

Effective starting: March 1st 2020

Klipworks Customer Terms of Service

PLEASE READ THESE CUSTOMER TERMS OF SERVICE CAREFULLY.

This is a contract between you (the Customer) and us (Klipworks). It describes the services we will provide to you, how we will work together, and other aspects of our business relationship.

By using the Subscription Service or receiving the Consulting Services, you are agreeing to these terms. We periodically update these terms. If you have an active Klipworks subscription, we will let you know when we do via an email or notification within our services.

You can find archived versions of the terms [here](#).

Finally, we know legal terms can sometimes be difficult to navigate, so we wanted to give you a roadmap of the Agreement:

- A. DEFINITIONS. This is where we provide the detail on what the key defined terms in the Agreement mean. You can think of this kind of like a contractual dictionary.
- B. GENERAL COMMERCIAL TERMS. Here's where you can find the basics about how our Subscription Service and Consulting Services are provided. For example, you can find information on access and [Acceptable Use](#). These terms apply to all of our products and service offerings.
- C. SUBSCRIPTION TERMS. Customers of ours subscribe to use our software (yes, it's SaaS), and there are some fundamental terms that apply to each subscription. There are some differences between the different types of subscriptions, and here's where you can find that detail.
- D. PRODUCT DISCLOSURES. We offer several different products and there are some important things to know before you use them. We've collected these important things to know and you can find them here.
- E. GENERAL LEGAL TERMS. As we mention above, this is a contract, and contracts are filled with legal terms. In this section, we've collected the many of the remaining legal terms that make up our Customer Terms of Service.
- F. JURISDICTION SPECIFIC TERMS. With customers across the globe, this final section is where we address most of the differences in these terms that vary based on customer location.

A. DEFINITIONS

- "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control of a party to this Agreement. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- "Agreement" means these Customer Terms of Service and all materials referred or linked to in here. "Billing Period" means the period for which you agree to prepay fees under an Order Form, which will be the same as or shorter than the Subscription Term as specified in the Order Form. For example, if you subscribe to the Subscription Service for a one (1) year Subscription Term, with a twelve (12) month upfront payment, the Billing Period will be twelve (12) months.
- "Communication Services" means third-party forums, online communities, blogs, personal web pages, calendars, and/or other social media communication facilities (such as Facebook, Twitter and LinkedIn) linked to or from the Subscription Service that enable you to communicate with the public or with a private group.
- "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, Confidential Information shall include all information concerning:
 - (a) Disclosing Party's customers and potential customers, past, present or proposed products, marketing plans, engineering and other designs, technical data, business plans, business opportunities, finances, research, development, and the terms and conditions of this Agreement. Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. Subject to the foregoing exclusions, Customer Data shall be Confidential Information under this Agreement regardless of whether or not it is designated as confidential.
- "Contact" means a single individual (other than a User) whose Contact Information is stored by you in the Subscription Service.
- "Contact Information" means the name, email address, phone number, online user name(s), telephone number, and similar information submitted by visitors to your landing pages on the Subscription Service or uploaded by you to the Subscription Service.
- "Consulting Services" means the professional services provided to you by us, which may include training services, installation, integration or other consulting services.
- "Customer Data" means all information that you submit or collect via the Subscription Service. Customer Data does not include Klipworks Content.
- "Customer Materials" means all materials that you provide or post, upload, input or submit for public display through the Subscription Service.
- "DPA" means the Klipworks Data Processing Agreement, that is available upon request
- For the Klipworks Service, if you only use our Free Services, this limit is equal to a maximum of 500 (500) minutes upload to our online servers.

- “Enrichment Data” means the company level information we make available to you as part of the Subscription Service obtained from public or third party sources. Enrichment Data does not include Personal Data. These properties may include information such as company name, company location, and company address.
- “Free Services” means the Subscription Service or other products or features made available by us to you on an unpaid trial or free basis.
- "Klipworks Content" means all information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags that we incorporate into the Subscription Service or Consulting Services, including Enrichment Data.
- "Order" or "Order Form" means the Klipworks-approved form or online subscription process by which you agree to subscribe to the Subscription Service and purchase Consulting Services. The Order may be referred to as a "Statement of Work" if you are purchasing only Consulting Services.
- “Paid Users” means those types of Users (defined below) for which we charge you fees as set forth in our Product and Services Catalog.
- “Personal Data” means any information relating to an identified or identifiable individual where such information is contained within Customer Data and is protected similarly as personal data or personally identifiable information under applicable Data Protection Law.
- "Sensitive Information" means (a) credit or debit card numbers; personal financial account numbers or wire instructions; Social Security numbers or local equivalents; passport numbers; driver’s license numbers or similar identifiers; passwords or log-in credentials; racial or ethnic origin; physical or mental health condition or information; or other employment or health information, including any information subject to the Health Insurance Portability and Accountability Act, the Payment Card Industry Data Security Standards, and other regulations, laws or industry standards designed to protect similar information; and (b) any information defined under European Data Protection Laws (as this term is defined in the DPA) as sensitive personal data (including special categories of personal data enumerated in in European Union Regulation 2016/679, Article 9(1) or any successor legislation.
- "Subscription Fee" means the amount you pay for the Subscription Service.
- "Subscription Service" means all of our web-based inbound marketing and sales applications, tools and platforms that you have subscribed to by an Order Form or that we otherwise make available to you, and are developed, operated, and maintained by us, accessible via <http://Klipworks.com> or another designated URL, and any ancillary products and services, including website hosting, that we provide to you.
- "Subscription Term" means the initial term of your subscription to the applicable Subscription Service, as specified on your Order Form(s), and each subsequent renewal term (if any). For Free Services, the Subscription Term will be the period during which you have an account to access the Free Services.
- "Third-Party Products" means non-embedded products and professional services that are provided by third parties which interoperate with or are used in connection with the Subscription Service. These products and services include non-Klipworks apps available from, for example, the following: our integrations products page,

partner directory, template marketplace, links made available through the Subscription Service and non-Klipworks services listed Klipworks.com.

- "Third-Party Sites" means third-party websites linked to from within the Subscription Service, including Communications Services.
- "Total Committed Subscription Value" means the aggregate amount of Subscription Fees paid or payable to us during your then-current Subscription Term(s) for all of your Klipworks accounts, but this amount excludes fees for renewals, Consulting Services and applicable taxes.
- "Users" means your employees, representatives, consultants, contractors or agents who are authorized to use the Subscription Service for your benefit and have unique user identifications and passwords for the Subscription Service. "Klipworks", "we", "us" or "our" means the applicable contracting entity as specified in the 'Contracting Entity and Applicable Law' section.
- "You", "your" or "Customer" means the person or entity using the Subscription Service or receiving the Consulting Services and identified in the applicable account record, billing statement, online subscription process, or Order Form as the customer.

B. GENERAL COMMERCIAL TERMS

1. Access. During the Subscription Term, we will provide you access to use the Subscription Service as described in this Agreement and the applicable Order. We may also provide you access to use our Free Services at any time by activating them in your Klipworks account. We might provide some or all elements of the Subscription Service through third party service providers. Your Affiliates may access and use the Subscription Service or receive the Consulting Services purchased under this Order; provided that, all such access, use and receipt by your Affiliates is subject to and in compliance with the Agreement and you shall at all times remain liable for Affiliates' compliance with the Agreement.

2. Additional Features. You may subscribe to additional features of the Subscription Service by placing an additional Order or activating the additional features from within your Klipworks account (if this option is made available by us.). This Agreement will apply to all additional Order(s) and all additional features that you activate from within your Klipworks account.

3. Service Uptime Commitment. For the purposes of this 'Service Uptime Commitment' section, the following definitions shall apply: "Priority 1" means a critical full outage/severe issue that constitutes a catastrophic problem that causes complete inability to use the Subscription Service, excluding Free Services, across a significant portion of the production environment (e.g. crash or hang), resulting in production downtime and where there is no workaround or solution to the problem.

- "Excluded" means the following: (i) unavailability caused by circumstances beyond our reasonable control, including, without limitation, act of God, acts of government, emergencies, natural disasters, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), or any other force majeure event or factors; (ii) any problems resulting from Customer's combining or merging the Subscription Service with any hardware or software not supplied by us or not identified by us in writing as compatible with the Subscription Service; (iii)

interruptions or delays in providing the service resulting from telecommunications or Internet service provider failures outside of our datacenter as measured by our third party website availability monitoring provider; and (iv) any interruption or unavailability resulting from the misuse, improper use, alteration, or damage of the Subscription Service.

- "Service Uptime" means (total hours in calendar month - unscheduled maintenance which causes unavailability - Priority 1 issue durations - scheduled maintenance - Excluded) / (Total hours in calendar month - scheduled maintenance - Excluded) X 100%. We will use commercially reasonable efforts to meet a Service Uptime of 99.95% for our Subscription Service in a given calendar month. All availability calculations will be based on our system records. Notwithstanding anything to the contrary in this Agreement, as Customer's sole and exclusive remedy for failure to meet availability or support commitments, in the event there are two (2) or more consecutive calendar months during which the Service Uptime falls below 99.95% in a given calendar month, Customer will be entitled to receive a credit equal to the prorated amount of fees applicable to the downtime as measured within two (2) or more consecutive calendar months during which the Service Uptime fell below 99.95%, which credit shall be applied against an invoice or charge for the following renewal Subscription Term, provided Customer requests such credit within twenty (20) days of the end of the relevant calendar month. Notwithstanding anything to the contrary in the Agreement or this section, this 'Service Uptime Commitment' section does not apply to our Free Services

4. Consulting Services. You may purchase Consulting Services by placing an Order with us. Unless we otherwise agree, the Consulting Services we provide are described in the Product and Services Catalog and will be delivered in English. Fees for these Consulting Services are in addition to your Subscription Fee. If you purchase Consulting Services that recur, they will be considered part of your subscription and will renew in accordance with your subscription. All Consulting Services are performed remotely, unless you and we otherwise agree. For Consulting Services performed on-site, you will reimburse us our reasonable costs for all expenses incurred in connection with the Consulting Services. Any invoices or other requests for reimbursements will be due and payable within thirty (30) days of the date of the invoice. If there are a specific number of hours included in the Consulting Services purchased, those hours will expire as indicated in the applicable description, which expiration period will commence upon purchase (the "Expiration Period"). If there are deliverables included in the Consulting Services purchased, it is estimated that those deliverables will be completed within the time period indicated as the delivery period in the applicable description, which delivery period will commence upon purchase (the "Delivery Period"). If there is no Expiration Period or Delivery Period indicated, then it will be one hundred and eighty (180) days from purchase. If the Consulting Services provided are not complete at the end of the Delivery Period due to your failure to make the necessary resources available to us or to perform your obligations, such Consulting Services will be deemed to be complete at the end of the Delivery Period. If Consulting Services provided are not complete at the end of the Delivery Period due to our failure to make the necessary resources available to you or to perform our obligations, the Delivery Period will be extended to allow us to complete such Consulting Services. We might provide some or all elements of

the Consulting Services through third party service providers. Consulting Services are non-cancellable and all fees for Consulting Services are non-refundable.

5. Use and Limitations of Use.

a. **Acceptable Use.** You will comply with our Acceptable Use Policy ("AUP").

b. **Prohibited and Unauthorized Use.** You will not (i) use or launch any automated system, including, "robots," "spiders," or "offline readers," that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser; (ii) use the Subscription Service in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Subscription Service; (iii) attempt to gain unauthorized access to the Subscription Service; (iv) access the Subscription Service other than through our interface; or (v) use the Subscription Service for any purpose or in any manner that is unlawful or prohibited by this Agreement. You may not use the Subscription Service if you are legally prohibited from receiving or using the Subscription Service under the laws of the country in which you are resident or from which you access or use the Subscription Service. The Subscription Service is not designed to comply with industry-specific regulations such as the Health Insurance Portability and Accountability Act (HIPAA) or the Federal Information Security Management Act (FISMA), so you may not use the Subscription Service where your communications would be subject to such laws. You may not use the Subscription Service in a way that would violate the Gramm-Leach-Bliley Act (GLBA). Nothing contained herein shall limit the usage restrictions specific to Sensitive Information under the Agreement. You will notify us right away of any unauthorized use of your Users' identifications and passwords or your account.

c. **No Sensitive Information.** YOU ACKNOWLEDGE THAT THE SUBSCRIPTION SERVICES HAVE NOT BEEN DESIGNED TO PROCESS OR MANAGE SENSITIVE INFORMATION AND ACCORDINGLY YOU AGREE NOT TO USE THE SUBSCRIPTION SERVICE TO COLLECT, MANAGE OR PROCESS SENSITIVE INFORMATION. WE WILL NOT HAVE AND SPECIFICALLY DISCLAIM ANY LIABILITY THAT MAY RESULT FROM YOUR USE OF THE SUBSCRIPTION SERVICE TO COLLECT, PROCESS OR MANAGE SENSITIVE INFORMATION.

d. **Use of Communication Services.** You agree to use Communication Services only in compliance with any terms of use specified by each Communication Service. We do not control the content, messages or information found in the Communication Services. We will not have any liability with regards to the Communication Services and any actions resulting from your use of the Communication Services.

e. **Third-Party Sites and Products.** Third-Party Sites and Products are not under our control. Third-Party Sites and Products are provided to you only as a convenience, and the availability of any Third-Party Site or Product does not mean we endorse, support or warrant the Third-Party Site or Product.

f. You must be 18 years of age (or 20 years of age, if you are subject to the laws of Japan) or older to Admin or be User of the Subscription Service.

6. Retrieval of Customer Data. If you make a written request within thirty (30) days after upload we will provide you with temporary access to the Subscription Service to retrieve, or we will provide you with copies of, all Customer Data then in our possession or control. Thirty (30) days after upload, we will have no obligation to maintain or provide you the Customer Data. We will delete all Customer Data in our systems or otherwise in our control, unless (i) we are legally prohibited or (ii) save as set out in the 'Deletion or Return of Personal Data' section of the DPA, then such Personal Data shall be Processed in accordance with our DPA.

D. PRODUCT DISCLOSURES

For privacy disclosures about the Subscription Service, please see our [Product Privacy Policy found here](#).

E. GENERAL LEGAL TERMS

1. Customer Data

a. Limits on Klipworks. We will not use, or allow anyone else to use, Customer Data to contact any individual or company except as you direct or otherwise permit. We will use Customer Data only in order to provide the Subscription Service and Consulting Services to you and only as permitted by applicable law, this Agreement, and our Product Privacy Policy. b. Data Practices. We may monitor use of the Subscription Service by all of our customers and use the information gathered in an aggregate and anonymous manner. You agree that we may use and publish such information, provided that such information does not incorporate any Customer Data and/or identify you. For clarity any data provided to other customers or third parties will only be in an aggregated and anonymous manner. We use Customer Data in an anonymized manner for machine learning that supports certain product features and functionality within the Subscription Service. c. Protection of Customer Data. The terms of the DPA are hereby incorporated by reference and shall apply to the extent any Customer Data includes Personal Data as defined in the DPA. We will maintain commercially appropriate administrative, physical, and technical safeguards to protect Personal Data as described in the DPA, available by request..

2. Klipworks's Proprietary Rights.

This is an Agreement for access to and use of the Subscription Service, and you are not granted a license to any software by this Agreement. The Subscription Service and Consulting Services are protected by intellectual property laws, they belong to and are the property of us or our licensors (if any), and we retain all ownership rights to them. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the Klipworks Content, the Subscription Service, or the Consulting Services in whole or in part, by any means, except as expressly authorized in writing by us. You may not use any of trademarks without our prior written permission. If we make Enrichment Data available to you, then you may only use that Enrichment Data in connection with your use of the Subscription Service. We may change what Enrichment Data we provide or discontinue providing Enrichment Data at any time with or without notice to you. We encourage all customers to comment on the Subscription Service or Consulting Services, provide suggestions for improving it, and vote on suggestions they like. You agree that all such comments and suggestions will be

non-confidential and that we own all rights to use and incorporate them into the Subscription Service or Consulting Services, without payment or attribution to you.

3. Customer's Proprietary Rights.

As between the parties, you own and retain all rights to the Customer Materials and Customer Data. This Agreement does not grant us any ownership rights to Customer Materials or Customer Data. You grant permission to us and our licensors to use the Customer Materials and Customer Data only as necessary to provide the Subscription Service and Consulting Services to you and as otherwise permitted by this Agreement. If you are using the Subscription Service or receiving Consulting Services on behalf of another party, then you represent and warrant that you have all sufficient and necessary rights and permissions to do so.

4. Confidentiality. The Receiving Party shall: (i) protect the confidentiality of the Confidential Information of the Disclosing Party using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but in no event less than reasonable care, (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information of the Disclosing Party to any third party (except those third party service providers used by us to provide some or all elements of the Subscription Service or Consulting Services and except for your Klipworks Solutions Partner bound by confidentiality obligations), and (iv) limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. The Receiving Party may disclose Confidential Information of the Disclosing Party if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process; provided, however, that (i) Receiving Party will provide Disclosing Party with prompt notice of any request that it disclose Confidential Information, sufficient to allow Disclosing Party to object to the request and/or seek an appropriate protective order or, if such notice is prohibited by law, Receiving Party shall disclose the minimum amount of Confidential Information required to be disclosed under the applicable legal mandate; and (ii) in no event shall Receiving Party disclose Confidential Information to a party other than a government agency except under a valid order from a court having jurisdiction requiring the specific disclosure.

5. Publicity. You grant us the right to add your name and company logo to our customer list and website. To object to this use, please indicate so by contacting us.

6. Indemnification. You will indemnify, defend and hold us and our Affiliates harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us or our Affiliates to the extent that such Action is based upon or arises out of (a) unauthorized or illegal use of the Subscription Service by you or your Affiliates, (b) your or your Affiliates' noncompliance with or breach of this Agreement, (c) your or your Affiliates' use of Third-Party Products, or (d) the unauthorized use of the Subscription Service by any other person using your User

information. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defense or settlement of such a claim; and provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the defense or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

7. Disclaimers; Limitations of Liability a. Disclaimer of Warranties. WITHOUT LIMITING OUR OBLIGATIONS IN THE 'PROTECTION OF CUSTOMER DATA' SECTION OF THIS AGREEMENT, WE AND OUR AFFILIATES AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE SUBSCRIPTION SERVICE, DATA MADE AVAILABLE FROM THE SUBSCRIPTION SERVICE, Klipworks CONTENT, OR THE CONSULTING SERVICES FOR ANY PURPOSE. APPLICATION PROGRAMMING INTERFACES (APIs) MAY NOT BE AVAILABLE AT ALL TIMES. TO THE EXTENT PERMITTED BY LAW, THE SUBSCRIPTION SERVICE, Klipworks CONTENT AND CONSULTING SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SUBSCRIPTION SERVICE AND THE CONSULTING SERVICES, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. b. No Indirect Damages. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR BUSINESS OPPORTUNITIES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY; PROVIDED THAT, THIS LIMITATION SHALL NOT APPLY TO YOU IF YOU ONLY USE THE FREE SERVICES. c. Limitation of Liability. EXCEPT FOR YOUR LIABILITY FOR PAYMENT OF FEES, YOUR LIABILITY ARISING FROM YOUR OBLIGATIONS UNDER THE 'INDEMNIFICATION' SECTION, AND YOUR LIABILITY FOR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS, IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, EITHER PARTY OR ITS AFFILIATES IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY, ITS AFFILIATES OR ANY THIRD PARTY, THE PARTIES AGREE THAT THE AGGREGATE LIABILITY OF A PARTY AND ITS AFFILIATES WILL BE LIMITED TO A SUM EQUAL TO THE TOTAL AMOUNTS PAID OR PAYABLE FOR THE SUBSCRIPTION SERVICE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM; PROVIDED HOWEVER, THIS LIMITATION SHALL NOT APPLY TO YOU IF YOU ONLY USE THE FREE SERVICES, AND IN THIS CASE, IF WE ARE DETERMINED TO HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY ARISING FROM YOUR USE OF THE FREE SERVICES, THEN OUR AGGREGATE LIABILITY WILL BE LIMITED TO ONE HUNDRED U.S. DOLLARS. d. Third Party Products. WE AND OUR AFFILIATES DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT. e.

Agreement to Liability Limit. YOU UNDERSTAND AND AGREE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY, WE WOULD NOT PROVIDE THE SUBSCRIPTION SERVICE TO YOU.

8. Miscellaneous

- a. Amendment; No Waiver. We may update and change any part or all of these Customer Terms of Service, including the fees and charges associated with the use of the Subscription Service (but, your fees and charges won't change during the Subscription Term except as we explain in the 'Fees and Payments' section above.) If we update or change these Customer Terms of Service, the updated Customer Terms of Service will be posted at <http://legal.Klipworks.com/terms-of-service> and we will let you know via email or in-app notification. The updated Customer Terms of Service will become effective and binding on the next business day after it is posted. When we change these Customer Terms of Service, the "Last Modified" date above will be updated to reflect the date of the most recent version. Klipworks will push an email notification when we update the Customer Terms of Service. For the Product Disclosures page, if we make updates or changes we will provide notice of those changes at our discretion. The updated Product Disclosures page will be effective upon posting. We encourage you to review these Customer Terms of Service periodically. If you do not agree with a modification to the Customer Terms of Service, you must notify us in writing within thirty (30) days after receiving notice of modification. If you give us this notice, your subscription will continue to be governed by the terms and conditions of the Customer Terms of Service prior to modification for the remainder of your current term. Upon renewal, the Customer Terms of Service published by us on our website will apply. No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.
- b. Force Majeure. Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.
- c. Actions Permitted. Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.
- d. Relationship of the Parties. You and we agree that no joint venture, partnership, employment, or agency relationship exists between us.
- e. Compliance with Laws. We will comply with all U.S. state and federal laws (where applicable) in our provision of the Subscription Service, the Consulting Services and our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. We will comply with our Code of Business Conduct and Ethics (a/k/a our Code of Use Good Judgment) which can be found on our Investor Relations page on Klipworks.com. You will comply with all laws in your use of the Subscription Service and Consulting Services, including any applicable export laws. You must comply with all applicable laws related to the recording of phone calls and ensure all proper consent to record is obtained prior to making any such recording. You will comply with the sanctions programs administered by the Office

of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury in your use and receipt of the Subscription Service and Consulting Services. You will not directly or indirectly export, re-export, or transfer the Subscription Service or Consulting Services to prohibited countries or individuals or permit use of the Subscription Service or Consulting Services by prohibited countries or individuals. f. Severability. If any part of this Agreement or an Order Form is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect. g. Notices. Notice will be sent to the contact address set forth herein, and will be deemed delivered as of the date of actual receipt. We may give electronic notices by general notice via the Subscription Service and may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you or through the notifications center of the Subscription Service. We may give notice to you by telephone calls to the telephone numbers on record in our account information for you. You must keep all of your account information current.

h. Entire Agreement. This Agreement (including each Order), along with our Privacy Policy found here), Product Privacy Policy, and AUP, is the entire agreement between us for the Subscription Service and Consulting Services and supersedes all other proposals and agreements, whether electronic, oral or written, between us. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the Subscription Service or dependent on any oral or written public comments made by us regarding future functionality or features of the Subscription Service. We might make versions of this Agreement available in languages other than English. If we do, the English version of this Agreement will govern our relationship and the translated version is provided for convenience only and will not be interpreted to modify the English version of this Agreement.

i. Assignment. You will not assign or transfer this Agreement without our prior written consent, except that you may assign this Agreement to a successor by reason of merger, reorganization, sale of all or substantially all of your assets, change of control or operation of law, provided such successor is not a competitor of ours. We may assign this Agreement to any Klipworks affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.

j. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

k. Contract for Services. This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, shall not apply to this Agreement. If you are located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights and obligations of the parties under this Agreement.

l. Authority. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable

in accordance with its terms. Customer further warrants and represents that it has the authority to procure its Affiliates compliance with the terms of this Agreement.

EU/EEA and Switzerland Data Processing. Klipworks participates in and has certified its compliance with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of Personal Data (as defined in the DPA) transferred from the European Economic Area, the United Kingdom and/or Switzerland, as applicable, to the U.S. For additional detail on our commitments with respect to the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks, see our Privacy Policy and Product Privacy Policy. Customer will obtain and maintain any required consents necessary to permit the processing of Customer Data under this Agreement. If you are subject to the GDPR you understand that if you give an integration provider access to your Klipworks account, you serve as the data controller of such information and the integration provider serves as the data processor for the purposes of those data laws and regulations that apply to you. In no case are such integration providers our subprocessors.

3. U.S. Government Entities. If you are a U.S. local, state or federal government entity, then the Klipworks Government Customer Additional Terms apply to your Agreement. If these terms apply to you, then they are incorporated into the Agreement and will control in the event of any conflict with these Customer Terms of Service.

4. Germany. If you are contracting with Klipworks Germany GmbH, then the following provisions apply to you. In the event of a conflict between the terms in this 'Germany' section and the terms otherwise set forth in this Agreement, the terms of this 'Germany' section shall control.

a. Defects. If the Subscription Service is determined to have a defect, you will notify us in writing. We will remedy material defects in a reasonable period of time. If we cannot, then we will refund to you the pro-rata amount of fees actually paid applicable to the unremedied material defect. You cannot deduct this amount from your Subscription Fee, unless your claim is undisputed or has been confirmed by a final court judgment. You will not have a claim for a defect under this section if: (i) it is caused by your use of the Subscription Service in violation of this Agreement, or (ii) is a defect relating to our Free Services that has not been maliciously concealed by us. Subject to the limitation of liability set forth in this Agreement, the refund described in this section is your sole and exclusive remedy for defect claims.

b. Termination for Cause. The 'Termination for Cause' section set forth above is replaced in its entirety with the following: "Either party may terminate this Agreement for cause, as to any or all Subscription Services upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period. We may also terminate this Agreement for cause on thirty (30) days' notice if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers. This Agreement may not otherwise be terminated prior to the end of the Subscription Term. The right of either party to terminate this Agreement for a compelling reason under a claim of extraordinary termination under the German Civil Code shall remain unaffected."

c. Compliance with Laws. We will comply with all E.U. regulations (where applicable) in our provision of the Subscription Service, the Consulting Services and our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. You will comply with all laws in your use and receipt of the Subscription Service and Consulting Services, including any applicable export laws. You must comply with all applicable laws related to the recording of phone calls and ensure all proper consent to record is obtained prior to making any such recording. You will not directly or indirectly export, reexport, or transfer the Subscription Service or Consulting Services to prohibited countries or individuals or permit use of the Subscription Service or Consulting Services by prohibited countries or individuals.

d. Disclaimers; Limitations of Liability. The 'Disclaimers; Limitations of Liability' set forth above is replaced in its entirety with the following:

"a. Disclaimer of Warranties. OUR SUBSCRIPTION SERVICE AND CONSULTING SERVICES WILL BE PROVIDED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH CUSTOMARY INDUSTRY STANDARDS UTILIZING REASONABLE CARE AND SKILL. WE AND OUR AFFILIATES AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY OF THE SUBSCRIPTION SERVICE, DATA MADE AVAILABLE FROM THE SUBSCRIPTION SERVICE, Klipworks CONTENT, OR THE CONSULTING SERVICES FOR A PARTICULAR PURPOSE NOR ON A SPECIFIC RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE SUBSCRIPTION SERVICE, DATA MADE AVAILABLE FROM THE SUBSCRIPTION SERVICE, Klipworks CONTENT, OR THE CONSULTING SERVICES, EXCEPT IF AGREED SEPARATELY. ANY LIABILITY FOR DEFECTS EXISTING UPON CONCLUSION OF THESE TERMS ACCORDING TO SECTION 536a GERMAN CIVIL CODE SHALL BE EXCLUDED. APPLICATION PROGRAMMING INTERFACES (APIs) MAY NOT BE AVAILABLE AT ALL TIMES. OUR FREE SERVICES, INCLUDING APIs, ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SUBSCRIPTION SERVICE AND THE CONSULTING SERVICES, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

b. Full Liability. We will be liable to you without limit for loss or damage you actually suffer that is caused by: (i) our fraudulent action, (ii) our willful action, (iii) our gross negligence, (iv) our damage to life, body or health, or (v) our action that would give rise to a claim under the German Product Liability Act and/or (vi) from a guarantee of characteristics ("zugesicherte Eigenschaft"). Provided however, the limitations otherwise set forth below shall apply to: (w) our Free Services, (x) those losses or damages caused by our slight negligence, (y) those losses or damages caused by gross negligence of employees who are not legal representatives or senior employees, and (z) our strict liability that may arise from material defects in the Subscription Service that were already in existence at the commencement of your

subscription. The claims for which we will be liable to you without limit in accordance with this section are collectively referred to as "Full Liability Claims"

c. No Indirect Damages. EXCEPT FOR FULL LIABILITY CLAIMS, TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR BUSINESS OPPORTUNITIES.

d. Limitation of Liability. EXCEPT FOR YOUR LIABILITY FOR PAYMENT OF FEES, YOUR LIABILITY ARISING FROM YOUR OBLIGATIONS UNDER THE 'INDEMNIFICATION' SECTION, YOUR LIABILITY FOR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS, AND OUR LIABILITY FOR FULL LIABILITY CLAIMS, IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, EITHER PARTY, ITS AFFILIATES OR ITS AFFILIATES IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY, ITS AFFILIATES OR ANY THIRD PARTY, THE PARTIES AGREE THAT THE AGGREGATE LIABILITY OF A PARTY AND ITS AFFILIATES WILL BE LIMITED TO A SUM EQUAL TO THE TOTAL AMOUNTS PAID OR PAYABLE FOR THE SUBSCRIPTION SERVICE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM; PROVIDED HOWEVER, THIS LIMITATION SHALL NOT APPLY TO YOU IF YOU ONLY USE THE FREE SERVICES, AND IN THIS CASE, IF WE ARE DETERMINED TO HAVE ANY LIABILITY TO YOU, YOUR AFFILIATES OR ANY THIRD PARTY ARISING FROM YOUR USE OF THE FREE SERVICES, THEN OUR AGGREGATE LIABILITY WILL BE LIMITED TO ONE HUNDRED U.S. DOLLARS. e. Third Party Products. WE AND OUR AFFILIATES DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT. f. EXCEPT FOR FULL LIABILITY CLAIMS, THE PERIOD OF LIMITATION FOR ANY WARRANTY AND LIABILITY CLAIMS SHALL BE ONE YEAR."

5. Ireland. If you are contracting with Klipworks Ireland Limited then the following provisions apply to you. In the event of a conflict between the terms in this 'Ireland' section and the terms otherwise set forth in this Agreement, the terms of this 'Ireland' section shall control.

a. Compliance with Laws. We will comply with all E.U. regulations (where applicable) in our provision of the Subscription Service, the Consulting Services and our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request. You will comply with all laws in your use and receipt of the Subscription Service and Consulting Services, including any applicable export laws. You must comply with all applicable laws related to the recording of phone calls and ensure all proper consent to record is obtained prior to making any such recording. You will comply with the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. You will not directly or indirectly export, reexport, or transfer the Subscription Service or Consulting Services to prohibited countries or individuals or permit use of the Subscription Service or Consulting Services by prohibited countries or individuals.

6. Japan. If you are contracting with Klipworks Japan KK, then you and Klipworks Japan KK represent and warrant that they, and their officers, directors, and material shareholders, are not: (i) Anti-Social Forces (defined below), and have not been for at least the last five years, and (ii) involved with Anti-Social Forces, including, without limitation, involvement by management, utilization, or provision of funding or favors. Either party may immediately terminate this Agreement for cause in the event of a breach of any of these representations and warranties. For the purposes of this section "Anti-Social Forces" means, collectively, an organized crime group (boryokudan) or a member or affiliate thereof, a corporate racketeer (soukaiya), a rogue person or group advocating a social or political movement, or any other anti-social forces. If you are not contracting with Klipworks Japan KK, then this section does not apply to you.