

Terms of Service

These terms of service (the **Terms**) form a legally binding agreement between the Exclaimer group entity set out in Section 13.11 below (**We, Us, or Our**) and the individual or organisation accepting them by: (a) clicking a box indicating acceptance; (b) registering or purchasing through Our online self-service portal; or (c) signing them or a Quote that refers to them (in each case, **you, your**). They apply 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 these Terms: (a) the words: including, includes, without limitation, e.g. or similar expressions are illustrative and do not limit the scope of words following them; (b) references to writing or written include email; and (c) an obligation not to do something includes an obligation not to allow that thing to be done. THE INDIVIDUAL ACCEPTING THESE TERMS WARRANTS AND REPRESENTS THAT THEY HAVE AUTHORITY TO BIND THE COUNTERPARTY TO THESE TERMS. IF THEY DO NOT HAVE SUCH AUTHORITY, THEY MUST NOT ACCEPT THESE TERMS.

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 these Terms.

Agreement: these Terms together with the Quote.

Beta Services: applications, features, or functionality not made generally available to Our customers.

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.

Client-Side: where the Services are configured so that they are performed on Sent Emails on infrastructure hosted by/on behalf of you.

Customer Data: means User Data and, where the Subscription Services are deployed Server-Side, Sent Email Data.

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

Dual Mode: where the Services are configured so that they use both Client-Side and Server-Side delivery.

Email Address: a unique email address using a business domain that you either own or are authorized to use by the domain owner and which is permitted to use the Services.

End Date: the Subscription Term end date on the Quote.

Fees: the fees payable by you to Us set out on the Quote.

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.

Partner: an authorised reseller, distributor or managed service provider through which you purchase Services.

Professional Services: services provided by Us to you in accordance with these Terms and an agreed SOW.

Quote: a quote sent by Us or a Partner to you that describes the Services you have purchased, refers to these Terms and which you sign or otherwise indicate your acceptance of.

Sent Emails: emails sent by Users from Email Addresses.

Sent Email Data: personal data within Sent Emails.

Server-Side: where the Services are configured so that Sent Emails are routed via infrastructure hosted by/on behalf of Us in order for the Services to be performed.

Services: the Subscription Services, Professional Services and Support.

Start Date: the Subscription Term start date on the Quote.

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

Subscription Term: the period between (and including) the Start Date and End Date.

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

Support: the support services described at <http://exclaimer.com/support/support-services>.

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

Usage Data: data relating to or obtained in connection with the performance, operation, support or use of the Services (e.g. event name, event timestamps, browser information, data types, file sizes and diagnostic data).

Users: your employees or contractors authorised by you to access and use the Services through an Email Address.

User Data: personal data about Users (including that which you provide Us with access to via your chosen integration with a third-party user directory).

2. TRIAL SERVICES; BETA SERVICES

2.1 **Trial and Beta Access.** If you use: (a) the Subscription Services on a trial basis, We grant you a personal, non-transferable, non-exclusive, non-assignable, revocable, royalty-free right to access and use the Subscription Services solely to evaluate them for your internal business purposes for a period of 14 calendar days (unless a longer period is agreed in writing by Us). This trial licence automatically terminates at the end of the trial period and the Subscription Services will cease to operate unless you purchase a Subscription; (b) beta services, you acknowledge they: (i) may contain defects, are not fully tested and are supported on a 'best endeavours' basis only; (ii) are Our Confidential Information; and (iii) may be changed, discontinued, suspended or withdrawn at any

time without notice. We may terminate trials and Beta access at any time. TRIALLED SERVICES AND BETA SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND. WE WILL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THEM.

3. DELIVERY OF THE SERVICES

- 3.1 Services. In consideration of payment of the Fees, We will provide you with the Services set out on the Quote in accordance with the Documentation, together with Support. Professional Services will be provided in a professional and workmanlike manner, using reasonable skill and care and in accordance with the terms of the relevant statement of work.
- 3.2 Grant of rights. In consideration of payment of the Fees and subject to the terms of the Agreement, We grant you a non-transferable, non-exclusive, revocable, non-sub-licensable (except as set out in Section 4.3) right to access and use the Documentation, Subscription Services and Support during the Subscription Term. Access to the Subscription Services is on a usage basis, and is licensed, not sold. The Services are for your business purposes only, with any reports created using the Subscription Services only for your internal business purposes. You agree not to sub-license, rent, sell, lease, distribute or otherwise transfer your right to access the Subscription Service or otherwise use or allow others to use it for the benefit of any third-party (other than Affiliates as permitted in Section 4.3).
- 3.3 Licence to Us by you. You grant Us a fully-paid up, non-exclusive, royalty-free, sub-licensable licence to use Customer Data to provide the Services in accordance with these Terms and as may be required by law.
- 3.4 Protection of Customer Data. To the extent that We process personal data within Customer Data, the terms of our [DPA](#) shall apply. How personal data is processed will depend on whether the Services are configured Client-Side, Server-Side or Dual. For the purposes of Section 8, Customer Data is not disclosed to Us.
- 3.5 Security. The security measures taken in relation to the Subscription Services can be found at <https://exclaimer.com/legal/security-measures/>. We are responsible for the acts and omissions of Our employees and contractors and their compliance with Our obligations under these Terms.
- 3.6 Integrations. The Subscription Services contain features designed to interoperate with services you contract directly with third-parties to use. Operations completed via such integrations are between you and the third party, and you are solely responsible for actions using such features. We are not responsible for: (a) backups of your systems or information; or (b) the availability or accuracy of such third-party services or data. We may cease providing an integration at any time, including where a third-party ceases to make its service available for interoperation or changes how it does so in a way not acceptable to Us. Interoperation is not an endorsement or approval of a third-party service.
- 3.7 Email Addresses. The number of Email Addresses you can use the Subscription Services with is set out on the Quote. You must not use the Subscription Services with more Email Addresses than this number. Rights cannot be

shared or used by more than one Email Address but can be permanently reassigned to another Email Address. Additional Email Addresses may be licensed during the Subscription Term at an additional cost. Email Addresses added will co-terminate at the end of the current Subscription Term. The number of Email Addresses cannot be reduced during the Subscription Term (changes may only be made ahead of a Renewal).

4. YOUR OBLIGATIONS

- 4.1 User credentials. All passwords and other access details are confidential. You are responsible for the security of these credentials and for all acts and omissions of anyone using them (whether or not authorised or undertaken by you) unless caused by Our breach of these Terms.
- 4.2 Responsibilities. You are responsible for: (a) any customer-side configurations; (b) User's compliance with: (i) <https://exclaimer.com/legal/acceptable-use-policy/>; and (ii) the Agreement, Documentation and all laws, rules and regulations applicable to your and their use of the Subscription Services; (c) Customer Data and the means by which it is and has been obtained; and (d) all telecommunication, third-party software and internet connectivity required to access and use the Subscription Services and Support. You must notify Us promptly if you are aware of a breach of the Agreement.
- 4.3 Affiliates. If you purchase access to the Subscription Services for an Affiliate the rights set out in Section 3.2 shall include the right to sub-license access to your Affiliate solely for its internal business purposes in accordance with the terms of the Agreement. In addition, you shall: (a) ensure your Affiliate complies with the Agreement; (b) be responsible for payment of all Fees on its behalf; and (c) be responsible for its acts and omissions as if they were your own. Affiliates may not enforce any provision of the Agreement. All actions to enforce the Agreement must be brought by you against Our contracting entity. If your Affiliate breaches the Agreement, We may bring actions against you as if the breach were your own.

5. LICENCES; PROPRIETARY RIGHTS

- 5.1 Reservation of Rights. Subject to the limited rights set out in these Terms, We own all rights (including current and future developed IPRs), title, and interest in and to the Services and Our Confidential Information, including if created in response to Feedback or through Professional Services. The Agreement is not a work made-for-hire agreement (as defined by U.S. or other laws). All rights and licences granted under these Terms are not, and shall not be deemed, rights or licences to 'intellectual property' (as defined in Section 365(n) of the US Bankruptcy Code).
- 5.2 Customer Data. You own, and will continue to own, all IPRs in Customer Data.
- 5.3 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 Customer Data or your Confidential Information in a form that could serve to identify you or any User. We retain all IPR in Usage Data and any such reports.
- 5.4 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 Services (**Feedback**).

- 5.5 **Trademarks.** You must not remove proprietary notices from the Subscription Services and Documentation. You agree not to display or use Our trademarks or logos without Our prior written permission. You grant Us a non-exclusive, worldwide, royalty-free licence to use your name and logo to refer to you as a customer. You may withdraw consent by email to legal@exclaimer.com
- 5.6 **Third-Party Software.** Use of Third-Party Software is subject to these Terms and it may only be used in conjunction with the Services, not separately. Some Third-Party Software or components within the Services may be offered under an [open source license](#).
- 5.7 **U.S. Government End User Notice.** If you are a US Government entity, the Subscription Services, Professional Services and Support are 'commercial items' as defined in the Federal Acquisition Regulation 2.101 and are licensed on the terms of the Agreement only.

6. FEES; INVOICING; PAYMENT

- 6.1 **Fees; payment.** Fees accrue from the Start Date. Fees are invoiced in full in advance unless otherwise stated on the Quote. Invoices are issued electronically. You agree to pay all undisputed Fees in the currency, and within the payment terms, stated on the Quote by direct bank/wire transfer. You will pay any bank charges assessed by your bank. Payments must be in funds and through banking channels not blocked or frozen by any authority. If you dispute any Fees you must notify Us within 30 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 7.6, non-refundable. Fees are based on pricing numbers and not usage or deployment. Pricing is Our Confidential Information.
- 6.2 **Online payments.** If purchasing online, then during the registration process you will choose a payment method. If you pay by card and your card details change, you must notify Us to avoid suspension or termination.
- 6.3 **Taxes.** Fees are exclusive of sales, tariffs and use taxes assessed in the jurisdiction in which you are physically located. You are responsible for paying any taxes (including sales, use and withholding taxes) and any duties, levies, excises or tariffs applicable to receipt or use of a Service. 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. You will not be responsible for taxes based on Our net income, employment or real estate.
- 6.4 **Interest.** Without prejudice to Our rights and remedies, if you are late paying Fees We may: (a) charge interest at 4% per annum (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 overdue Fees; and (b) make shorter payment terms a condition of future renewal or purchases.

- 6.5 **Overuse.** We may review the number of Email Addresses that you use the Subscription Services with. If the number of Email Addresses is greater than the licensed quantity, We or a Partner will invoice you for, and you will pay, the Fees for additional Email Addresses through to the end of the Subscription Term (calculated at your then-current contracted per-unit rate, back-dated to the date on which the overuse commenced or, if that date cannot be determined, to the beginning of the relevant quarter).
- 6.6 **Partners.** In the event you acquire Services through a Partner, all payment related terms will be set out in your agreement with that Partner. Any such agreements between you and the Partner shall not be binding on Us.

7. TERM; SUSPENSION; TERMINATION

- 7.1 **Term.** These Terms come into force on the date you accept them and continue in force until the earlier of: (a) the end of the trial period; (b) the End Date; or (c) termination in accordance with these Terms.
- 7.2 **Renewal.** Quotes automatically renew for a further 12-month period (a **Renewal**) unless either party has given the other not less than 60 calendar days' prior notice to cancel it on expiry. We reserve the right to change the Fees at the end of the Subscription Term. If you purchase the Subscription Services through a Partner, then Quotes will renew with the Partner unless you or your Channel Partner notifies Us to opt you out. If you pay by card, you authorise Us to charge your card automatically for the Fees payable for any Renewal.
- 7.3 **Suspension.** Without prejudice to Our rights and remedies We can suspend Services: (a) if you have any undisputed Fees outstanding 14 days or more after a reminder from Us to pay; (b) if We have a right to terminate the Agreement; (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 Services. Suspension will not prevent later termination. During suspension under (a) you remain responsible for payment of Fees.
- 7.4 **Termination.** Either party may terminate the Agreement: (a) if the other party materially breaches it and does not cure the breach within 30 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; (b) 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 (c) as provided in the Agreement. We may terminate the Agreement immediately if required to comply with law, government, regulator or court order, or if you fail to pay Us or a Partner within 14 days of a reminder to do so.
- 7.5 **Data Act Termination.** *[This Section 7.5 applies only where you are domiciled in the EEA and your Agreement is with Exclaimer Europe B.V.]* If you terminate a Quote before its End Date under Article 25 of Regulation (EU) 2023/2854, you shall pay an early termination charge equal to the

Fees through to the End Date. Such Fees are reasonable and proportionate as they reflect Our legitimate interest in recovery of Our investment in both the development and provision of the Services. These Fees will become immediately due and payable on receipt of your termination notice. Fees already paid will not be refunded.

- 7.6 **Effect of Termination or expiry.** Upon termination or expiry of the Agreement: (a) all rights and licences granted shall cease immediately; (b) each party will return or destroy all Confidential Information pursuant to Section 8 below; (c) all undisputed Fees committed or owed by you to Us, including all future recurring Fees through to the End Date, will become immediately due and payable unless you are terminating under Sections 7.4(a) or 9.1. We will raise a further invoice, payable immediately, in respect of Fees for which We have not previously invoiced; and (d) 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 7.4(a) or 9.1, or by Us under Section 10.1. Any such Fees will be refunded within 30 calendar days.
- 7.7 **Retention.** During the Subscription Term and following termination or expiry, Customer Data will be retained and deleted by Us in accordance with Our retention policies.
- 7.8 **Survival.** The following Sections shall survive termination or expiry of the Agreement for any reason: Sections 2.1, 3.4 (only to the extent that Customer Data is held for a limited period under Section 7.7), 5–13 (inclusive). Obligations under Section 8 shall continue for a period of 2 years from the date of termination or expiry. 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.

8. CONFIDENTIALITY

- 8.1 **Confidentiality.** Each party may receive Confidential Information from the other during the Subscription 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 the 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 the 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 8 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.
- 8.2 **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.
- 8.3 **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 or Customer Data, it will attempt to re-direct the requestor to seek disclosure from the owning party (and may provide its 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.

9. WARRANTIES

- 9.1 **Service warranty.** We warrant that: (a) the Subscription Services will materially conform to the then-current [Documentation](#); and (b) We will not materially decrease the overall functionality of the Subscription Service during the Subscription Term. If We breach this warranty your sole and exclusive remedy will be for Us to provide Support to remedy the breach and, if We fail to do so within 30 days of your notice to Us describing the issue, to terminate the Service immediately and receive a refund of Fees paid in advance relating to the period after the effective date of termination. 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 Services is not materially in accordance with the Agreement; or (ii) the issue arises from your failure to follow Our instructions or the Documentation. It is your responsibility to ensure the Services will be fit for your purpose and operate in your technology environment.
- 9.2 EXCEPT FOR SECTION 9.1, 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).
- 9.3 **Mutual.** Each party represents it has validly entered into the 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 the Agreement; and (ii) has and will maintain all necessary authority, rights, licences, consents and permissions to enable it to perform its obligations under the Agreement.

10. INDEMNITIES

- 10.1 **IPR.** We will defend and indemnify you from and against any third-party claim filed against you alleging that the Subscription Services infringe or misappropriate any third-party 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 Subscription Services so they no longer

infringe; or (c) terminate the Agreement through notice to you and refund Fees paid in advance which relate to the period after the effective date of termination. This Section states Our sole and exclusive obligation and liability for claims that the Subscription Services infringe or misappropriate third-party trademark, patents or registered design rights.

10.2 **Exclusions.** We will have no obligation under Section 10.1: (a) to the extent a claim is based on: (i) modification of the Subscription Services other than by Us; (ii) a combination with third-party IPR or Customer Data; (iii) your breach of the Agreement; (iv) your failure to implement updates to the Services 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.

10.3 **Indemnification by You.** You will defend and indemnify Us and Our Affiliates from and against any third-party claim arising from: (a) your use of the Services in breach of Our AUP; or (b) Customer Data, and you will pay any amounts awarded against Us and Our Affiliates in judgment or pursuant to a settlement of such a claim.

10.4 **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.

11. LIABILITY

11.1 IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THE 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 THE 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. OUR TOTAL AGGREGATE LIABILITY FOR TRIAL AND BETA SERVICES IS LIMITED TO £10 (OR \$10 IN THE UNITED STATES OF AMERICA).

11.2 You acknowledge that email disclaimer text made available within the Subscription Services is for example

purposes only. You are responsible for ensuring the legality and accuracy of any email disclaimer you use, and for the content of emails and other communications sent through the Services by you and Users.

11.3 **Independent Allocations of Risk.** Both parties agree that the: (a) disclaimers of warranties in Section 9.2, and the limitations of liability and the exclusion of losses and damages in Section 11, represent the agreed, bargained-for understanding of the parties and are reflected in the Fees; and (b) the terms of Sections 9.2 and this Section 11 are intended to apply regardless of whether a specific remedy in these Terms has failed in its essential purpose.

11.4 **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 these Terms excludes or limits liability that cannot be excluded or limited by law.

12. DISPUTE RESOLUTION

12.1 Both of us shall attempt to resolve any dispute relating to the 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.

13. GENERAL

13.1 **Special Conditions.** Special conditions on a Quote adjust these Terms in respect of that Quote only.

13.2 **Order of precedence.** This order of precedence applies: (a) the Quote; (b) statement of work; (c) the DPA; and (d) these Terms.

13.3 **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the foregoing. If a party identifies such a thing it will promptly notify the other party.

13.4 **Benchmarking etc.** No access to the Services is permitted for: (a) monitoring their availability, performance or functionality (other than for your own internal business purposes); (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 Services except with Our prior written consent.

13.5 **Entire Agreement.** The Agreement (together with documents referred to in these Terms) 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 the Agreement or to the Services. We both agree we have not been induced to enter into the 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.

- 13.6 **Assignment.** You may only assign the 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 days prior to the proposed assignment date; and (b) the successor in interest is able to comply with these Agreement. You may not otherwise assign, novate, transfer, charge, sub-contract or deal with the Agreement in any way without Our prior written consent. The Agreement will be binding on any permitted successors and assigns.
- 13.7 **Compliance.** The Subscription 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 permit any access to or use of the Subscription Services or Support: (i) in any Embargoed Region; or (ii) by any Embargoed Entity. You are solely responsible for complying with Compliance Laws. 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.
- 13.8 **Notices.** Notices relating to the Agreement shall, unless not permitted by law, be sent by: (a) you to 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 on your Quote. 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.
- 13.9 **Force Majeure.** Neither party will be liable for any delay in performance or failure to perform our respective obligations under the Agreement due to a cause or event outside its reasonable control except that you cannot claim relief in respect of your payment obligations.
- 13.10 **Miscellaneous.** Failure or delay in exercising a right or remedy in the Agreement or by law will not waive it and will not prevent or restrict further exercise of it. If part of the 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 the 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 the Agreement except that Our Affiliates and licensors may enforce Section 5 to the extent necessary to protect their respective IPR. Variations and amendments may not be made orally and any amendment or variation to the Agreement must be in writing and signed by both of our respective authorised representatives (except that this does not apply to documents or information referred to in these Terms at a URL which We may update at any time).
- 13.11 **Governing Law; Jurisdiction.** The Exclaimer entity entering into the Agreement, the address to which you should direct notices, the law that will apply in a dispute or lawsuit arising out of or in connection with the Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where you are domiciled. Notwithstanding the foregoing, We will be able to bring action in any jurisdiction relevant to protection of Our IPR or that within Third-Party Software. We both disclaim application of the UN Convention on the International Sale of Goods, and the Uniform Commercial Code.

Where your contracting entity is domiciled	Exclaimer entity entering into the Agreement and place for service	Governing law	Courts with exclusive jurisdiction
North America, South America, Canada	Exclaimer LLC , 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	Exclaimer Europe B.V. , KvK: 37161598. Schiphol Boulevard 127, 1118BG, Schiphol, Netherlands	Netherlands	Amsterdam
UK and rest of the World	Exclaimer Limited , 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)