

Please read these Trading Terms carefully. By clicking on the “I Accept” button in connection with your enrollment as a User (defined below) you are affirmatively consenting to enter into and be legally bound by these by these Trading Terms, which govern your access to Xclaim’s online marketplace platform (“XCM”) and all trading activity contemplated herein. These Trading Terms may be amended from time to time and shall remain in effect unless terminated or suspended in Xclaim’s sole discretion.

## **1. Definitions**

1.1. “Acceptance” means a firm commitment to consummate a Trade on the terms of an Offer, whether such Offer is presented in the form of a Bid or Counter.

1.2. “Affiliate” or “Affiliates” means, with respect to any entity, any of its affiliates or associates, including parent entities, subsidiaries, and other entities in which it owns a substantial or controlling interest.

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 Seller at a specified Bid Price and Bid Terms.

1.7. “Bid Message” means an optional message from the Buyer to a Seller included with a Bid when submitted via XCM or by email to Xclaim that modifies the Bid Terms.

1.8. “Bid Price” means, with respect to a Bid, the price for which Buyer proposes to purchase the Seller’s Claim.

1.9. “Bid Terms” means, with respect to a Bid, the terms on which a Buyer proposes to purchase Seller’s Claim, which shall include the form of Purchase Agreement and any material modifications thereto as may be identified in Buyer’s Bid Message.

1.10. “Brokerage Agreement” means an agreement between Xclaim and a Seller for Xclaim to serve as Seller’s exclusive agent to market Seller’s Claim(s) for sale for a specified period of time and for a specified price.

1.11. “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.

1.12. “Buyer” means any Person seeking to purchase or acquire a Claim or any portion or interest therein utilizing XCM.

1.13. “Claim” means any claim against or right to payment from a Debtor, as more particularly defined in section 101(5) of the Bankruptcy Code, including without limitation, as such claim or right 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.

1.14. “Claim Amount” means, with respect to any Claim, the total monetary amount asserted (in U.S. Dollars), whether or not such Claim is disputed, contingent, allowed, the subject of an unresolved objection or otherwise impaired. Any unstated, unliquidated or potential additional claim amounts shall not be deemed to be part of the Claim Amount unless otherwise specified in a Claim Listing.

1.15. “Claim holder” means any Person holding a Claim, or any portion of or rights in a Claim, including any Buyer, following the Buyer’s purchase of a Claim via XCM or otherwise.

1.16. “Claim Listing” means the unique listing of a Claim on XCM, including the Claim Amount and other information that identifies and describes the Claim,.

1.17. “Claim Listing Agreement” means an agreement between Xclaim and a Seller to list Seller’s Claim(s) for sale on XCM for specified period of time and for a specified price.

1.18. “Claim Support Information” means information and documents evidencing a Seller’s ownership of a Claim and supporting a Seller’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.

1.19. “Closing” means the date and time at which a Buyer performs under a Purchase Agreement to pay the Purchase Price to the Seller, provided that if the Purchase Price is paid over multiple installments, “Closing” shall be defined as of the first of

any such dates.

1.20. “Commission” means the commission due to Xclaim from Buyer no later than one (1) business day after the date that the Purchase Price (or the first installment of the Purchase Price, if applicable) is due under the Purchase Agreement, which Commission shall be calculated based on the terms of Buyer’s Investor Access Agreement, provided that Xclaim reserves the right to apply an alternative commission structure with respect to any Trade by specifying the terms of such alternative commission structure in the relevant Claim Listing(s) prior to Seller’s Acceptance of Buyer’s Bid or Buyer’s Acceptance of Seller’s Counter, as applicable.

1.21. “Confirmed Trade” means a binding agreement between a Seller and a Buyer to work in good faith to complete a Trade, which agreement shall be subject to the diligence of the Claims and Seller to Buyer’s reasonable satisfaction, the parties’ entry into a Purchase Agreement, and the satisfaction of any other closing conditions agreed to by Seller and Buyer.

1.22. “Counter” means, with respect to a Bid, a Rejection of such Bid and an alternative Offer to the issuer of the rejected Bid.

1.23. “Counter Message” means an optional message from a Seller to a Buyer included with a Counter when submitted via XCM or by email that modifies the Counter Terms.

1.24. “Counter Price” means, with respect to a Counter, the price for which Seller proposes to sell a Claim to a Buyer from which it received a Bid with respect to such Claim.

1.25. “Counter Terms” means, with respect to a Counter, the terms on which a Seller proposes to sell its Claim to a Buyer from which it received a Bid with respect to such Claim, which shall include the form of Purchase Agreement and any material modifications thereto as may be identified in Seller’s Counter Message.

1.26. “Court Fees” means, with respect to any Trade, all costs or fees imposed by the Bankruptcy Court.

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

1.28. “Governmental Authority” is to be broadly interpreted and includes (a) any national, federal, state, local, regional or foreign government, or level, branch, or subdivision thereof; (b) any multinational or public international organization or authority; (c) any ministry, department, bureau, division, authority, agency, commission, or body entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power; (d) any court, tribunal, or governmental arbitrator or arbitral body; (e) any government-owned or controlled institution or entity; (f) any enterprise or instrumentality performing a governmental function; and (g) any political party.

1.29. “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.

1.30. “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).

1.31. “Marketplace Services” means any services offered to any Users via XCM.

1.32. “Offer” means a conditional proposal to buy or sell a Claim made by a Buyer or Seller, which becomes legally binding if accepted by the recipient.

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

1.34. “Policies” means Xclaim’s general website policies published at [www.x-claim.com/policies](http://www.x-claim.com/policies) at any given time.

1.35. “Prohibited Use Policy” means the provisions of Section 6 of these Trading Terms.

1.36. “Purchase Agreement” means a contract between a Buyer and Seller that provides for the definitive terms of the parties’ agreement to consummate a Trade.

1.37. “Purchase Price” means the amount to be paid by the Buyer to the Seller for a Trade, denominated in United States Dollars or such other currency or coin as may be agreed by the Buyer and Seller in respect of such Trade, as consideration for the purchase and sale of the Claims that are the subject of such Claims Trade. The Purchase Price shall be calculated by multiplying the Purchase Rate by the Claim Amount.

- 1.38. “Purchase Rate” means the percentage of the Claim Amount to be paid by the Buyer in connection with a Trade.
- 1.39. “Rejection,” with respect to a Bid or Counter, means the communicated decision of the recipient of such Bid or Counter to reject such Bid or Counter and stop engaging with the issuer of such Bid or Counter.
- 1.40. “Seller,” with respect to any Claim, means a Claim holder that has listed such Claim for sale on XCM or engaged Xclaim to provide Marketplace Services with respect to such Claim.
- 1.41. “Trade” or “Trades” means any transaction or transactions involving the sale, assignment, participation or other transfer of any part of, or any rights with respect to a Claim by a Seller to a Buyer.
- 1.42. “Trade Confirmation” means a binding agreement between a Buyer and Seller to work in good faith to consummate a Trade at the price and on the terms specified in the most recent Offer delivered by Buyer or Seller, as applicable.
- 1.43. “Trade Price” means, with respect to a Trade, the price for which the Buyer has agreed to purchase the Seller’s Claim.
- 1.44. “Trade Terms” means, with respect to a Trade, the Purchase Agreement and any exhibits, annexes, attachments and side letters thereto.
- 1.45. “User” means any individual who accesses XCM.
- 1.46. “Wallet Address” means a unique string of alphanumeric characters used to identify a cryptocurrency wallet.
- 1.47. “Xclaim” means Xclaim Inc.
- 1.48. “Xclaim Entities” means Xclaim together with its Affiliates, officers, directors, employees, agents, partners, members and controlling entities, each such entity, an “Xclaim Entity”.
- 1.49. “Xclaim Standard Terms and Conditions” means the default terms applicable to all Xclaim Trades unless otherwise specified in a Claim Listing, Bid Message or Counter Message.
- 1.50. “Xclaim Form Transfer Agreement” means the default form of Purchase Agreement applicable to all XCM trades unless otherwise specified in a Claim Listing, Bid Message or Counter.
- 1.51. “you” as used herein refers to the Person presented with these Trading Terms, which may be in a capacity as a User, Seller or Buyer.

## **2. XCM Claim Listings**

- 2.1. Claim Registration. Claim holders may offer Claims for sale via a Claim Listing on XCM by providing details about their Claims and uploading Claim Support Information using Xclaim’s online registration form or by engaging Xclaim to run a sales process pursuant to a Claim Listing Agreement or Brokerage Agreement.
  - a. Each Claim Listing is assigned a unique identifier by Xclaim (an “Xclaim ID”) that consists of the prefix “xcm\_” and a string of numbers.
  - b. In each case, once a Claim holder has provided sufficient Claim Support Information with respect to a Claim, as determined in Xclaim’s sole discretion, the Claim Listing may be published to XCM.
  - c. As described in more detail in Section 4.1, a Seller’s identifying information is generally redacted in all Claim Listings.
- 2.2. Claim Pricing. Seller may specify desired transaction pricing at any time by contacting Xclaim Trade Support at [tradesupport@x-claim.com](mailto:tradesupport@x-claim.com).
- 2.3. Claim Status.
  - a. Claims on XCM that are eligible to receive bids are designated as either:
    - (i) “Active Listing” if accepting bids on a rolling basis; or
    - (ii) “Active Auction” if accepting bids pursuant to a sale process
  - b. Claims on XCM that are ineligible to receive bids are designated as either:
    - (i) “Under Review” if Seller is still completing their Claim Listing and/or Xclaim is collecting Claim Support Information from Seller;
    - (ii) “Pending Auction” if the Claim Listing and Claim Support Information is available for Buyer

due diligence in advance of a Claim Auction; or

- (iii) “In Contract”, if the Seller has either accepted an Offer, entered into a Trade Confirmation or executed a Purchase Agreement.

- c. Claims offered on XCM on an exclusive basis pursuant to a Brokerage Agreement or Claim Listing Agreement are designated as “Exclusive”.

#### 2.4. Featured and Recommended Claims.

- a. Xclaim may designate certain Claims as “Featured” based on various factors including but not limited to (a) the extent of Claim Support Information available to support the Claim; (b) Seller’s timeline and urgency to transact, (c) whether the Claim is designated as “Exclusive” and (d) the Claim Amount.
- b. Xclaim may recommend certain Claims to a Buyer based on the Buyer’s transaction history, past XCM activity and Seller requirements.

### 3. **Bidding, Negotiation and Trading**

3.1. Bid Submission. Any Buyer may submit a Bid with respect to a Claim listed on XCM by (a) clicking the “Place Bid” button on the relevant Claim Listing or (b) emailing [tradesupport@x-claim.com](mailto:tradesupport@x-claim.com) with reference to the Xclaim ID in the subject field and specifying the Bid Price, Bid Terms and any modifications thereto.

- a. By clicking on the “Place Bid” button on any Claim Listing, Buyer represents, agrees and acknowledges, with respect to the Claim described in such Claim Listing, that
  - (i) Buyer will purchase the Claim at the Bid Price and on the Bid Terms, subject to (x) Buyer’s completion of due diligence on the Claim and the Seller to Buyer’s satisfaction, which shall be determined in Buyer’s sole discretion, and (y) negotiation of a Purchase Agreement consistent with the Bid Terms, which, unless otherwise specified by Buyer in the Bid Message submitted with Buyer’s Bid, shall be substantially in the form of the Xclaim Form Transfer Agreement and Xclaim Standard Terms and Conditions;
  - (ii) Buyer has and will have sufficient funds to purchase the Claim at Closing; and
  - (iii) Buyer will engage in good faith negotiations with the Seller upon receipt of an Acceptance or any Counter from Seller.
- b. Buyer acknowledges that with respect of any Bids submitted by email, Xclaim makes no guarantee that any Bid submitted by email will be delivered to the Seller on a timely basis or, in any event, prior to the Seller receiving an executable Bid via XCM from another User. Xclaim retains time-stamped records of all Bids received, but Buyer agrees and acknowledges that Buyer shall not rely on such records in the event of any dispute regarding the timing of Acceptance of any Bid.
- c. A Bid may be withdrawn or modified (which modification shall be the equivalent of a simultaneous withdrawal of Buyer’s initial Bid and the submission of a new Bid) at any time prior to Acceptance.
- d. A Bid shall have no expiration date unless specified in a Bid Message.

#### 3.2. Negotiation.

- a. Upon receipt of a Bid, Seller may submit an Acceptance, Rejection or Counter to the Buyer.
- b. Any Seller responses, questions or clarifications with respect to any Bid, Acceptance, Rejection or Counter shall be communicated by email to [tradesupport@x-claim.com](mailto:tradesupport@x-claim.com).
- c. Buyer and Seller may continue to negotiate and submit Bids and Counters until an agreement is reached and the parties are prepared to enter into a Trade Confirmation or Purchase Agreement.

#### 3.3. Acceptance.

- a. By Seller. Seller’s Acceptance of a Bid shall be deemed to create a Trade Confirmation with Buyer as of the date of Acceptance (i) at the Bid Price and (ii) on the Bid Terms, as may be modified by the Bid Message, which Trade Confirmation shall automatically expire if Seller and Buyer fail to affirm the Trade Confirmation in writing or enter into a Purchase Agreement within three (3) business days following the date of Acceptance.
  - (i) Seller’s Acceptance of a pending Bid may be recorded by Seller clicking on the “Accept” or

similarly labelled button or checkbox when presented to Seller in connection with a Claim or by Seller's clear expression of intent to accept a Bid by other written communication.

- (ii) Seller's Acceptance shall constitute Seller's acknowledgement that Seller has reviewed, understands, and agrees to the Bid Price, the Bid Terms, the obligations of Seller and Buyer to work in good faith to satisfy Buyer's reasonable diligence requirements and execute a Purchase Agreement consistent with the Bid Price and Bid Terms.
  - (iii) If Seller issues an Acceptance in error, Seller must promptly notify [tradesupport@x-claim.com](mailto:tradesupport@x-claim.com) to retract the Acceptance.
- b. By Buyer. Buyer's Acceptance of a Counter shall be deemed to create a Trade Confirmation with Seller as of the date of Acceptance (i) at the Counter Price and (ii) on the Counter Terms, as may be modified by the Counter Message or Counter Email, which Trade Confirmation shall automatically expire if Seller and Buyer fail to affirm the Trade Confirmation in writing or enter into a Purchase Agreement within three (3) business days following the date of Acceptance.
- (i) Buyer's Acceptance of a pending Counter may be recorded by Buyer clicking on the "Accept" or similarly labelled button or checkbox when presented to Buyer in connection with a Claim or by Buyer's clear expression of intent to accept a Counter by other written communication.
  - (ii) Buyer's Acceptance shall constitute Buyer's acknowledgement that Buyer has reviewed, understands, and agrees to the Counter Price, the Counter Terms, the obligations of Seller and Buyer to work in good faith to satisfy Buyer's reasonable diligence requirements and execute a Purchase Agreement consistent with the Counter Price and Counter Terms.
  - (iii) If Buyer issues an Acceptance in error, Buyer must promptly notify [tradesupport@x-claim.com](mailto:tradesupport@x-claim.com) to retract the Acceptance.
- c. Non-Reliance. Your decision to submit a Bid, Acceptance, Rejection or Counter in respect of any Claim, and to negotiate and consummate any Trade shall be based solely on your own investigation and analysis, and that of your legal, tax and other advisors, of the Claim and Trade. By taking such action you acknowledge and accept sole responsibility for such investigation and analysis. This includes all facts or information which may affect your decision to enter into and consummate a Trade, including but not limited to (i) the Claim Support Information, (ii) other documents, information and analysis available to you on XCM, via Xclaim or from public sources or third-party information providers regarding the Seller, the Claim and the Debtor(s), (iii) the Purchase Price, and (iv) the other terms of the relevant Purchase Agreement. You understand and acknowledge that Xclaim makes no representation as to the comprehensiveness of the Claim Support Information or the validity or merits of any Claim. You are encouraged to conduct your own due diligence with respect to any Trade to identify any other documents or information that could be helpful in your decision-making process.

#### 3.4. Closing.

- a. At Closing, following the satisfaction of any other closing conditions specified in the Purchase Agreement, the Buyer shall pay the Purchase Price to Seller and shall owe the Commission, plus the Court Fees, to Xclaim, which shall be paid according to the terms of the Buyer's Investor Access Agreement.
- b. Xclaim shall retain a perpetual non-exclusive license to use any modifications made by Buyer or Seller to the Xclaim Form Purchase Agreement or Xclaim Standard Terms and Conditions and to any custom Purchase Agreement or derivations thereof provided by Buyer or Seller in connection with a Bid, Counter or Trade, for any lawful purpose in connection with XCM and the Marketplace Services.

3.5. Late Payments. Unpaid amounts due to Xclaim in connection with any Trade shall incur interest at a rate of 18% per annum, compounded monthly from Closing, if not paid in full within ten (10) business days of Closing.

## 4. **Confidentiality**

4.1. Seller Identity. As a general matter, Xclaim will not disclose Seller's identity or contact information on XCM unless (a) Seller has provided consent to Xclaim (b) Seller has issued Acceptance to a Buyer, in which case, Xclaim will disclose Seller's identity and contact information to such Buyer, or (c) Xclaim is required to disclose Seller's identity by Law.

4.2. Pricing. All Bid pricing is highly confidential and may not be disclosed publicly by Xclaim except on an anonymized basis following the conclusion of a Sale Process. Xclaim may disclose Trade pricing following Closing at its sole discretion.

4.3. **Communications.** All communications from one User to another User via XCM or to Xclaim via XCM are highly confidential and may not be disclosed publicly by Xclaim, absent prior consent of either User. You agree to take all reasonable measures to ensure that your communications related to XCM or the Marketplace Services remain private and confidential and in compliance with these Trading Terms.

4.4. **User Activity.** Xclaim is required by Law to maintain records of activity on XCM. Xclaim may also monitor User activity on XCM to ensure compliance with its Policies and these Trading Terms. By using XCM, you acknowledge and consent to any form of recording and retention of any communications, information and data exchanged between you and Xclaim or its representatives or agents or you and other Users.

4.5. **Required Disclosures.** Notwithstanding anything to the contrary in this Section 4.5 **Error! Reference source not found.**, Xclaim may disclose pricing information, communications or User activity data if required by a Governmental Authority pursuant to applicable Law.

## 5. Privacy

5.1. Our collection and use of personal or financial information in connection with your access to and use of XCM as a public website is described in the Policies. Additional privacy-related provisions related to XCM trading activity are set forth in this Section 5.

5.2. To the extent that a Buyer requires a Seller's personal or financial information, including Seller's bank account information or Wallet Address to facilitate payment in connection with a Claims Trade, each Buyer agrees that it will only use such 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 information for any other purpose. Sellers who provide such personal or financial information in Claim Support Information expressly acknowledge and agree that such information may be accessible by parties with access to XCM who have agreed to maintain such information on a confidential basis and grant Xclaim an advance waiver of liability in respect of any and all claims related to the dissemination of such personal or financial information in connection with the express purpose of identifying suitable Buyers to purchase Seller's Claim(s) and satisfying a Buyer's due diligence requirements in connection with consummating a Trade.

5.3. Each Buyer warrants to Xclaim that it will comply with all applicable Laws in relation to the storage, use and transfer of any personal or financial information obtained from a Seller, or provided by Xclaim with respect to a Seller.

5.4. It is a Seller's responsibility to exclude or redact all medical records, complete social security numbers or tax identification numbers (only provide the last four digits), complete birth dates (only provide the year), the names of any minors (only provide the minor's initials) or any financial account numbers (only provide the last four digits of such financial account) in Seller's Claim Support Information.

5.5. Xclaim may retain a Seller's personal or financial information provided as Claim Support Information 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 XCM and the Marketplace Services.

## 6. Prohibited Uses; Remedies

6.1. **Prohibited Uses.** You shall not (and shall not assist or enable others to):

- a. after (a) submitting a Bid for a Claim via XCM or (b) contacting the holder of such Claim using information provided by Xclaim, consummate a Trade with the Claim holder without paying a Commission to Xclaim;
- b. after (a) receiving a Bid, (b) receiving communication from Xclaim regarding a specific Buyer's interest in a Claim you hold or (c) receiving communication from a Buyer through Xclaim regarding a Claim you hold, consummate a Trade with such Buyer (or such Buyer's Affiliate or designee) for such Claim without Xclaim's direct involvement;
- c. engage in any communications between or on behalf of Users transmitted with the purpose of or intention to circumvent XCM or the Marketplace Services, including via text message, email, phone, social media or any other means of communication;
- d. use XCM to breach any applicable Laws or agreements with third-parties or third-party rights;
- e. use XCM 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;

- f. contact any User for the purpose of soliciting such party to use a competing service, application or marketplace;
- g. use XCM in a fraudulent or illegal manner;
- h. engage in any communications or behavior within XCM that are hateful, offensive, unlawful, harassing, libelous, defamatory, abusive, threatening, harmful, vulgar, obscene, racist, profane, violent, or otherwise objectionable;
- i. copy, reproduce, mirror, scrape, or frame XCM, or any individual element in XCM or Xclaim's website, including 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 XCM;
- j. dilute, tarnish or otherwise harm the Xclaim brand in any way;
- k. use XCM in a way that damages XCM or denies other Users access to XCM or the Marketplace Services; or
- l. intentionally or recklessly use XCM in a way that degrades the performance of XCM for other Users.

6.2. **Remedies.** Without limiting other remedies available to Xclaim, if Xclaim has reason to believe you have violated these Trading Terms, the Policies or that your actions may cause loss or damage to XCM, Xclaim or other Users, Xclaim may, without notice to you and in our sole discretion, immediately suspend or terminate a User's access, and the access of such User's relevant trading entity or entities, to XCM and the Marketplace Services.

## **7. Disclaimers**

7.1. **No Agency or Other Relationship.** Neither your agreement to these Trading Terms nor your use of XCM and the Marketplace Services create or give rise to any joint venture, partnership, employment, agency relationship, fiduciary duties or any other relationship not specifically set forth in these Trading Terms. Xclaim is not a Broker Dealer, payment provider, payment processor, money transmitter or money service business and XCM does not facilitate transactions in "securities" as defined by federal or state Law.

7.2. **Third Party Links.** XCM may contain links to third-party websites or resources that Xclaim does not own or control and that may require you to accept their own terms of use and privacy policies. Xclaim is not and does not become a party to those agreements by your acceptance to such policies after navigating to them via XCM.

7.3. **No Assurances.** 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/or (d) the quality, suitability or ability of a third party which provides goods or services to Xclaim or to Buyers and Sellers via XCM. You are solely responsible to comply with all Laws that may apply to your use of XCM.

7.4. **No Warranty.** XCM is provided "as is" and "as available." Xclaim makes no warranty, representation, or assurances that XCM or any Marketplace Services will be available or operative at any given time. Xclaim reserves all rights to eliminate, suspend or modify XCM or the Marketplace Services at any time and without notice. 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 XCM or any services or goods bought or sold using XCM, or that XCM will be error-free.

7.5. **Assumption of Risk by Users.** While XCM has in place policies and procedures intended to ensure the integrity of XCM, you agree that the entire risk arising out of your use of XCM, 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 XCM, and as a User, you assume all risks of any such activity and any Losses caused by such activity.

7.6. **Force Majeure.** You agree that Xclaim will not be liable or responsible for any failure or delay in the provision of XCM or the Marketplace Services, including but not limited to any failure or delay resulting from a natural disaster, fire, pandemic, act of terrorism, sabotage, hardware or software failure or cyberattack, the failure or delay of any third party (including other Users), excess demand placed on XCM above the usual level of demand or any other circumstance or event beyond Xclaim's reasonable control.

## **8. Limitation of Liability**

8.1. None of the Xclaim Entities shall be liable for any indirect, incidental, special, exemplary, punitive or consequential damages related to, in connection with, or otherwise resulting from any use of XCM, or any Marketplace services

regardless of any breach or default by, or any negligence (either active, affirmative, sole or concurrent) of any Xclaim Entity.

8.2. None of the Xclaim Entities shall be liable for any Losses arising out of: (a) your use of, or your inability to access, XCM or any Marketplace Services; or (b) any transaction or relationship between you and another Buyer or Seller, as applicable.

8.3. As to Sellers 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 Law. 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, the Xclaim Entities' liability shall be limited to the extent permitted by applicable Law. This provision shall have no effect on Section 10.3 below.

## 9. Indemnification

9.1. You agree to indemnify and hold harmless the Xclaim Entities and their officers, directors, employees and agents from any and all Losses arising out of or in connection with: (a) your use of, or your inability to access, XCM or any Marketplace Services, (b) your breach or violation of any of these Trading Terms, (c) Xclaim's use of 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 Trade between you and such User, and (f) your violation of the rights of any third party, including any User.

## 10. Miscellaneous

10.1. Assignability. User may not assign any of its rights or obligations under these Trading Terms without the prior written consent of Xclaim, such consent not to be unreasonably conditioned, delayed or withheld.

10.2. Amendments. Xclaim reserves the right to amend, modify or supplement these Trading Terms at any time with or without notice. Xclaim will designate any amended, modified or supplemented Trading Terms as a new version where these Trading Terms are posted on Xclaim's website, which revised Trading Terms shall be effective immediately and apply prospectively to all XCM activity. If you access XCM at any time after the date the revised Trading Terms become effective, your continued access to or use of XCM shall constitute your express agreement to accept and be legally bound by the revised Trading Terms.

10.3. Governing Law. These Trading Terms shall be governed by, construed and enforced in accordance with, the laws of the State of New York, without reference to its conflicts of law rules.

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

10.5. Notices. Xclaim may provide notice under These Trading Terms by means of a general notice on XCM, to your email address, or by mail. Such notice shall be deemed to have been provided upon the expiration of 48 hours after mailing or posting (if sent by mail) or upon receipt if sent by email. You may provide notice to Xclaim, with such notice deemed to have been provided upon receipt by Xclaim, by email to [notices@x-claim.com](mailto:notices@x-claim.com) or by mail to our registered agent for service of process.

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

10.7. Severability. Each provision of these Trading Terms and any agreement that incorporates these Trading Terms by reference shall be interpreted in such manner as to be valid and enforceable under applicable Law. In the event that any provision or part of these Trading Terms is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Trading Terms, will be inoperative.

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