

## LICENSE AGREEMENT

*June 18, 2020 - May 12, 2023*

These Klear's Terms of Service ("Agreement"), dated as of the Licensee's signature date in the Order Form (as defined below) ("Effective Date"), are by and between Klear.com Ltd. ("Klear"), and Customer ("Licensee"), as defined in the Subscription Order Confirmation ("Order Form") (each a "party"). In the event of a conflict between the terms of the Order Form and this Agreement, the order of precedence shall be as follows: (1) the Order Form; and (2) this Agreement.

WHEREAS as between the parties, Klear is the owner or licensee of the "Klear" platform, a social intelligence solution that enables viewing insights on brands and individuals ("Services"); and WHEREAS Licensee desires to obtain a license from Klear to use the Services, and Klear is willing to grant such rights and licenses to use the Services subject to the terms and conditions set forth herein and in the Order Form; NOW, THEREFORE, the parties hereby agree as follows:

### **1. Scope of License.**

Subject to the this Agreement and the payment of the required fees, Klear grants Licensee a non-exclusive, nontransferable, non-sublicenseable, worldwide, revocable and limited license to use the Services for the internal purpose of Licensee's performing influencer marketing activities enabled via the Services for Licensee ("License"). Licensee warrants that: (a) it has the power and authority, and has taken all corporate action required, to enter into and fully perform this Agreement, and its entry into and performance of this Agreement do not and will not violate any agreement or restriction applicable to, or binding upon, Licensee; and (b) Licensee will comply with all applicable laws, rules, regulations, and ordinances (and shall not violate, infringe, misappropriate or breach any third party's (including, without limitation, Klear's rights) in its performance of this Agreement and use of the Services. Under the License, Licensee shall be given a user name and password from Klear for logging into the Services, following which Licensee's use of the Services shall be enabled. Licensee shall be fully responsible and liable for the actions and omissions of its users and the users Licensee adds to the Services. For clarity, this Agreement is a technology license agreement only and, therefore, no professional services are being provided to Licensee.

### **2. Intellectual Property Rights & Restrictions.**

Other than the limited License granted under this Agreement to Licensee during the Term, all intellectual property rights, ownership rights and proprietary rights in the Services and any part thereof, including all proprietary and secret information of Klear or its licensors, and including any and all derivatives, updates, upgrades, changes and improvements thereof lie and remain exclusively with Klear and/or its licensors. All rights not expressly granted hereunder are reserved by Klear. Licensee shall (i) not sell, lease, sublicense or distribute any rights of use in the Services or any part thereof or allow any third party to use such rights, for any purpose; (ii) not attempt to reverse engineer, decompile, or disassemble the Services, or any part thereof; (iii) refrain from modifying the Services, or granting any other third party the right to do so; (iv) not represent that it possess any proprietary interest in the Services; (v) not directly or indirectly, take any action to contest Klear's intellectual property or proprietary rights

or infringe them in any way; (vi) except as specifically permitted by Klear, not use the name, trademarks, trade-names, and logos of Klear; (vii) not use, or otherwise transfer, access or commercially exploit (or allow third parties to use, transfer, access or commercially exploit), any data made available to Licensee through the Services or any derivatives thereof ("Klear's Data") in order to create derivative works of the Services or any software product (or parts thereof) that is the same or substantially similar to the Services or achieve, or intends to achieve, the same or a similar purpose and (viii) not to bypass, circumvent or disrespect any security or technical restrictions implemented within the Services.

If Licensee provides suggestions, comments or feedback (whether orally or in writing) (the "Feedback"), any and all rights, including Intellectual Property Rights, shall belong exclusively to Klear and shall be considered Klear's Confidential Information, and Licensee hereby irrevocably transfers and assigns to Klear all rights in such Feedback and waives any and all moral rights that Licensee may have in respect thereto and waives the right to assert or claim such rights. Use of Feedback, if any, may be made by Klear at its sole discretion.

### **3. Consideration.**

In consideration for the License granted to Licensee, Licensees shall pay Klear a license fee as set forth in the applicable Order Form ("License Fee"), as such applicable Order Form may be mutually amended by the parties from time to time. Payments shall be made according to the payment terms set forth in the applicable Order Form. If no payment terms are specified in the applicable Order Form, payments shall be made within thirty (30) days from receipt of invoice from Klear. All payments shall be in US dollars unless otherwise specified in the Order Form. Any payment not paid by Licensee to Klear when due shall bear interest at the rate of 1.5% per month (but no more than the maximum rate allowed by applicable law), and shall constitute sufficient cause for Klear to immediately suspend performance of this Agreement and/or terminate the Agreement in accordance with the Order Form.

### **4. Taxes.**

All amounts payable hereunder and under the Order Form shall be paid in net terms and shall not be subject to any set-off or deduction of any kind. Licensee is solely responsible for payment of any taxes resulting from the acceptance of the License, including VAT if applicable. If Licensee is required to withhold any amounts due to applicable tax laws or regulations, Licensee shall pay an amount to Klear such that the net amount payable to Klear after withholding of taxes shall equal the amount that would have been otherwise payable under this Agreement ("gross up"). In addition, Licensee shall be responsible for all income, sales, business, or any other such form of tax, fee, license or payment due in receipt of the transfer of the property or right to use such property under all circumstances. Klear may request payment of such applicable taxes in accordance to applicable law for remittance to such governmental agency, but all final duties for payment and compliance of all tax laws shall be the duty of the Licensee. Licensee agrees to hold harmless Klear from all claims and liability arising from Licensee's failure to report or pay any applicable taxes, duties or other governmental charges.

### **5. Technical Support.**

During the term of this Agreement, Klear will provide Licensee technical support for the Services during the following Technical Support Hours: Monday to Friday from 9 am to 5 pm ET and Monday to Friday 9 am to 5 pm CET. Licensee shall be entitled to training and strategy sessions over webex, live in-platform chat support, monthly reviews, and a dedicated account manager to assist with questions according to the Support Package as stated in the Order Form.

## **6. Influencer Payments.**

If Licensee chooses to use Klear's influencer payment solution, (A) Licensee hereby provides written authorization to Klear to provide payment instructions to Tipalti on its behalf and Licensee shall fully defend, indemnify and hold Klear and Tipalti harmless from any liability resulting from or related to such payment instructions. (B) Klear will use commercially reasonable efforts to facilitate the payment from the Licensee to the influencer/end user. (C) To the maximum extent permitted by law, such payments shall be deemed made by Licensee and not by Klear. (D) The parties agree that to the maximum extent permitted by law: (a) Klear is merely the facilitator of any such payments and the obligation to pay, and/or any other obligation, requirement or consequence, in relation to such payment or the transaction with the influencers/end users, resides solely with Licensee; and (b) except for the payment facilitation, Klear bears no responsibility or liability of any kind in relation to any such payments, including, without limitation, in relation to the payment instructions, accuracy of payment details, tax, anti-money laundering and/or any disputes between Licensee and influencer or other end users. (E) Licensee acknowledges that Klear uses a third party payment service Tipalti for the payment facilitation and may, in the future, use other third party payment service and that: (i) such third parties have terms, conditions and policies concerning the payment process which shall govern the payment process and prevail at all time, including, without limitation, Tipalti's terms available at <https://tipalti.com/legal/services-agreement-3/>; (ii) Tipalti, or other third party as applicable, may discontinue or change the payment system in question which could delay or adversely affect the payment facilitation performed by Klear; and (iii) to the maximum extent permitted by law, Klear shall not bear any responsibility or liability of any kind in connection with (i) and (ii) above or for any action, omission and/or delay by, deriving from and/or related to such third parties and/or their payment systems. Licensee shall cooperate in good faith with Klear in the event that a modification to this Agreement is required under the agreement with third party payment providers or facilitators.

## **7. Confidentiality.**

All designs, engineering details, and other technical, financial, marketing, commercial and other information pertaining to the Services and/or Klear's business activities and/or any proprietary or confidential information of Klear disclosed pursuant to this Agreement which is marked as confidential or is identified at the time of disclosure as confidential or which would reasonably be considered confidential or proprietary in nature shall be considered "Confidential Information". Licensee agrees to use Klear's Confidential Information only in connection with the License, to keep such Confidential Information confidential, and not to reproduce, copy, or disclose such Confidential Information to any third party, except with Klear's prior written consent. If the disclosure is required by law, or a government order or official authority request the information to be disclosed, Licensee shall give written notice to the Klear prior to such disclosure

and provide Klear with an opportunity to take legal steps to resist or narrow such request.

#### **8. Disclaimer of Warranties.**

Licensee acknowledges that the data and information contained on, or included in, the Services may be based on information, data and content obtained by Klear from various data sources. To the maximum extent permitted by law, Klear shall not be held responsible for any acts and/or omissions of such data sources and Klear does not intend, and will not be required, to edit or review for accuracy or appropriateness any information and/or data provided by Licensee (including such information contained in Licensee's social properties). EXCEPT FOR THE WARRANTIES PROVIDED HEREIN, IF ANY, KLEAR PROVIDES THE SERVICES TO LICENSEE ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, KLEAR AND ITS SUPPLIERS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. KLEAR DOES NOT WARRANT THAT THE SERVICES OR ANY SOFTWARE OR DATA RELATED THERETO WILL BE DELIVERED OR PERFORMED ERROR-FREE OR WITHOUT INTERRUPTION. Licensee is solely responsible for proper configuration of all hardware and other equipment and all devices and other software used with the Services and for making lawful use of the Services and its features.

#### **9. Indemnification.**

Licensee shall fully indemnify, defend and hold Klear (including its officers, directors, employees, subsidiaries and affiliates) harmless from any and all losses, liabilities, fees, settlements and damages (including reasonable attorney's fees and expenses) arising from Licensee's use of the Services and/or from a claim based on Licensee's breach of its representations, warranties and obligations as set forth in this Agreement. Subject to the Indemnification Exceptions (defined below), Klear shall pay all settlements finally agreed to by Klear or judgments finally awarded against the Licensee resulting from a third party claim that the Services infringe valid copyrights or trade secrets. The indemnitee shall provide the indemnitor with: (a) prompt written notice of such claim and (b) sole control over the defense and settlement of such claim. The indemnitee shall provide the indemnitor with information and assistance as may be reasonably requested by the indemnitor. Licensee may not settle any claim without first obtaining Klear's written permission.

Indemnification Exceptions: Klear will have no obligation to Licensee to the extent that any claim arises from: (a) any modification to the Services by anyone other than Klear; (b) modifications made by Klear in accordance with Licensee's specific request; (c) use of the Services other than as specified in this Agreement; or (d) use of the Services in combination with third-party software, hardware or data not expressly approved in writing by Klear, if the claim would not have arisen but for such combination. Claims: If a claim arises, or in Klear's opinion is likely to arise, Klear may, at its own discretion, obtain for Licensee the right to continue using the Services, modify the Services to make them non-infringing, or substitute at no additional cost the Services with another service of substantially similar capability and functionality. If none of these options are reasonably available to Klear, Licensee may terminate this Agreement as a sole remedy in which case Klear's sole liability will be to refund to Licensee, within

30 days, the Fees pre-paid under this Agreement for the remaining unused period of the license. THIS SECTION "CLAIMS" STATES KLEAR'S SOLE LIABILITY AND OBLIGATIONS, AND THE EXCLUSIVE REMEDIES OF LICENSEE, WITH RESPECT TO ANY CLAIMS RELATED TO KLEAR'S INFRINGEMENT OR VIOLATION OF ANY KIND RELATING TO THIRD PARTY RIGHTS (INCLUDING, WITHOUT LIMITATION, PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS), AND KLEAR'S BREACH OF WARRANTIES.

#### **10. Further Requirements.**

Klear's unique and proprietary method collects influencers' information through/with Klear's own resources and through third parties' resources. Such information is processed, aggregated, analyzed and shown on Klear's Services. The information presented through the Services does not in any way create any representation or warranty on Klear's behalf with respect to such third party's websites or internet pages. By using the Services, the Licensee commits not to: Violate any laws, third party rights or Klear's policies, published from time to time; Post false, inaccurate, misleading, defamatory, or libelous content; Distribute or post spam, unsolicited, or bulk electronic communications, chain letters, or pyramid schemes or any other form of illegal communications; Distribute viruses or any other technologies that may harm, manipulate, extract unauthorized information from the Services, or the interests or property of users of the Services; Use any crawlers, bots, algorithms or other automatic applications or codes in order to retrieve and collect information through the Services; Present the information received through the Services without mentioning that Klear is the provider of the information; Sell, trade, license for commercial benefit or otherwise dispose any information received through the Services (which, for clarity, shall be used solely for the Licensee's internal purposes in accordance with this Agreement). Licensee shall comply at all times with all applicable privacy and data protection laws and regulations for allowing Klear to use the data provided by Licensee, controlled by Licensee or with respect to which Licensee is considered a data controller. This includes, without limitation, the provision of such data to Klear, the transfer of such data by Klear to its affiliates and subcontractors, including transfers outside of the European Economic Area. Access and use of the Services is subject to Klear's privacy policy available on <https://klear.com/legal/privacy>. To the extent that Licensee needs a data processing agreement, Licensee shall execute Klear's data processing agreement ("DPA") available upon request and return it signed to Klear as described therein. To the extent that Licensee needs a controller to controller addendum, Licensee shall execute Klear's controller to controller addendum ("CCA") available upon request and return it signed to Klear as described therein. In the event Licensee fails to comply with any data protection or privacy law or regulation and/or any provision of the DPA and/or the CCA, and/or fails to return an executed version of the DPA and/or CCA to Klear, then: (a) to the maximum extent permitted by law, Licensee shall be fully responsible and liable for any such breach, violation, infringement and/or processing of personal data without a DPA or a CCA by Klear and Klear's affiliates and subsidiaries (including, without limitation, their employees, officers, directors, subcontractors and agents); (b) in the event of any claim of any kind related to any such breach, violation or infringement and/or any claim related to processing of personal data without a DPA or a CCA, Licensee shall defend, hold harmless and indemnify Klear and Klear's affiliates and subsidiaries (including, without limitation, their employees, officers, directors, subcontractors and agents) from and

against any and all losses, penalties, fines, damages, liabilities, settlements, costs and expenses, including reasonable attorneys' fees.

### **11. Third Party Integration.**

The software and Services provided by Klear under this Agreement may rely on, or require, integration with third-party services, such as data sources or analytics provided by third party social networks. Klear does not control, and is not responsible for, such third-party services, and shall have no liability for any failure or degradation of such third-party services beyond Klear's reasonable control. The independent modification of such third-party services could adversely impact the functionality or quality of services provided through the Services or by Klear which depend on such third-party services, and Klear shall not have any liability or responsibility (including to provide any refunds) if such adverse impact occurs. Klear.com Terms of Use <https://klear.com/legal/tou> sets forth the third-party services that Klear currently uses in the context of the Services. Licensee hereby expressly accepts Klear.com Terms of Use.

### **12. Limitation of Liability.**

EXCEPT FOR (A) LICENSEE'S VIOLATION, INFRINGEMENT OR MISAPPROPRIATION OF KLEAR'S INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS, (B) LICENSEE'S VIOLATION OR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS OR (C) LICENSEE'S INDEMNIFICATION OBLIGATIONS: (I) NEITHER PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL EXCEED THE TOTAL AMOUNT OF LICENSE FEES PAID BY LICENSEE TO KLEAR DURING THE TWELVE (12) MONTHS PRECEDING THE DATE THE LIABILITY FIRST ARISES AND (II) TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY OTHER SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **13. Term.**

The Term of this Agreement is as set in the applicable Order Form.

### **14. Termination.**

Termination of this Agreement shall be according to the terms detailed in the applicable Order Form. Each party may terminate this Agreement at any time by giving written notice to the other party if: (i) the other party breaches a material provision of this Agreement and fails to cure the breach within thirty (30) days after being given written notice thereof; (ii) the other party is judged bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party; or any petition by or on behalf of such party is filed under any bankruptcy or similar laws. No refunds will be provided under any circumstance during or after the termination of the Agreement, except as explicitly provided in this Agreement. Upon termination of this Agreement for any reason whatsoever, Licensee will immediately cease use of the Services and return all Confidential Information to Klear and destroy

or return (including causing third parties to destroy or return) to Klear, at Klear's discretion, all Klear's Data. Licensee's obligations that, by their nature and content, must survive the termination of this Agreement in order to achieve their fundamental purposes shall so survive. Sections 2 (Intellectual Property Rights & Restrictions), 6(B) – (D) (Influencer Payments), 7 (Confidentiality), 10 (Further Requirements), 11 (Third Party Integration), 12 (Limitation of Liability), 14 (Consequences of Termination), 15 (Governing Law), 16 (Jurisdiction, injunctive relief) and Licensee's payment obligations shall survive any termination of this Agreement.

#### **15. Governing Law.**

Any dispute or claim arising out of, in relation to, or in connection with this Agreement, and any subsequent amendments to this Agreement, including without limitation the interpretation, making, performance, breach or termination thereof, shall be governed by and construed and enforced in accordance with the laws of the State of New York.

#### **16. Jurisdiction.**

The courts in New York, New York shall have exclusive jurisdiction over any dispute arising from or in connection with this Agreement, and each party waives any objection any forum non-convenience or jurisdiction in such courts. Notwithstanding the foregoing, Klear may seek an injunction or other equitable relief in any court of competent jurisdiction in order to prevent a breach or threatened breach of this Agreement.

#### **17. Use of the Services by Service Providers.**

"Service Provider(s)" means any third party service providers, such as agencies and marketing consultants, engaged by Licensee to provide marketing services directly to, and for the benefit of, Licensee. Subject to the terms and conditions of this Agreement, the scope of the License and to any reasonable requirements determined by Klear at its sole discretion (including, without limitation, technical restrictions to protect Klear's intellectual property or proprietary rights), Licensee may permit its Service Providers to participate in the License and use the Services and the data available on the Services for the sole purpose of providing marketing services to the Licensee, provided that: (i) Licensee first inform Klear in writing of the identity of such Service Providers, (ii) such Service Providers are approved in writing by Klear prior to receiving access to use the Services, (iii) Licensee causes such Service Providers to execute, and agree to be bound by, the Terms and Conditions for Service Providers by and between Klear and each such Service Provider, (iv) notwithstanding anything to the contrary, Licensee acknowledges and ensures that Klear shall have the right, but not the obligation, to use any remedies available in law or in equity directly against the Service Providers in connection with, or related to, any violation, breach, misappropriation or infringement of any kind by Service Providers or on Service Providers' behalf (with or without involving the Licensee, at Klear's sole discretion), and (v) Licensee shall in any event remain fully responsible and liable for the actions and omissions of its Service Providers, and for the transfer to, and access and/or use by, Service Providers of data and information (including, without limitation personal data) on the Services and shall defend, hold harmless and indemnify Klear (and its affiliates, subsidiaries, directors and staff) from and against any claim, liability, cost and/or expense of any kind related to the Service Provider's actions and/or omissions and/or the transfer to, and access and/or use by, Service Providers of data and information (including, without limitation personal data) on the Services and,

notwithstanding anything to the contrary in this Agreement or any other agreement or arrangement between Klear, the Licensee and/or the Service Providers, Licensee's liability in connection with this Section 17 shall be unlimited. Klear reserves the right to suspend access to the Services by Service Providers at Klear's sole discretion. Notwithstanding anything to the contrary, subsections (iv) and (v) of this Section 17 ("use of the Services by Service Providers") shall survive the termination or expiration of this Agreement and/or the relevant Order Forms for any reason.

#### **18. Publicity:**

Each party shall be permitted to use the names and/or logos of the other party in publicity releases, advertising, or similar marketing activities without the prior written consent of the other party. Nothing herein shall limit either party from disclosing the terms of this Agreement to potential financing sources, security holders, strategic partners and advisors.

#### **19. Assignment.**

Licensee may not transfer or assign its rights or obligations under this Agreement to any third party without the prior written approval of Klear. Klear may assign this agreement in whole or in part at its discretion.

#### **20. Entire Agreement.**

This Agreement and the relevant Order Form constitute the entire agreement between Klear and Licensee and supersedes any previous agreements or representations, either oral or written with respect to the subject matter of this Agreement. All amendments may be made only in writing. The parties shall be deemed independent contractors.

#### **21. No Third-Party Beneficiaries.**

This Agreement is intended solely for the benefit of the parties. In no event will any third party have any rights in relation to this Agreement or any right to enforce the terms hereof.

#### **22. Waiver.**

No waiver of rights arising under this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No failure or delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy and/or prejudice any rights of such party.

#### **23. Severability.**

If any provision under this Agreement is determined by a court to be unenforceable, that provision will be deemed to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted, and the remainder of the Agreement will continue in effect.

#### **24. Force Majeure**

Except for payment obligations, if any performance (excluding payment obligations) under this Agreement by either party is prevented, hindered, or delayed by reason of an event of Force Majeure (defined below), the party so affected shall be excused from



such performance to the extent that, and for so long as, performance is prevented, interrupted, or delayed thereby, provided that such party so affected shall promptly notify the other party of the occurrence of such event. If and when performance is resumed, all dates specified in this Agreement and/or in any Order Form accepted pursuant to this Agreement shall be automatically adjusted to reflect the period of such prevention, interruption, or delay by reason of such event of Force Majeure. For purposes of this Agreement, an event of Force Majeure shall be defined as: (a) fire, flood, earthquake, explosion, pandemic or epidemic (or similar regional health crisis), or act of God; (b) strikes, lockouts, picketing, concerted labor action, work stoppages, other labor or industrial disturbances, or shortages of materials or equipment, not the fault of either party; (c) invasion, war (declared or undeclared), terrorism, riot, or civil commotion; (d) an act of governmental or quasi-governmental authorities; (e) failure of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, shortage of adequate power or transportation facilities; and/or (f) any matter beyond the reasonable control of the affected party. Notwithstanding the foregoing, Licensee shall not be entitled to use, or rely on, this Section (Force Majeure) in connection with any Licensee breach of the License.

**Previous Versions:**

Below are previous versions of our Terms. They are effective as they correspond to the signature date of your Agreement.

[Klear.com Terms Of Service - Up to June 18, 2020](#)

[Klear.com Terms Of Service - Up to December 22, 2019](#)