

**ORDER FORM**

**THIS AGREEMENT** (the "Agreement") is entered into on the last date signed ("**Effective Date last date signed when fully executed by both parties**") by and between **KLIR INC.**, a corporation incorporated pursuant to the laws of Delaware (including all Affiliates, "**Klir**"), and **City of Cape Coral.**, a company having its principal office at 1015 Cultural Park Boulevard, Cape Coral, FL 33990 ("**Subscriber**").

**WHEREAS**, the parties have agreed that Klir shall grant Subscriber a subscription to access the Software and shall provide related services, on the terms and conditions set forth herein.

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

**1. Software**

<b>Sampling and Monitoring For Drinking Water (DW) &amp; WasteWater (WW) - Klir Comply</b>	
<b>Features</b>	<b>Inclusion</b>
Manage and store your SDWA / other DW permit(s) & NPDES and other WW permits in Klir 9 (Maximum 10)	✓
Set up DW & WW monitoring plans to ensure all required samples are accounted for	✓
Transfer lab data from LIMS and/or internal/ external data sources for a centralized view of sample results	✓
View all sample results in a consolidated, filterable, exportable view	✓
Automatically flag exceedances based on custom limits specific to parameters	✓
Send exceedance alerts to relevant stakeholders	✓
View Dashboard for the Safe Drinking Water Act Rule Klir & export as required	✓
DW & WW Monitoring Schedules to track all sampling required	✓
Historical Data	✓
Capture Sampling Results in Field (Mobile)	✓
Customer Success: value check-ins, support, virtual product walkthroughs	✓
Core Features: User & Role Management, Task Manager, Task Templates, Document Management (Store Files Against Records), Reporting & Sampling Dashboards, Audit Trails, Alerts Engine (Rules, Alerts, and Notifications)	✓

**2. Subscription Fee**

Items	Frequency	Year 1 Costs
Set Up	One-time	\$11,500
Permit Management (Max 10)	Annual	\$15,000
DW & WW Sampling & Monitoring -	Annual	\$ 42,000
<b>Total Cost due upon signing</b>		<b>\$ 68,500</b>

**3. Billing & Currency**

Subscriber shall be billed annually (in US dollars) for the subscription fees associated with this Agreement. Payment must be remitted by Subscriber within thirty (30) days from the date of issuance of the invoice.

**4. Term**


The initial term of this Agreement shall commence upon the Effective Date and shall continue for a period of twelve (12) months ("Initial Term"). Following the completion of the Initial Term, this Agreement can be renewed upon mutual agreement of the parties for 2 additional one year terms ("Renewal Periods"), collectively known as Renewal Periods 1-2 unless earlier terminated under this Agreement's express provisions or either party gives the other party written notice of non-renewal at least 180 days before the expiration of the then-current term (each, a "Renewal Term" and, collectively, together with the Initial Term, the "Term"). This agreement may not exceed more than three years from the Effective Date.

**5. Standard terms**

All capitalized terms used, unless otherwise defined in this initial order, shall have the meaning given to such terms in the standard terms and conditions located at: <https://www.klir.com/terms-conditions>. This order (and each subsequent order) incorporate by reference, and are subject to, the standard terms. In the event of any conflict or ambiguity between the terms and conditions of the standard terms and the terms of any order, the provisions of the standard terms shall prevail.


**IN WITNESS WHEREOF**, the parties have executed this Agreement with effect as of the date first written above.

**KLIR INC.**

  
 \_\_\_\_\_  
 Name: Jacquie Dwyer  
 Title: CRO

**City of Cape Coral, FL**

\_\_\_\_\_  
 Name:  
 Title:

APPROVED AS TO FORM:  
 By:   
 City Attorney's Office  
 Date: 9-20-2019

# Klir Standard Legal Terms and Conditions

Last updated June 14, 2024

These Terms and Conditions ("Standard Terms") govern the purchase of Services by the Subscriber and the access or use by the Subscriber of the Services and Software made available by Klir. By accepting or executing an Order that references These Standard Terms, or (b) otherwise accessing or using the Services or the Software, Subscriber agrees to be bound by these Standard Terms, and all terms, policies and guidelines incorporated by reference in these Standard Terms.

If accepting this Agreement on behalf of a company or legal entity, you represent that you have the authority to bind such entity and its affiliates to these Standard Terms, in which case the terms "Subscriber", "User" and "you" (as the case may be) shall refer to such entity and its affiliates. If you do not have such authority, you must not accept this Agreement and may not use the Services.

## 1. DEFINITIONS

The following terms shall have the following meanings:

(a) "**Affiliate**" means any corporation that either: (a) is controlled, either directly or indirectly, by a party to this Agreement, or (b) controls such party, as the case may be. For the purposes of this definition "control" means the ability to vote greater than fifty percent (50%) of the outstanding voting securities in such corporation.

(b) "**Agreement**" means these Standard Terms together with each Order.

(c) "**Anniversary Date**" means the date falling exactly one year following commencement of the Subscription;

(d) "**Confidential Information**" means all data and information in any form disclosed by either party to the other party, including, without limitation: (i) the Subscriber Content; (ii) all data and information concerning Klir's software programs and services including, without limitation, the source code, specifications, flow charts, computer codes, documentation, or any part or component thereof; (iii) all data and information that relates to Klir's finances, business operations, customers, customer products, business plans and opportunities, market research, research, development, know-how, trade secrets, ideas and intellectual property; (iv) the terms and conditions of this Agreement; and (v) the Services and Software;

(e) "**Consulting Services**" means all technical assistance, software consulting, custom development, implementation, training and all other services provided by Klir to the Subscriber in connection with the Software, other than the Hosting Services.

(f) "**Fees**" means the fees specified in an Order in connection with the Services. In the event that no Fees are specified in the relevant Order for Services which are rendered, the then current fees of Klir applicable to its general customer base shall apply to the relevant Services.

(g) **"Force Majeure"** means an act of God, action of the elements, fire, labour disturbances, telecommunications interruption or failure, shortage of labour, material, or supplies, war, invasion, civil unrest, enactment of legislation or issuance of governmental orders or regulations, or other casualty or cause, whether similar or dissimilar, beyond either party's control;

(h) **"Hosting Services"** means the hosting services provided by Klir to the Subscriber, either through Klir's own servers, or through a third party service provider, on which the Subscriber may access the Subscriber Portal and Software;

(i) **"Services"** means the provision of the Software, plug-in(s) or web portal(s), and all related services provided by Klir to Subscriber hereunder, including without limitation, where applicable, in conjunction with the Hosting Services;

(j) **"Software"** means the internet based software applications set forth in the Order;

(k) **"Subscriber"** means the person or entity specified as such in the initial Order;

(l) **"Subscriber Content"** shall have the meaning given to such term in Section 5.2;

(m) **"Subscriber Portal"** means the graphical user interface provided by Klir (whether through a third party server or otherwise) to Subscriber, that provides access, via the internet, to the Software;

(n) **"Subscription"** means a time-based, non-exclusive, non-transferable right to access the Software online in exchange for payment of the Fees and in accordance with this Agreement and the Order.

(o) **"Subscription Fees"** means the subscription fees set forth in the Order; and

(p) **"Supported Browser"** means any Internet browser as may be determined from time to time by Klir, in its sole discretion.

## 2. SUBSCRIPTION; SERVICES

**2.1 Subscription.** During the Subscription, the Services are provided by Klir for Subscriber's use on an annual basis (as specified in the Order), provided that Subscriber:

(a) complies with the provisions of this Agreement;

(b) shall not resell, license, rent, lease, transfer and/or assign (or attempt to do any of the foregoing) the rights granted to Subscriber by Klir in relation to the Software or Services, in whole or in part, to any third party;

(c) shall not transmit (in any manner) to, or permit any, third party to use and/or gain access to the Software or Services;

(d) shall not modify, alter, adapt, change or reverse engineer, tamper with any source code in relation to the Software or Services, or merge with another software program or other material to create an updated

original work, create derivative works or modify another software application or website so as to falsely imply that it is associated with Software, Klir, or any other software or service provided by Klir;

(e) shall not download, store, reproduce, transmit, display, copy, distribute, commercially exploit or use the Software or Services, or any portion thereof, other than as expressly permitted hereunder, or any modification to the Software or Services set forth in subparagraph (d) above;

(f) shall not use or access the Services: (a) in any manner (including without limitation those listed in this Section 2.1) which may infringe Intellectual Property Rights of Klir; (b) in any manner which is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or in violation of this Agreement; (c) to upload, post, host, or transmit unsolicited bulk e-mail "Spam", short message service "SMS" message, viruses, self-replicating computer programs "Worms", or any code of a destructive or malicious nature; or (d) in any manner that would contravene any laws in the USA or in any other jurisdiction;

(g) accesses, operates or uses the Software solely via the Supported Browser or through such other connections that conform to Klir's then applicable hardware, software (including, but not limited to, the use of a PDF reader) and communication specifications, and Subscriber must adhere to all such specifications in configuring such connections to properly function with Software. For the avoidance of doubt, Klir is in no way responsible or liable for the provision or cost of such connections or any related hardware or software to facilitate the connections or for the ability or inability of such connections to properly function or perform on Subscriber's behalf.

**2.2 Suspension of Access.** In the interest of maintaining operability in the Software and Services, Klir reserves the right to temporarily suspend the Services, including without limitation, for maintenance, repairs or installation of upgrades, and will endeavor, but is not obligated, to provide reasonable notice prior to any such suspension. For the avoidance of doubt, any such reasonable suspension shall not entitle Subscriber to any refund, credit or discount from the Fees payable to Klir hereunder.

**2.3 Hosting Services; Supported Browser.** Subscriber acknowledges that: (a) the Software can solely be accessed through the use of an internet browser: (i) which has successfully installed the Supported Browser, and (ii) from a personal computer or laptop computer; (b) no license is given to Subscriber to any of the underlying software used by Klir, or any third party service provider, as part of the servers to provide the Hosting Services to Subscriber; (c) Klir is in no way responsible or liable for the provision or cost of the Supported Browser; and (d) Klir makes no representation or warranty as to the service levels of the Hosting Services and Subscriber hereby waives any eligibility for service credits (or any other form of compensation) for any downtime of the Hosting Services.

**2.4 Consulting Services.** In the event that Klir agrees to provide the Subscriber with Consulting Services in writing (including by means of email), then unless otherwise specifically mutually agreed in writing, the terms and conditions set forth [here](#) shall apply.

### 3. Fees

**3.1 Fees.** The following terms and conditions shall apply in respect of payment of Fees by Subscriber:

(a) Fees. Subscriber shall pay the Fees to Klir in accordance with the terms of this Agreement.

(b) **Billing.** All Fees shall be paid by Subscriber to Klir, in advance, either (at the option of Klir): (i) on the dates set forth in invoices issued by Klir in accordance with the applicable payment terms set forth therein, or (ii) in the event that Subscriber.

(c) **Currency.** Unless otherwise expressly provided in this Agreement or the relevant invoice, all Fees are expressed in the currency specified in the Order.

(d) **Annual Increase.** The Fees will increase automatically each year on the anniversary of this Agreement by the greater of: (i) the percentage increase year on year of the Consumer Price Index, and (ii) five (5%) per cent.

(e) **Late Payment.** At Klir's option, Klir may assess a late payment fee equal to two per cent (2%) of the unpaid amount for each succeeding thirty (30) day period or portion thereof in which Klir has not received payment from Subscriber of Fees when due.

(f) **Adjustments.** Subscriber shall promptly and carefully review statements and invoices provided or made available by Klir to Subscriber. If Subscriber believes any adjustments are needed with respect to any amounts due to Klir, or if Subscriber has any other questions or concerns regarding any statement or report provided by Klir, Subscriber must so notify Klir in writing within thirty (30) days after such invoice or report is received. If Subscriber fails to notify Klir within such time frame, Klir will not be required to investigate the matter or effect any related adjustment, absent any wilful misconduct by Klir. If Subscriber notifies Klir after such time period, Klir may, in its sole discretion and at Subscriber's cost, investigate the matter addressed in Subscriber's notice, but Klir will not have any liability to effect any related adjustment absent any wilful misconduct by Klir.

(g) **Suspension of Services.** At Klir's option, Klir may suspend provision of any Services if Klir has not received payment of Fees from Subscriber when due.

(h) **Taxes.** All Fees payable to Klir are exclusive of any taxes, assessments or duties that may be assessed upon the Software, Services or any licenses under this Agreement, including, without limitation, sales, use, excise, value added, personal property, electronic/internet commerce, export, import and withholding taxes, but not including taxes based upon Klir's income. Subscriber shall directly pay any such taxes assessed against it, including without limitation all taxes that arise out of transactions completed by Subscriber using the Software. Subscriber shall promptly reimburse Klir for any such taxes payable or collectable by Klir. *If any tax in the nature of withholding tax is payable on any sums payable to Klir under this Agreement, Subscriber shall pay Klir such amount as is necessary to ensure that the net amount received by Klir after such withholding shall be equal to the amount originally due.*

(i) **Collection Expenses.** Subscriber agrees to reimburse Klir for any and all collection related expenses incurred by Klir in the collection of any amounts owed to Klir pursuant to this Agreement.

**3.2 No Refunds.** No refunds or credits will be issued to Subscriber for any non-use, or partial use, of the Services or for any other reason.

#### **4. ACCESS TO THE SOFTWARE**

**4.1 Authorized User.** Klir shall only permit access and use of Software to the Subscriber or employees and Authorized Contractors (each an “Authorized User”). Authorized Users are required to provide their full legal name, a valid e-mail address, and any other information requested by Klir.

**4.2 Administrator.** Subscriber shall designate an Authorized User as administrator for the Subscription (“Administrator”). Each Subscriber may have multiple Authorized Users, and the Administrator will manage the list of active Authorized Users associated with the Subscription. The Administrator may deactivate a Username if the Administrator wishes to terminate access to Software for any particular user.

**4.3 Usernames and Passwords.** Each Authorized User shall utilize a unique identifier (e.g. an email address) (each, a “Username”) and password to access and use Software. The Username shall only be used by the Authorized User to whom it is assigned, and shall not be shared with, or used by any other person, including other Authorized Users. Authorized Users and the Subscriber shall be responsible for protecting the security of Usernames and passwords, or any other codes associated with Software known to them, and for the accuracy and adequacy of personal information provided to Klir. The Subscriber shall implement policies and procedures to prevent unauthorized use of Usernames and passwords, and shall promptly notify Klir upon suspicion that a Username has been lost, stolen, compromised, or misused.

**4.4 Subscriber Responsible.** Subscriber agrees that it shall be responsible for all Authorized Users. Accordingly, this Agreement shall be construed to also apply to all Authorized Users, and Subscriber shall be liable for any breach of the Agreement by an Authorized User.

**4.5 Subscriber Feedback.** For the purposes of improving the Services and the functionality of the Software, Subscriber acknowledges and agrees that it, and the Authorized Users, shall be permitted to provide feedback to Klir, solely through feedback and/or bug alert buttons on the Software and/or Subscriber Portal, or any other method or manner as determined in the sole discretion of Klir. Subscriber further acknowledges and agrees that: (a) Klir does not warrant or guarantee that any such feedback shall be incorporated or implemented into the Software and/or the Subscriber Portal; and (b) where such feedback is so incorporated into the Software and/or the Subscriber Portal, Subscriber shall not have any right or title to any such resulting modifications to the Software and/or the Subscriber Portal.

**4.6 Prohibited Access.** All access to and use of Software via mechanical, programmatic, robotic, scripted or any other automated means not provided as part of the Services is strictly prohibited, unless otherwise permitted by Klir in writing.

## 5. INTELLECTUAL PROPERTY

**5.1 Intellectual Property Rights.** All copyrights, patents, utility models, trade-marks, service marks, design rights (whether registered or unregistered), database rights, proprietary information rights and all other proprietary rights that may exist relating to, or in connection with, the Services, including without limitation, text, design, graphics, software, source codes, data, training materials, derivative works, any modifications and custom programming (together, “Intellectual Property Rights”) are the sole property of Klir. For the avoidance of doubt, any modifications or custom programming made in connection with Software, whether performed by Klir, Subscriber, or any other third party, shall remain the sole property of Klir. Subscriber shall not obtain any Intellectual Property Rights in the Services or Software, whether in whole or in part, pursuant to or arising out of Subscriber's use of the Services, except for the rights granted by Klir hereunder to Subscriber to use and access the Services as set forth herein. For the

avoidance of doubt, any work product created in the course of performance of any Services shall be and remain the sole property of Klir.

**5.2 Infringing Material.** Klir is not responsible for any material or data submitted or uploaded to the Software servers by Subscriber (collectively, the “Subscriber Content”), Klir reserves the right to delete, move or edit the Subscriber Content that it, in its sole discretion, deems abusive, defamatory, in violation of the law or the Intellectual Property Rights of itself or any third party or is otherwise unacceptable. Notwithstanding any confidentiality, privacy or other obligations imposed upon Klir, by applicable legislation, contract or otherwise, Subscriber hereby grants Klir a perpetual, irrevocable, royalty-free, worldwide license to store and use the Subscriber Content for data aggregation, analysis and other business purposes. This license shall survive any termination or expiration of this Agreement.

**5.3 Third Party Claims.** Klir shall indemnify, defend and hold Subscriber harmless against all losses, liabilities, damages, costs and expenses suffered by Subscriber for any claim asserted or brought against Subscriber based on actual infringement of a third party’s Intellectual Property Rights in connection with the Software (each, a “Third Party Claim”). Subscriber shall allow Klir to control any proceedings arising as a result of any Third Party Claim. Subscriber shall make no admission as to liability nor accept any settlement without the written consent of Klir. Subscriber shall also, at the request of Klir, offer reasonable assistance and cooperation in relation to any such proceedings. Any recovery obtained from such proceedings shall accrue solely for the benefit of Klir.

## **6. LIMITED WARRANTY; LIMITED LIABILITY; INSURANCE**

**6.1 Reasonable Efforts.** Notwithstanding anything to the contrary, Klir shall be held to a reasonable efforts standard in the performance of its obligations under this Agreement.

**6.2 Waiver of Indirect Damages.** Klir, its affiliates, and all shareholders, officers, directors, employees, subcontractors, agents, successors, or assigns of Klir or its affiliates, shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if Klir has been advised of the possibility of such damages), resulting from: (a) the use or the inability to use or access Software or any part of the Services (including, but not limited to, in the event of any Force Majeure, such as loss of telecommunications, etc.); (b) the cost of procurement of a substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from Software; (c) any unauthorized access to or alteration of Authorized User transmissions or the Subscriber Content; (d) any price change, suspension or discontinuance of Software and/or the Services, whether in whole or in part; (e) any loss of any part of the Subscriber Content, modification to a feature of the Services or Software itself; (f) any loss of the Subscriber Content subsequent to a suspension or termination of the Subscription herein; (g) statements or conduct of any third party on Software or any part of the Services; or (h) any other matter relating to the Services, including without limitation, the Software.

**6.3 DISCLAIMER OF SERVICES WARRANTIES.** KLIR DOES NOT MAKE, AND HEREBY FULLY DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS REGARDING THE SERVICES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, AND WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

**6.4 AGGREGATE LIABILITY.** WITHOUT LIMITATION TO SECTIONS 6.2 AND 6.3, SUBSCRIBER AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY LIABILITY ON THE PART OF KLIR OR ITS AFFILIATES UNDER THIS AGREEMENT (INCLUDING FOR BREACH OF ANY PROVISION HEREOF, FUNDAMENTAL BREACH OR ANY OTHER BREACH GIVING RISE TO LIABILITY OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, SOFTWARE OR SERVICES IN ANY OTHER WAY), FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING BREACH OF CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY), SHALL BE LIMITED TO SUBSCRIBER'S ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AGGREGATE AMOUNT OF FEES PAID WITHIN THE PRECEDING 12 MONTHS.

**6.5 Insurance.** Klir shall carry and maintain appropriate (as determined by Klir, acting reasonably) commercial liability insurance coverage in relation to the Services during the Term.

## 7. TERM AND TERMINATION

**7.1 Term.** This Agreement shall commence on the date of execution of the Order and continue for the subscription duration specified in the Agreement, unless otherwise terminated in accordance with its terms (the "Initial Term"). The Subscription shall automatically renew on a year-to-year basis unless otherwise terminated in accordance with the terms of this Agreement (each, a "Renewal Term", together with the Initial Term, the "Term")

**7.2 Termination by Either Party.** In the event that either of the parties wishes to terminate this Agreement after the Initial Term, such party must, notwithstanding Section 8.15, notify the other party in writing, within the ninety (90) day period prior to the end of any Renewal Term (each, a "Termination Notice").

**7.3 Termination by Klir for Non-Compliance.** Notwithstanding the foregoing, Klir, in its sole discretion, has the right to suspend or discontinue access to the Software or Services to any Subscriber without notice for non-compliance (including, but not limited to, non-payment of any Fees), as determined in the sole discretion of Klir, with this Agreement, and pursue any other remedy legally available to it.

**7.4 Retrieval of Subscriber Content.** Following delivery of a Termination Notice, Subscriber shall have thirty (30) days to retrieve Subscriber Content from the Software.

## 8. MISCELLANEOUS

**8.1 Non-Disclosure.** Each party agrees to use reasonable efforts, during the Term and for a further three (3) years thereafter, not to disclose any Confidential Information of the other party to any third parties. Notwithstanding the foregoing, the Subscriber agrees that Klir shall be permitted to disclose Confidential Information: (a) to the extent that such disclosure is reasonably necessary in connection with its performance of its obligations under this Agreement, (b) that was known to Klir prior to Subscriber's disclosure hereunder or that becomes publicly available through no fault of Klir, or (c) not gained as a result of a breach of the Agreement.

**8.2 Publicity.** Klir is entitled to disclose the existence of this Agreement, the parties to, and the scope of the Subscription to any third parties, including but not limited to, on any website and/or publications of Klir, and to display Subscriber's name and logo in this context.

**8.3 Third Party Vendors and Websites.** Subscriber acknowledges and agrees that Klir may use third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required in connection with the provision of the Hosting Services.

**8.4 Back-ups.** While the Software will, from time to time, back up and store the Subscriber Content, Klir does not represent or warrant that: (a) such back up will be complete, timely, error-free or accurate; and (b) in the event of service interruption, the restoration of Subscriber Content by the Software will be complete, error-free or accurate. Subscriber acknowledges that it has and will have complete back-ups of all Subscriber Content.

**8.5 Data Transmission & Storage.** Subscriber acknowledges and agrees that the technical processing and transmission of data associated with Software, including the Subscriber Content, is transmitted securely using Transport Layer Security (TLS) 1.2 minimum encryption and is stored at rest using Advanced Encryption Standard (AES) 256-bit encryption. Transmission of encrypted data may involve: (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

**8.6 Klir is a Non-Party.** Subscriber agrees that Klir is not a party to any transaction or contract concluded through use of the Software between the Subscriber and any third party.

**8.7 No Waiver.** The failure of Klir to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it, or any other provision hereunder, at a later time.

**8.8 Entire Agreement.** This Agreement constitutes the entire agreement between the Subscriber and Klir and governs the Subscriber's use and access to Software and the Services, superseding any prior agreements between the Subscriber and Klir (including, but not limited to, any term sheet, proposal, confidentiality agreement, or prior versions of this Agreement).

**8.9 No Assignment.** Subscriber may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Klir.

**8.10 Headings.** The headings in this Agreement and the division of this Agreement into sections are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

**8.11 Severability.** If any provision of this Agreement (or any portion thereof) is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder hereof or thereof will not in any way be affected or impaired thereby.

**8.12 Enurement.** Subject to the restrictions on transfer contained in this Agreement, this Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

**8.13 Notices.** Except as otherwise specified in this Agreement, any notices, demands and other communications pursuant to this Agreement shall be in writing and shall be delivered: (a) in person, (b) mailed by first class mail and postage prepaid (registered or certified to the extent available, and via airmail if overseas), (c) couriered overnight, (d) delivered by facsimile transmission or email, or (e) transmitted electronically in a PDF or similar document-scanning file format, to the party to receive the notice at the applicable address, set out on in this Agreement or at such other address as may be designated in writing by the receiving party. All such notices shall be effective upon receipt.

**8.14 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without resort to any conflict of laws, and the parties irrevocably submit and attorn to the jurisdiction of the courts of New York, New York.

**8.15 Equitable Relief.** Subscriber acknowledges and agrees that Subscriber's breach of this Agreement may cause Klir irreparable damage for which recovery of money damages would be inadequate, and Subscriber agrees that Klir shall be entitled, in addition to any other remedies available to it, to seek (in any court of competent jurisdiction) injunctive relief and/or other equitable relief to prevent or restrain any breach by Subscriber or otherwise to protect its rights, without being required to post a bond or other security.

**8.16 Corporate Authority.** Each party represents and warrants to the other party that (a) it has the full corporate power and authority to enter into this Agreement; (b) the execution and delivery of this Agreement and its performance of its duties hereunder have been duly and validly authorized by all necessary corporate action; and (c) this Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

**8.17 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All of these counterparts will for all purposes constitute one agreement, binding on the parties, notwithstanding that all parties are not signatories to the same counterpart. A fax, electronically scanned document (e.g. PDF) or photocopy of this Agreement executed by a party in counterpart or otherwise will constitute a properly executed, delivered and binding agreement or counterpart of the executing party.