

## 1 DEFINITIONS

1.1 In this Contract the following words have the following meanings:

- (i) **"Additional Services"** means any additional services provided by Clarity from time to time.
- (ii) **"Clarity"** means Clarity Informatics Limited, a company incorporated under the laws of England with company number 04133376 of Deltic House, Kingfisher Way, Wallsend, NE28 9NX.
- (iii) **"Contract Activation Date"** means the Contract Activation Date specified in the Order.
- (iv) **"Contract"** means the Order, these Terms & Conditions.
- (v) **"Customer"** means the individual or organisation identified as the 'Customer' in the Order.
- (vi) **"Data Protection Legislation"** means the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any related act or regulation in the UK, including statutory modification or re-enactment of it, and **"Data Controller"**, **"Data Subject"**, **"Personal Data"**, **"Data Processor"**, **"Process"**, and **"Subprocessor"** shall have the meaning specified in the Data Protection Legislation.
- (vii) **"Event of Force Majeure"** any circumstances beyond a party's reasonable control, including, without limitation: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargoes; (e) any change in any Law(s) that has an impact on the parties' rights and/or responsibilities under this Contract; (f) any breach by a third party of the Computer Misuse Act 1990 or the Communications Act 2003 that has the object or effect of directly or indirectly interfering with or damaging Clarity's hardware, software and/or network infrastructure; (g) any government guidance or instruction(s) applicable to either party or its suppliers (and any difficulties in obtaining supplies), arising as a result of any epidemic, pandemic, or outbreak of disease.
- (viii) **"Fee(s)"** means the fee(s) specified in the Order, representing a fee covering the Fixed Term, and an annual fee thereafter.
- (ix) **"First Payment Date"** means the date first payment of the Fee(s) is due, if applicable, as specified in the Order. If no First Payment Date is specified, the First Payment Date will be the Contract Activation Date. First Payment Dates are applicable only in respect of new organisational subscriptions, where a free trial period has been granted.
- (x) **"Fixed Term"** means the period from the Contract Activation Date to the First Payment Date, plus the period of whole years specified as such in the Order (measured from the First Payment Date). Any Fixed Term expressed as 'Lifetime' shall mean the natural life of the Customer.
- (xi) **"Hosted Service"** means Clarity: (a) making the Software available (99.5% of the time on a 24 x 7 x 365 basis; measured during each calendar month) except during Maintenance; and (b) making Support available for Users in accordance with Clause 3.4.
- (xii) **"Maintenance"** encompasses the provision of new releases and new versions of the Software from time to time (at Clarity's discretion), and the provision of minor improvements, updates, enhancements, error corrections, upgrade scripts, and changes to the Software from time to time (at Clarity's discretion); each containing updates to the help files and documentation.
- (xiii) **"Order"** means the order form for the Software (whether online or paper-based), which when completed and countersigned by the Customer incorporates these Terms & Conditions and constitutes the Contract.
- (xiv) **"Software"** means Clarity's software application known as 'Clarity' as described in the user guide (freely available on request), including help files and documentation, and all new releases, new versions, updates, and modifications thereto that are provided to the Customer under this Contract, and including, if ordered, the provision within Clarity of 'Clarity Plus': the provision of content-based e-learning services.

- (xv) **"Support"** encompasses the provision of a helpdesk service in respect of the Software errors and queries raised by Users.
- (xvi) **"Use"** means permit the number and type of Users (as specified in the Order) to use the functionality of the Software that corresponds to their User type for internal purposes only (and not any form of commercial exploitation) and in accordance with the terms of this Contract.
- (xvii) **"Users"** means: (a) in the case of organisational subscriptions, the total number of named users set out in the Order; and Users must be employees of the Customer or individuals working on short term contracts for the Customer; (b) in the case of personal subscriptions, the Customer.

## 2 THIS CONTRACT

- 2.1 This Contract is formed (and becomes legally binding) when the completed Order is signed or otherwise accepted by the Customer.
- 2.2 The Customer acknowledges that Users may enter into separate contracts with Clarity in respect of the provision of Additional Services. The Customer may contract separately with Clarity in respect of the provision of Additional Services for Users.
- 2.3 From time to time, Clarity may update these Terms and Conditions by notifying the Customer. Unless the Customer objects to the updated Terms & Conditions within 30 days of notification, it will be bound by the updated Terms & Conditions.

## 3 CLARITY'S OBLIGATIONS

- 3.1 Clarity shall grant to the Customer a non-exclusive licence to Use the Software from the Contract Activation Date for the duration of this Contract.
- 3.2 From the Contract Activation Date and for the duration of this Contract Clarity shall use its reasonable endeavours to provide the Hosted Service, Maintenance, and Support.
- 3.3 Clarity shall be entitled to provide Maintenance either: (i) by providing ten days' written notice to the Customer (or such other period as the parties may agree from time to time); or (ii) between 23:00 and 08:00 on any day or at any time on a Sunday. Clarity shall use its reasonable endeavours to ensure that, during the provision of Maintenance, the Software will be unavailable for no more than 14 days in any calendar year.
- 3.4 Support is made available: (i) 09:00 – 17:00, Monday to Friday, excluding public holidays in England ("**Working Hours**") by telephone, email, or by completing and submitting an internet based form via the web; or (ii) outside Working Hours by (a) leaving a voice mail message; or (b) completing and submitting an internet based form via the web; in which case details of the problem will be logged into the system at 09:00 the next working day.
- 3.5 Clarity shall undertake all services provided pursuant to this Contract using reasonable care and skill and in accordance with good industry practice.

## 4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall: (a) make reasonable efforts to understand and implement any working practice changes required to make successful use of the Software; (b) ensure that the Software is used lawfully and properly by the Users (c) provide Clarity with all necessary information, co-operation, and assistance as may be required by Clarity in order to provide Services; (d) comply with the Law with respect to its activities under this Contract; (e) procure, maintain, and update its hardware, software, telecommunications, and internet environment as may be necessary (or advised by Clarity) for the Customer to Use the Software and/or optimise performance of the Software; (f) not reverse engineer or decompile the Software (or attempt to do the same), save to the extent permitted by Law; (g) not use the Software in any capacity as a 'consumer'.
- 4.2 The Customer warrants, represents, and undertakes that its use of the Software shall at all times be in good faith, in the manner reasonably intended by Clarity, and as an aid to the Customer's provision of healthcare services.

## 5 PAYMENT

- 5.1 The Customer shall pay the Fee(s) in advance with effect from the First Payment Date and for the duration of this Contract.
- 5.2 Fee(s) are not refundable in whole or in part in any circumstances.
- 5.3 If the Customer is entitled to a discount in respect of Fee(s) by virtue of its membership of any organisation(s) or otherwise meeting

Clarity's discounts eligibility criteria (as may be published from time to time): (a) if the Customer seeks to apply such discount(s) it warrants and represents that it meets the eligibility criteria; and (b) if after the application of such discounts at any time during the period of such discounting it no longer meets the applicable eligibility criteria, it will notify Clarity immediately and pay to Clarity a pro rated fee reflective of the period in which it does not meet such eligibility criteria (for example, if the Customer enters into a five year Fixed Term under which it is entitled to a 25% discount by virtue of membership of a particular organisation (paying (for illustrative purposes only) £75 per annum instead of £100 per annum), and if at the commencement of the second year it terminates its membership with such organisation, its use of the Software will be suspended by Clarity until it pays the balancing sum due over the remaining four years (£25 x 4 = £100)); and (c) if the organisational discount is withdrawn because such organisation has withdrawn such association with Clarity (e.g. by terminating its affinity contract with Clarity) (through no fault of Clarity), the principles of subparagraph 'b' above shall apply and the Customer shall be deemed no longer eligible for the discount. In respect of a 'lifetime' subscription, the Customer's obligations in this Clause 5.3 shall only continue for a period of 15 years, and the pro rating of any such payments that may be due shall only apply on a 15 year model. Therefore, if, for example, the Customer ceases to meet the eligibility criteria in the 16th year of a lifetime subscription, it shall not be liable to make any payments to Clarity. Equally, if the Customer fails to meet the eligibility criteria for a period of one year within the first 15 years of a lifetime subscription, the pro rating shall be on a 1/15th basis of the shortfall in annual fees.

5.4 Clarity shall be entitled to submit an invoice for the Fees when they become payable and the Customer must pay Clarity's invoices no later than 30 days after receipt.

5.5 All Fees payable by the Customer to Clarity under this Contract are payable in Pounds Sterling and are exclusive of any tax, levy or similar governmental charge, including value added or sales tax, that may be assessed by any jurisdiction, except for income, net worth or franchise taxes on Clarity.

5.6 All Fees shall increase on each anniversary of the First Payment Date by five percent, measured between the date of review and the last review date (or in the event of the first review date, the First Payment Date), provided that no Fee increase shall take place in respect of any prepaid period (for example, if the Customer agrees a five year Fixed Term, no Fee increase shall take place over this five year period).

5.7 If any sum payable under this Contract is not paid within 30 days after the due date, then (without prejudice to Clarity's other rights and remedies) Clarity reserves the right to charge interest on that sum on a daily compounded basis at the annual rate of 10% measured from the due date to the date of payment.

## 6 TERM AND TERMINATION

6.1 This Contract shall commence on the Contract Activation Date and shall continue unless and until terminated by either party in accordance with this Clause 6. Either party shall be entitled to terminate this Contract upon the first day of expiry of the Fixed Term or any anniversary thereafter by giving to the other party not less than 30 days' prior written notice.

6.2 The Customer acknowledges that its failure to pay Clarity does not constitute termination of this Contract. In the event of such a failure, Clarity will continue to comply with its obligations under this Contract (including, without limitation, the grant of licences and the provision of the Hosted Service), and Clarity will contact the Customer to determine whether the Customer wishes to terminate this Contract (such termination to be in accordance with this Clause 6, or otherwise with the agreement of Clarity; such agreement at Clarity's sole discretion). The Customer acknowledges that unless this Contract is terminated, it will continue, and Clarity will continue to comply with its obligations under this Contract (including the hosting and storage of User Data), and the Fees shall continue to be payable, irrespective of whether Clarity raises invoices, sends payment reminders, or otherwise.

6.3 Clarity shall be entitled to terminate either this Contract immediately if the Customer commits any material breach of its duties and fails to remedy that breach within 30 days of written notice of that breach.

## 7 CONSEQUENCES OF TERMINATION

7.1 On termination of this Contract howsoever caused: (a) the rights and duties created by Clauses 5, 8, 11, 12, and 15 shall survive; and (b)

the rights of either party which arose on or before termination shall be unaffected.

## 8 CONFIDENTIAL INFORMATION

8.1 Each party that receives ("Receiving Party") non-public business or financial information ("Confidential Information") from the other ("Disclosing Party") whether before or after the date of this Contract shall: (a) keep the Confidential Information confidential; (b) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 8.2, or 8.3; and (c) not use the Confidential Information for any purpose other than the performance of its obligations or the enjoyment of its rights under this Contract ("Permitted Purpose").

8.2 The Receiving Party may disclose Confidential Information to its own officers, directors, employees and advisers who reasonably need to know for the Permitted Purpose (each a "Permitted Third Party"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 8.2 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 8.2.

8.3 If required by law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving Party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.

## 9 MEMBER BENEFITS

9.1 The Customer may, by virtue of its Software subscription, become entitled to certain member benefits, which include discounts on products and services offered by third parties ("Member Benefits"). Clarity makes no representations or warranties as to the quality or fitness for purpose of Member Benefits. The Customer acknowledges that in order to take advantage of Member Benefits it will need to enter into separate contracts with third party providers and its rights and obligations in respect of Member Benefits will be governed by those contracts.

## 10 DATA OWNERSHIP, UPLOADING, AND SHARING

10.1 Clarity shall not own (or claim ownership rights in respect of) data uploaded (to Clarity) using the Software by Users ("User Data").

10.2 The Customer shall procure that all Users shall share (and give Clarity permission to share) User Data with third parties authorised (whether by the User or by any organisation that is licensed to use the Software) to appraise, revalidate, review, and/or assess the user and/or the User Data. Permission granted pursuant to this Clause 10.2 shall be irrevocable and for the duration of this Contract.

10.3 The Customer shall ensure at all times that Users are lawfully entitled to upload User Data and that the content of User Data shall not be defamatory or offensive or breach any codes of conduct or best practice applicable to the Customer and/or the Users.

10.4 The Customer grants to Clarity a perpetual, irrevocable, royalty-free licence to use, modify, create derivative works of User Data, and sublicense/distribute any or all of such rights, in each case for any purposes whatsoever, provided that Clarity shall ensure that such User Data will be anonymised and, for the avoidance of doubt, will not contain any Personal Data of the User(s), and nor will such User Data be capable of identifying any User. This licence shall survive termination of this Contract howsoever caused.

## 11 DATA PROTECTION

11.1 Clarity's Data Privacy Policy (available from [www.clarity.co.uk](http://www.clarity.co.uk)) sets out the subject matter, duration, nature and purpose of the processing by Clarity, as well as the types and categories of Personal Data and the obligations and rights of each Controller Beneficiary. It also explains the role of Clarity as either a Data Controller or Data Processor under this Contract and its corresponding responsibilities. Where the Customer is taking out a personal subscription under this Contract, the Customer acknowledges that Clarity shall be the Data Controller. The Customer acknowledges that Clarity has, in accordance with its obligations as a Data Controller, provided the Customer with an opportunity to access and read Clarity's Data Privacy Policy in advance of entering into the Contract and that, by signing this Contract, they are thereby confirming that they have done so. Where the Customer is an organisation, the Customer

acknowledges that Clarity will be acting as a Data Processor and that it is the responsibility of the Customer to ensure that it fully complies with its obligations as Data Controller at all times during the term of the Contract.

- 11.2 Where Clarity is acting as a Data Processor, Clarity hereby commits to the Customer that it shall use its reasonable endeavours in respect of such Personal Data to: (a) process that Personal Data only on the written instructions of the Customer unless Clarity is required by law to otherwise process that Personal Data (where the Clarity is relying on law as the basis for processing Personal Data, Clarity shall promptly notify the Customer of this before performing the processing required by the law unless those laws prohibit Clarity from notifying the Customer); (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures; (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the Customer has provided appropriate safeguards in relation to the transfer; (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and consultations with supervisory authorities or regulators; (f) notify the Customer without undue delay on becoming aware of a Personal Data breach; (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by law to store the Personal Data; (h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 11.2 and allow for and contribute to audits, including inspections, conducted by the Customer or other auditor mandated by the Customer, at the Customer's cost and to the extent reasonably permitted by Clarity; and (i) (without hereby assuming the primary liability of the Customer for the lawfulness of the same) immediately inform the Customer if, in its opinion, an instruction infringes any law.

## 12 LIABILITY

- 12.1 Neither party shall exclude or limit its liability for: (a) death or personal injury caused by its negligence; and / or (b) fraudulent misrepresentation.
- 12.2 Clarity shall not be liable to the Customer for any direct or indirect loss of profit, loss of revenue, loss of anticipated savings, and/or loss of goodwill. The Customer must ensure that Users make regular back-ups of the User Data. Clarity shall not be liable for loss of data to the extent that any User has failed to make regular back-ups in line with best practice.
- 12.3 The Customer agrees that it will have no remedy in respect of any untrue statement made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).
- 12.4 Clarity's Contractual Liability to the Customer shall not exceed the greater of the fees paid or payable under this Contract during the 12 month period in which the claim (or series of connected claims) arose (the first such period commencing on the Contract Activation Date) and two hundred Pounds (£200). "**Contractual Liability**" means liability howsoever arising under or in relation to the subject matter of this Contract that is not: (a) unlimited by virtue of Clause 12.1; (b) excluded pursuant to Clauses 12.2 and 12.3.
- 12.5 Clarity hereby excludes any implied condition or warranty concerning the merchantability, quality or fitness for purpose of the Software and any services supplied pursuant to this Contract, whether such condition or warranty is implied by statute or common law.
- 12.6 The Customer shall reimburse Clarity all costs reasonably incurred (including legal fees) in respect of Clarity's handling of, responding to, and/or, defending queries, complaints, claims, or demands which arise as a result of, or allege (directly or indirectly), breach by the Customer of this Contract.
- 12.7 The Customer acknowledges that any knowledge and/or learning resources provided by Clarity pursuant to this Contract should not be relied upon as the basis of making any clinical decisions and the Customer shall ensure at all times that any User will seek

independent professional advice (or, if the User is a clinician, it will exercise its independent professional judgment) prior to making any decision that may be addressed directly or indirectly by the knowledge and/or learning resources provided by Clarity.

## 13 ASSIGNMENT AND SUBCONTRACTING

- 13.1 The Customer shall not assign or otherwise transfer this Contract or any of its rights and duties hereunder whether in whole or in part without the prior written consent of Clarity.
- 13.2 Clarity shall not be entitled to assign or otherwise transfer this Contract or any of its rights and duties hereunder whether in whole or in part without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed, provided that, upon notification to the Customer, Clarity shall be freely entitled to assign or novate this Contract to any company that is directly or indirectly controlled by any parent company of Clarity (and in respect of any such novation, the Customer is deemed to have irrevocably authorised such novation).
- 13.3 Subject to the foregoing, the rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.
- 13.4 The Customer agrees that Clarity shall be entitled to subcontract all or any of its obligations under this Contract as it so chooses, including to any Processor or Subprocessor provided that Clarity remains primarily liable for the same. Where Clarity is acting as a Data Processor under this Contract, Clarity agrees that it shall ensure that obligations which are equivalent to those set in Clause 11.2 are included in any subcontract with a Subprocessor. Clarity appoints subprocessors to manage subscriptions, process annual payments, and provide CRM, in respect of which they may Process Customer Personal Data outside of the EU. Clarity confirms that it has undertaken appropriate due diligence in respect of such appointment, and the Subprocessing of personal data is in compliance with the Data Protection Legislation.

## 14 CHANGES

- 14.1 No changes to this Contract shall be valid unless made in writing and signed by the authorised representatives of both parties.

## 15 GENERAL PROVISIONS

- 15.1 **Intellectual Property.** Clarity owns all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature ("**Intellectual Property Rights**") in the Software and any deliverables provided pursuant to this Contract.
- 15.2 **Publicity.** The Customer hereby irrevocably consents to Clarity referring to the Customer as a client of Clarity in Clarity's sales and marketing literature (including its web site).
- 15.3 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract.
- 15.4 **Force Majeure.** Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by an Event of Force Majeure. If an Event of Force Majeure causes Clarity a delay in or failure to perform duties under this Contract for a continuous period of fourteen (14) days ("**Force Majeure Period**"), the Customer shall be entitled to terminate this Contract by giving to Clarity not less than thirty (30) days' prior written notice, such notice to be given within fourteen (14) days of expiry of the Force Majeure Period.
- 15.5 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to that subject matter.
- 15.6 **Severance.** If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.
- 15.7 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.
- 15.8 **No Bribery.** Each party warrants to the other that it: (i) has not and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other contract between the parties; and (ii) has adequate procedures (as defined in section 7(2) of that Act) in place

to prevent its associated persons from committing an offence under that Act.

- 15.9 **Notices.** All notices under this Contract shall be in writing and shall be sent to the address of the recipient set out in this Contract or to such other address as the recipient may have notified from time to time or, as specified below, by publication on Clarity's website. Any notice may be delivered personally (deemed served when delivered), by a reputable courier service (deemed served 48 hours after delivery), by email (deemed served immediately), or in respect of notice under Clauses 2.3 or 13.2 by update to the website [www.clarity.co.uk/products/appraisal/](http://www.clarity.co.uk/products/appraisal/) (deemed served 14 days after publication).
- 15.10 **Law and Jurisdiction.** This Contract is governed by the laws of England and subject to the exclusive jurisdiction of the courts of England and Wales.