

## Exclaimer Managed Service Provider Agreement

This Exclaimer Managed Service Provider Agreement (the **Agreement**) forms a legally binding agreement between the Exclaimer group entity set out in Section 15.9 below (**We, Us, or Our**) and the individual or organisation accepting them by: (a) clicking a box indicating acceptance; or (b) signing them or a Quote that refers to them (**you, your**). It applies to the exclusion of terms you seek or have sought to impose or incorporate (including on a purchase order, invoice or other document), or which are implied by trade, custom, practice or course of dealing. In this Agreement: (i) the words: including, includes, such as, without limitation, e.g. or similar expressions are illustrative and do not limit the scope of words following them; (ii) references to writing or written include email; and (iii) an obligation not to do something includes an obligation not to allow that thing to be done. THE INDIVIDUAL ACCEPTING THIS AGREEMENT WARRANTS AND REPRESENTS THAT THEY HAVE AUTHORITY TO BIND THE COUNTERPARTY TO THIS AGREEMENT. IF THEY DO NOT HAVE SUCH AUTHORITY, THEY MUST NOT ACCEPT THIS AGREEMENT.

### 1. DEFINITIONS

**Affiliate:** an entity that directly or indirectly, through one or more entities, controls, is controlled by, or is under common control, with the relevant party to this Agreement (where **control** means ownership of more than 50% of voting securities or equivalent ownership interest).

**Confidential Information:** any information, however communicated or presented, that relates to the discloser's: business; affairs; operations; finances; customers; suppliers; investments; budgets; opportunities; IPR; Services; road maps; strategies; Non-GA Services (and their existence); documentation; specifications; infrastructure; security measures; performance data; operations; processes; know-how, and any other information designated by the discloser as confidential (whether or not marked as such), or which ought reasonably to be considered confidential.

**Documentation:** the user manuals and other information available <https://support.exclaimer.com/hc/en-gb> from time to time.

**DPL:** data protection/privacy/security laws applicable to activity under and in relation to this Agreement and/or the Subscription Services.

**Email Address:** a unique email address using a business domain that a customer either owns or is authorized to use by the domain owner and which is permitted to use the Subscription Services.

**Fees:** the fees payable by you to Us set out on Our monthly invoice to you. Fees are calculated in accordance with the rates set out in Annex 1 (as otherwise updated or amended by Us in accordance with the terms of this Agreement).

**IPR:** patents and rights to inventions; trademarks; service marks; tradenames; business names; domain names; social media identifiers; copyrights and topography rights; rights in computer software; rights in trade secrets; rights in designs (both registered or unregistered); databases; rights protecting get-up, trade dress, goodwill and reputation; rights to sue for passing off or unfair competition; rights in, to use and to protect Confidential Information; and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world (which subsist now or in the future), and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights.

**Materials:** physical or digital materials and publications of whatever nature that We make available to you from time to time designed to assist you with marketing and promoting the Subscription Services.

**NFR Subscription:** a 'not-for-resale' right for your employees and fixed-term contractors that We may provide to you for them to access and use the Subscription Services for: (a) your internal business purposes only; or (b) to demonstrate the Subscription Services to End Customers during the shorter of: (i) the period that We make the NFR Subscription Services available to you; or (ii) the duration of this Agreement.

**Partner Code:** Our code of conduct for Our Partners available at [www.exclaimer.com/legal/partner-code-of-conduct](http://www.exclaimer.com/legal/partner-code-of-conduct) from time to time, which is incorporated by reference.

**Partner Programme:** Our partner programme that permits third-party distributors, resellers and managed service providers to be authorised to resell Subscriptions in accordance with the terms and requirements of the programme.

**Sub-Processors:** the companies listed <https://trust.exclaimer.com/> from time to time.

**Subscription:** the right for a customer to access and use the Subscription Services for a specified number of Email Addresses during a Subscription Term.

**Subscription Term:** the period during which a customer has a valid active Subscription.

**Subscription Services:** the services provided or made available by Us for access and use by customers (including all software and Third-Party Software necessary for us to make them available).

**Term:** the Initial Term together with any Renewal Term (as such terms are given in Section 9.1).

**Terms of Service:** Our standard terms of service at [www.exclaimer.com/legal/terms-of-service](http://www.exclaimer.com/legal/terms-of-service) from time to time.

**Territory:** the geographic region(s) in which you are authorised to deliver the Managed Services to End Customers under this Agreement, as set out in the Onboarding Form.

**End Customer:** a business or organisation to which you deliver Managed Services using or incorporating the Subscription Services under this Agreement.

**Managed Services:** the managed IT and email signature services that you deliver to End Customers using or incorporating the Subscription Services, as further described in Annex 1.

**Third-Party Software:** software proprietary to third-parties that We licence and which may be included within the Subscription Services to provide functionality.

**Trademarks:** Our registered and unregistered trademarks referred to in the Partner Code from time to time.

**Usage Data:** data such as event name, event timestamps, browser information, data types, file sizes and diagnostic data that is obtained in connection with the performance, operation, support or use of the Subscription Services, or otherwise relates to such activity.

## 2. APPOINTMENT AND YOUR RIGHTS

- 2.1 **Appointment as a Managed Service Provider.** Subject to the terms of this Agreement, We: (a) appoint you as an authorised non-exclusive Managed Service Provider for the Subscription Services within the Territory during the Term; (b) grant you a non-exclusive, non-transferable, non-sublicensable right during the Term to: (i) access and use the Subscription Services solely for the purpose of delivering Managed Services to End Customers in the Territory; (ii) use Our Trademarks solely as permitted by the Partner Code; and (iii) describe yourself in marketing activation related to this Agreement as an “*authorised Exclaimer Managed Service Provider*” or “*Exclaimer MSP Partner*” of the Subscription Services. YOU ARE NOT APPOINTED AS AN AGENT OF US, NOR ARE YOU PERMITTED OR AUTHORISED TO COMMIT US TO ANY CONTRACTS OR INCUR ANY OBLIGATION OR LIABILITY ON OUR BEHALF.
- 2.2 **Non-exclusive.** You acknowledge that your appointment under this Agreement is non-exclusive. Nothing in this Agreement will prevent or restrict Us granting the same or similar rights to any third-party, including other managed service providers operating in the same Territory.
- 2.3 **Demo Account and NFR access rights.** We may provide you with access to: (a) a demonstration account; and/or (b) NFR Subscriptions, each in accordance with the Partner Code. No rights are granted to access and use the demonstration account and/or NFR Subscriptions for any purpose other than: (a) demonstration of the Subscription Services to End Customers; (b) your internal business purposes. Access rights in and to the demonstration account are licensed, not sold. You will not, nor attempt to, sell or otherwise allow a third-party to access or use any demonstration account or NFR Subscription. Demonstration accounts and NFR Subscriptions are: (a) PROVIDED “AS IS” AND WE DISCLAIM ALL GUARANTEES, CONDITIONS, WARRANTIES AND REPRESENTATIONS (WHERE IMPLIED, STATUTORY OR OTHERWISE) IN RELATION TO THEM; and (b) may be suspended, withdrawn or revoked at any time, without notice or liability.

## 3. SERVICE DELIVERY AND REPORTING

- 3.1 In carrying out your obligations under this Agreement, you shall: (a) provide the services and carry out the activity set out in Annex 1; (b) maintain professional and respectful conduct at all times, acting in accordance with good business practice and in a manner that reflects favourably on Our good name and reputation and that of the Subscription Services; (c) comply with your warranty obligations in Sections 11.3 and 11.4; (d) promptly notify Us of any issues, bugs or errors with the Subscription Services that you identify; (e) ensure that all Managed Services delivered to End Customers are delivered in accordance with this Agreement, our support services, and the terms of the Terms of Service; and (f) ensure that

End Customers are aware of Terms of Service and include a link to them on your paperwork with them.

- 3.2 **Prohibited behaviours.** In carrying out your obligations under this Agreement, you shall not: (a) misrepresent the Subscription Services or the Managed Services to End Customers (including their functionality and performance); (b) engage in any deceptive, unfair or unethical practices; (c) make representations, warranties or claims about the Subscription Services other than those set out in Our Terms of Service; (d) advertise, promote or market the Subscription Services with any marks or logos other than the Trademarks; (e) use the Trademarks in any way that could cause confusion or mistake, or that may otherwise affect the distinctiveness, validity or ownership of the Trademarks by Us and Our Affiliates; (f) knowingly do or permit to be done any act or omission which could impact upon the reputation of either Us, Our Affiliates and/or the Subscription Services; or (g) use the Subscription Services other than for the purpose of delivering Managed Services to End Customers.
- 3.3 **Support.** You are responsible for providing first line technical support to your End Customers in relation to the Managed Services and Subscription Services. Details of the support scope are set out in Annex 1. We will provide escalation support to you in relation to the Subscription Services as set out at [www.exclaimer.com/support](http://www.exclaimer.com/support). Our escalation support relates to the Subscription Services only and does not include implementation, consulting, or managed service delivery obligations, which remain your responsibility.
- 3.4 **Purchases of Subscriptions.** You may access the Subscription Services in accordance with the processes, platforms and Fees set out in Annex 1 (or as We otherwise notify to you from time to time). Access is granted on a per Email Address basis and is solely for use in delivering Managed Services to End Customers. Each access order made by you will be governed by this Agreement. Fees will be invoiced monthly in arrears based on the maximum number of End Customer Email Addresses active in the immediately preceding month. You are not permitted to: (a) use the Subscription Services for your own internal business purposes unless you enter into a separate agreement with Us as a customer under Our Terms of Service; or (b) obtain access to the Subscription Services from any individual or entity other than Us unless authorised by Us in writing.
- 3.5 **Change of Channel.** You may not move that existing customer away from Us or Our partner during the customer’s current Subscription Term. Change of Channel pricing shall only apply if/when you move that existing customer to you at the end of their then current Subscription Term.
- 3.6 **Costs.** You are solely responsible for all costs, fees, charges and other expenses incurred by you, your personnel and representatives in relation to activity under this Agreement (including travel, subsistence, accommodation, marketing and event expenses).
- ## 4. COMPLIANCE STANDARDS
- 4.1 **Anti-Corruption.** You shall not, and shall ensure that your Affiliates shall not, directly or indirectly receive, solicit, demand, offer, promise or give any illegal or improper

- bribe, kickback, payment, gift or other thing of value to or from any individual in relation to this Agreement violation of anti-bribery and corruption laws (including the UK Bribery Act and the US Foreign Corrupt Practices Act).
- 4.2 **Compliance with laws.** Both parties will comply with all laws and regulations applicable to their respective obligations under this Agreement, including those relating to antitrust, fair competition and anti-boycotting. You will ensure that your End Customers' use of the Subscription Services (as part of your Managed Services) complies with the Terms of Service.
- 4.3 **Conflict of interest.** You shall avoid scenarios that could cause a conflict of interest, or the appearance of a conflict of interest in relation to this Agreement.
- 4.4 **Export and Sanctions.** The Services may be subject to export laws and trade sanctions of the United States and/or other jurisdictions (**Compliance Laws**). Each party separately represents that it is not: (a) on any U.S. government or other jurisdiction's denied-party list, or directly or indirectly (at least 50%) owned or controlled by any organisation or individual located in an Embargoed Region or on any U.S. government or other jurisdiction's denied-party list (an **Embargoed Entity**); or (b) located in any embargoed country or region, including those set out at <https://exclaimer.com/legal/territory-restrictions/> (**Embargoed Regions**). You will not sell Subscriptions to the Subscription Services, nor permit any access to or use of the Subscription Services: (i) in any Embargoed Region; or (ii) by any Embargoed Entity. You are solely responsible for: (A) complying with Compliance Laws when carrying out your obligations under this Agreement; and (B) for procuring at your own cost, all tools and record keeping required to conduct anti-money laundering, export and sanctions control searches prior to onboarding an End Customer. We shall not be liable for a failure to perform Our obligations if you, or an Affiliate or beneficial owner become an Embargoed Entity. You will give Us prompt notice if any of the foregoing change. We may terminate or suspend the Subscription Services and/or the Agreement in response to a breach of this Section. You represent and warrant that you will not misrepresent or attempt to conceal the identity of a party receiving access to or use of the Subscription Services.
- 4.5 **Financial Compliance.** You shall, and shall ensure that your Affiliates shall, have and maintain systems and record keeping to ensure compliance with anti-money laundering and anti-corruption laws (including the UK Economic Crime and Corporate Transparency Act, and UK Anti-Money Laundering Regulations).
- 4.6 **Payments.** Payments made to Us by you or any Affiliate must be in funds and through banking channels not blocked or frozen by any authority. You represent and warrant that: (a) all payments under this Agreement will be made by your legal entity (or that of your Affiliate that may be identified on an invoice); and (b) you will not misrepresent or attempt to conceal the identity of the party paying for access to or use of the Subscription Services.
- 4.7 **Third parties.** You will not subcontract the delivery of any Managed Services or engage any third party to access or use the Subscription Services on your behalf, without obtaining Our prior written consent (not be unreasonably withheld or delayed). Where We consent to subcontracting, you remain fully responsible for the acts and omissions of any subcontractor as if they were your own, and you must ensure that any subcontractor is bound by obligations no less restrictive than those imposed on you under this Agreement.
- 4.8 **Notices.** If you become aware of any scenario, breach or possible breach of this Section 4 you must immediately notify Us at [legal@exclaimer.com](mailto:legal@exclaimer.com).
- 4.9 **Termination.** We may terminate or suspend the Services and/or this Agreement in response to a breach of this Section 4. We reserve the right to audit, or otherwise request attestations of, your compliance with: (a) this Section 4; (b) Annex 1; and/or (c) the Partner Code of Conduct annually. Partners will respond promptly to, and co-operate with, any such request at no cost to Us.
- ## 5. DATA PROTECTION
- 5.1 You acknowledge that your data and that of your End Customers will be processed by Us in accordance with Our published DPA. You warrant and undertake that throughout the Term you will have all consents, rights and authority to provide to Us data provided by or relating to End Users in order for Us to deliver and manage the Subscription Services in accordance with Our role under this Agreement.
- 5.2 We will both comply with our respective obligations set out in Annex 2 and the Partner Code of Conduct.
- ## 6. OUR RIGHTS AND OBLIGATIONS
- 6.1 To enable Us to fulfil Our role in the delivery of the Subscription Services, We will retain access to the Subscription Services consistent with the terms of this Agreement, the Terms of Service, Our privacy notices and/or as required by law. This will include access to End Customer and your accounts. We reserve the right to contact End Customers directly in the event of: (a) a material security incident affecting the Subscription Services; (b) a regulatory or legal obligation requiring Us to do so; or (c) termination or expiry of this Agreement, for the purposes of transitioning End Customers to Us or to another authorised partner.
- 6.2 We will provide: (a) the Subscription Services in accordance with this Agreement and the Terms of Service; (b) you with technical support for escalated End Customer issues in accordance Section 3.3 and Annex 1; (c) you with access to Documentation and Materials. This may include training as set out in Annex 1. You are responsible for ensuring that use of the Documentation and Materials is compliant with local laws; and (d) updates to you regarding new features and functionality of the Subscription Services.
- 6.3 We reserve the right at any time to: (a) modify, add or change any features or specifications of all or part of the Subscription Services; (b) withdraw and/or discontinue all or any part of the Subscriptions Services (provided that such withdrawal or discontinuance shall not affect the rights of customers until their then current Subscriptions expire.
- ## 7. LICENCES; PROPRIETARY RIGHTS

- 7.1 **Reservation of Rights.** Subject to the limited rights set out in this Agreement, We own all rights (including current and future developed IPRs), title, and interest in and to the Subscription Services, Our support, Documentation, Materials and Our Confidential Information, including if created in response to Feedback. Nothing in this Agreement grants you or any third-party any IPR or other right, title or interest to any of the Subscription Services, Our support, Documentation, Materials or Our Confidential Information, nor the right to grant or convey any ownership right in any of Our IPR. This Agreement is not a work made-for-hire agreement (as defined by U.S. or other laws). All rights and licences granted under this Agreement are not, and shall not be deemed, rights or licences to 'intellectual property' (as defined in Section 365(n) of the US Bankruptcy Code).
- 7.2 **Statistical reports.** We may compile statistical reports from Usage Data. We may make information using Usage Data publicly available or share it with third-parties provided that it will not incorporate Confidential Information in a form that could serve to identify you or an End Customer. We retain all IPR in Usage Data and any such reports.
- 7.3 **Feedback.** You grant Us a fully-paid up, royalty free, worldwide, perpetual, irrevocable, transferable, sub-licensable right to use, modify, distribute and incorporate into the Services without attribution any suggestions, requests, recommendations, corrections or other feedback provided relating to the Subscription Services, Our support, Documentation and Materials (**Feedback**).
- 7.4 **Trademarks.** You must not remove proprietary notices from the Subscription Services, Documentation, Materials or Our Confidential Information. You agree not to display or use Our Trademarks other than in accordance with the Partner Code. We may reference you as a partner and use your name and logo for that purpose, and you grant Us a non-exclusive, worldwide, royalty-free licence to do so. You may withdraw such consent at any time through notice to [legal@exclaimer.com](mailto:legal@exclaimer.com).
- 7.5 **Third-Party Software.** Use of Third-Party Software is subject to this Agreement and it may only be used in conjunction with the Subscription Services, not separately. Some Third-Party Software or components within the Subscription Services may be offered under an open-source license. More information is available at <https://exclaimer.com/legal/open-source-licences/>.
- 7.6 **U.S. Government End User Notice.** The Subscription Services are made commercially available and are deemed to be commercial items within the meaning of any applicable civilian and military Federal acquisition regulations. If access to and/or use of the Subscription Services is acquired by or on behalf of an agency, department, employee or other entity of the United States Government, it is acknowledged that: (a) the Subscription Services and their IPR are and were developed solely by Us and our licensors at Our expense for Our commercial use; and, (b) use, duplication, reproduction, release, modification, disclosure, or transfer of the Subscription Services (or any part of them) is governed solely by this Agreement (as between Us and the you), and by the Terms of Service (as between Us and the Customer).
- 8. FEES; INVOICING; PAYMENT**
- 8.1 **Fees; payment.** Fees for access to the Subscription Services for use in delivering Managed Services will be as specified in the Onboarding Form. Fees are invoiced monthly in arrears based on the maximum number of End Customer Email Addresses active in the immediately preceding month. Invoices are issued electronically. You agree to pay all undisputed Fees in the currency, and within the payment terms stated in the Onboarding Form or otherwise on Our invoice by direct bank/wire transfer. Fees are based on purchased Subscriptions and not usage or deployment. The number of Email Addresses Subscribed cannot be reduced during a Subscription Term or Renewal (changes may be made prior to a Renewal). You will pay any bank charges assessed by your bank. If you dispute any Fees you must notify Us within 10 calendar days of the invoice date. We will work with you to resolve the dispute. Fees are non-cancellable and, except as set out in Section 9.3, non-refundable. We may change Our Fees at Our sole discretion by providing not less than 30 calendar days' prior written notice to you, such changes to take effect from the start of the next billing period following expiry of that notice. Fees are Our Confidential Information. You are solely responsible for setting and collecting your own charges from End Customers; your failure or inability to collect payment from an End Customer does not affect your obligation to pay Us. Our pricing is Our Confidential Information.
- 8.2 **Independence.** You determine the charges that you propose to End Customers for your Managed Services independently of Us. You are solely responsible for negotiating such charges and payment terms with End Customers, provided that the number of Email Addresses you activate under this Agreement does not fall below any applicable minimum set out in Annex 1.
- 8.3 **Taxes.** Fees are exclusive of sales tax, tariffs, use taxes, withholding taxes or any similar government assessment in any jurisdiction (**Tax**). You are responsible for, and will add, charge, collect and remit any and all Taxes due under this Agreement. Should you be required to withhold or deduct any portion of payments due, then you will gross up payments so that the amount received by Us is equal to the amount then due and payable under these Terms. We will provide you with any tax forms reasonably requested in order to reduce the amount of any withholding or deduction for taxes. If We have a legal obligation to pay or collect Taxes for which you are responsible, We will invoice you and you will pay that amount. You will not be responsible for taxes based on Our net income, employment or real estate.
- 8.4 **Interest.** Without prejudice to Our rights and remedies, if you are late paying undisputed Fees We may: (a) charge interest at the rate of 4% per annum above the Bank of England base rate (calculated from the date payment was due until it is made), together with all reasonable collection expenses and legal fees). You shall pay interest and fees together with the overdue Fees; and (b) make shorter payment terms a condition of future renewal or purchases.
- 9. TERM; SUSPENSION; TERMINATION**

- 9.1 **Term.** This Agreement comes into force on the date of second signature below and, subject to earlier termination in accordance with its terms, continues in force for a period of 12-months from that date (the **Initial Term**). This Agreement will automatically renew for further 12-month periods (each, a **Renewal Term**) unless and until terminated by either party through not less than 90 calendar days' prior written notice.
- 9.2 **Suspension.** Without prejudice to Our rights and remedies, We can suspend access to and use of the Subscription Services and/or your appointment and rights under this Agreement: (a) if We have a right to terminate this Agreement; (b) if there is a breach or suspected breach of your obligations under Annex 2; (c) to comply with law, government, regulator or court order; or (d) to respond to emergencies, security risks or fraudulent activity, or prevent damage or impact to the Subscription Services. Suspension may apply to you or to some or all End Customer accounts. Suspension will not prevent later termination. During suspension under (a) you remain responsible for payment of Fees. We will use commercially reasonable efforts to promptly resolve any issue causing the suspension that is within Our control. Once the reason for suspension has been resolved, We will restore your appointment and rights under this Agreement and/or access to the Subscription Services (as applicable). We will provide you with reasonable prior notice of any suspension where it is safe and lawful to do so, so that you may notify affected End Customers, such notice may be given at <https://status.exclaimer.com>.
- 9.3 **Termination.** Either party may terminate this Agreement: (a) without cause for convenience through not less than 90 calendar days' prior written notice; (b) immediately if the other party materially breaches this Agreement and does not cure the breach within 30 calendar days of receipt of written notice from the other party specifying the breach. A second notice on expiry of the cure period is required for termination to be effective; (c) immediately if: (i) the other party ceases, or threatens to cease, its business operations; (ii) there is an order or resolution for the liquidation, administration, dissolution or winding-up of the other party (except for the purpose of solvent reconstruction), or the other party has an administrator or receiver, manager, liquidator or similar officer appointed over all or a substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors, or is subject to an analogous event in any applicable jurisdiction); or (d) as provided in this Agreement. We may terminate this Agreement immediately if: (A) required to comply with law, government, regulator or court order; (B) you materially breach this Agreement and it is not capable of remedy; (C) you have failed to pay Us within 14 calendar days of a reminder to do so; (D) if you have not made any purchase under this Agreement for a period of 90 consecutive calendar days or more during the Term; or (E) if you do not meet any agreed minimum Subscription volume in two (2) consecutive calendar months or more during the Term, provided that We have first given you written notice of the shortfall and you have failed to cure it within 60 calendar days of such notice.
- 9.4 **Effect of Termination or expiry.** Upon termination or expiry of this Agreement: (a) all rights and licences granted shall cease immediately; (b) each party will return or destroy all Confidential Information pursuant to Section 10 below; (c) you will pay to Us all Fees for Subscription Services ordered up to the date of termination (or where later, the end date of any transition period in accordance with Annex 1). We will raise an invoice, payable immediately, in respect of Fees for which We have not previously invoiced, promptly following the termination date (or the end of any transition period); (d) except where Annex 1 is applicable, you will cease use of the Subscription Services and will cease delivering Managed Services to End Customers using the Subscription Services; (e) you will cooperate with Us to ensure continuity of service for End Customers during any transition period, including as set out in Annex 1; (f) you will cease all marketing activity relating to the Subscription Services, including any and all use of Our Marks and including stopping holding yourself out as an authorised Managed Service Provider of Us and the Subscription Services. Fees paid in advance by you to Us will not be refunded unless you are terminating in accordance with your right to do so under Sections 9.3(b) or 11.1, or by Us under Section 12.1. Any such Fees will be refunded within 30 calendar days..
- 9.5 **Transition of End Customers.** Upon termination or expiry of this Agreement, you must comply with the obligations in paragraph 2 of Annex 1.
- 9.6 **Commercial Agents Regulations 1993.** If the Commercial Agents (Council Directive) Regulations 1993 apply to your engagement with Us under this Agreement (or to any relationship or activity arising from it), we both agree that Regulation 17(3) (indemnity) shall apply on termination of this Agreement rather than Regulation 17(6) (compensation).
- 9.7 **Survival.** The following Sections shall survive termination or expiry of this Agreement for any reason: Sections 3.2, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15 and Annexes 1 and 2. Termination or expiry shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry.
- ## 10. CONFIDENTIALITY
- 10.1 **Confidentiality.** Each party may receive Confidential Information from the other during the Term. Each party will keep the other's Confidential Information in confidence using the same degree of care that it uses to protect its own Confidential Information (but not less than reasonable care) and: (a) not use or exploit it in any way except for the purpose of this Agreement; (b) only disclose it to its and its Affiliates' directors, personnel, representatives, agents, advisors and sub-processors who need to know it for the purpose of this Agreement. Where such disclosure is made by a party it will be responsible for ensuring that suitable confidentiality obligations are in place with the receiving party; (c) unless disclosable under this Section 10 not make it available to any third party; and (d) on request, destroy or return all copies of the other's Confidential Information in its control.
- 10.2 **Exclusions.** Information is not Confidential Information if it is: (a) known to the receiving party without restriction before disclosure; (b) publicly available through no fault of

the receiving party; (c) disclosed to the receiving party by a third-party not under a duty of confidence; or (d) independently developed by the receiving party without use of the disclosing party's Confidential Information.

- 10.3 Compelled disclosure. If a party receives a valid and binding request or order from a court or governmental body relating to the other's Confidential Information, it will attempt to re-direct the requestor to seek disclosure from the owning party (and may provide the owning party's basic contact information to enable them to do this). If, notwithstanding those efforts, the party is compelled to disclose the requested information then, provided it is allowed to do so, it will provide notice to the owning party so that it may seek a protective order or other remedy.

## 11. WARRANTIES

- 11.1 Our warranty. We warrant to you that: (a) the Subscription Services will materially conform to the then-current Documentation. If We breach this warranty your sole and exclusive remedy will be for Us to repair, replace or re-perform the non-conforming part of the Subscription Services within 30 calendar days of your notice to Us describing the issue. If We are unable to cure the non-performing part of the Subscription Services within this period We may terminate this Agreement and, in such circumstances, will provide a pro-rated refund for the unusable portion of the Subscription Services to you. You must notify Us promptly of any alleged non-compliance, describing the issue in sufficient detail so that We can confirm the breach. We shall have no obligation or liability under this Section if: (i) your use of the Subscription Services is not materially in accordance with this Agreement; or (ii) the issue arises from your or a relevant End Customer's failure to follow Our instructions or the Documentation.
- 11.2 EXCEPT FOR SECTION 11.1, THE SERVICES ARE PROVIDED "AS IS". WE DO NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR THAT FAULTS WILL BE CORRECTED. YOU ACCEPT WE HAVE NO CONTROL OVER CONTENT TRANSMITTED FROM THE SERVICES. WE ARE NOT RESPONSIBLE FOR DELAYS, FAILURES, LOSS OR DAMAGE RESULTING FROM THE INTERNET AND YOU ACKNOWLEDGE THE SERVICES MAY EXPERIENCE LIMITATIONS, DELAYS AND ISSUES INHERENT TO ITS USE. TO THE FULLEST EXTENT PERMISSIBLE BY LAW WE EXCLUDE AND DISCLAIM: (A) LIABILITY OF ANY KIND ARISING FROM THE TRANSMISSION OF INFORMATION THROUGH THE SERVICES; AND (B) ALL GUARANTEES, CONDITIONS, WARRANTIES AND REPRESENTATIONS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND SATISFACTORY QUALITY).
- 11.3 Your warranties. You warrant that: (a) you possess the necessary expertise, experience, capacity, systems, technology and resources to provide the services set out in Annex 1; (b) you will ensure your personnel involved or engaged in the activity relating to this Agreement will be, and remain at all times, suitably trained on the Subscription Services; (c) you will use adequate numbers of qualified individuals with suitable training, education,

experience and skill to perform your activities under this Agreement; (d) you will perform the services with due care, skill and diligence in a professional and workmanlike manner consistent with best industry practice; (e) you will, and will ensure that your Affiliates and representatives will, comply at all times with Our Partner Code; and (f) you have not entered into, and will not enter into, any arrangement that would prevent you from complying with your obligations under this Agreement.

- 11.4 Mutual warranties. Each party represents it has validly entered into this Agreement and has the power to do so. Each party warrants that it: (i) will comply with all binding laws, rules and regulations applicable to its activity under this Agreement; and (ii) has and will maintain all necessary certifications, credentials, registrations, authority, rights, licences, consents and permissions to enable it to perform its obligations under this Agreement.

## 12. INDEMNITIES

- 12.1 IPR. We will defend and indemnify you from and against any third-party claim filed against you alleging that the Trademarks, Documentation and/or Marketing Materials infringe or misappropriate any third-party copyright, patent, trademark or registered design right. We will pay any amounts awarded against you in judgment or pursuant to a settlement of such a claim. In defence or settlement of a claim We may at Our expense and discretion: (a) obtain the right for you to continue using the allegedly infringing material; (b) replace or modify the Trademarks, Documentation and/or Marketing Materials so they no longer infringe; or (c) terminate this Agreement through notice to you. This Section states Our sole and exclusive obligation and liability for claims that the Trademarks, Documentation and/or Marketing Materials infringe or misappropriate third-party copyright, trademark, patents or registered design rights.
- 12.2 Exclusions. We will have no obligation under Section 12.1: (a) to the extent a claim is based on: (i) modification of the Trademarks, Documentation and/or Marketing Materials other than by Us; (ii) a combination with third-party IPR; (iii) your breach of this Agreement; (iv) your failure to implement updates to the Trademarks, Documentation and/or Marketing Materials issued by Us; or, (v) claims of infringement of IPR in which you have an interest; or (b) where the claim arises from your intentional tortious act or negligence; or, (c) where you have compromised or settled the claim.
- 12.3 Indemnification by you. You will defend, indemnify and hold Us and Our Affiliates harmless from and against any third-party claims, complaints, actions, disputes, suits and hearings (and all associated fees, costs, expenses, costs (including reasonable legal fees) arising from: (a) your use of Our Trademarks, brands, or information about the Subscription Services on any website, or in any content that infringes third-party IPR; (b) your breach of Sections 3.2 or 4, Annex 2 or Our Partner Code; and (c) any unauthorised activity in relation to the Subscription Services and/or this Agreement.
- 12.4 Obligations of the indemnified party. The foregoing indemnities are contingent upon the party indemnified: (a) providing prompt notice of the claim and co-operating with the indemnifying party's defence or settlement of it at

the indemnifying party's cost; (b) not making any admission or statement in relation to the claim or attempt to settle it; (c) mitigating losses or costs that it does, or may otherwise, incur. The indemnifying party will have sole authority to control the defence and settlement of any claim provided that it may not settle any claim against the indemnified party without the indemnified party's prior written consent unless it unconditionally releases the indemnified party and its Affiliates from liability and does not impose penalties or obligations on the indemnified party or its Affiliates or admit fault on their behalf.

### 13. LIABILITY

- 13.1 IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF PROFITS, SALES, GOODWILL, OR REVENUE, OR OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO THE FOREGOING, THE TOTAL LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE TOTAL FEES PAID BY YOU IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT OR SERIES OF CONNECTED EVENTS GIVING RISE TO THE CLAIM. The foregoing limitations of liability for direct damages do not apply to: (a) either party's misappropriation or infringement of the other party's IPRs; (b) either party's gross negligence or wilful misconduct; or (c) your payment obligations.
- 13.2 You are responsible for ensuring that: (a) End Customers understand that email disclaimer text made available within the Subscription Services is provided for example purposes only and does not constitute legal advice; (b) the Managed Services and Subscription Services are configured solely by you to operate in the End Customer's technology environments; and (c) End Customers are made aware of all material limitations of the Subscription Services that are relevant to their use case before you commence delivery of Managed Services to them. In particular, you must not make any representation, nor give any warranty, undertaking or covenant, that the Subscriptions Services are fit for an End Customer's particular purpose.
- 13.3 Independent Allocations of Risk. Both parties agree that the: (a) disclaimers of warranties in Section 11.2, and the limitations of liability and the exclusion of losses and damages in Section 13, represent the agreed, bargained-for understanding of the parties and are reflected in the Fees; and (b) the terms of Sections 11.2 and this Section 13 are intended to apply regardless of whether a specific remedy in this Agreement has failed in its essential purpose.
- 13.4 Exceptions. If any exclusion or limitation set out above is not permitted in a specific jurisdiction, the parties' liability will be limited to the greatest extent permitted by law in that jurisdiction. Nothing in this Agreement excludes or limits liability that cannot be excluded or limited by law.

### 14. DISPUTE RESOLUTION

- 14.1 Both of us shall attempt to resolve any dispute relating to this Agreement in good faith by negotiation between authorised personnel. Notwithstanding this, we will both be entitled to enforce our respective IPRs, to protect Confidential Information and to seek equitable or injunctive relief at any time. If a dispute is not resolved within 30 calendar days of the first written request to do so, then each party may pursue any available remedies.

### 15. GENERAL

- 15.1 Order of precedence. This order of precedence applies: (a) Our invoices; (b) the terms of this Agreement; and (c) the Partner Code of Conduct.
- 15.2 Benchmarking etc. No access to the Subscription Services is permitted for: (a) monitoring their availability, performance or functionality; (b) competitive or benchmarking purposes; or (c) to determine if they are within the scope of patents. Our direct competitors are prohibited from accessing the Subscription Services except with Our prior written consent.
- 15.3 Entire Agreement. This Agreement (together with the Onboarding Form and the documents referred to in this Agreement) constitutes the entire agreement between us relating to its subject matter, superseding all prior discussions agreements, understandings of every kind and nature. The terms of a separate non-disclosure agreement do not apply to our relationship under this Agreement or to the Services. We both agree we have not been induced to enter into this Agreement in reliance on, nor do we have any remedy in respect of, any undertaking, promise, statement, representation or understanding of any nature not expressly set out in it. This Section does not limit or exclude liability for fraud or fraudulent misrepresentation.
- 15.4 Assignment. You may only assign this Agreement in its entirety to a successor in interest in the event of a sale or merger of your business provided that: (a) you give written notice to Us not less than 30 calendar days prior to the proposed assignment date; and (b) the successor in interest is able to comply with this Agreement. You may not otherwise assign, novate, transfer, charge, sub-contract or deal with this Agreement in any way without Our prior written consent. This Agreement will be binding on any permitted successors and assigns.
- 15.5 Notices. Notices relating to this Agreement shall, unless not permitted by law, be sent by: (a) you to [legal@exclaimer.com](mailto:legal@exclaimer.com); and (b) Us to the email address then associated with your administration account. Notices will be effective when sent provided that no failure or non-delivery message is received. If by law notice is not permitted to be given solely by email, notices must be sent by you to Our relevant address below, and by Us to the address at the top of this Agreement. Notices will be deemed delivered at the time it would have been delivered in the normal course of post if sent by overnight delivery, pre-paid first-class post or recorded delivery post; or immediately if delivered by hand (unless in each case delivery is not during working hours, in which case delivery will be effective at 9am on the next working day). Each of us may change our address to another through 10 calendar days' prior written notice.

- 15.6 **Force Majeure.** Neither party will be liable for any delay in performance or failure to perform our respective obligations under this Agreement due to a cause or event outside its reasonable control except that you cannot claim relief in respect of your payment obligations.
- 15.7 **Miscellaneous.** Failure or delay in exercising a right or remedy in this Agreement or by law will not waive it and will not prevent or restrict further exercise of it. If part of this Agreement is found by a court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal (in whole or in part), the other terms will remain in force. Any invalid, unenforceable or illegal term will, where possible, be interpreted to give effect to our commercial intention, or if not possible, will be severed leaving the rest in full force. We are both independent contractors. Nothing in this Agreement shall be construed to establish a partnership, joint venture, agency or employment between us, or authorise either of us to act as agent for or to bind the other. There are no third-party beneficiaries under this Agreement except that Our Affiliates and licensors may enforce Section 7 to the extent necessary to protect their respective IPR. Any amendment or variation to this Agreement must be in writing (not email) and signed by both of our respective authorised representatives (except that this does not apply to documents or information referred to in this Agreement at a URL which We may update at any time).
- 15.8 **Insurance.** You shall maintain such insurance coverage as is required by law or regulation and that is appropriate in

respect of your obligations under this Agreement. Such coverage shall be equal to or in excess of these minimum amounts: (a) **Americas:** (i) Commercial General Liability – not less than \$1,000,000 per incident, \$2,000,000 annual aggregate; (ii) Errors and Omissions (including cyber and privacy) - \$5,000,000 annual aggregate; and (iii) Workers Compensation Coverage – as required by applicable law; or (b) **ROW:** (i) Professional Indemnity coverage - £5,000,000 per claim; (ii) Employers Liability - £5,000,000 per claim; (iii) Cyber coverage - £5,000,000 annual aggregate; and (iv) Public and Products Liability - £5,000,000 per claim. You shall provide Us with a Certificate of Insurance evidencing such coverage annually (or following Our written request at any time).

- 15.9 **Governing Law; Jurisdiction.** The Exclaimer entity entering into this Agreement, the address to which you should direct notices, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where you are domiciled. Details are set out in the table that follows. Notwithstanding the foregoing, We will be able to bring action in any jurisdiction relevant to the protection of Our IPR or that within Third-Party Software. We both disclaim application of the United Nations Convention on the International Sale of Goods, and the Uniform Commercial Code.

Where your contracting entity is domiciled	Exclaimer entity entering into this Agreement	Governing law	Courts with exclusive jurisdiction
North America, South America, Canada	<b>Exclaimer LLC</b> , Floor 33, 100 Federal Street, Boston, MA 02110, United States	State of Delaware (without regard to choice or conflict of law rules)	Delaware Court of Chancery
EU and EEA	<b>Exclaimer Europe B.V.</b> , Schiphol Boulevard 127, 1118BG Schiphol	Netherlands	Amsterdam
UK and rest of the World	<b>Exclaimer Limited</b> , company number: 04938619. 250 Fowler Avenue, Farnborough, Hampshire, GU14 7JP, United Kingdom	England and Wales (including non-contractual disputes and claims)	England and Wales (including non-contractual disputes and claims)

## Annex 1 Managed Services Schedule

### 1 Managed Services

1.1 You shall comply with the requirements of this Annex 1 in conducting your activity under this Agreement as a Managed Service Provider using the Subscription Services to deliver Managed Services to End Customers. This includes:

- (a) onboarding End Customers in accordance with the onboarding process set out in paragraph 2 of this Annex 1, and conducting such activity in accordance with this Agreement and the Partner Code of Conduct at your sole cost and expense.
  - (b) providing a representative sample of any promotional, marketing or advertising materials relating to your activity under this Agreement for Our written approval prior to use. We will acknowledge your request within 14 calendar days of receipt and use reasonable endeavours to review, comment and approve your material within a further 7 calendar days. Where We do not respond within that 21 calendar day period, approval shall be deemed granted for the materials as submitted, unless We notify you of a specific reason for delay within that period.
  - (c) providing Us with accurate and complete information regarding End Customers on whose behalf you use the Subscription Services, including current contact details and the number of active Email Addresses per End Customer.
  - (d) conducting appropriate compliance checks of End Customers prior to onboarding them and delivering Managed Services. This includes confirming to Us:
    - (i) registered name.
    - (ii) country in which the End Customer is based and in which the Managed Services will be delivered.
    - (iii) confirmation that you have conducted, and each End Customer has passed, anti-money laundering, export control and sanctions compliance screening with a 'No match' status.
  - (e) registering End Customers with Us prior to activating Subscription Services on their behalf and keeping those registrations up to date.
  - (f) ensuring that End Customers are provided with appropriate Documentation relevant to their use of the Managed Services, and that you retain copies of all configuration and setup documentation for each End Customer.
  - (g) maintaining up-to-date records of all End Customers, including the number of active Email Addresses per End Customer and contact details for each End Customer's nominated technical and billing contacts.
  - (h) conducting at its sole cost and expense account management services for End Customers, including regular service reviews where reasonably requested, in order to ensure End Customer satisfaction and retention.
  - (i) providing support to End Customers in respect of the Managed Services and Subscription Services. You shall:
    - (i) be the sole point of contact for End Customers in respect of support for the Managed Services and the Subscription Services. End Customers must not contact Us directly for support, and you will redirect any such contact to your own support function.
    - (ii) provide first line support and maintenance to End Customers who will raise support tickets with you. Further details of the support scope are set out in paragraphs 2, 3, 4 and 5 of this Annex 1 below.
    - (iii) ensure that you have in place appropriate systems to enable you to provide support to End Customers, including ticketing, incident tracking and escalation management systems.
    - (iv) escalate to Us promptly any End Customer support issues relating to the Subscription Services that you are not reasonably able to resolve, by raising a ticket here <https://exclaimer.com/support/>. We shall provide escalation support to you only. We do not support End Customers directly and you shall not represent to End Customers that they may contact Us for support.
    - (v) promptly notify Us of any issues, bugs or errors with the Subscription Services that you identify by raising a support ticket with Us here <https://exclaimer.com/support/>.
- You expressly acknowledge and agree that Our escalation support for End Customer issues relating to the Subscription Services is for you and you shall **not** include support and maintenance provided by Us in your offering to End Customers.
- (j) ensuring that usernames, passwords and API keys that may be needed to access the Subscription Services are kept confidential and not shared. Where these are required, you will be responsible for the security of them and are responsible for all acts and omissions of anyone who uses them (whether or not authorised or undertaken by you) unless they are caused by Our breach of this Agreement. You must notify Us immediately if you know or suspect misuse of them.
  - (k) notifying us promptly if you become aware of any data security breach or other damage alleged, or shown, to have been caused by your act or omission whilst conducting activity relating to this Agreement. You will promptly investigate and seek to resolve any such incident (whether or not raised through a formal complaint or claim) and keep Us up-to-date with the results of such efforts (subject to compliance with data protection laws).

Access to the Subscription Services is licensed on a per-Email Address basis and may only be used for the benefit of registered End Customers. You are not permitted to pool, share or transfer Email Address entitlements between End Customers. You may only reallocate Email Address entitlements previously assigned to an End Customer where that End Customer's engagement with you has terminated or expired and all relevant data has been offboarded. We may request evidence of compliance, or request that you certify compliance, with this paragraph at any time. You shall respond to any such request promptly in writing. We reserve the right to monitor usage of the Subscription Services.

### 2 End Customer Onboarding and Offboarding

- 2.1 **Onboarding.** Prior to commencing delivery of Managed Services to any End Customer, you shall: (a) register the End Customer with Us in accordance with paragraph 1.1(e) above; (b) conduct the compliance checks required by paragraph 1.1(d) above; (c) obtain from the End Customer all access credentials, permissions and consents required to configure and deliver the Subscription Services on their behalf; (d) configure the Subscription Services to meet the End Customer's requirements in accordance with the Documentation; and (e) document the End Customer's initial configuration and maintain up-to-date configuration records throughout the duration of your engagement with them.
- 2.2 **Offboarding – Termination of a Customer.** Upon termination or expiry of your engagement with any End Customer, you shall: (a) give Us 30 calendar days' prior notice of the termination or expiry; (b) provide Us with contact information for all End Customers, ensuring you have all consents necessary to lawfully transfer that information to Us; (c) co-operate with Us to facilitate orderly migration of End Customers to Us or to another authorised partner where the End Customer is seeking to move from the Managed Services you provide or, where the End Customer is leaving the Subscription Service completely, cleanly remove the Subscription Services from the End Customer's mail flow; (d) deactivate the End Customer's access to the Subscription Services immediately on expiry of their subscription; (e) decommission the End Customer's service within 30 calendar days; and (f) update your End Customer records accordingly. You shall retain End Customer configuration records for a minimum of 12 months following offboarding to support any transition or dispute resolution (and will promptly provide them to Us following Our request). We will contact End Customers to arrange their transition and you will co-operate as necessary with Us with all activity under this paragraph.
- 2.3 **Offboarding – Termination of this Agreement.** Where this Agreement is terminated by either party (other than by you for Our insolvency under Section 9.3(c)(ii)), you will notify affected End Customers of the termination within 2 business days. We will use commercially reasonable efforts to contact affected End Customers within 5 business days of termination to arrange transition of their subscriptions either to Us directly or to another authorised Exclaimer partner. During the 30-calendar day period following termination We will maintain End Customers' access to the Subscription Services to support transition. You will co-operate fully with that transition and provide Us with all End Customer contact details, configuration records and any other information We reasonably require within 5 business days of Our request. Following migration of an End Customer you will decommission its service within 30 calendar days and update your End Customer records accordingly. You shall retain End Customer configuration records for a minimum of 12 months following offboarding to support any transition or dispute resolution (and will promptly provide them to Us following Our request). You will co-operate as necessary with Us with all activity under this paragraph. We reserve the right to require a shorter transition period, and to adjust the level of support required from you, where We terminate due to your breach of Section 4.

### 3 Support Services

- 3.1 **Our Service Services.** We will use commercially reasonable efforts to make the Subscription Services available in accordance with the details provided at <https://exclaimer.com/legal/support-services/> from time to time. You acknowledge that these details relate only to the Subscription Services as delivered by Us; it does not apply to your Managed Services, your network, or any third-party systems outside Our control.
- 3.2 **Your service levels to End Customers.** You are solely responsible for determining and meeting any service level commitments you make to End Customers in respect of your Managed Services. Your commitments to End Customers must not represent or imply that We provide direct service level guarantees to End Customers. You must ensure that your service level commitments to End Customers are consistent with, and do not exceed, any service level commitment that We provide to you. We shall have no liability to End Customers for any failure by you to meet your service level commitments.

### 4 Incident Management

- 4.1 **Classification.** You shall classify incidents affecting the Managed Services or Subscription Services using the following severity levels: (a) *Critical* – the Subscription Services are wholly unavailable or a material security breach has occurred; (b) *High* – significant degradation affecting multiple End Customers or a significant End Customer; (c) *Medium* – partial degradation affecting one or more End Customers but with workarounds available; (d) *Low* – minor issues with minimal End Customer impact or cosmetic defects.
- 4.2 **Response obligations.** You shall: (a) acknowledge all End Customer incident reports within the timeframes set out in your agreed service levels; (b) escalate Critical and High severity incidents to Us within 2 hours of your own identification of such incidents; (c) keep affected End Customers updated on incident status at regular intervals proportionate to severity; (d) conduct and provide Us with a written root cause analysis for Critical incidents within 5 business days of resolution; and (e) maintain an incident log for all incidents and make it available to Us on request.
- 4.3 **Data security incidents.** Where an incident involves or may involve a personal data breach, you shall comply with the terms of paragraph 3 of Annex 2.

### 5 Change Management

- 5.1 **Our changes to the Subscription Services.** We reserve the right to modify, update or change the Subscription Services at any time in accordance with Section 6.3 of this Agreement. Where We make a material change to the Subscription Services that We reasonably believe may affect your Managed Services delivery or your End Customers, We will use reasonable efforts to

provide you with not less than 30 calendar days' advance notice. You are responsible for communicating relevant changes to End Customers and for updating your Managed Services delivery accordingly.

- 5.2 **Your changes to Managed Services configuration.** You shall implement and maintain a documented change management process governing all changes to End Customer configurations within the Subscription Services. This process shall include: (a) a record of all configuration changes made on behalf of each End Customer; (b) a requirement for End Customer authorisation before making any material change to their configuration; (c) a rollback procedure for changes that cause service degradation; and (d) retention of change records for a minimum of 12 months. You shall make change records available to Us on request.
- 5.3 **Business continuity.** You shall maintain, test and be able to demonstrate a business continuity and disaster recovery plan covering the delivery of your Managed Services. Such plan shall include procedures for maintaining service continuity to End Customers in the event of a failure affecting your own systems, the Managed Services or your personnel. You shall provide Us with a written summary of your BCM/DR arrangements on written request, no more than once per calendar year.

## 6 Personnel focussed

- 6.1 **Onboarding.** You shall ensure that all members of your and your Affiliates' personnel who provide services in relation to this Agreement shall be screened (or otherwise have been screened) through pre-employment checks aligned to, or which otherwise fulfil, the requirements and standards expected by the UK Government's Baseline Personnel Security Standard (**BPSS**), details of which can be found here <https://www.gov.uk/government/publications/united-kingdom-security-vetting-clearance-levels/national-security-vetting-clearance-levels#baseline-personnel-security-standard-bpss>. You shall provide Us with written confirmation of compliance with this paragraph promptly following a written request from us.
- 6.2 **Training.** You are responsible for ensuring that your personnel involved in delivery of sales, marketing and activity under or relating to this Agreement: (a) are appropriately trained to enable them to properly and effectively describe, discuss, sell, demonstrate and support the Subscription Services; and (b) maintain knowledge of the industry and competitive services so that they can confidently competitively sell the Subscription Services against Our competitors. This includes ensuring that your personnel are aware of the functionality, performance, capability, delivery models, value and issue solving of the Subscription Services.

## 7 Your business focussed

- 7.1 **Quality.** You are solely responsible and liable for the quality and adequacy of the services that you provide to End Customers.
- 7.2 **Insurance.** You shall maintain insurance coverages are required by law or regulation and that is appropriate in respect of your obligations under this Agreement. Such coverage shall be equal to or in excess of these minimum amounts:
  - (a) **Americas:** (a) Commercial General Liability – not less than \$1,000,000 per incident, \$2,000,000 annual aggregate; (b) Errors and Omissions (including cyber and privacy) - \$5,000,000 annual aggregate; and (c) Workers Compensation Coverage – as required by applicable law.
  - (b) **Rest of the world:** (a) Professional Indemnity coverage - £5,000,000 per claim; (b) Employers Liability - £10,000,000 per claim; (c) Cyber coverage - £5,000,000 annual aggregate; and (d) Public and Products Liability - £10,000,000 per claim]. You shall provide Us with a Certificate of Insurance evidencing that such coverage is in place annually (or following Our written request at any time).

## 8 MSP Support Scope

- Configuration of Exclaimer Cloud and each of the features
- SPF Record changes
- Signature design queries
- Basic design
- Alignment
- Applying signatures
- Basic configuration queries
- Using the signature rules tester
- Using diagnostic logs
- Gathering email examples
- Email header analysis
- Gathering extended message trace
- Basic image issues
- Client-side agents
- Installation
- Gathering application logs
- Managing user data
- Queries about updating user data in Microsoft 365/AD/Google
- Queries about old data showing in the signature

- Queries about CSV upload
- Queries about User Details Editor
- Login issues
- Subscription management changes
- Change of ownership
- Change email address
- Change user count
- Invoice requests
- Basic mail flow scenarios
- Re-running the connector setup wizard
- Configuration for 3rd party security providers
- Configuration for centralized mail flow
- Escalate
- Complex signature design issues
- Complex mail flow issues
- Complex signature application issues
- Duplicate subscription issues

We may change the description of first line support by notice in writing (email sufficient) to you provided that any such change applies to all Our distributors equally.

## Annex 2 Data Protection

### 1 Technical and organisational measures

#### 1.1 You warrant and undertake that:

- (a) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, you have implemented (and will maintain throughout the Term) appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate: (a) the pseudonymisation and encryption of personal data collected by you in relation to your activities under this Agreement (**Data**); (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (c) the ability to restore the availability and access to Data in a timely manner in the event of a physical or technical incident; and (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Data transmitted, stored or otherwise processed.
- (b) you are able to and shall comply with all applicable data protection laws in connection with the Subscription Services and the Managed Services.
- (c) you shall: (i) have in place and maintain all safeguards necessary to ensure the proper handling and processing of Data; (ii) notify Us, and co-operate with Us, if you cannot comply (or have not complied) with your obligations under data protection laws.

### 2 DPL compliance

#### 2.1 You will comply with your obligations under DPL, including:

- where applicable: (i) gaining consent from individual data subjects to being part of Data provided to Us; (b) enabling individuals to identify, and be informed of, the recipients of their Data (including Us).
- ensuring that Data you provide to Us has been obtained fairly, lawfully and in a transparent manner.
- providing all necessary notices to data subjects at the time of collection of their Data which notify them of the processing activities that will be undertaken by Us.
- checking all Data and information provided to Us for accuracy.
- enabling individuals to exercise rights given to them by law in respect of their Data.
- ensuring that you are legally able to transfer and disclose each data subject's Data to Us and for Us to be able to use it for the purposes of the Partner Programme (including contacting them by electronic means).
- ensuring that you have all necessary registrations with any relevant authorities in relation to data privacy compliance.

We reserve the right to request evidence of data privacy notices at any time. You must provide these within 7 calendar days of the date of Our request.

#### 2.2 You will notify Us if you receive any complaint, inquiry or request from a data subject or regulatory authority regarding the processing of Data under this Agreement or your agreement with an End Customer. You shall refrain from notifying or responding to any data subject or regulatory authority for or on behalf of Us or any of Our personnel, unless We specifically request in writing that you so do. The foregoing shall not restrict your ability to respond where required to do so by applicable data protection laws.

### 3 Incidents

#### 3.1 You shall:

- (a) **notify Us at [DPO@exclaimer.com](mailto:DPO@exclaimer.com) within 24 hours of becoming aware of a known or suspected personal data breach.**
- (b) provide Us with full details of:
  - (i) the nature of the known or suspected personal data breach;
  - (ii) the data and individuals affected; and
  - (iii) the steps taken or proposed to address the known or suspected personal data breach
- (c) cooperate with Our investigation and with Us with respect to any regulatory notification obligations to both End Customers and/or supervisory authorities; and
- (d) not make any public statement or notification to supervisory authorities regarding the known or suspected personal data breach without Our prior written consent, save where required to do so by law. This shall not restrict any obligation you have to notify your insurers on a confidential basis.

#### 3.2 You acknowledge that We shall not be liable for any breach of security or unauthorized access to Data, resulting from: (a) your failure to secure the Data; (b) your breach of this Agreement or your agreement with the End Customer(s); or (c) your breach of applicable data protection laws.