-paid tracked airmail.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- ix. No one other than a party to these Terms, their successors and permitted assignees, shall have any right to enforce any of the Terms whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- x. These Terms and the fee details referred to in clause 2 iii contain the whole agreement between you and us in relation to their subject matter and supersede all prior agreements, promises, assurances, warranties, representations, arrangements and understandings between you and us relating to that subject matter.
- xi. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.
- xii. Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- xiii. The parties hereby agree that these Terms and any dispute or claim (including without limitation non-contractual disputes or claims) arising out of or in connection with these Terms or their subject matter or formation shall be governed by and construed in accordance with the laws of England. The parties hereby irrevocably submit to the exclusive jurisdiction of the English courts to settle any dispute or claim (including without limitation contractual disputes or claims) arising out of or in connection with these Terms or their subject matter or formation.

**SCHEDULE 1
DATA PROCESSING AGREEMENT**

SECTION I

Clause 1

Purpose and scope

- (a) The purpose of these Standard Contractual Clauses (the Clauses) is to ensure compliance with Article 28(3) and (4) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- (b) You are the Data Controller and we are the Data Processor for the purposes of this Schedule and the Data Protection Legislation. The parties have agreed to these Clauses in order to ensure compliance with Article 28(3) and (4) of Regulation (EU) 2016/679 and/or Article 29(3) and (4) of Regulation (EU) 2018/1725.
- (c) These Clauses apply to the processing of personal data as specified in Annex I.
- (d) Annexes I to III are an integral part of the Clauses.
- (e) These Clauses are without prejudice to obligations to which the controller is subject by virtue of Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.
- (f) These Clauses do not by themselves ensure compliance with obligations related to international transfers in accordance with Chapter V of Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.

Clause 2

Invariability of the Clauses

- (a) The Parties undertake not to modify the Clauses, except for adding information to the Annexes or updating information in them.

Clause 3

Interpretation

- (a) Where these Clauses use the terms defined in Regulation (EU) 2016/679 or Regulation (EU) 2018/1725 respectively, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679 or Regulation (EU) 2018/1725 respectively.
- (c) These Clauses shall not be interpreted in a way that runs counter to the rights and obligations provided for in Regulation (EU) 2016/679 / Regulation (EU) 2018/1725 or in a way that prejudices the fundamental rights or freedoms of the data subjects.

Clause 4

Hierarchy

In the event of a contradiction between these Clauses and the provisions of the Terms between the Parties existing at the time when these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

SECTION II

OBLIGATIONS OF THE PARTIES

Clause 5

Description of processing(s)

The details of the processing operations, in particular the categories of personal data and the purposes of processing for which the personal data is processed on your behalf, are specified in Annex I.

Clause 6

Obligations of the Parties

6.1. Instructions

- (a) We shall process personal data only on your documented instructions, unless required to do so by UK, Union or Member State law to which we are subject. In this case, we shall inform you of that legal requirement before processing, unless the law prohibits this on important grounds of public interest. Subsequent instructions may also be given by you throughout the duration of the processing of personal data. These instructions shall always be documented. For this purpose, you specifically agree to our processing of your personal data as stated in this Schedule.

- (b) We shall immediately inform you if, in our opinion, instructions given by you infringe Regulation (EU) 2016/679 / Regulation (EU) 2018/1725 or the applicable UK, Union or Member State data protection provisions.

6.2. Purpose limitation

We shall process the personal data only for the specific purpose(s) of the processing, as set out in Annex I, unless we receive further instructions from you.

6.3. Duration of the processing of personal data

Processing by us shall only take place for the duration specified in Annex I.

6.4. Security of processing

- (a) We shall at least implement the technical and organisational measures specified in Annex II to ensure the security of the personal data. This includes protecting the data against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to the data (personal data breach). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the risks involved for the data subjects.
- (b) We shall grant access to the personal data undergoing processing to members of our personnel (including contractors and representatives) only to the extent strictly necessary for implementing, managing and monitoring of the contract. We shall ensure that persons authorised to process the personal data received have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

6.5. Sensitive data

If the processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences ("sensitive data"), the processor shall apply specific restrictions and/or additional safeguards. We do not expect or need to receive or process any such sensitive data under the Terms.

6.6. Documentation and compliance

- (a) The Parties shall be able to demonstrate compliance with these Clauses.
- (b) We shall deal promptly and adequately with inquiries from you about the processing of data in accordance with these Clauses.
- (c) We shall make available to the you all information necessary to demonstrate compliance with the obligations that are set out in these Clauses and stem directly from Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725. At your request, we shall also permit and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or an audit, you should take into account relevant certifications held by us. In particular, you acknowledge that we are ISO27001 certified and audited for compliance with that standard from time to time by independent third parties. You agree that such audits shall normally satisfy the audit requirements of this clause 6.6.
- (d) You may choose to conduct the audit by yourself or mandate an independent auditor. Audits may also include inspections at our premises or physical facilities and shall, where appropriate, be carried out with reasonable notice and subject always to the duty of confidentiality.
- (e) The Parties shall make the information referred to in this Clause, including the results of any audits, available to the competent supervisory authority/ies on request.

6.7. Use of sub-processors

- (a) You authorise us to engage sub-processors listed in Annex III. We shall inform you in writing of any intended any changes of that list through the addition or replacement of sub-processors at least 10 days in advance, thereby giving you sufficient time to be able to object to such changes prior to the engagement of the concerned sub-processor(s). We shall provide you with the information necessary to enable us to exercise the right to object. In emergencies (such as failure of a third party data centre) we may appoint a new sub-processor immediately to protect your personal data and ensure continuity of the Service in which case we will notify you as soon as practically possible.

- (b) Where we engage a sub-processor for carrying out specific processing activities (on your behalf), we shall do so by way of a contract which imposes on the sub-processor, in substance, the same data protection obligations as the ones imposed on us in accordance with these Clauses. We shall ensure that the sub-processor complies with the obligations to which the processor is subject pursuant to these Clauses and to Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.
- (c) At your request, we shall provide to you a copy of such a sub-processor agreement and any subsequent amendments. To the extent necessary to protect business secret or other confidential information, including personal data, we may redact the text of the agreement prior to sharing the copy.
- (d) We shall remain fully responsible to you for the performance of the sub-processor's obligations in accordance with its contract with us. We shall notify you of any failure by the sub-processor to fulfil its contractual obligations.
- (e) We shall agree a third party beneficiary clause with the sub-processor whereby - in the event we have factually disappeared, ceased to exist in law or has become insolvent - you shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return any personal data it has stored or retained.

6.8. International transfers

- (a) Any transfer by us of personal data to a third country or an international organisation that is not recognised By the UK or under GDPR as having adequate safeguards in place with respect to your personal data shall be done only on the basis of documented instructions from you or in order to fulfil a specific requirement under UK, Union or Member State law to which we are subject and shall take place in compliance with Chapter V of Regulation (EU) 2016/679 or Regulation (EU) 2018/1725. For this purpose, the parties agree to the Standard Contractual Clauses to comply with Regulation (EU) 2016/679 as set out under the Data Protection Legislation to the extent that any of your personal data is transferred to a country outside the UK or EEA that is not deemed by the European Union to have adequate safeguards in place.

Clause 7

Assistance to the controller

- (a) We shall promptly notify you of any request we have received from a data subject. We shall not respond to the request itself, unless authorised to do so by you.
- (b) We shall assist you in fulfilling your obligations to respond to data subjects' requests to exercise their rights, taking into account the nature of the processing. In fulfilling our obligations in accordance with (a) and (b), we shall comply with your instructions
- (c) In addition to our obligation to assist you pursuant to Clause 7(b), we shall furthermore assist you in ensuring compliance with the following obligations, taking into account the nature of the data processing and the information available to us:
 - (1) the obligation to carry out an assessment of the impact of the envisaged processing operations on the protection of personal data (a 'data protection impact assessment') where a type of processing is likely to result in a high risk to the rights and freedoms of natural persons;
 - (2) the obligation to consult the competent supervisory authority/ies prior to processing where a data protection impact assessment indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk;
 - (3) the obligation to ensure that personal data is accurate and up to date, by informing you without delay if we become aware that the personal data we are processing is inaccurate or has become outdated;
 - (4) the obligations in Article 32 of Regulation (EU) 2016/679.
- (d) The Parties shall set out in Annex II the appropriate technical and organisational measures by which the processor is required to assist the controller in the application of this Clause as well as the scope and the extent of the assistance required.

Clause 8

Notification of personal data breach

In the event of a personal data breach, we shall cooperate with and assist you to comply with your obligations under the UK Data Protection Legislation and/or Articles 33 and 34 of Regulation (EU) 2016/679 or under Articles 34 and 35 of Regulation (EU) 2018/1725, where applicable, taking into account the nature of processing and the information available to us.

8.1 Data breach concerning data processed by the controller

In the event of a personal data breach concerning data processed by you, we shall assist you:

- (a) in notifying the personal data breach to the competent supervisory authority/ies, without undue delay after you have become aware of it, where relevant/(unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons);
- (b) in obtaining the following information which, pursuant to UK Data Protection Legislation or Article 33(3) of Regulation (EU) 2016/679 shall be stated in your notification, and must at least include:
 - (1) the nature of the personal data including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - (2) the likely consequences of the personal data breach;
 - (3) the measures taken or proposed to be taken by you to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

- (c) in complying, pursuant to UK Data Protection Legislation or Article 34 of Regulation (EU) 2016/679 with the obligation to communicate without undue delay the personal data breach to the data subject, when the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons.

8.2 Data breach concerning data processed by the processor

In the event of a personal data breach concerning data processed by us, we shall notify you without undue delay after we become aware of the breach. Such notification shall contain, at least:

- (a) a description of the nature of the breach (including, where possible, the categories and approximate number of data subjects and data records concerned);
- (b) the details of a contact point where more information concerning the personal data breach can be obtained;
- (c) its likely consequences and the measures taken or proposed to be taken to address the breach, including to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

The Parties shall set out in Annex II all other elements to be provided by the processor when assisting the controller in the compliance with the controller's obligations under UK Data Protection Legislation or Articles 33 and 34 of Regulation (EU) 2016/679.

SECTION III

FINAL PROVISIONS

Clause 9

Non-compliance with the Clauses and termination

- (a) Without prejudice to any provisions of UK Data Protection Legislation and Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725, in the event that we are in breach of our obligations under these Clauses, you may instruct us to suspend the processing of personal data until we comply with these Clauses or the contract is terminated. We shall promptly inform you in case we are unable to comply with these Clauses, for whatever reason.
- (b) You shall be entitled to terminate the contract insofar as it concerns processing of personal data in accordance with these Clauses if:

- (1) the processing of personal data by us has been suspended by you pursuant to point (a) and if compliance with these Clauses is not restored within a reasonable time and in any event within one month following suspension;
 - (2) We are in substantial or persistent breach of these Clauses or its obligations under UK Data Protection Legislation or Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725;
 - (3) we fail to comply with a binding decision of a competent court or the competent supervisory authority/ies regarding its obligations pursuant to these Clauses or to UK Data Protection Legislation or Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.
- (c) We shall be entitled to terminate the contract insofar as it concerns processing of personal data under these Clauses where, after having informed you that your instructions infringe applicable legal requirements in accordance with Clause 6.1 (b), you insist on compliance with the instructions.
- (d) Following termination of the contract, we shall, at your choice, delete all personal data processed on your behalf and certify that we have done so, or, return all the personal data to you and delete existing copies unless Union or Member State law requires storage of the personal data. Until the data is deleted or returned, we shall continue to ensure compliance with these Clauses.

**Annex I
Processing Services**

<p>SCOPE OF PROCESSING</p>	<p>Exclaimer will process Personal Data provided by the Controller to Exclaimer or collected by Exclaimer in order to manage the Controller’s account.</p> <p>Exclaimer will process the Personal Data for the duration of the period in which it provides services to the Controller.</p>
<p>PURPOSE OF PROCESSING</p>	<p>Exclaimer will process the Personal Data provided by the Controller or its affiliates in order to administer and provide the Email Signature Service.</p>
<p>CATEGORIES OF DATA SUBJECTS AND PERSONAL DATA PROCESSED</p>	<p>Personal Data provided by the Controller to Exclaimer or collected by Exclaimer in order to manage the Controller’s account. This includes the following:</p> <ul style="list-style-type: none"> • Customer name. • Customer email address. • Customer business address. • Customer telephone number. • Customer credit card information. • Credit card name. • Credit card type. • Credit card expiry date. • Credit card number. <p>Where the Controller logs a technical support case, Exclaimer will process the name and contact details of the user logging the case and the other users involved in the case. If Exclaimer is provided access to email content by the Controller (with the express permission of the Controller having been granted), Exclaimer will have access to any Personal Data set out in that email.</p> <p>Personal Data provided by the Controller to Exclaimer or collected by Exclaimer in order to provide the email signature service. This includes the following data aggregated from the Controller’s Active Directory or Google Directory:</p> <ul style="list-style-type: none"> • Senders First, Last and Full name. • Senders business address. • Senders company. • Senders telephone number. • Senders email address. • Senders email subject line and content information for the inclusion of the signature block. This full email content never remains at rest within the infrastructure. • Any other information that the customer exposes via Custom Attributes within the signature block. <p>No sensitive data is processed by Exclaimer.</p>
<p>NATURE OF PROCESSING</p>	<p>Personal Data provided by the Controller to Exclaimer or collected by Exclaimer in order to manage the Controller’s account is stored for the duration of the Controller’s relationship with Exclaimer as per the current Controller’s agreement.</p> <p>Where the Controller logs a technical support case, the data relating to the case is stored within our CRM. Personal Data provided by the</p>

<p>SUBPROCESSORS</p> <p>DURATION OF PROCESSING</p> <p>CONTACT</p>	<p>Controller to Exclaimer or collected by Exclaimer in order to provide the email signature service is aggregated from the Controller’s Active Directory or Google Directory and stored. This stored copy of the data is then used during the processing of the signature block prior to inclusion within the signature. This data is held separately from the main signature block, with the signature block being deleted once it has been included within the email. The aggregated data is stored for the duration of the Controller’s relationship with Exclaimer, after which time it is deleted in its entirety.</p> <p>The data centre that runs the Exclaimer Email Signature Service is owned and operated by a sub-processor named in Annex IV.</p> <p>Only for the duration of your subscription to the Service</p> <p>dpo@exclaimer.com</p>
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ANNEX II

Description of the technical and organisational security measures implemented by Exclaimer:

Security Requirement	How Importer implements security measures
<p>1.</p> <p>Physical access control measures to prevent unauthorized persons from gaining access to Processing systems or premises where Personal Data are Processed or used.</p>	<p><i>Card access control system with documentation of key holders.</i></p> <p><i>Security patrolled business park.</i></p> <p><i>Physical security service inside building.</i></p> <p><i>Burglar alarm system.</i></p> <p><i>CCTV.</i></p> <p><i>Locked server room with authorized personnel access only.</i></p>
<p>2.</p> <p>Access control measures to prevent Processing systems from being used without authorization. Including Importer's representatives access permissions segregation to Processing systems and Personal Data such as read, copy, modify, delete.</p>	<p><i>Individual user log-in to corporate network.</i></p> <p><i>All development, staging, production systems are located within secure Data Centres.</i></p> <p><i>Access to production level infrastructure per tenancy is limited to secure certificate endpoint.</i></p> <p><i>Processors Password policy procedures are regulated by Password Policy.</i></p> <p><i>Automatic password-protected blocking of computer after a certain period of time without user activity.</i></p>
<p>3.</p> <p>Transmission control measures taken in by Importer and Exporter to ensure that Personal Data cannot be read, copied, modified or removed without authorization during electronic transmission or transport, and that it is possible to check and establish to which bodies the transfer of Personal Information by means of data transmission facilities is envisaged.</p>	<p><i>Encrypted access via TLS</i></p> <p><i>Hard drive encryption of all processor employee machines used to facilitate business performance protected by Bitlocker.</i></p> <p><i>Locked server room at Processor's premises with authorized personnel access only.</i></p>

<p>4.</p> <p>Describe the measures of input control to ensure that it is possible to check and establish whether and by whom Personal Data have been entered into Processing systems, modified or removed.</p>	<p><i>Access rights.</i></p> <p><i>Functional responsibilities.</i></p>
<p>5.</p> <p>Assignment control measures Importer takes to ensure that, in the case of commissioned Processing, the Personal Information are Processed strictly in accordance with the instructions of the principal.</p>	<p><i>Training of all Processor's representatives involved in Personal Data Processing for technical and organizational security measures. Follow-up training at regular intervals.</i></p> <p><i>Specific clauses in Contractor/Employment agreements with all Processor's representatives, such as: The Right for Work Results, Confidentiality, Policies and work processes, Non-compete, Non Disclosure.</i></p> <p><i>Appointment of contact person in charge of data protection (daniel.richardson@exclaimer.com).</i></p>
<p>6.</p> <p>Availability control measures Importer applies to ensure that Personal Data are protected from accidental destruction or loss.</p>	<p><i>Replication/Back-up processes.</i></p> <p><i>Active/Active and regional Data Centres.</i></p> <p><i>Centralized virus protection and firewall at Processor's infrastructure</i></p> <p><i>Air conditioning for work and server/network environment.</i></p> <p><i>Fire alarm system.</i></p> <p><i>Burglar alarm system.</i></p> <p><i>CCTV.</i></p> <p><i>Contingency plans.</i></p>

ANNEX III

List of sub-processors

The controller has authorised the use of the following sub-processors:

	Name of subcontractor	Company number	Address
1.	Microsoft Operations Limited (Where Signatures for O365 is used)	256796	70 Sir John Rogerson's Quay Dublin 2 D02R296 IRELAND
2.	GPUK LLP	OC337146	51 De Montfort Street Leicester LE1 7BB UNITED KINGDOM
3.	Google Cloud EMEA Limited (and each member of the group of companies to which it belongs) (Where Signature for G-Suite is used)	03977902	70 Sir John Rogerson's Quay, Dublin 2, Ireland
4.	Salesforce UK Limited	05094083	Floor 26, Salesforce Tower, 110 Bishopsgate, London EC2N 4AY
5	Barracuda Networks Ltd	05145504	The White Building, 33 King's Rd, Reading RG1 3AR UNITED KINGDOM