

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 (the **“Services”**) and any associated use of the Exclaimer technology offered or made available by Exclaimer Ltd (below referred to as **“we”, “our”** or **“us”**).

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”** 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.

1. SUBSCRIPTION TO AND USE OF THE SERVICES

- i. By subscribing to the Services, we grant you a non-exclusive, non-transferable 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 your subscription period.
- 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), your appointed reseller or marketing company (“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; (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 (d) prior to Permitted Access being granted you shall enter into a written agreement with such third parties which shall include terms which i) are consistent with the obligations on you under these Terms and ii) at least as protective of our interests as these Terms.
- 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 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 clause 1 v.

- v. 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) use the Services or underlying software to provide services to third parties;
 - e) 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 Permitted Access;
 - 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.

2. SUBSCRIPTION DURATION, FEES, BILLING AND RENEWAL

- i. We shall provide the Services to you in accordance with these Terms.
- ii. The minimum subscription period for the Services is fifteen months from and including the date that you start to use the Services ("**Initial Period**"). Following the expiry of the Initial Period your subscription shall continue automatically unless 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. The subscription fees will automatically change on each anniversary of the date of entry into these Terms by a percentage increase of no more than 2% plus the percentage increase in the Retail Price Index (RPI All Items: Percentage Change over 12 Months) published by the Office for National Statistics (or its successor) for the month immediately prior to the month of the relevant anniversary provided always that nothing in this clause shall result in a downward adjustment to the subscription fees.
- v. In addition to any changes implemented pursuant to paragraph iv above we

may change the subscription fees with effect from each anniversary of the Initial Period upon giving you not less than 90 days' prior notice and these Terms shall be deemed to have been amended accordingly. No such changes shall be applied where you notify us, pursuant to clause 4ii, that you wish to cancel your subscription 90 days after the expiry of the Initial Period.

- vi. Our subscription fee is payable monthly in advance based on;
 - a) In respect of the first month: the number of 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 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 users in your Office 365 tenancy or G Suite tenancy (as applicable) during your subscription period.
 - vii. Each month we will verify the number of users in your Office 365 tenancy or G Suite tenancy (as applicable) and bill you in advance on the basis described in paragraph iv above.
 - viii. We may agree an annual fee structure and / or a credit account for large at our sole discretion for large customers on a case by case basis.
3. PAYMENT
- i. During the registration process, we will 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 or (c) a credit account for large customers in accordance with clause 2viii. Where you choose to pay by credit or debit card, you agree to keep your card details up to date and accurate. You may access and edit your account information through our portal on our website. If you do not keep your card details up to date, we may not be able to take your payment, in which case we may use some or all of our rights under clauses 3vii, 3viii or 4.
 - 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. A copy of our invoices will also be available to view via your on-line account which you can access via our website.
 - v. You shall pay each invoice submitted to you by us in full and cleared funds within fourteen (14) days of receipt (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 until your subscription ends.

- 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. If you wish to cancel your subscription at the end of the Initial Period or following the end of the Initial Period, you agree to give us at least 90 days' notice in writing. You are not permitted to cancel your subscription under this clause 4 ii. prior to the expiry of the Initial Period.
- iii. We may terminate these Terms for convenience by giving you not less than 30 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 this agreement 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 paragraphs (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 or expiry of these Terms, all licences granted under these Terms shall immediately terminate.
- vii. Termination or expiry 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 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.

6. CONFIDENTIALITY

- i. We may disclose or make available to you 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 and on-line guides, and the technology and software we use to provide the Services.
- ii. You agree not to use our Confidential Information for any purpose other than your use of the Services in accordance with these Terms. You agree not to disclose the Confidential Information to third parties and you agree that will restrict its disclosure to your employees who need to have the Confidential Information in order to carry out their employment duties.

7. DATA PROTECTION

- i. The following definitions are used in this clause 7:
 - a) “**Data Controller**” has the meaning set out in section 1(1) of the Data Protection Act 1998.
 - b) “**Data Subject**” means an individual who is the subject of Personal Data.
 - c) “**Personal Data**” has the meaning set out in section 1(1) of the

Data Protection Act 1998 and 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.

- d) **"Processing"** and **"process"** have the meanings set out in section 1(1) of the Data Protection Act 1998.
 - ii. You and we acknowledge that for the purposes of the Data Protection Act 1998, you are the Data Controller and we are the data processor in respect of any Personal Data.
 - iii. Exclaimer agrees that it 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.
 - iv. 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 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.
 - v. We shall process the Personal Data in accordance with your instructions from time to time and shall not process the Personal Data for any purposes other than i) those expressly authorised by you or ii) as is necessary in connection with providing the Services in accordance with these Terms.
 - vi. You agree on demand to indemnify us and defend us at your own expense against all losses, costs, claims, demands, damages and expenses suffered or incurred by us or for which we become liable arising out of or in connection with any failure by you or your employees or agents to comply with this clause 7.
 - vii. You acknowledge that we are reliant on you for direction as to the extent to which we are entitled to use and process the Personal Data. Consequently, we will not be liable for any claim brought by a Data Subject arising from any action or omission by us, to the extent that such action or omission resulted from your directions or failure to provide directions.
8. SERVICE LEVELS AND WARRANTY
- i. We will use reasonable skill and care in providing the Services.
 - 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 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 8 i.

- 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 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
www.exclaimer.com/exclaimer-cloud/signatures-for-gsuite/free-trial (as applicable)
 - viii. We may create new versions of the Services ("**upgrades**") which may correct errors although we have no obligation to notify you of such upgrades.
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, 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 month period preceding the date of the incident(s) giving rise to the relevant claim and (b) £10,000 (ten thousand pounds).
 - iv. The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms.
 - v. 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 the agreement; 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 2v, we may amend these Terms from time to time at our discretion. We will give you not less than 90 days' prior notice, by email or via your online account on our website, of any changes to these Terms, and these Terms shall be deemed to have been amended accordingly with effect from the date specified in the relevant notice. Unless any amendments are required in order to comply with applicable law, we will not make any amendments until after the expiry of the Initial Period.
- iii. 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).
- iv. 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.
- v. 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.
- vi. 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.
- vii. 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.

- viii. 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.
- ix. 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.
- x. 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.
- xi. 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.