

EXCLAIMER CLOUD MAIL ARCHIVER SERVICE AGREEMENT

This Exclaimer Cloud Mail Archiver Service Agreement (“**Agreement**”) is made between **EXCLAIMER LIMITED** (registered in England with company number 04938619) whose registered office is at 250 Fowler Avenue, Farnborough, Hampshire GU14 7JP (“**Exclaimer**”) and the customer entity purchasing the Service (“**Customer**”) and becomes effective on the start date of the Service as stated in the order confirmation document issued to Customer by Exclaimer (“**Effective Date**”).

The Agreement consists of the general terms and conditions set below, (which includes the Schedules hereto), and any other terms expressly referenced herein or in other incorporated documents, all of which are expressly deemed incorporated into this Agreement. By accepting this Agreement, including through clicking on a relevant icon or otherwise signing to indicate your acceptance, Customer’s representative specifically agrees that (a) he/she has read the terms of this Agreement; (b) has authority to agree the terms of this Agreement on behalf of his/her company/organisation and (c) agree terms of this Agreement shall govern Customer’s use of the Service until the relationship is terminated by either party as stated below

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

“**Affiliates**” means any person or entity directly or indirectly Controlling, Controlled by, or under common Control with a party, where “**Control**” means the legal power to direct or cause the direction of the general management of the company, partnership, or other legal entity.

“**Ancillary Software**” means the Outlook plug-in software (for the Exclaimer Core Technology) licensed by Exclaimer to Customer that is deployed on technology operated by or for Customer to facilitate operation of the Service. All or part of the Ancillary Software may be code that is licensed to Exclaimer under third-party license agreements.

“**Business Day**”: means a day other than Saturday, Sunday or public holiday in England when banks are open for business.

“**Claim**” means any third-party suit, claim, action, or demand.

“**Confidential Information**” means: (a) the Exclaimer Products (which is Confidential Information of Exclaimer); (b) Customer Data (which is Confidential Information of the Customer); (c) any information of a party that is disclosed in writing or orally and is designated as *Confidential* or *Proprietary* at time of disclosure (and, for oral disclosures, summarized in writing within 30 days of initial disclosure and delivered in written summary form to the receiving party), or that, due to the nature of the information or circumstances of disclosure, receiving party would understand it to be disclosing party’s confidential information; and (d) the specific terms of this Agreement, any Use Authorization, and any amendment or attachment to any of these, between the parties (which will be deemed Confidential Information of both parties). Confidential Information excludes any information that: (i) is or becomes generally known to the public through no fault or breach of this Agreement by receiving party; (ii) was already rightfully in receiving party’s possession, without restriction on use or disclosure, when receiving party received it under this Agreement; (iii) is independently developed by receiving party without use of disclosing party’s Confidential Information; or (iv) was or is rightfully obtained by receiving party, without restriction on use or disclosure, from a third party not under a duty of confidentiality to disclosing party.

“**Customer Data**” means all text, information, data, images, audio or video material, in whatever medium or form, inputted by any User and processed and/or stored through the Service.

“**Documentation**” means the then-current Exclaimer product documentation relating to the operation and use of the Service or Ancillary Software published by Exclaimer at support.archive.exclaimer.com or its successor website. Documentation includes technical program or interface documentation, user manuals, operating instructions, and release notes.

“**Exclaimer Core Technology**” means the Exclaimer Cloud Mail Archiver software and all Updates of the same (but excluding any New Product Offerings).

“**Exclaimer Products**” means, collectively, the Service, the Exclaimer Core Technology, Ancillary Software and Documentation

“Intellectual Property Rights” means all intellectual property or other proprietary rights worldwide, including patents, copyrights, trademarks, moral rights, trade secrets, and any other intellectual or industrial property, including registrations, applications, renewals, and extensions of such rights

“Law” means any applicable law, rule, statute, decree, decision, order, regulation, judgment, code, and requirement of any government authority (federal, state, local, or international) having jurisdiction.

“New Product Offerings” means a version of the Service that includes significant new functionality and/or other enhancements, as well as additional new products which may complement Exclaimer’s existing service offering in either case released generally by Exclaimer subject to payment of an additional fee and/or additional terms.

“Security Event” means any unauthorised third party access to the Service; or any use of the Service by the Customer or by a User that is in breach of this Agreement and which materially impacts the Service or use of the Service by any other customer of Exclaimer or any of that customer's end users; or the presence of any Vulnerability or Virus in the Service.

“Service” means the provision of the Exclaimer Core Technology as a hosted solution ordered by Customer pursuant to this Agreement.

“Storage Allocation” means an allocation of an average of 10GB of archive storage per User across each tenant. The Storage Allocation is measured based on the raw data presented to the archive prior to processing.

“Subscription Term” means (i) the period commencing on the Effective Date and ending twelve months later (the “Initial Term”) and (ii) each subsequent twelve (12) month term thereafter (each a **“Renewal Term”**).

“Updates” means minor functional enhancements, modifications, extensions, error corrections or bug fixes to the Exclaimer Products.

“User” means a mailbox account on the Customer’s computer email network.

“Virus” means any software, code, file or programme which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

“Vulnerability” means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

2. THE SERVICE

- 2.1. In consideration of Customer paying the fees for the agreed number of Users that will have access and/or use of the Service, Exclaimer agrees to provide the Service and technical support relating to the Service to the Customer for the duration of the Subscription Term in accordance with the terms of this Agreement. This Agreement shall automatically renew at the end of the Initial Term and each subsequent Renewal Term unless either party terminates it in accordance with its provisions.
- 2.2. Subject to the terms of this Agreement and payment of all applicable fees, the Customer’s Users are authorised to access and use the Service in accordance with the Documentation during the Subscription Term, solely for Customer’s internal business purposes and solely for the maximum number of Users the Customer has paid the applicable fees.
- 2.3. Exclaimer grants Customer a limited, personal, worldwide, non-sublicensable, non-transferable, non-exclusive, royalty-free license during the Subscription Term to install and execute the Ancillary Software on technology operated by or for Customer, solely to facilitate Users’ authorized access to and use of the Service.
- 2.4. With respect to the Exclaimer Core Technology, Customer will not (and will not permit others to): (a) use it in excess of contractual User limits, or in a manner that circumvents usage limits or technological access control measures without paying for the increased use; (b) license, sub-license, sell, re- sell, rent, lease, transfer, distribute, time share, or otherwise make any of it available for access by third-parties, except as may otherwise be expressly stated herein; (c) access it for the purpose of developing or operating products or services for third-parties in competition with the Exclaimer Core Technology; (d) disassemble, reverse engineer, or decompile it; (e) do or authorise any third party to do any act which would or might invalidate or be inconsistent with any of Exclaimer’s or its licensors’ Intellectual Property Rights and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character; (f) copy, create derivative works based on, or otherwise modify it, except as may be otherwise expressly stated in this Agreement; (g) remove or modify a copyright or other proprietary rights notice in it; (h) use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Right (including the rights of publicity) without first obtaining permission of the owner; (i) use it to create, use, send, store, or run Vulnerabilities, Viruses or

other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or (j) access or disable any Exclaimer or third-party data, software, or network (other than Customer's instance of the Service under this Agreement).

- 2.5. Customer agrees to comply with and ensure its Users comply with the Acceptable Use Policy in Schedule 1 hereto. Customer agrees that a breach of the Acceptable Use Policy shall entitle Exclaimer to: (a) remove any offending Customer Data; and/or (b) suspend or, in serious cases, acting reasonably, terminate this Agreement immediately without a refund or any further liability to Customer for such termination.
- 2.6. Notwithstanding any other provision in this Agreement, if there is a Security Event, Exclaimer may, without liability or prejudice to its other rights and without prior notice to the Customer, remove the relevant Customer Data and, where reasonably necessary to remedy the Security Event, disable the Customer's account and/or any User's account until the relevant Security Event has been resolved. Where reasonably practicable, Exclaimer shall give the Customer notice of the relevant Security Event and, where applicable, of its intention to remove Customer Data and/or disable the Customer's account and/or any User's account, provided however that Customer acknowledges and agrees that the provision of such advance notice may not be possible in all circumstances.
- 2.7. The Customer shall: (a) provide Exclaimer with all co-operation as may be reasonably required in relation to this Agreement and access to such information as may be reasonably required by Exclaimer in order to provide the Service, including any security information and/or configuration services; (b) comply with all applicable laws and regulations with respect to its activities under this Agreement; (c) take all reasonable steps to ensure that its Users use the Service in accordance with the terms and conditions of this Agreement and shall be responsible for breach of this Agreement caused or contributed to by any acts or omissions on the part of any User and (d); be solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Exclaimer's data centre, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links.

3. ORDERING AND FEES

- 3.1. Customer may place an order for the Service either directly with Exclaimer at the price per User quoted by Exclaimer or indirectly from its preferred reseller pursuant to a separate agreement specifying price, payment and other commercial terms. Exclaimer is not a party to any such separate agreement but will provide the Service pursuant to this Agreement once it receives the corresponding order and this Agreement signed by Customer from the reseller. Reseller is not authorized to make any changes to this Agreement or bind Exclaimer to any additional or different terms or conditions on behalf of Exclaimer. At the end of the Initial Term and the then current Renewal Term (as applicable), Exclaimer (or Customer's reseller as appropriate) will send a new pricing quote to Customer applicable to the subsequent Renewal Term.
- 3.2. If ordering directly from Exclaimer, Customer agrees to pay the agreed price per User annually in advance within 30 days of the date of Exclaimer's invoice failing which Exclaimer may (a) charge interest at the rate of 5% above the base rate of the Bank of England; (b) suspend the Service without further liability until Customer pays the relevant invoice and/or (c) terminate this Agreement if the invoice remains unpaid more than 45 days after the date of the invoice. The price payable by the Customer will be the agreed per User price for the number of Users ordered by the Customer. If the number of actual Users exceeds the licensed quantity at any time, Customer agrees that Exclaimer may invoice it (or advise Customer's reseller to do so if Customer purchased through a reseller) for the increased quantity of Users for the remaining duration of Initial Term or the then current Renewal Term (as applicable) without the requirement for a purchase order or other request from Customer.
- 3.3. Customer agrees that Exclaimer may increase the per User price at the end of the Initial Term and each subsequent Renewal Term by the greater of the Retail Price Index in the United Kingdom or 5%. Invoices must be paid in the same currency as billed. Unless otherwise stated, all fees are exclusive of value added tax or similar sales tax which shall be payable in addition where applicable.
- 3.4. If Customer exceeds the Storage Allocation, an excess storage charge will become payable by the Customer for each GB per month for each month (or part month), that the Customer exceeds the Storage Allocation. Excess storage charges shall be applied on a whole month basis regardless of the period of use within a particular month.
- 3.5. If Exclaimer's cloud service provider increases the amount payable by Exclaimer for such services by more than 30% of the then current rate, Exclaimer reserves the right to pass such percentage increase on to the Customer by increasing the amount of the per User fees payable by the Customer pro rata ('pro rata fee increase'). For the avoidance of doubt, Exclaimer will absorb the first 30% of any such increase and will not charge the Customer any pro rata fee increase unless and until the fees payable by Exclaimer to the cloud service provider increase by more than 30%.

- 3.6. Exclaimer or the reseller (as Exclaimer's agent) administering Customer's order may remotely review Customer's use of the Service, and on Exclaimer or reseller's written request, Customer will provide reasonable assistance to verify Customer's compliance with the Agreement, and access to and use of the Service. If Exclaimer or the reseller determines that Customer has exceeded its permitted number of Users to the Service, Exclaimer will notify Customer and within 10 Business Days thereafter Customer shall purchase additional User subscriptions commensurate with Customer's actual use from the date that such overuse commenced to the end of the Initial Term or the then current Renewal Term.

4. INTELLECTUAL PROPERTY

- 4.1. As between the parties, Exclaimer and its licensors exclusively own all right, title, and interest in and to all Intellectual Property Rights in the Exclaimer Products. Except for the access and use rights, and licenses expressly granted in this Agreement, Exclaimer, on behalf of itself and its licensors, reserves all rights in the Exclaimer Products and does not grant Customer any other rights (express, implied, by estoppel, through exhaustion, or otherwise). Any Exclaimer Products delivered to Customer or to which Customer is given access shall not be deemed to have been sold, even if, for convenience, Exclaimer makes reference to words such as "sale" or "purchase" in any marketing or other documents.

5. WARRANTIES; DISCLAIMER OF WARRANTIES

- 5.1. Exclaimer warrants that during the Subscription Term, Customer's production instance of the Service will materially conform to the Documentation.
- 5.2. In addition, Exclaimer warrants it will use all reasonable efforts to provide technical support in accordance with the Service Level Agreement found at www.exclaimer.com/support which is incorporated herein and made subject to and part of this Agreement.
- 5.3. To submit a warranty claim under Section 5.1 or 5.2, Customer must first submit a support request to resolve the non-conformity. If the non-conformity is material and persists without relief more than 30 days after the support request has been submitted under this Section 5.3, then Customer may terminate the affected Service and claim a refund from Exclaimer or submit to its reseller a claim for the same for any prepaid subscription fees covering that part of the Subscription Term for the affected Service remaining after the effective date of termination. Notwithstanding the foregoing, this warranty will not apply to any minor defects that are not material to the functionality of the Service or any non-conformity due to a modification of or defect in the Service that is made or caused by any person other than Exclaimer or a person acting at Exclaimer's direction.
- 5.4. This Section 5 sets forth Customer's exclusive rights and remedies (and Exclaimer's sole liability) in connection with these warranties.
- 5.5. Except for the warranties expressly stated in this Section 5, to the maximum extent allowed by Law, Exclaimer disclaims all warranties of any kind (express, implied, statutory, or otherwise, oral or written, including warranties of merchantability, accuracy, title, non-infringement, or fitness for a particular purpose, and any warranties arising from usage of trade, course of dealing, or course of performance). Without limiting the foregoing, Exclaimer specifically does not warrant that the Exclaimer Products will meet the requirements of Customer or others or will be accurate or operate without interruption or error or that the Service is free from any Virus or Vulnerability. Customer acknowledges that in entering this Agreement, it has not relied on any promise, warranty, or representation not expressly set forth in this Agreement.

6. CONFIDENTIAL INFORMATION

- 6.1. The recipient of Confidential Information will: (a) at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event use less than reasonable care; and (b) not use it except to the extent necessary to exercise rights or fulfil obligations under this Agreement. Each party will limit the disclosure of the other party's Confidential Information to those of its employees and contractors and the employees and contractors of its Affiliates with a need to access such Confidential Information for a party's exercise of its rights and obligations under this Agreement, and then only to employees and contractors subject to binding disclosure and use restrictions at least as protective as those in this Agreement. Each party's obligations under this Section 6 will remain in effect during, and for three years after termination of, this Agreement. The receiving party will, at disclosing party's request, return all originals, copies, reproductions, and summaries of Confidential Information and other tangible materials and devices provided to receiving party as Confidential Information, or at disclosing party's option, certified destruction of the same. Provisions for return of Customer Data are set forth in Section 9.4.
- 6.2. This Agreement will not be construed to prevent receiving party from disclosing the disclosing party's Confidential Information to a court, or governmental body pursuant to a valid court order, Law, subpoena, or

regulation, provided that the receiving party: (a) gives prompt notice (or the maximum notice permitted under Law) before making the disclosure, unless prohibited by Law; (b) provides reasonable assistance to disclosing party in any lawful efforts by disclosing party to resist or limit the disclosure of such Confidential Information; and (c) discloses only that portion of disclosing party's Confidential Information that is legally required to be disclosed. In addition, receiving party will cooperate and assist disclosing party, at disclosing party's cost, in relation to any such request and any response to any such communication.

7. INDEMNIFICATION

- 7.1. Subject to the limitations in this Section 7 and Section 8 below, Exclaimer will: (a) defend Customer, and its and their officers, directors, and employees against any Claim: (i) to the extent alleging that any Exclaimer Products accessed or used in accordance with this Agreement infringes any third party patent, copyright, or trademark, or misappropriates any third party trade secret; or (ii) to the extent alleging that Exclaimer's personnel when onsite at Customer's premises caused death, bodily harm, or damage to tangible personal property due to their negligence or wilful misconduct; and (b) pay any settlement amount or any court-ordered award of damages, under the forgoing subsections (a)(i) and (ii) to the extent arising from such Claim.
- 7.2. To the extent any Claim alleges any part of the Exclaimer Products infringe any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret, Exclaimer may: (a) contest the Claim; (b) obtain permission from the claimant for Customer's continued use of its instance of the Service or any applicable Exclaimer Product; (c) avoid such Claim by replacing or modifying Customer's access to and use of its instance of the applicable Exclaimer Product as long as Exclaimer provides a substantially similar product; or, if Exclaimer determines the foregoing (a), (b), and (c) are not commercially practicable, then (d) terminate Customer's access to and use of the affected Exclaimer Product on 60-days' prior notice, whereupon Customer may submit a claim for a refund of any prepaid subscription fees covering any prepaid subscription fees covering that part of the Subscription Term for such Service remaining after the effective date of termination.
- 7.3. Notwithstanding the above, Exclaimer will have no obligation or liability for any Claim under Section 7.1(a)(i) to the extent arising in whole or in part from: (a) any access to or use of any Exclaimer Products not expressly authorized under this Agreement, to the extent the Claim would have been avoided without such unauthorized access or use; (b) Customer Data; or (c) access to or use of the Exclaimer Products: (i) in violation of Law; (ii) after termination under Section 7.2(d); (iii) as modified to Customer's specifications or by anyone other than Exclaimer or its contractors, if the Claim would have been avoided but for such modifications; or (iv) combined with anything not provided by Exclaimer, if the Claim would have been avoided but for such combination.
- 7.4. Customer will: (a) defend Exclaimer and Exclaimer Affiliates, and its and their officers, directors, and employees against any Claim to the extent alleging that Customer Data or a modification to any Exclaimer Products made to Customer's specifications or otherwise made by or on behalf of Customer by any person other than Exclaimer or a person acting at Exclaimer's direction (but only if the Claim would have been avoided by use of the unmodified Exclaimer Product), infringes any patent, copyright, or trademark, misappropriates any third-party trade secret, or violates any third-party privacy rights; and (b) pay any settlement amount or any court-ordered award of damages, under the foregoing subsection (a) to the extent arising from such Claim.
- 7.5. The obligations of Exclaimer and Customer under Sections 7.1 and 7.4 respectively are conditioned on the indemnified party (a) notifying the indemnifying party promptly in writing of any actual or threatened Claim, (b) the indemnified party giving the indemnifying party sole control of the defence of such Claim and of any related settlement negotiations, and (c) the indemnified party cooperating and, at the indemnifying party's reasonable request and expense, assisting in such defence. Neither party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent. The indemnifying party will not publicize any settlement without the indemnified party's prior, written consent. To the extent the parties perform as required, this Section 7 states each party's entire liability and the other party's exclusive remedy for third-party claims and third-party actions.

8. LIMITED LIABILITY

- 8.1. Exclaimer shall have no liability for any refund or other monies that, in accordance with the terms of this Agreement, is to be paid by Customer's reseller.
- 8.2. Nothing in this Agreement excludes or limits the liability of either party:
 - 8.2.1. for death or personal injury caused by negligence;
 - 8.2.2. for fraud, fraudulent misrepresentation, deliberate default or wilful negligence; or
 - 8.2.3. in respect of the Customer, the Customer's payment obligations under this Agreement.
- 8.3. Subject to Section 8.2, neither party shall be liable to the other (whether such liability arises in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise) for:

- 8.3.1. any loss of profits (direct or indirect), loss of or damage to business, depletion of goodwill or pure economic loss or loss or corruption of data (including Customer Data) or information; or
- 8.3.2. any special, indirect or consequential loss, costs, damages, charges or expenses, or for any incidental, other consequential, punitive or exemplary damages or indirect damages of any type however caused, whether by breach of warranty, breach of contract, in tort (including negligence), or any other legal or equitable cause of action, even if such party has been advised of such damages in advance or if such damages were foreseeable.

in each case, howsoever arising under this Agreement.

- 8.4. Exclaimer's total cumulative liability (including in respect of the indemnity at Section 7.1) whether such liability arises in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or any other legal or equitable theory or otherwise in respect of all losses arising out of or in connection with the performance or contemplated performance of this Agreement, including any losses that are payable as a result of a competent court adjudicating that all or any of Section 8.3 is illegal, unenforceable or not applicable, shall be limited to the greater of the total amount of the fees paid for the Service during the twelve months immediately preceding the date of the first incident giving rise to any claim or £10,000. The existence of more than one claim will not enlarge this limit.

9. TERM AND TERMINATION

- 9.1. The Customer may terminate this Agreement at any time within the first thirty days from the Effective Date for any reason by giving simple notice in writing to Exclaimer which shall be effective at the end of the said 30 days' period. Any invoice issued by Exclaimer prior to such notice being given will become null and void. If Customer pays Exclaimer's invoice, it shall be assumed to have accepted the Service and waived its option to terminate under this Section 9.1.
- 9.2. Subject to Section 9.1 above, this Agreement begins on the Effective Date and shall continue for the Initial Term and each Renewal Term until terminated. Each party may terminate this Agreement in its entirety: (a) after the end of the end of the Initial Term or after the end of any Renewal Term by giving ninety (90) days' written notice to the other party with such termination effective on expiry of the 90 days' notice period; (b) immediately on notice if the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction, that is not dismissed within 60 days of its commencement or an assignment for the benefit of creditors; or (c) immediately on notice if the other party materially breaches this Agreement and does not cure such breach within 30 days after the other party's receipt of notice of the breach; or (d) the other party is in persistent breach of any term of this Agreement. Exclaimer may also terminate this Agreement on 30 days written notice if Customer ceases to license Exclaimer's Email Signature product.
- 9.3. On termination of this Agreement: (i) Customer must stop accessing and using the Service; (ii) Exclaimer will stop providing the Service; and (iii) all related rights granted to Customer in this Agreement will terminate immediately, automatically, and without notice.
- 9.4. After termination of this Agreement, upon Customer's written request, Exclaimer will work with Customer or Customer's nominees to migrate the Customer Data from the Service to either the Customer's own servers or to another provider's hosted service. Customer must submit such request to Exclaimer within 45 days after termination of this Agreement. Depending on the quantity of Customer Data and the complexity of the migration, such migration may be chargeable and the parties shall agree the fees for the same (if any) in good faith at the relevant time. Exclaimer shall not be obligated to maintain or provide any Customer Data after such 45- day period and will, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control, and delete Customer's instances of the Service.

10. GENERAL PROVISIONS

- 10.1. Customer may not assign or novate its rights or obligations under this Agreement, by operation of law or otherwise (any of the foregoing, "Assign"), without the prior written consent of Exclaimer. Notwithstanding the foregoing, on notice and without Exclaimer's consent, Customer may in connection with a merger, reorganization, or sale of all or substantially all of such party's assets or equity, assign this Agreement in its entirety to its successor. Any attempted or purported Assignment in violation of this Section 10.1 will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.
- 10.2. Each party agrees to comply with all Laws applicable to it under this Agreement including (but not limited to) all, bribery and corruption, money laundering and applicable data protection legislation. If Customer is subject to UK or EU data protection laws, the parties also agree the terms of Schedule 2 (Data Protection). Each party will

comply with local and foreign export control Laws, including U.K. export control Laws. Without limiting the foregoing, Customer represents and warrants that: (a) it is not located in, and will not use the Exclaimer Product from, any country subject to U.K., U.S. U.N. or local export restrictions; (b) Customer will not use the Exclaimer Products in the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems; and (c) Customer is not prohibited from participating in U.K. or U.S. export transactions by any federal agency of the U.K. or U.S. government. In addition, Customer is responsible for complying with any local Laws that may impact Customer's right to import, export, or use Exclaimer Products or any of them.

- 10.3. Exclaimer is not, and may not be construed to be, in breach of this Agreement for any failure or delay in fulfilling or performing the Service when and to the extent such failure or delay is caused by or results from acts beyond Exclaimer's reasonable control, including: strikes, lock-outs or other industrial disputes; actions of third party suppliers, trespass, sabotage, theft or other criminal acts export bans, sanctions, war, terrorism, riot, civil unrest, or government action; failure of Internet connectivity or backbone or other telecommunications failures, in each case outside of Exclaimer's local network; breakdown of plant or machinery; nuclear, chemical, or biological contamination; fire, flood, natural disaster, extreme adverse weather, or other acts of God (each a "**Force Majeure Event**"). Exclaimer will use reasonable efforts to mitigate the effects of such Force Majeure Event.
- 10.4. The Exclaimer Products are not designed for any purpose requiring fail-safe performance. Exclaimer, its licensors, and suppliers expressly disclaim all warranties of fitness for any such use.
- 10.5. This Agreement may be executed in counterparts and by electronic signature. Neither party will contest the Agreement's validity solely because a signature was electronic. Except as otherwise provided in this Agreement, all notices will be in writing and deemed given on: (a) personal delivery; (b) when received by the addressee if sent by a recognized overnight courier (receipt requested); (c) the third Business Day after mailing; or (d) the first Business Day after sending by email with confirmation of receipt, except that email will not be sufficient for notices regarding a Claim or alleged breach. Notices will be sent as set forth in this Agreement or as subsequently updated in writing.
- 10.6. Failure by a party to enforce any part of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any right is effective only if in a writing signed by an authorized representative of the waiving party. Any modification of this Agreement must be in writing and signed by authorized representatives of both parties.
- 10.7. The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, agency, or other relationship. Neither party has any right or authority to assume or create any obligation of any kind, express or implied, in the other party's name or on its behalf. No third-party is a third-party beneficiary of, or liable under, this Agreement, and no third-party is responsible for any obligations or liability arising out of Customer's use of the Exclaimer Core Technology.
- 10.8. This Agreement shall be governed by the laws of the England and Wales without regard to its conflict of laws principles. The parties hereby irrevocably consent to the nonexclusive jurisdiction of, and venue in, any court of competent jurisdiction located in London, England for the purposes of adjudicating any dispute arising out of this Agreement. Each party hereto expressly consents to service of process by registered mail. To the extent permitted by law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods shall not apply. Notwithstanding the foregoing, either party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's intellectual property rights or for enforcing any judgment of the court in London.
- 10.9. The receiving party's disclosure of Confidential Information except as provided in this Agreement, or a party's infringement or misappropriation of the other party's Intellectual Property Rights may result in irreparable injury for which a remedy in money damages may be inadequate. In the event of such actual or threatened disclosure, infringement or misappropriation, disclosing party may be entitled to seek an injunction to prevent the breach or threatened breach without the necessity of proving irreparable injury or the inadequacy of money damages, in addition to remedies otherwise available to disclosing party at law or in equity.
- 10.10. Exclaimer is obligated to provide Exclaimer Products only in the English language.
- 10.11. This Agreement is the parties' entire agreement regarding its subject matter and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings, negotiations, letters of intent, and proposals, with respect to such subjects. The terms of this Agreement apply to the exclusion of any other terms Customer seeks to impose or incorporate, or that may be implied by trade, custom, practice, or course of dealing. Customer's orders are not contingent, and Customer has not relied, on the delivery of any future functionality regardless of any verbal or written communication about Exclaimer's possible future plans.

SCHEDULE 1 ACCEPTABLE USE POLICY

1. Neither the Customer nor any User shall access, store, distribute or transmit any Viruses, or any material during the course of its use of the Service that:
 - 1.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 1.2 facilitates illegal activity;
 - 1.3 depicts sexually explicit images;
 - 1.4 promotes unlawful violence;
 - 1.5 is discriminatory based on race, gender, religious belief, sexual orientation and/or disability; or
 - 1.6 in a manner that is otherwise illegal or causes damage or injury to any person or property.

SCHEDULE 2 DATA PROTECTION (Customers Subject to UK and/or EU Data Protection Laws only)

1. DEFINITIONS
The definitions in the Agreement and the following definitions apply in this Schedule 2.
 - 1.1. For the purposes of this Schedule 2, the terms "**data processor**", "**personal data**", "**data subject**", "**processing**" and "**supervisory authority**" shall be as defined in the Data Protection Legislation.
 - 1.2. "**Authorised Country**" means , as applicable: (i) in respect of any transfers of Personal Data from within the EEA or from a country to which EEA Applicable Privacy Law applies, (a) the countries within the EEA, from time to time; (b) the countries deemed by the European Commission to provide an adequate level of protection to personal data, from time to time; and (c) such countries from time to time that whilst not deemed by the European Commission to provide an adequate level of protection to personal data, the European Commission has authorised or approved to receive personal data on a transitional basis; and (ii) following the exit of the United Kingdom from the EEA and the expiry of the Transition Period, in respect of any transfers of personal data from within the UK or to which UK Applicable Privacy Law applies (a) the countries deemed by the applicable UK governing body to provide an adequate level of protection to personal data, from time to time; and (b) such countries from time to time that whilst not deemed by the applicable UK governing body to provide an adequate level of protection to personal data, the applicable UK governing body has authorised or approved to receive personal data on a transitional basis;
 - 1.3. "**Data Protection Legislation**" means the relevant data protection and privacy law, regulations (including the UK Data Protection Act 2018 and the EU General Data Protection Regulation (EU) 2016/679) and other regulatory requirements to which the parties are subject;
 - 1.4. "**EEA**" means the European Economic Area;
 - 1.5. "**Third Country**" means any country that is not an Authorised Country;
 - 1.6. "**Transition Period**" means the transition period provided for in Part Four of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community;
2. Both Parties shall comply with all applicable requirements of the Data Protection Legislation.
3. To the extent that Exclaimer, in connection with the provision of the Exclaimer Products under this Agreement is acting in the capacity of a processor or a sub-processor of personal data in relation to which the Customer is a data controller or processor (as applicable), Exclaimer shall:
 - 3.1. process the personal data only on documented instruction from the Customer, including with regards to transfers of personal data to a Third Country or an international organisation, unless required to do so by European Union or Member State law to which Exclaimer is subject; in such a case, Exclaimer shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest; or in its opinion, an instruction given by or on behalf of the Customer infringes the Data Protection Legislation, in which instance Exclaimer shall immediately inform the Customer of such opinion,
 - 3.2. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 3.3. take all measures required pursuant to Article 32 of the GDPR;
 - 3.4. in addition to the measures put in place by the Customer, and taking into account the nature of the processing, implement and maintain all appropriate technical and organisational security measures to assist the Customer, insofar as possible, in the fulfilment of its obligations to respond to requests from data subjects exercising their rights under the Data Protection Legislation;
 - 3.5. assist the Customer, at the Customer's cost, in ensuring compliance with its obligations pursuant to Articles 32 to 36 of the GDPR, taking into account the nature of the processing and the information available to Exclaimer;
 - 3.6. following the termination or expiry of this Agreement, at the Customer's option, return to the Customer (in accordance with Section 9.4 of the Agreement) or permanently delete all personal data (including copies) in its possession or control, save where required to retain such personal data by applicable law;
 - 3.7. notify the Customer without undue delay of the loss, compromise or any unauthorised access to, or breach of the security of, any personal data of which it becomes aware; and

- 3.8. make available to the Customer all information reasonably necessary to demonstrate compliance with the obligations laid down in this provision and allow for and contribute to audits, including inspections, conducted on reasonable notice to Exclaimer by the Customer or another auditor mandated by the Customer. All reasonable costs incurred by Exclaimer in complying with this paragraph 3.8 shall be reimbursed by the Customer.
4. The Customer hereby gives its consent to Exclaimer to process or transfer the personal data outside of the EEA (and following the expiry of the Transition Period, the UK) (and permit the personal data to be so processed or transferred), subject to (i) Exclaimer having first entered into the European Commission-approved "model clauses" for the transfer of data or having otherwise complied with another approved data transfer mechanism; or (ii) to the extent that such personal data is transferred in the period after the expiry of the Transition Period, the personal data being transferred in compliance with any UK-based equivalent to the model clauses which is approved by the UK government and made available for use. The parties agree to the Standard Contractual Clauses pursuant to Article 26(2) of Directive 95/46/EC as set out at www.exclaimer.com/company/legal/eula to the extent that any of Customer's personal data is transferred to a country outside the EEA that is not deemed by the European Union to have adequate safeguards in place
5. Notwithstanding the generality of paragraph 3, the Customer hereby provides its general written authorisation to the appointment by Exclaimer of sub-processors of the personal data. When Exclaimer engages a sub-processor, Exclaimer shall ensure that such sub-processor is engaged by way of a written contract which imposes obligations on the sub-processor which are materially equivalent to the obligations imposed on Exclaimer pursuant to paragraph 3. Exclaimer shall, subject to any exclusions or limitations set out in this Schedule 3, remain liable to the Customer in respect of any breach of paragraph 3 that is caused by an act, error or omission of such sub-processor. For the purposes of this paragraph 5, the Customer hereby consents to the appointment of the following entities as sub-processors of the personal data: (i) each of Exclaimer's Affiliates; (ii) Microsoft Operations Limited (company number 256796, registered at 70 Sir John Rogersons Quay, Dublin 2, D02R296, Ireland); (iii) GPUK LLP (company number OC337146), registered at 51 De Montfort Street, Leicester, LE1 7BB, United Kingdom); (iv) Solar Archive Limited (company 10927416) whose registered office is at 16 Raymond Road, London, United Kingdom, SW19 4AP; (v) Google UK Limited (and each of its Affiliates) (company number 03977902, registered at Belgrave House, 76 Buckingham Palace Road, London, SW1W 9TQ) and (vi) Salesforce UK Limited whose registered office is at Floor 26, Salesforce Tower, 110 Bishopsgate, London EC2N 4AY.