

KLEAR PLATFORM

TERMS OF SERVICE

Last Updated: December 10, 2025

1. Introduction.

Klear Inc. (the “**Company**”) owns, operates, and offers a digital network, the Klear platform (“**Klear**”), designed to facilitate interactions and transactions among its users. The Company is willing to grant access to Klear to you as the company or the legal entity that will be utilizing the Platform (“**you**” or “**User**”) on the condition that you accept all of the terms of these Terms of Service (these “**Terms of Service**”).

2. Definitions

Capitalized terms used in this Agreement have the meanings set forth in this Section 2.

“**Account**” means an account set up in Klear by a User in order to use the functions and features provided in Klear.

“**Affiliate**” means any person, partnership, joint venture, company, corporation, or other form of enterprise, domestic or foreign, that directly or indirectly controls or owns, is controlled or owned by, or is under common control with the Company.

“**Aggregated/De-Identified Data**” means Service Data that has been aggregated and/or de-identified so it cannot reasonably be used to identify a specific natural person or User.

“**Agreement**” means collectively, these Terms of Service, the applicable Subscription Order, and any Supplemental Agreements.

“**Beta Feature**” means certain beta or pre-release features of the Services that may not be provided to similarly situated customers of the Company.

“**Claim**” or “**Claims**” means the assertion of any alleged right or demand for money, property, or for enforcement of a right, whether the assertion or demand has resulted in suit, proceedings, or actions in any court, before any tribunal, in any administrative proceedings, in arbitration, or otherwise.

“**Confidential Information**” means any information or data (including information or data received by the Disclosing Party from a third party and as to which the Disclosing Party has confidentiality obligations) provided or disclosed by the Disclosing Party or its Representatives to the Receiving Party that is: (a) marked as the confidential or proprietary information of the Disclosing Party; or (b) not falling within the prior clause (a) of this sentence, but which a reasonable person would conclude is of a confidential nature given the type of information disclosed and the facts and circumstances surrounding such disclosure. Notwithstanding the foregoing, the term Confidential Information does not include information that (i) was rightfully known to the Receiving Party without obligation of confidentiality prior to such information being

disclosed or made available to the Receiving Party in connection with this Agreement and was not obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (ii) is or becomes part of the public domain through no fault of the Receiving Party or any of its Representatives; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that is lawfully in possession of such information and not in violation of any contractual or legal obligation to the Disclosing Party with respect to such information; or (iv) the Receiving Party can demonstrate by written or other documentary records was independently developed by the Receiving Party without access to any of the Disclosing Party's Confidential Information.

"Data" means the information or data provided by any User on Klear, including but not limited to PII, intellectual property, and trade secrets, and which the Users have authorization to provide on Klear.

"Data Protection Law" means all applicable laws, regulations, and legal obligations relating to the processing, protection, privacy, and security of personal data, including, without limitation, the European General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA), the California Privacy Rights Act (CPRA), the Health Insurance Portability and Accountability Act (HIPAA) in the United States, and any other national, federal, state, or local laws or regulations governing the collection, use, disclosure, or processing of personal data, as may be amended or replaced from time to time.

"Documentation" means the Company documentation, in all forms, relating to Klear (e.g., user manuals, on-line help files, etc.) as it may be made available by the Company to User from time to time.

"Financing Partners" means banks, lenders, liquidity providers, credit facilities, payment and foreign-exchange processors, and other financial institutions engaged by the Company to provide or enable the Services.

"Governmental Authority" means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, award, or determination by any Governmental Authority.

"Intellectual Property Right" means any existing or future patent (including a patent application, reissue, division, continuation, and extension), utility model, copyright, trade secret, registered design, trademark, service mark (whether or not registered), mask work right, right in the nature of an unfair competition right, database right, design right, and any other form of intellectual property right protected under the laws of any jurisdiction or bi-lateral or multi-lateral international treaty regime.

"Law" means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law,

Governmental Order, other requirement, or rule of law of any Governmental Authority.

“Mark” or “Marks” means the names, trademarks, trade names, drawings, logos, or symbols a Party uses to promote and to identify itself or its products or services.

“Person” means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, Governmental Authority, or any other entity.

“Personally Identifiable Information” or “PII” means information or unique identifier that can be used, either alone or in combination with other information, to identify an individual in context or to identify, locate, or contact an individual. Examples of PII include, but are not limited to, an individual’s name, financial information, mobile device identification, mobile identification number, driver’s license number, passport number, social security number, date and place of birth, biometric records, medical information, educational information, and employment information. For purposes of this Agreement, PII should be deemed to include any information that is protected from disclosure by applicable law or regulation, whether national, state, provincial, or local, credit card and other financial information.

“Representative” means, with respect to any Person, any and all directors, officers, managers, members, employees, consultants, financial advisors, counsel, accountants, and other agents of such Person.

“Services” means the proprietary products ordered and subscribed to by User under a Subscription Order, which may include Services performed by or on behalf of the Company under any Supplemental Agreements (as defined below).

“Service Data” means data generated through or provided to Klear in connection with the Services, including transaction/activity logs, account and device metadata, usage data, support communications, fraud/risk indicators, and data derived from the foregoing, but excluding Data provided by User to the extent expressly owned by User under this Agreement.

“Subscription Fees” means the subscription fee set forth in the applicable Subscription Order.

“Subscription Order” means an ordering document (including order forms and statements of work) or online order specifying the Services to be provided by or on behalf of the Company, which may include additional terms identified in the Subscription Order, and that is entered into from time to time between User and the Company

“Trade” means a series of coordinated activities for the sales and purchase of goods or services involving Users and/or third parties to complete any of the following transactions: ordering, manufacturing, shipping (with international clearing), delivering, invoicing, collecting, and settling payments, which may be further described in the applicable Subscription Order.

3. TERMS OF USE

3.1 **Account.** To access and utilize specific features of Klear, you must register an Account. You affirm that you are not prohibited from using Klear under the laws of the United

States or any other relevant jurisdiction. During registration, you must provide accurate, current, and comprehensive information and ensure this Account information remains up to date. The registration of more than one Account or the transfer of your Account to another Person requires the Company's prior written approval. You must maintain the confidentiality of your account credentials and must not disclose them to any third party. You are solely responsible for all activities that transpire through your Account. Should you suspect any unauthorized access or compromise of your Account, it is your responsibility to notify the Company immediately.

3.2 Dashboard. Upon successful registration, you gain access to Klear's browser-based online dashboard ("Dashboard"). The Dashboard allows you to:

- (a) Create a profile ("Profile"), which you may brand with your Mark and provide information about your operation. The information on your Profile may include your licenses, certifications, previous work experience, specialties, and other relevant details, provided in each case such information in the Profile must be up-to-date, complete, and accurate. By using any Marks in connection with Klear, you grant the Company a license to display the Mark on your Profile.
- (b) Access other functions and features made available by the Company on Klear from time to time, which may include the ability to transact Trades.

3.3 Use of Platform. Subject to the terms and conditions of this Agreement, the Company grants to you a limited, worldwide, non-exclusive, non-transferable (except as explicitly permitted in this Agreement) right during the term of this Agreement to use Klear. You are solely responsible for your conduct, the content of Data uploaded to Klear, and all communications with others while using Klear. The Company is not responsible for the availability, accuracy, appropriateness, or legality of any Data you uploaded or provided or any other information that you may upload to Klear from time to time.

3.4 Use of the Documentation. Subject to the terms and conditions of this Agreement, the Company grants to you a limited, worldwide, non-exclusive, non-transferable (except as explicitly permitted in this Agreement) right during the term of this Agreement to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with the use of Klear in accordance with this Agreement.

3.5 Use Restrictions. You shall not, and shall not permit or authorize your Representative or any third parties to:

- (a) Modify, enhance, or create a derivative work of Klear or Documentation;
- (b) Transfer, distribute, assign, sublicense, rent, lease, time share or sell Klear or Documentation;
- (c) Circumvent or disable any security or other technological features or measures of Klear, or attempt to probe, scan or test the vulnerability of a network or system, or to breach security or authentication measures;
- (d) Knowingly upload or provide for processing any information or material that is illegal, defamatory, abusive, obscene, or that violates privacy or intellectual property rights of any third party;
- (e) Use Klear to knowingly harm, threaten, or harass another person or organization;
- (f) Cause or launch any programs or scripts for the purpose of scraping, indexing,

surveying, or otherwise data mining any portion of Klear or unduly burdening or hindering the operation and/or functionality of any aspect of Klear; or

(g) Decompile, disassemble, reverse compile, reverse engineer or otherwise attempt to reconstruct the source code for Klear. You will neither alter nor remove any Mark, copyright notice, or other proprietary rights notice that may appear in any part of the Documentation and will include all such notices on any copies.

You will use reasonable efforts to ensure that your Representatives comply with this Agreement. You will be directly and fully responsible to the Company for the conduct and any breach of this Agreement by your Representative.

3.6 Prohibited Use. You shall not, and shall not permit or authorize your Representative or any third parties to:

- (a) Make any representations, warranties, guarantees, indemnities, similar claims, or other commitments actually, apparently, or ostensibly on behalf of the Company;
- (b) Engage in any unfair, competitive, misleading, or deceptive practices respecting the Company or any other Users, any of the Company's or any other Users' Marks, including any product disparagement or "bait-and-switch" practices; or
- (c) Remove, translate, or modify the contents or Documentation of or related to Klear, including, without limitation, any warranty statements.

3.7 Protection against Unauthorized Use. You shall, and shall ensure, that your Representative use reasonable efforts to prevent any unauthorized use of Klear and Documentation, and you will promptly notify the Company in writing of any unauthorized use of which you become aware. If there is unauthorized use by anyone who obtained access to Klear or Documentation directly or indirectly through you, your Representative, you will take reasonably necessary steps to terminate the unauthorized use.

3.8 Platform Availability. The Company maintains regular database backups and system processes designed to enhance Klear's performance and availability. The Company will use commercially reasonable efforts to avoid unplanned Klear interruptions and to notify you in advance of planned interruptions. However, the Company does not guarantee uninterrupted access to Klear and shall not be liable for any unplanned interruptions. In the event of an unplanned interruption, you may contact the Company pursuant to Section 16 hereof.

3.9 Right to Sell Competitive Projects. For the avoidance of doubt, this Agreement shall not preclude the Company from entering into agreements with any third-party related to the marketing and sale of any goods and/or services that are similar to or competitive with your business through Klear.

3.10 Supplemental Agreements. These Terms of Service govern your use of Klear. Certain features or services offered through Klear, including but not limited to payments, foreign exchange, procurement transactions, factoring, and other specific functionalities, may require you to enter into separate agreements or accept additional terms and conditions ("Supplemental Agreement"). By using those features or services, you agree to be bound by the applicable supplementary terms. In the event of any conflict between this Agreement and the supplementary terms, the supplementary terms will prevail with respect to your use of those specific features or services.

4. PLATFORM FEES; TAXES

4.1 Payments and Fees. User will pay the Company the applicable fees (“**Fees**”) for Services in accordance with the payment terms set forth in the Subscription Order. If User believes that the Company has billed User incorrectly, User must contact the Company no later than ten (10) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Except as otherwise provided in this Agreement, Fees are non-refundable. The Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by User thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. User shall be responsible for all taxes associated with use of Klear other than U.S. taxes based on the Company’s net income.

4.2 Fees Adjustment. The Company reserves the right to adjust the Subscription Fees. Any adjustment to the Subscription Fees will be communicated in writing to the User at least thirty (30) days in advance. If the User does not agree to the adjusted Subscription Fees, User may opt-out and terminate this Agreement without penalty by providing written notice to the Company within thirty (30) days of receiving the fee adjustment notification. Continued use of the Services after the thirty (30) day notice period constitutes acceptance of the new Subscription Fees.

4.3 Taxes.

- (a) Payment of Taxes. All prices quoted are exclusive of all taxes. Each Party is responsible for its own taxes relating to transactions under this Agreement and shall report and pay any relevant taxes to the respective tax authorities. All prices listed on Klear are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Government Authority on any amounts payable by User under this Agreement.
- (b) Tax Responsibility. For the avoidance of doubt, User is responsible for all charges, costs, and taxes; *provided, that*, User is not responsible for any taxes imposed on, or regarding, the Company’s income, revenues, gross receipts, personnel, or real or personal property or other assets.
- (c) Documentation of Taxes. You are responsible for all taxes that you are required by law to pay. If requested from the Company, You must supply the Company with sufficient documentation to enable the Company to complete any necessary tax filings or to claim any applicable tax credits for amounts the Company pays you, and you must compensate the Company for any tax penalty imposed as a result of your failure to provide sufficient or accurate documentation.

5. THIRD-PARTY SERVICES OR PRODUCTS.

5.1 Third Party Services or Products. Any third-party service or product that the Company made available through Klear is provided pursuant to the terms of the applicable third-party agreement (each, a “**Third-Party Agreement**”), and User’s use of any such third-party product constitutes User’s agreement to comply with the terms of the applicable Third-Party Agreement. User acknowledges that the Company (i) has no obligation to flow any Third-Party Agreement through Klear, although it may opt to do so at its discretion and (ii) assumes no

responsibility for, and specifically disclaims any liability or obligation with respect to, any third-party services or products.

5.2 AI-Assisted Features. Klear may use automated or artificial-intelligence-enabled tools solely to assist with internal operational review, document processing, data extraction, quality control, and analysis based on publicly available information in connection with the provision of the Services. You acknowledge that outputs or indicators generated with the assistance of such tools, like other analytical methods, may be imperfect or incomplete and are only one of multiple factors that Klear may consider in its internal review processes. To the fullest extent permitted by Law, you agree that you will not assert any Claim against Klear that is based solely on Klear's use of such automated or AI-assisted tools.

6. REPRESENTATION AND WARRANTIES.

6.1 Mutual Representations. Each Party hereby represents and warrants that: (a) it has full power and authority to enter into this Agreement and perform its obligations hereunder; (b) its acceptance of this Agreement, as well as its performance of the obligations set forth in this Agreement, does not and will not violate any other agreement to which it is a party or create a breach or default of any law, court order, or other obligation by which it may be bound or affected; and (c) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its origin.

6.2 User Representations. The User represents and warrants that: (a) when performing under this Agreement, its personnel will operate in a professional and workmanlike manner; (b) it will not use confidential or proprietary information belonging to any third party in the performance of this Agreement unless fully and legally licensed and authorized to do so; (c) to the best of its knowledge, there are no actions or investigations pending or threatened against it that may affect its ability to perform its obligations under this Agreement; and (d) the User has the rights to the Mark, Data and all information uploaded or provided on Klear, and the use of such Mark, Data or information does not infringe any third-party's rights.

6.3 Warranty Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR A SUPPLEMENTAL AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT KLEAR AND ANY OTHER OFFERINGS MADE AVAILABLE BY THE COMPANY TO YOU UNDER THIS AGREEMENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PURPOSE, TITLE, NON-INFRINGEMENT, OR THAT THE OFFERING IS FREE OF DEFECTS.

7. DATA; DATA PROTECTION.

7.1 Ownership of Data. Use of Klear may require User to enter Data through Klear, with such information being ultimately stored on the Company's server. By entering such Data, User hereby grants the Company a license to such Data for the purposes set forth in this Agreement. User allows the Company to retain any such Data to provide the services through Klear and to improve the functionality of Klear. Except for the license granted to the Company, User shall retain all right, title, and interest in and to the Data.

7.2 Disclosure. You may not disclose Data made available to you through Klear to any third-party, except to the Government Authority as necessary to comply with the Law.

7.3 Personnel. You must restrict your personnel from processing, accessing, or using Data made available to you through Klear except in accordance with the Data Security Policy, and without prior authorization from the Company, the relevant Partner, End-User, or End-User, unless You are doing so to fulfil Your responsibilities according to this Agreement.

7.4 Compliance. Each Party shall be individually and separately responsible for complying with the obligations that apply to it under Data Protection Law. Without limitation to the foregoing, each Party shall maintain a publicly accessible privacy policy on its website that satisfies the transparency disclosure requirements of Data Protection Law.

7.5 Personal Information. The Company (and its licensors/service providers) may process limited PII in connection with providing the Services, including identity verification, sanctions screening, fraud and credit-risk management, payments, customer support, and compliance with Law. Each Party will comply with Data Protection Law. The Company will use PII only as permitted under this Agreement and the Company's Privacy Policy.

7.6 Regulatory Compliance. To the extent the Company may be subject to the Gramm-Leach-Bliley Act ("GLBA") and related regulations, including the FTC's Safeguards Rule, the Company will collect, use, disclose, and safeguard nonpublic personal information ("NPI") in accordance with applicable requirements. The Company does not sell NPI and limits sharing to legal exceptions or operational necessities, such as with service providers or Financing Partners. The Company maintains administrative, technical, and physical safeguards reasonably designed to protect the confidentiality and integrity of NPI and to ensure compliance with applicable Law.

7.7 Service Data. Without limiting the Company's rights elsewhere in this Agreement, the Company may access, use, retain, and disclose Service Data to: (a) provide, operate, support, and secure Klear and the Services; (b) detect, investigate, and mitigate fraud, credit risk, financial loss, abuse, and security incidents affecting User, the Company, Financing Partners, other Users or relevant third-parties in transactions facilitated through the Services; (c) comply with Law, respond to Governmental Authorities, and satisfy audit, reporting, and compliance obligations; (d) comply with contractual obligations to Financing Partners and enable them to meet their legal and partner requirements; (e) enforce this Agreement and manage disputes; (f) analyze, develop, and improve Klear and the Company's systems, products, services, and functionalities; and (g) create and use Aggregated/De-Identified Data for any lawful purpose. The Company may also access, use, and disclose Service Data as permitted by its Privacy Policy and as authorized in writing by User. Where required by Law, the Company will delete or de-identify PII upon a verifiable request by a natural person, subject to legal, regulatory, and record-keeping obligations.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Ownership. User acknowledges and agrees that Klear, including all text, graphics, editorial content, Data, formatting, graphs, designs, HTML, look and feel, photographs, sounds, images, software, videos, typefaces, and other content, including the Company's designs and Marks and any services offered through Klear are Intellectual Property Rights belonging to the

Company or its licensors (collectively “**Proprietary Material**”). Notwithstanding the foregoing, the Company’s Proprietary Material shall exclude Data provided by User, which shall remain the exclusive property of User. The Proprietary Material is protected in all forms, media, and technologies now known or hereinafter developed. The Company and its licensors own all Proprietary Material. Nothing in this Agreement shall be construed to transfer any Intellectual Property Rights to User or grant any rights in or to the Intellectual Property Rights to User, except as expressly provided in this Agreement. User may not copy, download, use, redesign, reconfigure, or retransmit anything from Klear without the Company’s express prior written consent, and if applicable, the consent of the holder of the rights to the Data.

8.2 Feedback. the Company may ask Users to submit feedback, user community contributions and comments, technical support information, suggestions, enhancement requests, recommendations, and messages relating to the use and operation of Klear (any of the above, “**Feedback**”). User is under no obligation to provide any Feedback. To the extent that User provides any Feedback, User hereby grants the Company a royalty-free, fully paid, non-exclusive, perpetual, irrevocable, worldwide, transferable license to display, use, copy, modify, publish, perform, translate, create derivative works from, sublicense, distribute, and otherwise exploit Feedback without restriction.

9. TERM AND TERMINATION.

9.1 Term. This Agreement commences on the effective date specified in the Subscription Order and continues for the term specified therein. If the Order has an automatic renewal clause, either Party may terminate this Agreement by providing written notice to the other Party of its intent not to renew at least thirty (30) days prior to the expiration of the current term.

9.2 Termination for Material Breach. Either Party may terminate this Agreement if the other Party does not cure its material breach of this Agreement within 30 days of receiving written notice of the material breach from the non-breaching Party. A breach of this Agreement by an Authorized User will be treated as a breach by User. Termination in accordance with this Subsection will take effect when the breaching Party receives written notice of termination from the non- breaching Party, which notice must not be delivered until the breaching party has failed to cure its material breach during the 30-day cure period. Further, either Party may terminate this Agreement if the other party is declared judicially insolvent by a court or competent jurisdiction.

9.3 Protective Measures. Without limiting its other rights, the Company may immediately suspend or restrict access to Klear or any specific Services, or terminate any Supplemental Agreement, upon notice to User if: (i) required or directed by a Financing Partner or Governmental Authority; (ii) the Company reasonably determines that continued provision would violate Law or applicable partner requirements; (iii) the Company reasonably suspects fraud, abuse, or a material security risk; or (iv) the Company has reason to believe that User has otherwise breached this Agreement.

9.4 Effect of Termination. Any outstanding payment obligations, and all terms and provisions of this Agreement, which by their nature are intended to survive any termination or expiration of this Agreement, will survive.

10. LIMITATIONS OF LIABILITY

10.1 Exclusion of Certain Damages. EXCEPT WITH RESPECT TO CUSTOMER'S BREACH OF THE CONFIDENTIALITY PROVISIONS UNDER THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL EXEMPLARY OR PUNITIVE DAMAGES (SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS) REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE OTHERWISE FORESEEABLE.

10.2 Damages Cap. EXCEPT WITH RESPECT TO (A) THE CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, (B) LIABILITIES OR DAMAGES ARISE FROM EACH PARTY'S INDEMNIFICATION OBLIGATIONS, (C) BREACH OF THE CONFIDENTIALITY PROVISIONS UNDER THIS AGREEMENT, OR (D) BREACH OF THE DATA PROTECTION PROVISIONS UNDER THIS AGREEMENT, EACH PARTY'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL FEES PAID BY THE USER TO THE COMPANY IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10.3 General. The exclusion of damages and limitations of liability set forth in Sections 10.1 and 10.2, shall (a) apply regardless of the form of action, whether the basis of the liability is breach of contract, tort (including negligence and strict liability), statute, or any other legal theory, and (b) be independent of, and shall survive, any failure of the essential purpose of any warranty or limited remedy stated herein.

11. INDEMNITY.

11.1 The Company Indemnity. The Company shall defend, indemnify, and hold User, its affiliates, and its and their respective Representatives harmless from and against any and all Claims that Klear infringes on any U.S. patent, trademark, copyright, or other proprietary right in the U.S. of any third party, or that the process, design, or methodology used to produce Klear infringes on any such third-party right. The Company's indemnity obligation will not apply if the Claim is a result of content modified by User and such modified content is the source of the Claim.

11.2 User Indemnity. User shall defend, indemnify, and hold the Company, its affiliates, and its and their respective Representatives harmless from and against all third-party Claims resulting from or in connection with the User's breach or non-fulfillment of any covenants, agreements, or obligations set forth hereunder.

11.3 Indemnification Procedures. In connection with a Party's ("**Indemnifying Party**") obligations to indemnify the other Party pursuant to this Agreement ("**Indemnified Party**"), the Indemnified Party shall promptly notify the Indemnifying Party after receipt of notice of a Claim; provided that a delay by the Indemnified Party in providing such notice shall not relieve the Indemnifying Party of its defense and indemnity obligations hereunder, except to the extent that such delay materially prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party, at its sole expense, shall promptly assume the defense of such Claim and shall have sole control over the defense of such Claim, including any proposed settlement (subject to the requirements below with respect to settlement). The Indemnified Party shall reasonably cooperate with the Indemnifying Party, at the Indemnifying Party's request and sole expense, in

connection with the Indemnifying Party's defense of such Claim. In addition, the Indemnified Party, in its sole discretion, may participate in (but not control) any such Claim using its own counsel at its own expense. The Indemnifying Party shall not settle any such Claim without first obtaining the Indemnified Party's prior written consent where the settlement of such Claim results in any admission of wrongdoing or liability on the part of the Indemnified Party, imposes any obligation on the Indemnified Party, or imposes any liability on the Indemnified Party (other than monetary liability for which the Indemnified Party is fully indemnified by the Indemnifying Party).

12. CONFIDENTIALITY.

12.1 Obligations of the Receiving Party. In connection with this Agreement, each Party (as the "Disclosing Party") may disclose or make available Confidential Information to the other Party (as the "Receiving Party"). The Receiving Party shall:

- (a) not access or use the Disclosing Party's Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (b) except as may be permitted by and subject to its compliance with Section 13.2, not disclose or permit access to the Disclosing Party's Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement, (ii) have been informed of the confidential nature of the Disclosing Party's Confidential Information and the Receiving Party's obligations under this Section 13, and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Disclosing Party's Confidential Information as the terms set forth in this Section 13;
- (c) safeguard the Disclosing Party's Confidential Information using at least the same degree of care it uses to protect its own similar information and in no event less than a reasonable degree of care; and
- (d) ensure its representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 13.

12.2 Compelled Disclosure. If the Receiving Party is compelled by applicable law to disclose any Confidential Information then, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement (if permitted by applicable law) so that the Disclosing Party can seek a protective order or other appropriate remedy; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If such protective order or other remedy is not obtained, or if the Disclosing Party waives compliance with the provisions hereof, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

13. **BETA FEATURES.** The Company may, in its sole discretion, provide, and Users may elect to receive Beta Features, from time to time. The Company may remove access to or modify such Beta Features at any time in its sole discretion. Any and all such Beta Features are subject to the terms and limitations set forth in this Agreement and such additional terms and conditions provided by the Company at the time of access to such Beta Features. For avoidance of doubt,

unless otherwise agreed by the parties, Beta Features are not subject to the Company's support or maintenance obligations. Furthermore, User understands and agrees that any material and/or data downloaded or otherwise obtained through the use of the Beta Features is done at User's sole risk, and the Company assumes no responsibility for the quality of such material or data. Any and all Beta Features, including but not limited to the terms and provisions thereof, are deemed to be Confidential Information of the Company.

14. **GENERAL.**

14.1 **Assignment.** Neither Party may assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of the other Party; provided, however, that no consent shall be required for any assignment to any of the assigning Party's affiliated entities or in connection with any merger, acquisition or the sale of all or substantially all of the stock or assets of the assigning Party to a party that agrees in writing to be bound by the terms and conditions of this Agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the Parties' respective successors and permitted assigns.

14.2 **Publicity.** The Company may use User's name and logo to identify User as a customer in the Company's marketing materials, website, and presentations, provided such use is in a reasonable manner. Except for this permitted use, neither Party shall issue press releases or make other public statements regarding this Agreement without the prior written consent of the other Party..

14.3 **Independent Contractors.** The Parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. Neither Party will have the power to bind the other Party or to incur any obligations on its behalf without the other Party's prior consent.

14.4 **Notices.** Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by email to [EMAIL], in the case to the Company, or to the appropriate party identified in the Subscription Order, in the case to User. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this subsection. Notices are deemed given two (2) business days following the date of emailing.

14.5 **Waiver.** Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

14.6 **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. Section headings in this Agreement are for convenience of reference only, and shall not be considered in interpreting this Agreement.

14.7 **Mediation.** In the event any dispute arises between the Parties, the Parties shall first proceed in good faith to submit the matter to mediation. Costs related to mediations shall be shared mutually between the Parties. Unless otherwise agreed in mediation, the Parties retain their rights

to proceed to litigation pursuant to Section 13.7.

14.8 Governing Law. This Agreement is governed by the laws of the State of California. The Company and User agree that any claims, legal proceedings, or litigation arising in connection with this Agreement will be brought solely in the state courts located in San Mateo County, California or United State District Court, Southern District of California. The Parties hereby consent to the jurisdiction of such courts.

14.9 Amendment. The Company reserves the right, in its sole discretion, to modify or replace any part of these Terms by (a) posting the revised these Terms of Service or Supplemental Agreements on the Company's website and (b) announcing the change(s) to the Company's users, which may be done via generally distributed (including by electronic mail or within the Services) product release notes. Provided that such modifications are made at least sixty (60) days prior to the end of the then-current term, any such modifications will take effect at the start of the next renewal terms, if any, as described in the applicable Subscription Order.

14.10 Entire Agreement. This Agreement, together with any Supplemental Agreement and/or Third-Party Agreements, represent the complete and exclusive Agreement between the Parties with respect to the subject matter hereof, superseding any prior agreements and communications (both written and oral) regarding such subject matter. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.