

KLEARCOM
TERMS OF SERVICE

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Affiliate: any entity directly or indirectly controlling or controlled by or under direct or indirect common control with another entity; and “control” means the power, directly or indirectly, to direct, or cause the direction of the management and policies of an entity through the ownership of voting securities, by contract or otherwise.

Authorised Users: those employees, contractors, subcontractors, and agents who are authorised by Client to use the Services.

Business Day: a day other than a Saturday, Sunday or public holiday in Ireland when banks in Dublin are open for business.

Business Hours: 9.00 am to 5.30 pm local Irish time, each Business Day.

Client: the client in the Order Form.

Client Data: the information and data inputted by Client, Authorised Users, or Klearcom on Client’s behalf for the purpose of using the Services or facilitating Client’s use of the Services.

Confidential Information: all documentation, technical information, software, business information, feedback, trade secrets or know how or other materials of a confidential nature that are disclosed in confidence by either party to the other during the term of this Agreement.

Data Protection Laws: the provisions of the EU General Data Protection Regulation 2016/679 (the “GDPR”) and all national legislation implementing or supplementing the foregoing and all associated codes of practice and other guidance issued by any applicable data protection authority, all as amended, re-enacted and/or replaced from time to time, and any other applicable legislation relating to the collection, processing, transfer, or retention of personal data.

Effective Date: the date as set out on the Order Form.

Fees: the fees for the Services as set out in the Order Form.

Initial Term: the initial term of this Agreement as set out in the Order Form.

Intellectual Property Rights: patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, source code and all intellectual property rights concerning a technology application, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action).

Order Form: the form signed by Client confirming the order for the Services subject to these Terms of Service including all schedules thereto. Order Form shall include any subsequent ordering document for services that is signed by the parties specifically referring to this Agreement.

Package: the service package for the Services purchased by Client as set out in the Order Form and any Addendum.

Renewal Term: the periods described in clause 12.1.

Services: access to the Klearcom Platform and any other services as more particularly described in the Order Form and any Addendum.

Platform: the online software platform and applications from which Klearcom makes the Services available.

Statement of Work: a statement of work substantially in the form set out in Schedule 2 to the Order Form as may be agreed between the parties for Additional Services.

Term: means the Initial Term together with any subsequent Renewal Terms.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. Reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it. A reference to writing or written includes e-mail.

2. SERVICES

- 2.1 Subject to the terms and conditions of this Agreement, Klearcom hereby grants to Client a non-exclusive, non-transferable right, without the right to grant sublicences, of access to and use of (and to permit the Authorized Users to access and use) the Services during the Term.
- 2.2 Client may designate an Authorised User as an administrator (or "master" administrator) with control over Client's service account, including management of Authorised Users and Client Data. Client is fully responsible for its choice of administrator and any actions they take. Client agrees that Klearcom's responsibilities do not extend to the internal management or administration of the Services for Client.
- 2.3 Certain Additional Services may be agreed by the parties in an Addendum. Client will give Klearcom timely access to any Client materials reasonably necessary for these Additional Services, and if Client fails to do so, Klearcom's obligation to provide these Additional Services will be excused until access is provided. Once an Addendum is agreed such additional services will become part of the Service for the purposes of this Agreement.

3. CLIENT'S OBLIGATIONS

- 3.1 Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Klearcom.
- 3.2 Client shall be responsible for the acts and omissions of its Affiliates and Authorised Users who access the Services, as though they were the acts and omissions of Client. Client agrees to indemnify and hold harmless Klearcom, its Affiliates and subcontractors against any claims, costs, losses, damages, liabilities or expenses arising from the acts or omissions of its Affiliates and Authorised Users.
- 3.3 Client shall not during the course of its use of the Services access, store, distribute or transmit any Viruses, or any material that: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; or (ii) facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence; or (iii) is discriminatory or otherwise illegal or causes damage or injury to any person or property; (iv) contains any unsolicited or unauthorized advertising, promotional or marketing materials; or (v) encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable law or regulation.
- 3.4 Client shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means; (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Services; (iii) access all or any part of the Services in order to build a product or service which competes with the Services; (iv) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit; (v) access the Services and Documentation for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes; or (vi) work around any technical limitations in the Services.
- 3.5 Client shall: (i) comply with all applicable laws and regulations with respect to its activities under this Agreement; (ii) obtain and shall maintain all necessary licences, consents, and permissions necessary for Klearcom, Affiliates and subcontractors to perform their respective obligations under this Agreement; and (iii) ensure that its network and systems comply with specifications provided by Klearcom and will be solely responsible for procuring and maintaining its network connections and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Client's network connections or telecommunications links.
- 3.6 Without prejudice to Klearcom's other rights in law or equity, Klearcom reserves the right, without liability to Client, to suspend or disable Client's or any Authorised Users access to the Services where Client or an Authorised User is in material breach of the provisions of this clause 3 and fails to remedy such breach within 30 days of being notified by Klearcom to do so, and Client shall not thereby be entitled to claim any refund or compensation for such suspension, provided however that where such breach of same has or may have a material adverse impact on Klearcom's ability to provide the Services, or on the integrity and security of the Platform, no remedy period shall be granted to Client prior to Klearcom exercising the suspension rights herein.

4. FEES AND PAYMENT

- 4.1 Unless otherwise provided in an Order Form: (i) Services are purchased as Packages for the Initial Term and/or Renewal Term; (ii) incremental Package(s) for additional testing services may be added (on agreement of an Addendum) at Klearcom's then-current pricing, prorated for the portion of the Initial Term or Renewal Term as applicable remaining at the time the incremental Package(s) are added; and (c) any added Package(s) will be co-terminus with the initial Package(s). Volume of Services are fixed for the Initial Term or Renewal Term as applicable and the Package(s) may only be decreased between Renewal Terms, provided that Client delivers a notice of such decrease to Klearcom at accounts@Klearcom.com at least thirty (30) days prior to the beginning of the Renewal Term. Client agrees that its purchase of Services hereunder is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Klearcom regarding future functionality or features.
- 4.2 Except as otherwise agreed between the parties in the Order Form, fees are based on the Packages purchased and not actual usage and Package fees will be invoiced regardless of the amount of minutes or tests used in a given period.
- 4.3 Klearcom shall invoice Client and Client shall pay the Fees in accordance with the provisions of the Order Form and this clause 4. Subject to clause 4.8, Fees for Renewal Terms shall be at Klearcom's then-current rates, regardless of any discounted pricing in a prior Order Form, unless otherwise agreed by the parties.
- 4.4 All amounts stated or referred to in this Agreement are non-cancellable and non-refundable unless stated elsewhere in the Agreement and are exclusive of all sales, use, value-added, withholding and other taxes and duties which shall be added to Klearcom's invoice(s) at the appropriate rate. For clarity, Klearcom is solely responsible for taxes assessable against it based on its income, property and employees. Client will pay all taxes and duties (including withholding tax) assessed in connection with this Agreement. Client shall pay all Fees in full without set off or counterclaim.
- 4.5 Where any usage limitations are indicated on an Order Form, Klearcom shall notify Client in the event of such limitations being breached at any time together with details of increased rates to apply to continued usage during the billing period. Invoices for overage charges shall be issued monthly in arrears and shall be subject to the payment terms set out in the Order Form.
- 4.6 Should Client have a bona fide dispute in respect of all or any part of any invoice(s) it will notify Klearcom of the nature of that dispute in writing by email at billing@Klearcom.com within ten Business Days of receipt of the invoice giving the relevant details. Following any such notice, Client will be entitled to withhold payment of the amount in dispute without interest but will pay the undisputed amount(s) in accordance with this Agreement. The parties will cooperate in good faith to resolve any such dispute as amicably and promptly as possible and on settlement of the dispute Client will make the appropriate payment in accordance with this Agreement. If Client fails to pay the undisputed portions of an invoice by the due date of the invoice, or if Client fails to provide notice as required in this Section, Client hereby waives its right to dispute any portion of the invoice.
- 4.7 If Klearcom has not received payment of undisputed Fees within fifteen (15) days after the due date in accordance with the payment terms set out in the Order Form, and without prejudice

to any other rights and remedies of Klearcom, Klearcom may subject to providing a further fifteen (15) days' written notice, without liability to Client, disable Client's password, account and suspend access to all or part of the Services and Klearcom shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. In addition, interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8 percentage points above the European Central Bank's reference rate or if such rate shall exceed any applicable permissible legal interest rate, then at the highest legally permissible rate, commencing on the due date and continuing until fully paid, whether before or after judgment.

- 4.8 Klearcom may increase the Fees at the end of the Initial Term and any Renewal Term by giving Client not less than 30 days' notice with such notice to expire at the end of the Initial Term or Renewal Term as the case may be. During this notice period the Client can either: (i) accept the increase in the Fees by continuing to avail of the Services; or (ii) reject the increase in Fees and issue a notice to Klearcom of their intention to terminate this Agreement on the expiration of the Initial Term or Renewal Term, as the case may be.

5. SUPPORT AND MAINTENANCE

- 5.1 Client may contact Klearcom for support in relation to the Services during Business Hours by contacting support@[].
- 5.2 From time to time it may be necessary for Klearcom to complete maintenance on the Klearcom systems and Platform. If the maintenance is likely to result in unavailability of the Services then Klearcom will endeavour to advise Client in advance. Unscheduled maintenance in respect of a significant event may be required to be performed at any time without notice.

2.4 Provision of Services. Klearcom will (a) provide applicable Klearcom standard support for purchased Klearcom Services to Client at no additional charge for the **testing countries** provisioned as per Client agreement, and/or upgraded support if purchased, (b) use commercially reasonable efforts to make the purchased Klearcom Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Klearcom shall give or post advance electronic notice), and (ii) any unavailability caused by circumstances beyond Klearcom's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Klearcom employees), Internet service provider failure or delay, Non Klearcom Application, or denial of service attack, and (c) provide the Klearcom Services in accordance with laws and government regulations applicable to Klearcom's provision of its Klearcom Services to its Clients generally (i.e., without regard for Client's particular use of the Klearcom Services), and subject to Client's use of the Klearcom Services in accordance with this Agreement, the Documentation and the applicable SOW Terms.

6. WARRANTIES AND DISCLAIMER

- 6.1 Each party warrants that it has the full corporate power: (i) to enter into this Agreement; (ii) to carry out its obligations hereunder; and (iii) to grant the rights herein granted to the other party.
- 6.2 Client warrants that Client Data, material, content or links provided to Klearcom by or on behalf of Client: (i) are owned by Client or are provided with the express consent from the

third party holding any ownership rights (including copyright) over such material, or, alternatively, are in the public domain, and are not owned by any third party or otherwise covered by copyright laws; (ii) do not breach the rights of any person or entity, including rights of publicity, privacy, or under applicable Data Protection Laws or direct marketing laws and are not defamatory; and (iii) do not result in consumer fraud (including being false or misleading), product liability, tort, breach of contract, breach of Intellectual Property Rights, injury, damage or harm of any kind to any person or entity.

- 6.3 Other than with respect to the express warranties set forth herein, the Services are provided “as is” and all warranties express or implied, representations, conditions and all other terms of any kind whatsoever implied by statute or common law, including those of non-infringement, merchantability and fitness for a particular purpose, all are, to the fullest extent permitted by applicable law, are hereby disclaimed and excluded by Klearcom from this Agreement. Client is solely responsible for determining the suitability of the Services for its use in light of any applicable legislation or regulations including without limitation Data Protection Laws.
- 6.4 Klearcom does not warrant that Client’s use of the Services will be uninterrupted or error-free or that the Services will operate in combination with third party services used by Client save where otherwise agreed. The Service may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. Klearcom is not responsible for any delays, delivery failures, or other damage resulting from the transfer of data over communications networks and facilities, including the internet.
- 6.5 Klearcom may make available additional features, functionality, and services (each, an “Add-on”) offered by third-party providers (each, an “Add-on Provider”). If Client, at Client’s discretion, chooses to use an Add-on, then Client may be required to accept the Add-on Provider’s terms of service (“Add-on Provider’s Terms”) as part of the Add-on installation process. Client acknowledges for each Add-on Client uses through Klearcom, the Add-on Provider’s Terms constitute a binding agreement between Client and the relevant Add-on Provider only. The Add-on Provider of each Add-on is solely responsible for that Add-on, the content therein, and any claims that Client or any other party may have relating to that Add-on or Client’s use of that Add-on. Client acknowledges that Klearcom is not a party to the agreement between Client and the Add-on Provider with respect to that Add-on; and Klearcom is not responsible for that Add-on, the content therein, or any claims that Client or any other party may have relating to that Add-on or Client’s use of that Add-on. By purchasing an Add-on, Client grants Klearcom permission to share Client Data with the Add-on Provider as necessary in order to provide Client the Add-on.

Klearcom makes no representations, endorsements, guarantees, or warranties, express or implied, with respect to Add-ons, including but not limited to the continuing availability of such Add-ons or the continuing ability to use and integrate the Klearcom Service with such Add-ons. Klearcom is not responsible for any disclosure, modification or deletion of Client Data resulting from access by such Add-on or services or its provider.

- 6.6 Klearcom reserves the right to introduce new or enhanced features and functionalities to the Services which do not negatively impact the Services.

3.3 Local Jurisdictions. Client acknowledges that given the nature of the Services and the number of clients and volume of information submitted and different features chosen,

Klearcom cannot evaluate compliance with the applicable law for each sort of processing requested, data protection laws and that Klearcom is a worldwide service and some features may be prohibited in some jurisdictions. Client expressly agrees that Klearcom will not be liable for compliance with applicable laws and Client agrees to undertake a legal analysis before the beginning of the provision of the Services.

- 6.7 THE SERVICES ARE NOT INTENDED TO SUPPORT OR CARRY EMERGENCY CALLS OR SMS MESSAGES TO ANY EMERGENCY SERVICES. NEITHER KLEARCOM NOR ITS REPRESENTATIVES WILL BE LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY CLAIM, DAMAGE, OR LOSS (AND CLIENT WILL HOLD KLEARCOM HARMLESS AGAINST ANY AND ALL SUCH CLAIMS) ARISING FROM OR RELATING TO THE INABILITY TO USE THE SERVICES TO CONTACT EMERGENCY SERVICES.

7. DATA

- 7.1 Save in respect of the business contact details of the persons from each Party administering the operation of this Agreement, which each Party recognises is required for the normal operation of this Agreement, it is not anticipated that either Party will act as a processor of any personal data in respect of which the other Party is a controller. To the extent that a Party does act as a processor in the performance of its obligations under this Agreement, the Parties shall enter into a data processing addendum as necessary in order to comply with the Data Protection Laws.
- 7.2 Client acknowledges and agrees that Klearcom may collect and use anonymised data from the Platform relating to outcomes, usage data and other information. This data shall be irreversibly anonymised and shall not be considered personal data under Data Protection Laws or contain any Client Confidential Information.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Client acknowledges and agrees that Klearcom and/or its licensors own all Intellectual Property Rights in the Services and Platform (including any modifications or enhancements thereto). Except as expressly stated herein, this Agreement does not grant Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services and Platform.
- 8.2 Client shall own all right, title and interest in and to all of Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.

9. INDEMNITY

- 9.1 Klearcom will indemnify Client in respect of any and all third party claims, suits, demands and actions and for resulting damages, awards of damages, losses, costs, expenses and liabilities (including reasonable legal fees, fines and penalties) to the extent arising out of claims by third parties that the Services infringes a third-party's copyright, trademark existing or patent granted as of the date of delivery in any country in which the Services are delivered. If Services are or are likely to be held to be infringing, Klearcom will at its expense and option either: (i) procure the right for Client to continue using it, (ii) replace it with a non-infringing equivalent, (iii) modify it to make it non-infringing, or (iv) terminate this Agreement and refund to Client fees paid for any unused portion of the Services.

- 9.2 Notwithstanding the above, Klearcom shall have no liability to Client to the extent that any claim is based upon: (i) modifications to the Services made by anyone other than Klearcom or a party authorised by Klearcom; (ii) combination of the Services with software not provided by Klearcom or specified in any agreed documentation; (iii) Client's failure to use modifications to the Services provided by Klearcom to avoid infringement or misappropriation; or (iv) unauthorised use or misuse of the Services.
- 9.3 The rights granted to Client under Clause 10.1 shall be Client's sole and exclusive remedy and Klearcom's entire liability for any alleged or actual infringement of Intellectual Property Rights of any third party.
- 9.4 Client shall defend indemnify and hold harmless Klearcom, its Affiliates and each of its officers, employees agents and subcontractors from and against all claims, demands, damages, awards of damages, losses, costs, expenses and liabilities (including any regulatory fines and reasonable legal fees) that result or arise in connection with Client or its Authorised User's: (i) unauthorised use of the Services; (ii) infringement or violation of Klearcom's Intellectual Property Rights; (iii) breach of applicable law including violations of third party rights due to Client's use of the Services; or (iv) material breach of this Agreement including any warranties or representations.
- 9.5 The indemnities set forth in this Agreement are conditioned on the following: (i) the party claiming indemnification (the "Indemnitee") shall promptly notify the indemnifying party (the "Indemnitor") of any matters in respect of which it seeks to be indemnified, and shall give the Indemnitor full cooperation and opportunity to control the response thereto and the defense thereof, including without limitation any settlement thereof (provided that the Indemnitor will not enter into any settlement of such claim without the prior approval of the Indemnitee, which approval will not be unreasonably withheld); (ii) the Indemnitor shall have no obligation for any claim under this Agreement if the Indemnitee makes any admission, settlement or other communication regarding such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld; and (iii) the Indemnitee's failure to promptly give notice to the Indemnitor shall affect the Indemnitor's obligation to indemnify the Indemnitee only to the extent the Indemnitor's rights are materially prejudiced by such failure. The Indemnitee may participate, at its own expense, in such defense and in any settlement discussions directly or through counsel of its choice.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in this Agreement limits or excludes liability of either party in respect of any claims for death or personal injury caused by negligence, fraud or any other liability which cannot be excluded or limited by law.
- 10.2 To the maximum extent permitted by applicable law, neither party will have any liability to the other party for any loss of profits, loss of business, loss of revenue, loss of data, reputational damage, or for any indirect, special, incidental, punitive, or consequential damages however caused and under any theory of liability whether or not such party has been advised of the possibility of such.
- 10.3 Subject to clauses 10.1 and 10.2, to the maximum extent permitted by applicable law, Klearcom's and its Affiliates total aggregate liability arising out of or related to this Agreement or the Services under any theory of law (including liability for negligence or breach of statutory

duty or an indemnity claim) shall not exceed the total amount of the Fees paid by Client in the twelve months preceding the event giving rise to the claim.

11. TERM AND TERMINATION

- 11.1 This Agreement shall commence on the Effective Date and shall unless otherwise terminated as provided in this Clause 11 continue for the Initial Term. Thereafter, this Agreement shall automatically renew for Renewal Terms of the same period as the Initial Term each unless either party notifies the other party of termination, in writing, at least ninety (90) days before the end of the Initial Term or any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Term or otherwise terminated in accordance with the provisions of this Agreement. The Initial Term together with any subsequent Renewal Terms shall constitute the Term. If Klearcom wishes to modify pricing for the Services for such a Renewal Term it may do so in accordance with clause 4.
- 11.2 Klearcom may immediately terminate this Agreement by notice in writing to Client if Client fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment.
- 11.3 Klearcom may terminate this Agreement by notice in writing immediately if Klearcom determines acting reasonably that Client is using the services in violation of law or Client's use of the Service will expose Klearcom to criminal or regulatory sanctions and/or fines.
- 11.4 Either party shall be entitled, without prejudice to the rights and remedies otherwise available under this Agreement or by law to terminate the Agreement on written notice in the event of:
 - 11.3.1 a material breach of this Agreement by the other party which, if capable of remedy, is not remedied by the defaulting party within fifteen days of its receipt of written notice of the breach from the non-defaulting party;
 - 11.3.2 fraud or wilful default of the other party; or
 - 11.3.3 the other party becoming insolvent or unable to pay its debts when due (as defined by applicable law) or has a liquidator, receiver or manager appointed to it, or a winding-up order instituted against it.
- 11.5 On termination of this Agreement for any reason:
 - 11.4.1 all licences and rights of access granted under this Agreement shall immediately terminate;
 - 11.4.2 each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
 - 11.4.3 Upon receipt of a written request, Klearcom shall use reasonable commercial endeavours to deliver a back-up of Client Data to Client within 30 days of its receipt of such a written request, provided that Client has at that time paid all fees and charges outstanding at and resulting from termination. If Klearcom does not receive any such request within thirty (30) days of the date of termination, it may destroy or otherwise dispose of any of Client Data in its possession; and
 - 11.4.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of

the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

12. CONFIDENTIALITY

- 12.1 Each party (the “**Receiving Party**”) acknowledges that, in the course of this Agreement, it may obtain Confidential Information from the other Party, (the “**Disclosing Party**”). The Receiving Party shall keep in confidence and protect the Confidential Information of the Disclosing Party from unauthorised disclosure or dissemination and use no less than that degree of care it uses to protect its own like information, and in any event no less than reasonable care. The Receiving Party shall not use such Confidential Information except in furtherance of this Agreement.
- 12.2 The Receiving Party shall not disclose any Confidential Information to any person without the Disclosing Party’s prior written consent except that the Receiving Party may disclose the Confidential Information to its officers, employees, independent contractors and agents (“**Representatives**”) on a “need-to-know” basis, provided that such Representatives are bound by a written agreement with materially the same terms and conditions as this clause 12 and the Receiving Party remains ultimately liable for any breach thereof. In addition, either party may provide a copy of this Agreement or otherwise disclose its terms in connection with any audit, financing transaction, regulatory or due diligence inquiry provided the recipients are subject to obligations of confidentiality at least as restrictive as those contained herein. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information.
- 12.3 The obligations of confidentiality shall continue during the term of this Agreement and thereafter, unless and until such Confidential Information falls within one of the exceptions outlined in clause 12.4.
- 12.4 This clause 12 shall not apply with respect to information the Receiving Party can document: (a) is in the public domain as a result of no act or omission of the Receiving Party or its employees or agents; (b) is received by the Receiving Party from third parties without restriction and without breach of a duty of nondisclosure by such third party; (c) was independently developed by the Receiving Party without reliance on the Confidential Information; or (d) is required to be disclosed by operation of law or by order of a court or administrative body of competent jurisdiction (provided that, where permitted under law, prior to such disclosure, the Receiving Party shall first give notice to the Disclosing Party such that the Disclosing Party has the opportunity to contest such order or requirement of disclosure or seek appropriate protective order).
- 12.5 Any breach or threatened breach by the Receiving Party of an obligation under this Agreement may cause the Disclosing Party immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, the Disclosing Party has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the Receiving Party or to compel specific performance of this clause.
- 12.6 A Receiving Party must notify the Disclosing Party in writing, giving full details known to it immediately, when it becomes aware of any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information, or any actual,

suspected, likely or threatened theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.

13. FORCE MAJEURE

Neither party shall have any liability to the other party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemic, epidemic, provided that the party notified of such an event and its expected duration. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three (3) months, the party not affected may terminate this Agreement by giving one calendar month written notice to the other party. Force Majeure shall not prevent or delay the payment of any sum due or to be due by either Party.

14. MISCELLANEOUS

- 14.1 Waiver. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law, or a single or partial exercise of such right or remedy, shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.
- 14.2 Invalidity. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.3 Entire Agreement. This Agreement and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 14.4 Assignment. Either party may assign on written notice all of its rights and obligations under this Agreement to: (i) an Affiliate; (ii) a purchaser of all or substantially all assets related to this Agreement; or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which a party is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns.
- 14.5 Publicity. Neither party may publicly announce this Agreement except with the other party's prior consent or as required by applicable laws. However, Klearcom may include Client and its trademarks in Klearcom's Client lists and promotional materials but will cease this use at Client's written request.
- 14.6 No agency. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the parties, or authorize either party to act as agent for the other.

- 14.7 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 14.8 Notice. Any notice to be given by either party for the purposes of the Agreement shall be sent by mail/email to the contact party whose details are set out in the Order Form. A notice delivered (i) by hand shall be deemed to have been received when delivered or if delivery is not in Business Hours, at 9am on the first Business Day following delivery, (ii) by post if correctly addressed by prepaid registered delivery shall be deemed delivered two days from the date of posting and five days for pre-paid registered airmail, and (iii) by email shall be deemed to have been received at 9.00am on the next Business Day after transmission.
- 14.9 Survival. The following Clauses shall survive the termination or expiration of this Agreement: clause 3, 6, 7, 8, 9, 10, 11, 12, 13 and this clause 14.
- 14.10 Amendment. No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.
- 14.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.
- 14.12 Dispute Resolution. The parties shall do their best acting in good faith to settle amicably any dispute, controversy or claim arising out of or in connection with the existence, validity, construction, performance and termination of the Agreement (or any terms thereof). Escalation to the Senior Management of the parties shall be the preferred dispute resolution methodology. If Senior Management cannot resolve the dispute within 30 days of first notification of the dispute the matter shall be referred to the courts of Ireland in accordance with clause 14.13.
- 14.13** Governing Law and Jurisdiction. This Agreement and any disputes or claims arising out of or in connection with it are governed by and construed in accordance with the laws of the Republic of Ireland. The parties irrevocably agree that the courts of the Republic of Ireland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).