

Terms of Service

Kleer Message, LLC (“**Kleer Message**”, “**we**”, “**us**” or “**our**”) provides digital marketing products and services for businesses such as healthcare providers. The Registration Form (the “**Registration Form**”) sets forth the services being purchased by the client who signed the Registration Form (“**you**”, “**your**” or “**Client**”), the costs for such software and services, and any other relevant details.

These terms of service (the “**Terms**”) are incorporated by reference into and made a part of any Registration Form and govern the relationship between you and Kleer Message. All Registration Forms are subject to acceptance by Kleer Message, in its sole discretion. The Registration Form, the Terms, and any documents or links referenced in such documents are together referred to as the “**Agreement**”.

If you are accepting these Terms on behalf of your employer or another entity, you represent and warrant that (i) you have full legal authority to bind your employer or such legal entity to these Terms, (ii) you have read and understand these Terms, and (iii) you agree, on behalf of the Client, to these Terms.

Please read the following terms carefully. Except as otherwise provided in Section 13 (Dispute Resolution and Arbitration), these Terms provide that all disputes between you and Kleer Message will be resolved by binding arbitration and you agree to give up your right to go to court to assert or defend your rights. Except as otherwise provided in Section 13 (Dispute Resolution and Arbitration), your rights will be determined by a neutral arbitrator and not a judge or jury, and your claims cannot be brought as part of a class action. Please review Section 13 (Dispute Resolution and Arbitration) below for the details regarding your agreement to arbitrate disputes with Kleer Message.

1. **Elements of the Service**

The “Service” means the Kleer Message software and services for a business as detailed in the Registration Form and this Agreement. The Service includes, but is not necessarily limited to, the development of a cloud-based marketing service, the provision of cloud-based tools and services, including but not limited to online booking tool, call tracking, reputation management, profile syndication & management, analytics dashboard, and general online local marketing, and email marketing.

The Services shall also include any required, usual, appropriate or acceptable methods to perform activities related to the Services, including without limitation (a) conducting analytics and other product improvement activities, (b) carrying out the Services or the business of which the Services are a part, (c) carrying out any benefits, rights and obligations related to the Services, (d) maintaining records relating to the Services, and (e) complying with any legal or self-regulatory obligations related to the Services.

i. Provider Website

To the extent set forth in an Registration Form, Klear Message will develop a cloud-based Provider Website for Client. Such Provider Website will integrate elements of the Patient Outreach Program, including but not limited to the Klear Message online booking tool. Client may, but is not required to, submit Content (as defined below) for inclusion on such Provider Website; any such Content submitted by Client and used by Klear Message is subject to Section 3 (Content) and Section 4 (Ownership) below.

ii. Patient Outreach Program

KlearMessage will provide the Patient Outreach Program indicated on the applicable Registration Form. Where applicable, Klear Message will make the dashboard element of the Patient Outreach Program (the “**Dashboard**”) available to Client in accordance with these Terms and any other Klear Message rules and policies then in effect. Client may authorize employees or subcontractors to use the Dashboard on behalf of Client (each, a “**User**”); such Users are subject to these Terms, and Client agrees to be responsible for the actions of all Users who receive authorization to use the Service, including but not limited to their access to the Dashboard.

iii. Restrictions

Client will not, and will not permit or authorize third parties to: (a) rent, lease, resell or otherwise permit unauthorized third parties to access or use the Service;

(b) reverse engineer, reverse assemble or otherwise attempt to discover the source code for any software made available as part of the Service; or (c) circumvent or disable any security or other technological features or measures of the Service.

iv. Responsibilities of the Parties

i. HIPAA

As part of the Service, Klear Message may perform or assist in performing a function or activity on Client's behalf that involves the use and disclosure of Protected Health Information (as defined in 45 C.F.R. 164.501; hereinafter, "**PHI**"). The parties hereto shall use or disclose such PHI as required by the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Standards for Privacy of Individually Identifiable Health Information (the "**Privacy Rule**") and the Standards for Security of Electronic Protected Health Information (the "**Security Rule**") promulgated thereunder, and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) (the "**HITECH Act**"). Capitalized terms used but not otherwise defined in this Section 2 shall have the same meaning given to such terms in HIPAA, the HITECH Act, or any implementing regulations promulgated thereunder, including but not limited to the Privacy Rule and the Security Rule.

ii. Business Associate Agreement

In connection with and by agreeing to these Terms, you and Klear Message agree to be bound by the terms of a Business Associate Agreement, the terms of which are referenced in the Registration Form incorporated herein by reference. You (the "**Covered Entity**," as referred to in the Business Associate Agreement) hereby agree that you have read and agree to be bound by the terms of the Business Associate Agreement. Klear Message (the "**Business Associate**," as referred to in the Business Associate Agreement), agrees to be bound by the terms of the Business Associate Agreement. The parties hereto each agree to perform their respective obligations as enumerated therein.

iii. CCPA

This Section 2(iii) applies solely to the extent that (1) Klear Message's provision of the Service is not exempt from the Texas Consumer Privacy Act of 2018 ("**CCPA**") under Texas Civil Code sections 1798.145(c)(1)(A) and (c)(1)(B) pertaining to medical information, PHI, providers of health care, and covered entities; (2) you are a "business" within the meaning of the CCPA; and (3) Klear Message is processing the personal information of Texas residents.

1. Klear Message is a "service provider" (as such term is defined under the CCPA) under this Agreement. Klear Message will not retain, use, disclose or otherwise process Customer Personal Information for any purpose other than for performing the Service, or as otherwise permitted by the CCPA. Klear Message

will not “sell” (as defined in the CCPA) any Customer Personal Information. Kleer Message may create and derive from its provision of the Service anonymized and/or aggregated data that does not identify you or any consumer, and use, publicize or share with third parties such data to improve Kleer Message's products and services and for Kleer Message's other lawful business purposes. Notwithstanding anything in the Agreement or any Registration Form entered in connection therewith, you and Kleer Message acknowledge and agree that Kleer Message's access to Customer Personal Information is not part of the consideration exchanged by the parties in respect of the Agreement. Kleer Message certifies that it understands its obligations under this paragraph and shall comply with them.

2. You are solely responsible for (1) identifying whether the CCPA applies to you; (2) providing any notices of your privacy practices that may be required by CCPA; and (3) identifying and responding to consumer requests to exercise CCPA rights to access, delete, or opt out of the sale of personal information (collectively, “**CCPA Requests**”), including for verifying the identity of consumers submitting CCPA Requests and for evaluating the scope and legality of CCPA Requests. Kleer Message will provide reasonable assistance to you in responding to such CCPA Requests, which may include assistance by way of providing self-service functionality. Kleer Message will treat any CCPA Requests that you submit to Kleer Message as presumptively valid under the CCPA.
3. With respect to CCPA Requests for which you require Kleer Message to provide assistance, you shall: (a) notify Kleer Message within 10 days of your receipt of the CCPA Request by emailing admin@KleerMessage.com; and (b) provide Kleer Message with the consumer’s email address or such other information that would permit Kleer Message to honor the request. You shall be solely responsible and liable for responding to the individual’s CCPA Request, including without limitation the content and timing of the response, in compliance with the CCPA. In addition:
 1. In response to a CCPA Request for access to Customer Personal Information that you submit to Kleer Message, within 10 business days of Kleer Message's receipt of such request from you, Kleer Message will provide you with a file that contains the Customer Personal Information that Kleer Message maintains about the individual via a secure method of transfer. Kleer Message reserves the right to withhold from such file any Customer Personal Information that the CCPA does not require to be provided in response to a CCPA Request.

2. In response to a CCPA Request for the deletion of Customer Personal Information that you submit to Klear Message, except as otherwise required by applicable law or permitted by the CCPA, within 10 business days of KlearMessage's receipt of such request from you, Klear Message will delete the Customer Personal Information, to the extent Klear Message maintains such Customer Personal Information about the individual. You agree that Klear Message may delete such Customer Personal Information by anonymizing and/or aggregating the information such that the information does not identify, and is not reasonably capable of identifying, the individual.
4. You agree that you will not direct or otherwise cause Klear Message to share any Customer Personal Information with any third party in a manner that may constitute a "sale" as such term is defined in the CCPA.
5. For purposes of this Section 2(iii), "**Customer Personal Information**" means any "personal information" (as defined in the CCPA) contained within the data that Klear Message "processes" (as defined in the CCPA) in connection with performing the Service under the Agreement.

iv. TCPA

This Section 2.iv concerns compliance with the Telephone Consumer Protection Act of 1991, located at 47 U.S.C. §§ 227 et seq., including the implementing regulations therefore located at 47 C.F.R. 64.1200 et seq. ("**TCPA**") and the Telemarketing Sales Rule authorized by the Telemarketing and Consumer Fraud and Abuse Prevention Act, located at 15 U.S.C. §§ 6101-6108 ("**TSR**") and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, located at 15 U.S.C §§ 7701-7713 ("**CAN SPAM Act**"). As between you and Klear Message, you agree that you will comply and be solely responsible for complying with all laws governing any messages sent or received in connection with your access and use the Service, including the TCPA, TSR, and CAN SPAM Act. Specifically, you agree to be responsible for, without limitation, obtaining any legally required consent(s) from any and all third parties (including your patients or customers) to send and receive any text message and/or emails using the Service and honoring any requests revoking such consent or otherwise "opting-out" of receiving any such messages and/or emails. You agree to be liable for, and to indemnify, defend and hold harmless Klear Message from and against any and all damages, liabilities, judgments, fees, fines, costs and expenses (including reasonable attorneys' fees) incurred by Klear Message

arising from any claims, demands or legal actions made against Kleer Message resulting from your failure to comply with this Section 2.iv.

3. Content

- i. Client may provide content to Kleer Message for use in Kleer Message's provision of the Service, including but not limited to photos, images, data, text, and other types of works ("**Content**"). Client retains copyright and any other proprietary rights that Client may hold in the Content that Client provides to Kleer Message. By providing Content, Client hereby grants Kleer Message a worldwide, non-exclusive, royalty-free right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, and distribute Client's Content, in whole or in part, in any media formats and through any media channels (now known or hereafter developed).
- ii. Client is solely responsible for any Content that Client provides, and for the consequences of posting or publishing such Content. By providing Content, Client affirms, represents, and warrants that:
 - o Client is the creator and owner of, or has the necessary licenses, rights, consents, and permissions, to use and to authorize Kleer Message to use and distribute Client's Content as necessary to exercise the licenses granted by Client in this Section 3 and in the manner contemplated by Kleer Message, the Service, and these Terms; and
 - o Client's Content, and the use of Client's Content as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause Kleer Message to violate any

4. Ownership

i. Client

Client will retain exclusive ownership of all rights, title and interest in and to all Content which Client provides to Kleer Message for the provision of the Services, subject to the rights granted to Kleer Message herein. Upon termination or expiration of the Agreement, Client will own solely the domain name of the Provider Website; if the domain name was purchased and registered by Kleer Message will take reasonable measures to assign the domain name to Client upon termination or expiration of this Agreement. Upon

termination or expiration of this Agreement, if the domain name was purchased and registered by Client, Client will retain such ownership of the domain name. For clarity, all other elements of the Provider Website, apart from any Content provided by Client, will be owned solely by Kleer Message, and will not be retained by Client upon expiration or termination of this Agreement.

ii. Kleer Message

Kleer Message will retain exclusive ownership of all rights, title and interest in the Patient Outreach Program (including, without limitation, any modifications, updates and developments provided hereunder), as well as any Content supplied by Kleer Message in the provision of the Service, and any visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and any other elements of the Service, subject to the licenses granted herein.

5. Fees

In connection with Client's use of the Service and pursuant to Kleer Message's acceptance of the Registration Form, Client will pay to Kleer Message the applicable fees set forth in the Registration Form. Kleer Message reserves the right to increase its prices by no greater than 4% at any one time, decrease its prices, charge for previously free Services and change its billing methods under an Registration Form on a going forward basis at any time after the first anniversary of that Order Form's effective date, no more frequently than once per 12 month period, upon notice to you by a posting on the Services, an e-mail sent to you, or any other method for notice permitted hereunder. All payments required by these Terms exclude all sales, value-added, use, or other taxes, all of which Client will pay in full, except for taxes based on Kleer Message's net income.

iii. Implementation Fees

Each party will provide the other with reasonable cooperation, assistance, information and access as may be necessary to initiate Client's use of the Service. Kleer Message will provide non-refundable implementation services to Customer to the extent set forth in the Registration Form.

iv. Billing

Client will be required to pay for each Patient Outreach Program campaign at the time of registration. The applicable payment amount will be indicated on the Registration Form.

iii. Discounts

Kleer Message may from time to time, in its sole discretion, provide special promotions or discounts. If Kleer Message offers any special promotions or discounts that provide you with credits or other incentives in connection with the Service (“**Promotional Credits**”), and you cancel the Service prior to completion of the Initial Term (as defined below) (other than for cause, as set forth below in Section 6 vi.), you will be required to repay to Kleer Message the full amount of any corresponding discounts.

iv. Manner of Payment

You will pay for all amounts payable under this Agreement either by credit card (the “**Client Card**”), by electronic debit from your bank account (“**ACH**”), or such other form of payment as Kleer Message may, in its sole discretion and with prior approval, permit (included but not limited to payment by check) or require. You will be required to agree to the applicable payment authorization form(s), which also permits Kleer Message to recover any Promotional Credits (as set forth above) in the authorized manner. In the case of payment through ACH, no amounts owing are considered paid until the electronic debit has been received by Kleer Message's bank.

v. Timing of Payment

Fees, as identified on the Registration Form, are due as indicated on the Registration Form and in accordance with Client’s billing subscription plan. Kleer Message will have the right to charge the Client Card or debit from your account through ACH for fees in accordance with these Terms. By providing Kleer Message with your payment information, you agree that Kleer Message is authorized, to the extent permitted by applicable law, to immediately charge such payment method for all fees and charges due and payable to Kleer Message hereunder and that, except as required by applicable law, no additional notice or consent is required. You agree to immediately notify Kleer Message of any change in the payment information used for payment hereunder. You understand and acknowledge that all amounts owed must be paid in advance and that if timely payment is not received, in addition to being in breach of your contractual obligations, the

Service may be paused or terminated. Any amounts not paid by you when due may bear interest at the rate of 1.5% per month (or the highest rate permitted by law). You agree to pay all costs of collection, including attorney's fees and costs and all other legal and collection expenses incurred by Klear Message in connection with its enforcement of its rights under these Terms.

6. Term and Termination

i. Term

This Agreement will continue for the period indicated on the applicable Registration Form (the "**Initial Term**").

ii. No Early Termination; No Refunds

The subscription term in effect will end on the expiration date and you cannot cancel it before its expiration. We do not provide refunds if you decide to stop using the subscription during your subscription term.

iii. Suspension for Non-Payment

We will provide you with notice of non-payment of any amount due. Unless the full amount has been paid, we may suspend your access to any portion or all of the Service ten (10) days after such notice. We will not suspend the Service while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If your Service is suspended for non-payment, we may charge a re-activation fee to reinstate the Service.

iv. Termination for Cause

Either party will have the right to terminate this Agreement if the other party

breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of Client's failure to pay fees, which must be cured within ten (10) days after receipt of written notice from Klear Message. Pursuant to the payment policies outlined in Section 5 (Fees), you understand and agree that you will not be entitled to any refunds of amounts already paid to Klear Message unless you properly terminate the Agreement for cause per the terms of this Section.

vii. Effect of Termination

Upon the expiration or termination of this Agreement, Client's rights to access and use the Service will terminate, provided that: (i) any and all payment obligations of Client under this Agreement outstanding as of the effective date of expiration or termination will survive; (ii) Klear Message shall return or destroy all PHI received from you, or created or received by us on your behalf (including any PHI in the possession of Klear Message's subcontractors or agents), and otherwise comply with the termination provisions of the Business Associate Agreement; (iii) where returning or destroying the PHI is infeasible, Klear Message will provide notification to you of the conditions that make return or destruction infeasible, and upon mutual written agreement regarding such infeasibility, the protections of this Agreement and the Business Associate Agreement will continue to apply to such PHI to limit further uses and disclosures of such PHI for so long as the PHI must be maintained; and (iv) the following provisions will survive: Sections 2, 3, 4, 5, 6vii., and 8-14.

7. Hosting, Updates, and Privacy

The Service will be hosted and operated by or on behalf of Klear Message may update the features, functionality and user interface of the Service from time to time at its sole discretion. Please read the Klear Message Privacy Policy, found on our website at Klear Message.com, carefully for information relating to our collection, use, storage and disclosure of information.

8. Publicity

You agree that Klear Message may, during and after the Term of this Agreement, include your name (including any applicable trade name, trademark, service mark or logo) on Klear Message's client list, and in its marketing materials, sales presentations and any online directories that Klear Message may, from time to time, publish.

9. Confidentiality

i. Confidential Information

Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business or practice, plans, technology, and products ("**Confidential Information**"). Each party will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information. Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

ii. Confidentiality of Agreement

Each party agrees that the non-public terms and conditions, but not the existence, of this Agreement will be treated as the other's Confidential Information; provided, however, that each party may disclose such terms and conditions of this Agreement: (i) as required by any court or other governmental body; (ii) as otherwise required by law; (iii) to legal counsel of the parties; (iv) in connection with the requirements of a public offering or securities filing; (v) in confidence, to its employees and agents and to its professional advisors such as accountants, banks and financing sources; (vi) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or (vii) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

10. Indemnities

iii. Klear Message Indemnity

Klear Message will indemnify, defend and hold Client harmless from and against:

(a) any third party claim brought against Client alleging that the Patient Outreach Program or any Klear Message-provided Content infringes any third party intellectual property or proprietary right, including without limitation, patent,

copyright or trademark; and (b) any liability, claim, action, loss, cost, damage or expense (including reasonable fees of attorneys and experts) incurred or suffered by Client, to the extent that such liability, claim, action, loss, cost, damage, expense or fees are attributable to or incurred as a result of an unauthorized use or disclosure of PHI by Klear Message or Klear Message's breach of this Agreement; provided that (i) Client promptly notifies Klear Message in writing of such claim, (ii) provides assistance as reasonably requested by Klear Message to defend or settle such claim and (iii) gives Klear Message the exclusive authority to defend or settle such claim. Klear Message will not enter into any settlement that requires Client to admit liability or pay money without Client's prior written approval, which will not be unreasonably withheld or delayed. Klear Message will have no liability or obligation under this Section 10 i. for any Content provided by Client.

ii. Client Indemnity

Client will indemnify, defend and hold Klear Message and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the "**Klear Message Indemnitees**") harmless from and against every claim, liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or in any way connected with: (a) your access to, use of, or alleged use of, the Service; (b) your violation of any portion of this Agreement or any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party, including but not limited to any dispute arising from the sale, license, supply or provision of your goods or services. Client specifically agrees to indemnify the Klear Message Indemnitees as it relates to any claims against them related to the accessibility of the Provider Website to persons with disabilities, specifically those who are visually or hearing impaired. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of that claim.

11. Representations and Warranties; Disclaimer

iii. Mutual Representations and Warranties

Each party represents and warrants to the other that: (i) this Agreement has been duly entered into and constitutes a valid and binding agreement

enforceable against such party in accordance with its terms; (ii) no authorization or approval from any third party is required in connection with such party's entering into or performance of this Agreement; and (iii) the entering into and performance of this Agreement does not and will not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

ii. **Disclaimer**

EXCEPT AS EXPRESSLY SET FORTH ABOVE, Klear Message MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AND Klear Message EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. Klear Message DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR-FREE OR THAT OPERATION OF THE SERVICE WILL BE SECURE OR UNINTERRUPTED. FROM TIME TO TIME, CLIENT MAY REQUEST THE ADDITION OF CERTAIN CODE AND/OR FUNCTIONALITIES TO BE ADDED TO CLIENT'S WEBSITE OR OTHER PLATFORM. Klear Message SHALL NOT BE RESPONSIBLE FOR ENSURING THAT THE REQUESTED CODE AND/OR FUNCTIONALITIES COMPLY(IES) WITH ANY AND ALL APPLICABLE LAWS AND REGULATIONS PERTAINING TO CLIENT'S BUSINESS. CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT CLIENT ALONE SHALL BE RESPONSIBLE FOR ENSURING THAT CLIENT'S WEBSITE AND SERVICE OFFERINGS, EVEN IF SUPPORTED BY Klear Message, COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

12. **Limitation of Liability**

KLEER MESSAGE WILL NOT BE LIABLE TO THE CLIENT FOR ANY LOST PROFITS, COST OF COVER, LOSS OF DATA, INTERRUPTION OF BUSINESS OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF CLIENT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND (II) Klear Message's TOTAL LIABILITY UNDER OR ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNTS PAID TO Klear Message BY CLIENT DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO

SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE OR IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. Dispute Resolution and Arbitration

i. Generally

Except as provided in subsection ii. below, any and all disputes, controversies, or claims arising out of or relating to the Service, this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association (“**AAA**”) then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Dallas County, Texas. The arbitrator shall apply the laws of the State of Texas to all issues in dispute. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Legal fees shall be awarded as provided by the arbitrator.

ii. Exceptions

Despite the provisions of this Section 13, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through an applicable federal, state, or local agency if that action is available; (c) seek emergency injunctive relief in a court of law; or (d) file suit in a court of law to address an intellectual property infringement claim.

iii. No Class Actions

Each party may bring claims against the other only in its individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. Further, unless both you and Kleer Message agree otherwise, the arbitrator may not consolidate more than one person’s or entity’s claims, and may not otherwise preside over any form of a representative or class proceeding. If a decision is issued stating that applicable law precludes enforcement of any of this subsection’s limitations as to a given claim for relief, then that claim must be severed from the arbitration and brought in the State or Federal Courts located in Dallas County, Texas. All other claims shall be arbitrated in accordance with this Section 13.

14. Miscellaneous

Except for the obligation to pay money, neither party will be liable for any failure

or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to correct promptly such failure or delay in performance. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Texas (except that body of law controlling conflicts of law). Subject to Section 13, the parties hereby agree and submit to the sole and exclusive jurisdiction of the state and federal courts located in Dallas, Texas for any litigation brought in a court under this Agreement. Neither party may assign this Agreement without the prior written consent of the other party, except that Klear Message may freely assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its business or assets without the prior consent of Client. Any attempted assignment or delegation in violation of the foregoing will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns. Klear Message may, without your consent, subcontract to any party the performance of all or any of Klear Message's obligations under this Agreement provided that Klear Message remains primarily liable for the performance of those obligations. Except as otherwise provided herein, any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid to the address for the applicable party as furnished in writing by either party hereto to the other. Klear Message's address for notice is: Klear Message, LLC, 3716 Mason Dr, Melissa TX 75454 , Attn: General Counsel, and by email to: admin@KlearMessage.com. Such notice will be deemed to have been given as of the date it is delivered, mailed or sent, whichever is earlier. Klear Message and Client are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Klear Message and Client. Neither Klear Message nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein. This Agreement, including all documents and terms incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter

hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. In the event of a conflict between these Terms and the terms and conditions in an Registration Form, the terms and conditions of the Registration Form will prevail. Notwithstanding anything to the contrary herein, these Terms are subject to change by Klear Message on a going-forward basis in its sole discretion at any time. When changes are made to these Terms,

Klear Message will make a new copy of the modified Terms available on the Services and will also update the “Last Updated” date at the top of the Terms. Any changes to the Terms will be effective immediately for new Clients and will be effective for continuing Clients upon the earlier of: (i) thirty (30) days after posting notice of such changes on the Services for existing Clients; (ii) thirty (30) days after dispatch of an e-mail notice of such changes to you; or (iii) you providing consent to the updated Terms in a specified manner, as applicable. Unless otherwise stated, your continued use of the Services constitutes your acceptance of such change(s). If you do not agree to any change(s) after receiving a notice of such change(s), then, notwithstanding anything to the contrary herein, your sole recourse is to terminate the Agreement, effective as of the end of the then current Initial Term or Renewal Term, by providing

Klear Message written notice of termination prior to your continued use of the Services. Please regularly check the Services to view the then-current Terms. The parties agree to take such action to amend this Agreement from time to time as is necessary for compliance with the requirements of the Privacy Rule, the Security Rule, HIPAA, and the HITECH Act. Notwithstanding the foregoing, if the parties have not amended this Agreement to address a law or final regulation that becomes effective after the date that the parties enter into this Agreement and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and shall incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such law or regulations, and for both parties to be and remain in compliance with all applicable laws and regulations. Except as expressly provided in this Section 14, this Agreement may be amended only in writing executed by both parties. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. Except as expressly provided in subsection 13(iii), if any

provision of this Agreement or any word, phrase, clause, sentence, or other portion thereof should be held to be unenforceable or invalid for any reason, then such provision or portion thereof shall be modified or deleted in such manner as to render this Agreement as modified legal and enforceable to the maximum extent permitted under applicable laws. Any reference in this Agreement to a section of HIPAA, the Privacy Rule, the Security Rule, the HITECH Act, or any other regulations implementing HIPAA or the HITECH Act, shall mean such regulation or statute as in effect at the time the parties entered into this Agreement or, if and to the extent applicable, as subsequently updated, amended or revised.