



XCM Marketplace Trading Terms

January 11, 2022

Please read these Trading Terms carefully. By clicking the “I Accept” button or similarly labelled acceptance button or checkbox on your computer screen with respect to these Trading Terms, at the time they are presented to you on your computer screen, you will be acknowledging that you have read and agree to be legally bound by these Trading Terms, under the mutual written assent of you and XCLAIM.

1. Definitions.

1.1. “Affiliate” means, as to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or under common control with the specified Person. As used herein, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise Voting Power, by contract or otherwise and “controlling” and “controlled” shall have meanings correlative thereto.

1.2. “Auctioneer” means any Person that is engaged in or advertises or otherwise holds itself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.

1.3. “Bankruptcy Case” means any proceeding commenced by or against any obligor, under any provision of the Bankruptcy Code or under any other federal or state bankruptcy or insolvency law, and all converted or succeeding cases in respect thereof.

1.4. “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. § 101, et seq.

1.5. “Bankruptcy Court” means any of the U.S. bankruptcy courts to which Bankruptcy Cases are referred under 28 U.S.C. § 157(a), or any other court of the United States before which a Bankruptcy Case is pending.

1.6. “Bid” means a Buyer’s Offer to purchase a Claim from a Creditor. A Bid includes a Purchase Price and a Purchase Agreement.

1.7. “Broker Dealer” means any Person that is in the business of buying and selling “securities” as defined by federal or state Law on behalf of its customers or its own account or both.

1.8. “Buyer” means any Person seeking to purchase or acquire a Claim or any portion or interest therein utilizing the Marketplace.

1.9. “Claim” means any right to payment against a Debtor, as more particularly defined in section 101(5) of the Bankruptcy Code, as may be listed on a Debtor’s schedules of liabilities filed with the Bankruptcy Court and/or in a Proof of Claim filed with the Bankruptcy Court in a Debtor’s Bankruptcy Case.

1.10. “Claim Face Amount” means the total dollar amount claimed that is set forth with respect to a Claim, whether or not such total dollar amount is disputed, contingent, or the subject of an unresolved objection. Where a Claim sets forth any combination of a stated amount and additional unstated, unliquidated or potential additional claim amounts, such additional unstated, unliquidated or potential additional claim amounts shall not be deemed to be part of the Claim Face Amount.

1.11. “Claim Support Information” means information and documents supporting a Creditor’s Claim including, but not limited to, documents that evidence and support liability of the Debtor on the Claim and the amount of the Claim, as may be reasonably required to be provided by a Seller to a Buyer as part of a Buyer’s diligence.

1.12. “Claim Trade” means a Primary Trade or a Secondary Trade.

1.13. “Commission” means the commission due to XCLAIM at Trade Closing, calculated based on the rates set forth in Section 8 of the Buyer’s Marketplace Access Agreement and allocated in the manner set forth in Section 6 hereof.

1.14. “Counter” means the simultaneous rejection of an existing Offer and submission of a new Offer.

1.15. “Creditor” means any Person holding a Claim, or any portion of or rights in a Claim and includes both an Initial Creditor and a Secondary Creditor.

1.16. “Debtor” means a debtor in a Bankruptcy Case, as determined by 11 U.S.C. § 109.

1.17. “Initial Creditor” means, with respect to a Claim, the holder of such Claim or any portion of or rights in such Claim, as of the Petition Date or the date the Claim first arose, if such date is after the Petition Date.

1.18. “Information Providers” means parties from whom XCLAIM retrieves or receives data and information, including data and information used to list Claims and related information on the Marketplace.

1.19. “Intellectual Property Rights” means all past, present and future rights of the following types, whether registered or unregistered, which may exist or be created under the Laws of any jurisdiction: (a) rights associated with works of authorship, including copyrights, design rights, and moral rights; (b) trademark, trade name, service name, trade dress and service mark rights, and similar means of identification and similar rights, including all goodwill associated with the foregoing; (c) trade secret rights and other rights in know-how and confidential or proprietary information (including any techniques, specifications, designs, processes, practical knowledge and skills, or other similar information); (d) United States and foreign patents, including utility models, industrial designs and design patents, and applications therefor (and any patents that issue as a result of those patent applications), and any renewals, reissues, reexaminations, extensions, continuations, continuations-in-part, divisions and substitutions relating to any of such patents and patent applications, and any counterparts worldwide claiming priority therefrom, and all rights in and to any of the foregoing; (e) rights in data, including technical data, user data, algorithm training data, feasibility study results, data from research and development, including user research, and data collections (including knowledge databases, user lists

and user databases); (f) all other rights to intellectual property or proprietary information; and (g) all past, present and future claims and causes of action arising out of or related to infringement or misappropriation of any of the foregoing.

1.20. “Laws” means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authority.

1.21. “Losses” means, in respect of any matter, all direct or indirect, as well as consequential: losses, damages, liabilities, deficiencies, claims, demands, actions, proceedings, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind (including, without limitation, reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers).

1.22. “Marketplace” means the XCLAIM Marketplace as described and summarized in Section 5 hereof.

1.23. “Marketplace Services” means any services offered at any given time on the Marketplace to any Users.

1.24. “Offer” means an offer from a Buyer or Creditor to be legally bound to a Claim Trade.

1.25. “Person” means any corporation, limited liability company, joint venture, association, division, company, partnership, other legal entity, or individual.

1.26. “Petition Date” means the date of commencement of a Debtor’s Bankruptcy Case.

1.27. “Policies” means the XCLAIM general website policies published on www.x-claim.com at any given time, including the Terms of Use and the Privacy Policy, as such policies may be amended, modified or supplemented from time to time.

1.28. “Primary Trade” means any transaction involving the sale, assignment, or transfer of any part of, or any rights with respect to, a Claim by the Initial Creditor to a Buyer.

1.29. “Privacy Policy” means the Privacy Policy published on www.x-claim.com at any given time, as such policy may be amended, modified or supplemented from time to time.

1.30. “Prohibited Use Policy” means the policy set forth in Section 8 hereof.

1.31. “Purchase Agreement” means a contract between a Buyer and a Seller to provide for the definitive terms of the parties’ agreement to consummate a Claim Trade.

1.32. “Purchase Price” means the cash value for a Claim Trade, as indicated by a Bid, Offer, or Counter, and as agreed to in a Trade Confirmation and a Purchase Agreement. “Secondary Creditor” means, with respect to a Claim, a Buyer that holds such claim, or any portion of or rights in such Claim, as the result of a Claim Trade.

1.33. “Secondary Seller” means the Seller, assignor, or transferor in a Secondary Trade.

1.34. “Secondary Trade” means any transaction involving the sale, assignment, or transfer of any part of, or any rights with respect to, a Claim by a Secondary Creditor to a Buyer.

1.35. “Seller” Means any Creditor who has entered into a Trade Confirmation with a Buyer, and includes a Secondary Seller except where noted otherwise in these Trading Terms.

1.36. “Settlement Payment” means payment of good funds to close upon a Claim Trade by paying in full all consideration due under the applicable Purchase Agreement.

1.37. “Terms of Use” means the Terms of Use policy published on www.x-claim.com at any given time, as may be amended, modified or supplemented from time to time.

1.38. “Trade Confirmation” means an agreement reached by a Creditor and a Buyer on the Marketplace as set forth in Section 6 hereof.

1.39. “Trade Closing” means the date and time at which a Buyer performs under a Purchase Agreement to pay the Purchase Price to the Seller.

1.40. “User” means any individual who accesses the Marketplace.

1.1. “Voting Power” shall mean, with respect to any Person, the exclusive ability to control, through the ownership of shares of capital stock, partnership interests, membership interests or otherwise, the election of members of the board of directors or other similar governing body of such Person. The holding of a designated percentage of Voting Power of a Person means the ownership of shares of capital stock, partnership interests, membership interests or other interests of such Person sufficient to control exclusively the election of that percentage of the members of the board of directors or similar governing body of such Person.

1.41. “XCLAIM” as used herein, unless otherwise specified, means XCLAIM INC.

1.42. “you” as used herein refers to the Person presented with these Trading Terms, which may be in a capacity as a User, Creditor or Buyer.

2. Mutual Assent to be Legally Bound by These Trading Terms.

2.1. Binding Agreement. These Trading Terms constitute a legally binding agreement between you and XCLAIM governing any access to the Marketplace, in order for you to carry out any of the permissible trading actions set forth in Section 6 hereof.

2.2. With respect to Creditors, these Trading Terms are presented for review, and required to be agreed upon by such Creditor, at the time a Creditor seeks to respond to a Bid on the Marketplace, or at such earlier time as may be mutually agreed upon between XCLAIM and a Creditor.

3. Express Consent to E-Signing and E-Contracts on the Marketplace.

3.1. These Trading Terms are an electronic contract that set out the legally binding terms of your use of the Marketplace and the Marketplace Services. By clicking on the “I Accept” button in connection with your enrollment as a User, (i) you are affirmatively indicating your acceptance of these Trading Terms and consent to be bound by all of the terms and conditions contained or referenced in these Trading Terms, and (ii) you are also affirmatively 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 on or through the Marketplace. You further acknowledge and agree that under and pursuant to the federal Electronic Signatures in Global and National Commerce Act (ESIGN) enacted in 2000, as well as under the Uniform Electronic Transactions Act (UETA) or similar e-signature laws enacted in all or substantially all states, e-contracts and e-signatures are valid, legally binding upon, and enforceable against you to the same extent as traditional ink-on-paper signatures.

4. Term.

4.1. These Trading Terms, as may be amended from time to time, remain in effect without expiration or stated term, subject to being terminated or suspended in XCLAIM’s sole discretion.

5. The Marketplace.

5.1. The XCLAIM Marketplace is an online trading platform that provides Users with Marketplace Services, including but not limited to services that enable Users to:

- (a) access information about a Bankruptcy Case;
- (b) access information about a Claim;
- (c) submit and receive a Bid for a Claim;
- (d) accept, reject or Counter a Bid for a Claim; and
- (e) enter into a Trade Confirmation and Purchase Agreement with respect to a Claim (or Claims) with, in the case of Creditors, Buyers and, in the case of Buyers, Creditors and other Buyers.

5.2. Your Relationship with XCLAIM and the Marketplace.

- (a) XCLAIM is not and does not through its operation of the Marketplace become a party to any contract between a Buyer and Creditor.
- (b) XCLAIM is not a Broker Dealer or Auctioneer, and the Marketplace does not facilitate transactions in “securities” as defined by federal or state Law.

(c) Neither your agreement to these Trading Terms nor your use of the Marketplace create or give rise to any joint venture, partnership, employment, agency relationship or any other relationship not specifically set forth in these Trading Terms.

5.3. You are solely responsible to comply with all Laws that may apply to your use of the Marketplace.

5.4. Neither XCLAIM nor the Marketplace makes any warranty, representation, or assurances that any or all Marketplace Services will be available or operative at any given time. XCLAIM reserves all rights to eliminate, suspend or modify the Marketplace Services at any time and without notice.

5.5. Marketplace-Related Messaging.

(a) XCLAIM maintains all communications between Users transmitted via the Marketplace as private and confidential between such Users. You agree to take all reasonable measures to ensure that your communications related to the Marketplace Services remain private and confidential and in compliance with these Trading Terms, and acknowledge that all communications between or on behalf of Users transmitted with the purpose of or intention to circumvent the Marketplace Services are strictly prohibited, in each case irrespective of whether such communications are transmitted via the Marketplace or via any other means, including but not limited to text message, email, phone, social media and other means of communication.

(b) By using the Marketplace, you consent to any form of recording and retention of any communications, information and data exchanged between you and XCLAIM or its representatives or agents.

(c) Hateful, offensive, harassing, violently threatening, racist, obscene, profane, illegal or vulgar language, content or behavior is not tolerated on the Marketplace and will result in suspension or termination of your Marketplace access, in the sole discretion of XCLAIM.

6. Marketplace Trading Actions, Rules and Requirements.

6.1. General Trading and Bidding Rules.

(a) All Claims listed on the Marketplace are potentially available to be sold and purchased through the Marketplace. Users who seek to engage in Claims Trades are required to abide by these Trading Terms.

(b) Your decision to engage in any Claim Trade shall be based solely on your own investigation and that of your legal, tax and other advisors. You accept sole responsibility for examining and investigating a potential Claim Trade. This includes all facts or information which may affect your decision to enter into and consummate a Claim Trade, including but not limited to the Purchase Price. You also understand and acknowledge that the Marketplace only displays information on Claims provided directly by XCLAIM's Information Providers.

(c) Withdrawal Rights as to any Offers. Any Offer may be withdrawn at any time through the Marketplace prior to acceptance and entry into a Trade Confirmation.

6.2. Initial Bids. Any Buyer may Offer to purchase a Claim listed on the Marketplace, by submitting a Bid to the Creditor through the Marketplace.

(a) All Bids must be placed using the Marketplace and will set forth a Purchase Price and provide a proposed form of Purchase Agreement.

(b) Buyer Diligence Condition. All Bids made on the Marketplace are subject to the Buyer's right to conduct diligence to its reasonable satisfaction.

6.3. Creditor Responses to a Bid.

(a) A Creditor may accept, reject, or Counter a Bid.

(b) Acceptance of Bid. If a Creditor accepts a Bid, such Creditor agrees that it is entering into a Trade Confirmation as set forth more fully in Section 6.6 hereof.

(c) Rejection of Bid. If a Creditor rejects a Bid, no Offer remains as between the Creditor and Buyer.

(d) Counter to Bid. If a Creditor submits a Counter, it represents a rejection of the pending Bid and a new Offer to the Buyer.

6.4. Buyer Responses to a Counter. If a Creditor has submitted a Counter, the Buyer may accept, reject, or Counter.

(a) Acceptance of Counter. If a Buyer accepts a Counter, such Buyer agrees that it is entering into a Trade Confirmation as set forth more fully in Section 6.6 hereof.

(b) Rejection of Counter. If a Buyer rejects a Counter, no Offer remains as between the Creditor and Buyer.

(c) Further Counter. A Buyer may submit a Counter to the Creditor.

6.5. Subsequent Counters. Until such time a Counter is accepted, rejected, or withdrawn, Buyer and Creditor may continue to submit Counters.

6.6. Acceptance and Trade Confirmation. You acknowledge that Trade Confirmations are essential to the proper functioning of the Marketplace. Acceptance on the Marketplace of a pending Bid, Offer or Counter, by clicking on the "Accept" or similarly labelled button or checkbox, is an acknowledgement by you that you have read and agree to be legally bound to the following terms:

(a) the Purchase Price;

(b) the right of the Buyer to conduct diligence on the Claim and to obtain Claim Support Information to assist such diligence; and

(c) the obligation of Buyer and Seller to engage in a good faith effort to enter into a Purchase Agreement.

Parties to a Trade Confirmation are prohibited from asserting, and agree not to assert, that they did not fully understand that a Trade Confirmation is a binding agreement as described herein.

6.7. Effect of a Trade Confirmation. No other Bids may be submitted on such Claim on the Marketplace, pending the Trade Closing, or termination of the Trade Confirmation prior to Trade Closing.

6.8. Purchase Agreements.

(a) Each party to a Trade Confirmation is required to negotiate and seek to enter into a Purchase Agreement. XCLAIM is not a party to any Purchase Agreement between the Buyer or Seller, nor is XCLAIM responsible in any way for compliance by each Buyer or Seller with a Purchase Agreement or otherwise any act or omission of a Buyer or Seller.

(b) A Buyer shall determine the form of Purchase Agreement to be submitted as part of its Bid. XCLAIM has made available to Buyers several standardized template documents that may be used as a Purchase Agreement. A Buyer may alternatively utilize any other form of document as their preferred Purchase Agreement, provided that the form of document is delivered to XCLAIM in Microsoft Word format no later than one (1) business day prior to being used in any Bid. In the event a Buyer elects to use a form of Purchase Agreement provided by XCLAIM, you agree that for purposes of the rules of construction in interpreting said Purchase Agreement, the Buyer shall be deemed the drafter of the Purchase Agreement. You further agree that XCLAIM has not in any way provided legal or financial advice in relation to any such Purchase Agreement form, or made representations or warranties that any such form is suitable for your requirements or needs. XCLAIM recommends that both the Seller and Buyer seek their own independent legal advice in relation to any Claim Trade.

6.9. Creditor Payment Information and Creditor Review.

(a) Payment Information. To assist a Buyer and Seller with satisfying their obligations under a Purchase Agreement, XCLAIM may request that the Seller provide information on the Seller's bank account to which the Buyer will direct payment. Other than obtaining such information and relaying it to the Buyer, XCLAIM does not facilitate or oversee payments made by Buyer to Seller. XCLAIM is not a payment provider, payment processor, money transmitter, money service business or escrow service, and does not hold property on behalf of any Person.

(b) Identity Verification. To the extent reasonably requested by XCLAIM with respect to a Purchase Agreement, you agree to provide XCLAIM, or to any third-party provider of services to XCLAIM, with information about the Seller, such as company information, federal tax ID number, physical address and telephone number. XCLAIM may also request further identifying documents from Sellers to assist a Buyer in delivering the Purchase Price to a Seller, including information and documents needed for KYC ("Know Your Customer") purposes.

6.10. Trade Closing and Settlement Payments. At Trade Closing, the following payments are required:

- (a) Buyer shall pay, and Seller shall receive, the Purchase Price and any other Settlement Payments specified under the Purchase Agreement;
- (b) the Commission shall be paid to XCLAIM (i) for a Primary Trade, entirely by the Buyer, and (ii) for a Secondary Trade, 50% by the Buyer and 50% by the Secondary Seller; and
- (c) any other costs or fees imposed by the Bankruptcy Court with respect to the Claim Trade shall be paid to XCLAIM.

7. Confidentiality of All Pricing Information.

7.1. All pricing information contained in any Offer and/or any related communications between or among any Users is highly confidential. At no time, absent prior consent (written or electronic), shall XCLAIM publicly disclose the pricing contained in a Buyer's Offer on the Marketplace or otherwise.

8. Prohibited Use Policy and Prohibited Activities.

8.1. Exclusivity of the Marketplace. Use of the Marketplace to submit an Offer for a Claim, or to communicate with any other User related to such Claim, followed by an off-Marketplace Claim Trade for such Claim, is strictly prohibited, and may subject the User(s) taking such action, and their relevant trading entity or entities, to immediate suspension or termination of access to the Marketplace.

8.2. Other Prohibited Activities. In connection with your use of the Marketplace, you will not and will not assist or enable others to:

- (a) breach any applicable Laws or agreements with third-parties, third-party rights, these Trading Terms or our Policies;
- (b) use the Marketplace for any commercial or other purpose that is not expressly permitted by these Trading Terms or in a manner that falsely implies XCLAIM endorsement, partnership or otherwise misleads others as to an affiliation with XCLAIM;
- (c) copy, store or otherwise access or use any information, including personally identifiable information about any User, Buyer or Creditor that is inconsistent with the Privacy Policy or these Trading Terms, or that otherwise violates the privacy rights of any User, Buyer, Creditor, or third parties;
- (d) contact any User for the purpose of soliciting such party to use a competing service, application or marketplace, without XCLAIM's prior written approval;
- (e) use the Marketplace in a fraudulent or illegal manner, or engage in any communications within the Marketplace which are offensive, unlawful, harassing, libelous, defamatory, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable;
- (f) copy, reproduce, mirror, scrape, or frame the Marketplace, or any individual element within the Marketplace, XCLAIM's name, any XCLAIM trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page in the Marketplace;

- (g) dilute, tarnish or otherwise harm the XCLAIM brand in any way;
- (h) use the Marketplace in such a way which damages the Marketplace or denies access to the Marketplace to other Users; or
- (i) intentionally or recklessly use the Marketplace in a way that degrades the performance of the Marketplace for other users.

9. Suspension or Termination of Marketplace Access.

9.1. Without limiting other remedies available to XCLAIM, in equity or under these Trading Terms, XCLAIM may, without notice to you and in our sole discretion (which shall be exercised reasonably and in regard to the circumstances), suspend or terminate your access to the Marketplace if:

- (a) you have, or if XCLAIM believes that you have, violated these Trading Terms or the Policies;
- (b) XCLAIM has been unable to verify or authenticate information provided by you;
- (c) we believe your actions may cause loss or damage to or otherwise unlawfully harm Marketplace Users; or
- (d) you have otherwise violated the Prohibited Use Policy.

10. Intellectual Property.

10.1. You acknowledge that XCLAIM is the owner of all Intellectual Property Rights which subsist in the Marketplace (but not your Claims). You acknowledge that you have no Intellectual Property Rights in any of your information collected by XCLAIM or in the Marketplace.

11. Third Party Links.

11.1. The Marketplace may contain links to third-party websites or resources that XCLAIM does not own or control (for example, links to news and information sources relevant to Bankruptcy Cases). Third party websites or resources may require you to accept their own terms of use and privacy policies. XCLAIM is not a party to those agreements, and they are solely between you and any such third party.

12. Disclaimers.

12.1. XCLAIM has no control over and does not guarantee:

- (a) the validity, quality, suitability or legality of Claims;
- (b) the future performance of a Claim;
- (c) the performance or conduct of any Buyer or Seller; and

(d) the quality, suitability or ability of a third party which provides goods or services to XCLAIM or to Buyers and Sellers via the Marketplace.

12.2. The Marketplace is provided “as is” and “as available.” XCLAIM disclaims all representations and warranties, express, implied, or statutory, not expressly set out in these Trading Terms, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. In addition, XCLAIM makes no representation, warranty or guarantee regarding the reliability, timeliness, quality, suitability, or availability of the Marketplace or any services or goods bought or sold using the Marketplace, or that the Marketplace will be uninterrupted and error-free.

12.3. Assumption of Risk by Users. While the Marketplace has in place policies and procedures intended to ensure the integrity of the Marketplace, you agree that the entire risk arising out of your use of the Marketplace, and any service or good requested in connection therewith, remains solely with you, to the maximum extent permitted under applicable Law. XCLAIM shall have no responsibility or risk for any criminal, fraudulent or other unlawful or improper activity with respect to the Marketplace (“Unlawful Activity”). As a User, you assume all risks of any Unlawful Activity and any Losses caused by Unlawful Activity.

13. Force Majeure.

13.1. You agree that XCLAIM will not be liable or responsible for any failure in, or delay to, the provision of Marketplace Services, where such failure or delay has arisen or is anticipated to arise as a direct or indirect result of:

- (a) fire, earthquake, storm, flood, hurricane, inclement weather or other act of God, war, terrorism, explosion, sabotage, pandemic, industrial accident or an industrial strike;
- (b) denial of service attacks, telecommunications failure, hardware failure or the failure of software provided by a third party to function in accordance with its specifications;
- (c) a significant demand is placed on the Marketplace’s resources which is above the usual level of demand and which results in a failure of the Marketplace to function;
- (d) the failure of any third party (including, without limitation, any hosting service) to perform any obligations to XCLAIM; or
- (e) any other circumstances or events which are beyond the reasonable control of XCLAIM.

14. Limitation of Liability.

14.1. XCLAIM shall not be liable for indirect, incidental, special, exemplary, punitive or consequential damages, including lost profits, lost data, personal injury or property damage related to, in connection with, or otherwise resulting from any use of the Marketplace, or any other services provided under these Trading Terms, regardless of any breach or default by, or any negligence (either active, affirmative, sole or concurrent) of XCLAIM.

14.2. You acknowledge and agree that XCLAIM will not be liable or responsible for any breach by a User of any Intellectual Property Rights or other rights held by a third party related to a Claim or Claim Trade.

14.3. XCLAIM shall not be liable for any Losses arising out of:

- (a) your use of, or your inability to access, the Marketplace or any Marketplace Services; or
- (b) any transaction or relationship between you and a Buyer or Seller.

14.4. As to Creditors who are individuals, the limitations and disclaimers above do not purport to limit liability or alter your rights as a consumer that cannot be excluded under applicable Laws. Because some states or jurisdictions do not allow the exclusion of, or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, XCLAIM's liability shall be limited to the extent permitted by applicable Laws. This provision shall have no effect on XCLAIM's choice of law provisions below.

15. Indemnity.

15.1. You agree to indemnify and hold XCLAIM, its Affiliates, and their officers, directors, employees and agents harmless from any and all Losses (including legal fees) arising out of or in connection with:

- (a) your use of, or your inability to access, the Marketplace or any Marketplace Services;
- (b) your breach or violation of any of these Trading Terms;
- (c) XCLAIM's use of your Claim Support Information;
- (d) any misrepresentations made by you;
- (e) any disputes or claims between you and another User or any affected party in respect of a Claims Trade between you and such User; and
- (f) your violation of the rights of any third party, including any User.

16. Dispute Resolution.

16.1. Complaint Process. If you have a dispute with XCLAIM, you agree to first contact XCLAIM through our support team to attempt to resolve any such dispute amicably. If we cannot resolve the dispute through the XCLAIM support team, you and we agree to follow the process set forth in subsection 16.2 below.

16.2. Binding Arbitration. Any dispute, claim or controversy arising out of or relating to any party's Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of these Trading Terms to arbitrate, shall be determined exclusively by 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.

17. Privacy.

17.1. Our collection and use of personal information (“Personal Information”) in connection with your access to and use of the Marketplace as a public website is described in the Privacy Policy. Additional privacy-related provisions related to Marketplace trading activity are set forth in this Section 17.

17.2. To the extent that a Buyer requires information on a Seller’s bank account to process Settlement Payments to be made by the Buyer, or other Personal Information from a Seller, XCLAIM may request such information on behalf of Buyer pursuant to Section 6.9 hereof, or Buyer may request such information directly from Seller. Each Buyer agrees that it will only use such Personal Information to comply with its payment obligations under the applicable Purchase Agreement. Unless separately agreed between Buyer and Seller, Buyer is strictly prohibited from using any such Personal Information for any other purpose.

17.3. Each Buyer warrants to XCLAIM that it will comply with all privacy laws and data protection laws in relation to the storage, use and transfer of any Personal Information obtained from a Seller, or provided by XCLAIM with respect to a Seller.

17.4. Personal Information in Claim Support Information. Unless otherwise agreed between a Creditor and Buyer, a Creditor’s Claim Support Information shall not contain medical records, complete social security numbers or tax identification numbers (only provide the last four digits), a complete birth date (only provide the year), the name of a minor (only provide the minor’s initials) or a financial account number (only provide the last four digits of such financial account). Creditors must take particular care with respect to any Personal Information, as Claim Support Information may be available and accessible to other parties. Creditors who provide such personal information in Claim Support Information expressly acknowledge and agree that such information may be accessible by parties with access to the Marketplace.

17.5. The information Creditors provide as Claim Support Information will be retained by XCLAIM for as long as necessary for the purposes described above, as needed to resolve disputes or protect legal rights as they relate to such Claim, or as otherwise required by Law. Such information may be shared with certain third parties in furtherance of the functions of the Marketplace and the Marketplace Services.

18. Notices.

18.1. XCLAIM may give notice by means of a general notice on the Marketplace, electronic mail to your email address provided to XCLAIM by you or by any Information Provider, or by written communication sent by mail. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by mail) or upon receipt if sent by email.

18.2. You may give notice to XCLAIM, with such notice deemed given when received by XCLAIM, by (a) email to notices@x-claim.com and (b) by mail to our registered agent for service of process.

19. General.

19.1. **Assignability.** XCLAIM may assign its rights and novate or transfer obligations which arise under these Trading Terms. No Users may assign, novate or otherwise transfer their rights or obligations under these Trading Terms, absent prior written consent from XCLAIM.

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

19.3. **Governing Law.** These Trading Terms shall be governed by New York Law, excluding choice-of-law rules. It is agreed that any proceeding arising out of or based upon these Trading Terms shall be submitted to binding arbitration pursuant to Section 16.1 hereof. EACH PARTY HERETO IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THESE TRADING TERMS OR THE PERFORMANCE OF ANY OBLIGATIONS HEREUNDER.

19.4. **Headings; Construction.** The headings to the clauses, sub-clauses and parts of these Trading Terms are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of these Trading Terms. The terms “these Trading Terms,” “hereof,” “hereunder” and any similar expressions refer to these Trading Terms and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction under which ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of these Trading Terms. As used in these Trading Terms, the words “include” and “including,” and variations thereof, will be deemed to be followed by the words “without limitation.”

19.5. **No Waiver.** A provision of or a right created under these Trading Terms may not be waived except in writing signed by both parties. No single or partial exercise by any party of any right, power or remedy under these Trading Terms will preclude any other or further exercise of that or any other right, power or remedy. The rights, powers or remedies provided in these Trading Terms are cumulative with and not exclusive of any rights, powers or remedies provided independently of these Trading Terms.

19.6. **Severability.** If any provision of these Trading Terms is adjudicated to be invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of these Trading Terms to the intent that the invalid or unenforceable provision will be treated as severed from these Trading Terms.

19.7. **XCLAIM Right to Modify.** XCLAIM reserves the right to modify these Trading Terms at any time. If we make changes to these Trading Terms, we will update the Trading Terms to reflect such changes in each location that the Trading Terms are posted on the Marketplace and update

the “Last Updated” date at the top of the page. If you disagree with the revised Trading Terms, you may cease your use of the Marketplace and by doing so you will no longer be bound by these Trading Terms. If you access the Marketplace at any time after the date the revised Trading Terms become effective, your continued access to or use of the Marketplace will constitute your express agreement to accept and be legally bound by the revised Trading Terms.