Trial terms and conditions for Exclaimer Cloud Signatures

1. **Definitions**

   The definitions in this clause apply in this agreement.

   "Business Day" means a day other than a Saturday, Sunday or public holiday in England.

   "Client" means the company or other person contracting with Exclaimer in respect of the Services on the terms set out in this agreement.

   "Exclaimer" means Exclaimer Ltd a company incorporated and registered in England and Wales with company number 04938619 whose registered office is at 250 Fowler Avenue, Farnborough, Hampshire GU14 7JP.

   "Information" means information, documentation (including, without limitation, online materials) and materials which are proprietary or confidential to Exclaimer and are i) labelled as such, ii) identified as such and/or iii) would be regarded as such by a reasonable business person, and which are obtained by the Client and which relate to the Services or the Software.

   "Objective" means evaluation of the Services and Software by the Client to assess the suitability of the Services and Software for the Client's own internal business purposes.

   "Services" means the email signature services provided or made available by Exclaimer.

   "Software" means the on-line email signature software provided or made available by Exclaimer as part of the Services.

   "Trial Period" means the 14 day trial and evaluation period, such period starting on (and including) the date on which the Client first accesses the Services and lasts for 14 days or such shorter period as determined in accordance with this agreement.

   Subject to clause 3.5, this agreement includes the Schedule and the Appendices. Any reference to this agreement includes a reference to the Schedule and the Appendices. References to clauses are to clauses of the main body of this agreement and references to paragraphs are to paragraphs of the Schedule.

   To the extent that the Schedule applies to this agreement pursuant to clause 3.5 the parties acknowledge and agree that in the event of any conflict or inconsistency between the terms of the main body of this Agreement and the Schedule (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) Exclaimer shall be deemed not to be in breach of this agreement as a result of complying with the terms of the Schedule.

2. **Licence**

   2.1   Exclaimer hereby grants the Client a personal, non-transferable, non-exclusive licence to use the Services, Software and Information during the Trial Period solely for the purposes of the Objective. The Client acknowledges and agrees that such licence will automatically terminate at the end of the Trial Period and the Services and Software will, or may, automatically cease to operate at the end of the Trial

   Period if the Client has not at that time entered into a full licence in respect of the same.

   2.2   The Client shall not:

2.2.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

2.2.1.1 attempt to copy, modify, duplicate, create derivative works from or distribute all or any portion of the Services, Software and/or Information (as applicable) in any form or media or by any means; or

2.2.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services, Software and/or Information.

2.2.2 access all or any part of the Services, Software and/or Information in order to build a product or service which competes with the Services and/or Software; or

2.2.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Software and/or Information available to any third party except its staff who need to have access to the same in connection with the Objective.

2.3 The Client shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Software that (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, (b) facilitates illegal activity, (c) depicts sexually explicit images, (d) promotes unlawful violence, (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or (f) in a manner that is otherwise illegal or causes damage or injury to any person or property.

2.4 The licence granted in clause 2.1 shall automatically terminate upon acceptance by the Client of a full licence for the Services.

2.5 During the Trial Period the licence granted in clause 2.1 may be terminated immediately at any time by Exclaimer giving notice to the Client.

2.6 On termination of the licence in clause 2.1 or otherwise at any time at the request of Exclaimer, the Client shall return to Exclaimer all copies of all or any part of the Information which have been provided to the Client pursuant to this agreement, together with all analyses, studies and other materials produced by the Client which contain, or could reveal, all or any part of the Information, and any summaries (in whatever form) prepared by the Client of oral Information disclosed by Exclaimer.

3. **Property Rights and Data**

3.1 The following definitions are used in this clause 3:

3.1.1 **"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 the phrase which closest resembles the definition of "data controller" in the GDPR.

3.1.2 **"Data Protection Legislation"** means in each case as applicable to the activities undertaken by the respective parties under or in connection with this agreement (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, binding judgement which relate to the protection of an individual's Personal Data.

3.1.3 **"GDPR"** means the General Data Protection Regulations (IEU 2016/679).

3.1.4 **"Personal Data"** has the meaning set out the Data Protection Legislation or if there is no such definition in the relevant Data Protection Legislation it shall have the meaning given the phrase which closest 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 the Client is the Data Controller and in relation to which Exclaimer are providing Services under this agreement.

3.1.5 **"Processing"** and **"process"** and "**processor**" 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 the phrase which closest resembles the definition of "processing" and "process" and "processor" in the GDPR.

3.2 Exclaimer owns or is the licensee of the Services, Software and Information. The Client acknowledges that any disclosure pursuant to this agreement shall not confer on the Client any intellectual property or other rights in relation to the Services, the Software or the Information other than its right to use the Services, Software and Information under and in accordance with clause 2.1. Ownership of the Services, Software and the Information shall at all times remain with Exclaimer or its licensors.

3.3 The Client shall own all right, title and interest in and to all of the data inputted by the Client, its authorised users, or Exclaimer on the Client's behalf for the purpose of using the Services or facilitating the Client's use of the Services ("**Client Data**"). The Client shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.

3.4 The parties agree to comply with all applicable data protection laws. If the Client is subject to GDPR, the parties agree the following clauses: The parties record their intention that the Client shall be the Data Controller of Client Data and Exclaimer shall be a data processor of the same and:

3.4.1 the Client acknowledges and agrees that the Client Data may be transferred or stored outside the EEA or the country where the Client and its authorised users are located in order to carry out the Services and Exclaimer's other obligations under this agreement;

3.4.2 the Client shall ensure that the Client is entitled to transfer the relevant Personal Data to Exclaimer (including without limitation drafting any necessary third party contents) so that Exclaimer may lawfully use, process and transfer the Personal Data in accordance with this agreement.

3.5 The Client shall at all times comply with all obligations, responsibilities and duties imposed on the Client by the Data Protection Legislation in respect of any Personal Data which the Client passes to Exclaimer. The parties agree to the Standard Contractual Clauses pursuant to Article 26(2) of Directive 95/46/EC to the extent that any personal data is transferred by the Client to Exclaimer in the UK for so long as the UK is not deemed to have adequate safeguards in place by the European Union as set out at www.exclaimer.com/company/legal/

3.6 The parties acknowledge and agree that the provisions of the Schedule (including the appendices) shall only apply to this Agreement to the extent that the GDPR applies to the processing of any Personal Data pursuant to or in connection with this Agreement.

4. **Limitation of liability**

4.1 Subject to clauses 4.3 and 4.5, Exclaimer shall have no liability of any kind in any circumstances whatsoever to the Client in respect of the Services or the Software. In particular, Exclaimer shall have no liability in any circumstances whatsoever for any data loss or corruption and the Client agrees that it has sole responsibility for protecting its data during evaluation of the Services and Software.

4.2   No representations, conditions, warranties or other terms of any kind are given in respect of the Services, the Software or the Information, and all statutory warranties and conditions are excluded to the fullest extent permitted by law.

4.3   Subject to clause 4.5, Exclaimer's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under and/or in connection with (i) any breach by Exclaimer of any of the provisions of Schedule 1 or (ii) any failure by Exclaimer to fully comply with the provisions of Schedule 1 shall in each case (i) and (ii) be limited to £1,000 (one thousand pounds).

4.4   Exclaimer shall not in any circumstances be liable to the Client for any loss of profit, loss of business, loss of business opportunities, business interruption, reputation, reputation, goodwill or any indirect, consequential or special loss.

4.5   Neither party excludes or limits its liability to the other party for fraud or fraudulent misrepresentation, death or personal injury caused by negligence or any other type of liability that cannot be excluded or limited by law.

5.   **Entire Agreement**

5.1   This agreement constitutes the entire agreement between the parties in relation to the matters set out herein.

6.   **Assignment**

6.1   The Client shall not assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of Exclaimer (which shall not be unreasonably withheld).

6.2   Exclaimer shall not assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Client (which shall not be unreasonably withheld).

7.   **Waiver**

7.1   No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

8.   **Rights and Remedies**

8.1   The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

9.   **Notice**

9.1   Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or airmail at its registered office if a company or its principal place of business (in any other case).

9.2   Any notice shall be deemed to have been received:

9.2.1   if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

9.2.2   if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;

9.2.3   if sent by pre-paid airmail providing proof of postage, at 9.00 am on the fifth Business Day after posting.

9.3   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.

9.4   A notice given under this agreement is not valid if sent by email.

10.   Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.   Severance

If any provision or part-provision of this agreement 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 this agreement.

12.   No Partnership or Agency

Nothing in this agreement 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.

13.   Third-Party Rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

14.   Governing Law and Jurisdiction

14.1   This agreement and any dispute or claim arising out of in connection with it or its subject matter set out herein or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

14.2   Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter set out herein or formation (including noncontractual disputes or claims).

15.   General

15.1   The person(s) communicating and dealing with Exclaimer on behalf of the Client confirms that he/she is authorised to enter into this agreement on the Client's behalf, and to bind the Client to this agreement.

Schedule 1

DATA PROCESSING AGREEMENT (IF GDPR IS APPLICABLE TO THE CLIENT)

1. **Definitions**

1.1   The following definitions and rules of interpretation apply in this Schedule:

"**Data Controller**" or "**Controller**" has the meaning given to it in the Data Protection Legislation.

"**Data Processor**" or "**Processor**" has the meaning given to it in the Data Protection Legislation.

"**Data Protection Legislation**" means (i) prior to 25th May 2018, the Data Protection Act (1998) as amended, (ii) from and including 25th May 2018 the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (iii) any successor legislation to the GDPR applicable in the UK**.**

"**Data Subject**" has the meaning given to it in the Data Protection Legislation.

"**GDPR**" means General Data Protection Regulations (IEU 2016/679).

"**Personal Data**" has the meaning given to it in the Data Protection Legislation.

"**Processing Services**" means the services described in Appendix A.

"**the Controller**" means the Client.

"**the Processor**" means Exclaimer.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular

2. **Appointment**

2.1   The Controller appoints the Processor and the Processor accepts the appointment to process Personal Data on the Controller's behalf from time to time in accordance with the terms of this Schedule.

2.2   The parties will comply with all applicable requirements of the Data Protection Legislation.

2.3   Appendix A sets out the scope and nature of the processing and the types of Personal Data.

3. **Processor's obligations as Processor**

3.1   The Processor shall:

3.1.1   only process the Personal Data in accordance with the terms of this Schedule or any further documented instructions from the Controller and solely in relation to the performance thereof save where the Processor is required to do so by law; in which case, the Processor

shall inform the Controller of that legal requirement before processing, unless that law prohibits such informing on important grounds of public interest. If the Processor in its opinion, becomes aware that any such term or instruction infringes the GDPR, the Processor shall immediately inform the Controller of such infringement;

3.1.2 ensure that persons authorised to process the Personal Data have been required to commit themselves in writing via an employment agreement containing confidentiality provisions or some other contractual document to confidentiality or are under an appropriate statutory obligation of confidentiality;

3.1.3 assess and implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk to the Data Subject represented by the processing, including as appropriate:

3.1.3.1 the pseudonymisation and/or encryption of Personal Data;

3.1.3.2 the ability to ensure the on-going confidentiality, integrity, availability and resilience of processing systems and Processing Services;

3.1.3.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;

3.1.3.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing

3.1.4 in assessing the appropriate level of technical and organisational measures required to undertake the processing and ensure security as per paragraph 3.1.3, the Processor shall take account in particular of the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data of the type being transmitted, stored or otherwise processed.

3.2 The Processor shall, taking into account the nature of the processing, assist the Controller by appropriate technical and organisational measures to enable the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the GDPR.

3.3 The Processor shall assist the Controller in the compliance of its obligations pursuant to Article 32-36 of the GDPR taking into account the nature of the processing and the information available to the Processor.

3.4 The Processor shall, so far as it is lawful to comply, at the choice of the Controller, delete or return all the Personal Data to the Controller after the end of the provision of the Processing Services, and delete existing copies unless copies of the Personal Data need to be retained for compliance with the Processor's statutory obligations.

3.5 The Processor shall make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR and allow for and, if requested, contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller, including without limitation any regulatory authority of the Controller.

3.6 Subject always to paragraph 3.10 where the Processor engages a sub-processor to carry out specific processing activities on behalf of the Controller, the Processor must prior to any processing by the relevant sub-processor enter into a written contract with the sub-processor insofar as they relate to data processing.

3.7 The Processor shall make available to the Controller, its auditors and any regulator to which the Controller is subject such of the records and information necessary to demonstrate compliance with the obligations in Article 28 of the GDPR.

3.8 The Processor must notify any data breach to the Controller without undue delay after it becomes aware of the same.

3.9 Regarding transfers of Personal Data to a third country (being a country outside of the European Economic Area but excluding the UK), such transfers shall only be undertaken on the written instruction of the Controller save where the Processor is required to do so by law; in which case, the Processor shall inform the Controller of that legal requirement before processing, unless that law prohibits such informing on important grounds of public interest.

3.10 The Processor may not appoint a sub-processor without the prior specific written consent or general written authorisation of the Controller (which the Controller shall not unreasonably withhold).

4. **Sub processors**

4.1 The Controller consents to the Processor appointing the parties listed in Appendix B as third-party processors.

5. **Duration**

5.1 The provisions of this Schedule are expressly agreed by the parties to survive any termination or expiry of this agreement however arising.

SCOPE OF PROCESSING	Exclaimer will process Personal Data provided by the Controller to Exclaimer or collected by Exclaimer in order to manage the Controller's account. Exclaimer will process the Personal Data for the duration of the period in which it provides services to the Controller. Exclaimer will process the Personal Data provided by the Controller or its affiliates in order to administer and provide the Email Signature Service.

TYPE OF PERSONAL DATA	Personal Data provided by the Controller to Exclaimer or collected by Exclaimer in order to manage the Controller's account. This includes the following:
	• 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.
	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.
	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:
	• 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.

NATURE OF PROCESSING	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.
	Where the Controller logs a technical support case, the data relating to the case is stored within our CRM. Personal Data provided by the 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.

Appendix B
List of Sub processors

		Name of subcontractor	Company number	Address
	1.	Microsoft Operations Limited (Where Signatures for O365 is used)	256796	70 Sir John Rogersons Quay Dublin 2 D02R296 IRELAND
	2.	GPUK LLP	OC337146	51 De Montfort Street Leicester LE1 7BB UNITED KINGDON
	3.	Google UK Limited (and each member of the group of companies to which it belongs) (Where Signature for G-Suite is used)	03977902	Belgrave House, 76 Buckingham Palace Road, London, SW1W 9TQ
	4	Solar Archive Limited	10927416	16 Raymond Road, London, United Kingdom, SW19 4AP
	5	Salesforce UK Limited	05094083	Floor 26, Salesforce Tower, 110 Bishopsgate, London EC2N 4AY