

Xclaim

INVESTOR ACCESS AGREEMENT

XClaim, Inc. (“Xclaim”) provides website features and other products and services to you when you visit, list a Claim for sale, register to buy Claims, consummate a Trade, or use Xclaim applications or software in connection with any of the foregoing (collectively, “Xclaim Services”). This **Investor Access Agreement** (the “Agreement”) is an electronic contract that sets out the legally binding terms of your use of Xclaim Services, including, without limitation, Xclaim’s provision and operation of an online marketplace for trading bankruptcy claims (“XCM”).

By clicking on the “I Accept” button or similarly labeled acceptance button or checkbox on your electronic device’s screen when the Agreement is presented to you, you are affirmatively (i) indicating your acceptance of this Agreement as of the date of such acceptance (the “Effective Date”) and consent to be bound by all of the terms and conditions contained or referenced herein, and (ii) consenting to entering into and being legally bound under your electronic signature, digital signature and/or electronic consent to any other electronic or digital contract or agreement you enter into in connection with Xclaim Services.

You are entering into this Agreement in your own capacity, if registering as an individual or, if registering on behalf of a legal entity, in your capacity as an authorized representative of such entity (in either case, “Investor”, together with Investor’s Affiliates and any funds or accounts for which Investor or any of Investor’s Affiliates act as investment manager or advisor pursuant to discretionary investment management or investment advisory authority, the “Investor Entities”) that requires access to Xclaim Services under this Agreement. Investor and Xclaim may be referred to herein individually as a “Party” and collectively as the “Parties.”

Please read the following terms and conditions carefully and review our Policies, such as our [Privacy Notice](#), and the [Trading Terms](#) which govern Investor’s use of Xclaim Services. We reserve the right to make changes to our Policies at any time, provided that in the event of a conflict between this Agreement and our Policies, this Agreement shall govern. Capitalized terms not defined herein are as defined in the Trading Terms.

1. Access to XCM and Xclaim Services

1.1. Account Opening. In connection with opening an account with Xclaim, Xclaim may request that you provide additional information and documents regarding the Investor Entities for Xclaim to complete necessary diligence of our customers. Your provision of any such information and documents to Xclaim is entirely voluntary and Xclaim maintains sole discretion to approve the opening of an account for Investor.

1.2. Bidding. Upon Xclaim’s issuance of account credentials to Investor, the Investor Entities may access XCM, review non-public Claim Support Information and submit Bids.

1.3. Term and Termination. This Agreement shall continue in full force and effect until terminated with or without cause by either Party on written notice to the other Party, provided that Xclaim may elect to immediately and without notice revoke Investor’s access to XCM if, in Xclaim’s sole discretion, Xclaim determines that any Investor Entity has violated the Prohibited Use Policy (as defined in the Trading Terms) or for any other reason.

1.4. Effect of Termination. The termination of this Agreement shall not release either Party from any liability or obligation which, as of the effective date of termination, has accrued to the other Party. The following Sections of this Agreement shall survive termination: 1.3, 1.4, 3 (with respect to any Trades originated prior to the effective date of termination), 5, 6.1, 6.2, 7, 8.3, 8.4 and 8.5.

2. Transfer Documentation

2.1. Xclaim Filing Services. Xclaim provides documentation and filing services in connection with each Trade, including the preparation of required filings with the relevant Bankruptcy Court (the “Xclaim Filing Services”). Investor acknowledges and agrees that Xclaim may include the relevant Investor Entity’s name, email, address, and any other required contact information to the Bankruptcy Court in public, unredacted documents required to be filed in respect of any Trade to which any Investor Entity is a party. Investor may decline Xclaim Filing Services in respect of any Trade by notifying Xclaim prior to Closing, provided that, Investor agrees to (a) include Xclaim’s logo, displayed prominently, on all Bankruptcy Court

filings with respect to such Trade and (b) deliver to Xclaim a draft of any filings prior to filing it with the relevant Bankruptcy Court.

3. Commissions and Court Fees

3.1. Commissions. In connection with any Trade that is (a) originated by Investor using XCM to Bid on a Claim or to contact the holder of such Claim and/or (b) consummated by any Investor Entity using Xclaim Services, Investor shall pay Xclaim a commission (the "Commission") equal to the greater of (i) 1.0% of the Claim Amount and (ii) 1.0% of the Purchase Price, and in no event less than \$300.00 (the "Standard Xclaim Commission"), or such other amount calculated based on the commission structure specified in the relevant Claim Listing, ~~but in no event less than \$300.00 (the "Minimum Commission")~~, no later than one (1) business day after the date that the Purchase Price (or the first installment of the Purchase Price, if applicable) is due under the Purchase Agreement.

3.2. Court Fees. Xclaim shall bill the Court Fees to Investor at cost, which Court Fees shall be paid together with the Commission. Investor may decline Xclaim Filing Services for any Trade, provided that Investor notify Xclaim prior to Closing for such trade. Investor shall not be responsible for Court Fees for any Trade if notice was provided in accordance with this section,

3.3. Late Payments. Unpaid amounts due to Xclaim in connection with any Trade shall incur interest according to the Trading Terms.

4. Electronic Communications and Consent

4.1. Investor consents to receive communications electronically in respect of all of Investor's activity on XCM and the electronic delivery or acceptance of any agreement, consent, notice, disclosure or communication related to or required under this Agreement shall satisfy any requirement that such communications be in writing.

5. Confidentiality

5.1. Confidential Information. The term "Confidential Information" shall include, without limitation, (i) any confidential or proprietary information marked or otherwise identified in writing as confidential or proprietary at the time of disclosure by the disclosing Party, (ii) any non-public information regarding any Claim or any Seller made available to Investor by Xclaim in connection with the performance, execution or delivery of Xclaim Services and (iii) any non-public financial, tax or accounting information provided by Investor to Xclaim in connection with opening an account to use Xclaim Services. Confidential Information shall not include any Bid Price or Trade Price but shall include Investor's name in connection with such Bid Price or Trade Price, which Bid Price or Trade Price, absent Investor's written consent, may only be disclosed on an anonymized basis. Confidential Information shall also include Seller's name and contact information unless and until such information is required to be disclosed to the Bankruptcy Court in connection with a Trade.

5.2. Nondisclosure; Nonuse. No Confidential Information exchanged between the Parties pursuant to this Agreement shall be distributed, disclosed, or disseminated by the receiving Party to anyone except its own employees, agents, financing sources, co-investors, affiliates or subcontractors who have a reasonable need to know such Confidential Information and who have been advised of the confidential nature and are required to observe the terms and conditions hereof; nor shall Confidential Information be used by the receiving Party for its own purpose, except for the purposes of exercising its rights or fulfilling its obligations under this Agreement or any Trade. The restriction on disclosure will not apply to Confidential Information that is required to be disclosed by a court, subpoena, legal process, or any government or regulatory authority, provided that the recipient shall to the extent permitted and practicable, first notify the disclosing party of such disclosure requirement or order and, if requested by the disclosing party, use reasonable efforts to obtain confidential treatment or a protective order.

6. Representations, Warranties and Covenants

6.1. Investor Representations and Warranties. Investor represents and warrants that (i) Investor's acceptance of this Agreement (a) to the extent that Investor is not an individual, has been duly authorized by all necessary corporate (or other legal entity) governance action and (b) constitutes a valid and binding obligation enforceable against it,

except as such enforceability may be limited by insolvency, dissolution or other laws affecting the rights of creditors generally or by general principles of equity; (ii) to the best of Investor's knowledge, all information and documents provided by Investor to Xclaim in connection with opening an account is accurate; (iii) Investor undertakes all activity related to all Trades with the full requisite legal authority to engage in such Trades, for Investor's own account and for any other Investor Entities; (iv) Investor makes all decisions to engage in any Trades entirely in its own discretion and/or in reliance on the advice of its own counsel, accountants, or other advisors; (v) Investor understands and acknowledges that Xclaim does not transact in securities as defined by federal or state law and that Xclaim is not acting as a Broker Dealer, agent or advisor to Investor or any other Investor Entity and provides no investment, accounting, tax or legal advice to Investor or any other Investor Entity; (vi) Investor understands and acknowledges that as a general matter with respect to any Claim Listing, Xclaim acts as a fiduciary to neither Investor nor Seller, but that when Xclaim is retained by a Seller on an exclusive basis (which exclusivity Xclaim shall disclose to Investor in connection with any Claim Listing), and notwithstanding any Commission that may be payable by Investor upon consummation of a Trade with respect to the Seller's claim, Xclaim may undertake fiduciary duties to the Seller including but not limited to obtaining the highest and best terms available in the market for the Seller's claim; and (vii) Investor has reviewed and understands the Policies, including without limitation, the Trading Terms.

6.2. Investor Covenants. Investor covenants that (i) the Investor Entities will comply with all applicable Laws, ordinances, rules and regulations that apply to Investor's performance under this Agreement; (ii) Investor's execution, delivery and performance of this Agreement does not and will not conflict with or result in any violation or breach of any Law, or require any prior consent, approval, authorization or permit from or filing by any Investor Entities with or notification by any Investor Entities to, any governmental agency or regulator; (iii) the Investor Entities will not circumvent or otherwise interfere with or impair Xclaim's right to receive Commissions or Court Fees for any reason; and (iv) the Investor Entities will comply with all applicable privacy and data protection Laws in relation to the storage, use and transfer of any User's personal information provided by a User or Xclaim.

6.3. Xclaim Representations, Warranties and Covenants. Xclaim represents, warrants and covenants that (i) Xclaim will use commercially reasonable efforts to accurately present the data it obtains from Sellers and its other information providers but cannot guarantee that such data is free from errors or omissions if such errors or omissions are present in the data Xclaim receives; and (ii) Xclaim will comply with all applicable Laws, ordinances, rules and regulations that apply to Xclaim's performance under this Agreement and will obtain all permits, licenses, authorizations and/or certificates that are required for Xclaim to satisfy its obligations hereunder.

7. Limitation of Liability; Indemnification

7.1. The Parties agree that (i) the Xclaim Entities shall have no liability to the Investor Entities; (ii) the Investor Entities shall have no liability to Xclaim, other than for any Investor Entity's breach of its representations, agreements, or covenants in this Agreement and (iii) the Xclaim Entities make no representation or warranty whatsoever to the Investor Entities with respect to any Seller, Debtor, Claim or otherwise. Investor agrees to indemnify and hold Xclaim harmless from any and all Losses arising out of or in connection with:

- (i) Investor's use of, or Investor's inability to access XCM or Xclaim Services;
- (ii) Investor's breach or violation of the Trading Terms (as more fully set forth therein);
- (iii) Investor's publication or disclosure of any individual User's personal information, in whole or in part, including without limitation such User's name, contact information and any other information that together or when combined with such other information could be used to identify such User without the express permission of Xclaim or such User;
- (iv) any misrepresentations, gross negligence or willful misconduct of the Investor Entities;
- (v) any disputes or claims between Investor and another User of Xclaim Services or any affected party in respect of a Trade between Investor and such User; and
- (vi) Investor's violation of the rights of any third party, including any User of Xclaim Services; and (vii) Investor's failure to comply with applicable Law.

8. Miscellaneous

8.1. Assignability. Neither Party may assign this Agreement nor any of its rights or obligations hereunder without the prior written consent of the other Party, such consent not to be unreasonably conditioned, delayed or withheld. Notwithstanding the foregoing, either Party may assign this Agreement and its rights and obligations hereunder, without the other Party's consent, to an Affiliate of the assigning party or to a successor in interest upon any merger, reorganization, acquisition, change of control, or sale of all or substantially all assets of the assigning Party. Any purported assignment not in compliance with this Section 8.1 shall be deemed null and void from the beginning. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

8.2. Amendments. This Agreement may be amended, modified, supplemented or waived only by a written document signed by Investor and Xclaim; provided, that the Trading Terms, which are expressly incorporated herein as if fully set forth herein, remain subject to change by Xclaim at any time with or without notice to Investor, provided further that: (i) in the event of any conflict between the Trading Terms and this Agreement, this Agreement shall govern; (ii) any amendments to the Trading Terms shall apply only prospectively from the published date of such amendments; (iii) Investor may refuse any amendments to the Trading Terms by terminating this Agreement pursuant to Section 1.3; and (iv) in the absence of the delivery of a termination notice by Investor to Xclaim, Investor is deemed to have consented to the amendment to the Trading Terms by and as of the date of its continued use of XCM and/or the Xclaim Services.

8.3. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York, without reference to its conflicts of law rules.

8.4. Disputes. If Investor has a complaint or dispute with Xclaim regarding its use of XCM or Xclaim Services, Investor agrees to first contact Xclaim Trade Support at tradesupport@x-claim.com to attempt to resolve the matter amicably. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof that cannot be resolved through the Parties' good faith efforts, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined exclusively by binding arbitration in New York, New York, before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

8.5. Notices. All notices required or permitted hereunder shall be emailed, read-receipt requested, to Xclaim at notices@x-claim.com, and to Investor at the email address used to open the Investor's account (or to such other email address specified by Investor in a written request for notices to be delivered to such email address actually received by Xclaim prior to the due date, if any, applicable to such notice).

8.6. Entire Agreement. This Agreement, together with the Trading Terms, supersede all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter hereof and set forth the entire and exclusive agreement and understanding between the parties relating to the subject matter hereof.

8.7. Headings; Construction. The headings and subheadings used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement. The Parties agree that any rule of construction or interpretation under which ambiguities are to be resolved against the drafting party shall not be applied in connection with this Agreement.

8.8. Severability. Each provision of this Agreement shall be interpreted in such manner as to be valid and enforceable under applicable Law. If any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire agreement, shall be inoperative.

8.9. No Waiver. No failure or delay by any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial waiver thereof include any other or further exercise thereof or the exercise of any other right, power or privilege.