

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) **“Annual Fee”** means the ‘total annual fee’ specified in the Order Form.
 - (iii) **“Annual Start Date”** means the annual start date specified in the Order Form.
 - (iv) **“Contract”** means the Order Form, these Terms & Conditions and the Service Description. In the event of a conflict between the Service Description and these Terms & Conditions, these Terms & Conditions shall prevail.
 - (v) **“Contract Date”** means the contract date specified in the Order Form.
 - (vi) **“Contract Year”** means the period of 12 months from the Annual Start Date (or the relevant anniversary of the Annual Start Date) until the subsequent anniversary of the Annual Start Date.
 - (vii) **“Fees”** means the fees and charges specified in the Order Form, including (without limitation) the Annual Fee.
 - (viii) **“Hosted Service”** means Clarity: (a) making the Software available (99% 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 4.3.
 - (ix) **“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.
 - (x) **“Minimum Term”** means the period from the Contract Date to the Annual Start Date, plus the period of whole years specified as such in the Order Form (measured from the Annual Start Date).
 - (xi) **“Order Form”** means, if this Contract is being entered into in writing, the foregoing “Order Form”, or, if this Contract is being entered into online, the online form(s) that the Customer has completed to place its order and/or renew its order for the Software and related services.
 - (xii) **“Service Description”** means the Clarity Training service description available on the Clarity website <https://teamnet.clarity.co.uk/Library/ViewItem/ff03b044-8c2b-4f20-adf7-ab5300d6287e> (as amended from time to time).
 - (xiii) **“Software”** means the Staff Training module of TeamNet and all new releases, new versions, updates, and modifications thereto that are provided to the Customer under this Contract.
 - (xiv) **“Support”** encompasses the provision of a helpdesk service in respect of the Software errors and queries raised by Users.
 - (xv) **“Clarity”** means Clarity Informatics Limited (trading as ‘Clarity’), a company incorporated under the laws of England with company number 04133376 of Deltic House, Kingfisher Way, Wallsend, NE28 9NX.
 - (xvi) **“User Data”** means any information, materials, or data: (i) uploaded, stored or created in or using the Software by: (a) the Customer or the Users; or (b) by Clarity or a third party on the Customer’s or the Users’ instructions; and/or provided to Clarity by (or on behalf of) the Customer or the Users.
 - (xvii) **“Users”** means the ‘Users’ set out in the Order Form for the applicable ‘Licence Type’ (and their employees, contractors, agents, workers and consultants).

2. THIS CONTRACT

- 2.1 This Contract is formed (and becomes legally binding) when the Customer countersigns the Order Form.

- 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.

3. LICENCE

- 3.1 Clarity shall grant to the Customer a non-exclusive licence to permit the Users to access and use the Software in accordance with the terms of this Contract for the Users’ internal, non-commercial purposes from the Contract Date until expiry of the Minimum Term. In consideration of payment of each subsequent Annual Fee, Clarity shall grant to the Customer a non-exclusive licence to permit the Users to access and use the Software in accordance with the terms of this Contract for the Users’ internal, non-commercial purposes for 12 months (from the relevant anniversary of the Annual Start Date until the subsequent anniversary of the Annual Start Date).
- 3.2 In respect of a ‘Single Practice’ or ‘Multi-Practice’ licence (as indicated in the Order Form), Clarity shall be entitled, from time to time, to verify the patient population indicated in the Order Form (or otherwise as assessed at the Annual Start Date) against publicly available data, and/or to request Customer to confirm the patient population in writing from time to time. If the total patient population of the Customer and (in respect of a ‘Multi-Practice’ licence), the other Users, increases or decreases by more than 5%: (a) the Customer will notify Clarity of such change as soon as reasonably practicable; and (b) Clarity shall be entitled, at its option, to make a pro-rata adjustment to the Fees on the basis of the change on written notice to the Customer (whether Clarity became aware of such change as a result of Customer’s notification, Clarity’s patient population verification process, or otherwise).
- 3.3 The Customer shall be responsible for ensuring that the Users comply with the terms of this Contract, and shall be responsible for Users’ acts and omissions as if they were its own.

4. SERVICES

- 4.1 From the Contract Date and for the duration of this Contract Clarity shall use its reasonable endeavours to provide the Hosted Service, Support, and Maintenance (as may be further set out in the Service Description).
- 4.2 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.
- 4.3 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.
- 4.4 Clarity shall use its reasonable endeavours to provide training to the Customer as specified in the Service Description.

5. RESPONSIBILITIES

- 5.1 Clarity shall undertake all services provided pursuant to this Contract using reasonable care and skill.
- 5.2 Clarity shall check all software that it provides to the Customer under this Contract with an up-to-date virus checker immediately prior to hosting of such software to the Customer.
- 5.3 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 properly by the Users.
- 5.4 The Customer is responsible for procuring, maintaining, and updating its hardware, software, telecommunications, and internet environment.

6. PAYMENT

- 6.1 The Customer shall pay the Fees annually in advance (or, if the Customer requests, covering multiple years within the Minimum Term)

- with effect from the Annual Start Date and for the duration of this Contract.
- 6.2 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.
- 6.3 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.
- 6.4 All Fees shall increase on each anniversary of the Annual Start Date by an amount, as notified by Clarity, that does not exceed the rate of change in the Retail Price Index (for all items) as published by the Office for National Statistics plus two per cent, measured between the date of review and the last review date (or in the event of the first review date, the Annual Start Date), provided that no Fee increase shall take place in respect of any prepaid period (for example, if the Customer agrees a five year Minimum Term and agrees to pay the first three annual Fees on the first Annual Start Date, no Fee increase shall take place over this three year period) ("**Indexed Increase**").
- 6.5 After the expiry of the Minimum Term, Clarity shall be entitled by giving the Customer not less than ninety (90) days' written notice prior to an anniversary of the Annual Start Date ("**Anniversary Date**") to increase any or all Fees with effect from the Anniversary Date by an amount that exceeds an Indexed Increase (as determined by Clarity in its sole discretion) ("**General Increase**"), provided that if the Customer objects to a General Increase it shall be entitled to terminate this Contract with effect from the Anniversary Date by giving to Clarity not less than sixty (60) days' written notice prior to the Anniversary Date.
- 6.6 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.
- ## 7. TERM AND TERMINATION
- 7.1 This Contract shall commence on the Contract Date and shall continue unless and until terminated by either party in accordance with this Clause 7. Either party shall be entitled to terminate this Contract upon the first day of expiry of the Minimum Term or any anniversary thereafter by giving to the other party not less than 30 days' prior written notice.
- 7.2 Either party shall be entitled to terminate either this Contract immediately if that other party: (a) commits any material breach of its duties and fails to remedy that breach within 30 days of written notice of that breach; or (b) has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over any of its assets, or a court or arbitrator with authority to so determine, determines that the debtor is unable to pay its debts.
- ## 8. CONSEQUENCES OF TERMINATION
- 8.1 On termination of this Contract howsoever caused: (a) the rights and duties created by Clauses 6, 9, and 11 shall survive; (b) the rights of either party which arose on or before termination shall be unaffected; and (c) Clarity shall, on the Customer's request and at Clarity's standard daily rates, provide reasonable assistance with the migration of any Customer data to the Customer's IT systems.
- ## 9. CONFIDENTIAL INFORMATION
- 9.1 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 9.2, or 9.3; 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**").
- 9.2 Subject to Clause 10, the Receiving Party may disclose Confidential Information to its own officers, directors, employees and legal 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 9.2 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 9.2.
- 9.3 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.
- ## 10. DATA PROTECTION
- 10.1 Clarity shall not own (or claim ownership rights in respect of) User Data.
- 10.2 The Customer is responsible for the accuracy, reliability, lawfulness, and integrity of all User Data. Customer warrants that User Data shall not be defamatory or offensive and that it, and the Users, have all consents, licenses and permissions (including the consent of any Data Subjects) in respect of User Data as are required for Customer (and the Users) to lawfully upload, store, distribute, publish, share and/or Process the User Data (as applicable): (a) in/through the Software; (b) to/with other Clarity (or Clarity group companies') products; and/or (c) to/with the Users or any third parties. The Customer shall indemnify and hold harmless Clarity for all costs, liabilities, penalties, and charges arising from a breach of this Clause 10.2.
- 10.3 In relation to the Processing of any Personal Data in the User Data, the parties agree that the Data Controller(s) may be the Customer, the User, and/or any organisations that employ Users (e.g. practices where the Customer is a CCG) (each a "**Controller Beneficiary**") and the parties recognise that whether a party is a Data Controller will be determined by applying the Data Protection Legislation to the particular circumstances (and cannot be determined or agreed as between the parties).
- 10.4 Clarity's Data Privacy Policy (available from 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.
- 10.5 The parties agree that Clarity is the Data Processor, and Clarity hereby commits to each Controller Beneficiary 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 Client unless Clarity is required by Applicable Laws to otherwise process that Personal Data (where the Clarity is relying on Applicable Laws as the basis for processing Personal Data, Clarity shall promptly notify the Controller Beneficiary of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Clarity from notifying the Controller Beneficiary); (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 Client has been obtained and the Controller Beneficiary has provided appropriate safeguards in relation to the transfer; (e) assist the Controller Beneficiary, 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 Controller Beneficiary without undue delay on becoming aware of a Personal Data breach; (g) at the written direction of the Controller Beneficiary, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Laws to store the Personal Data; and (h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 10.5.

- 10.6 Each Controller Beneficiary shall, if such Controller Beneficiary is not a party to this Contract, be entitled to enforce its rights under Clause 10.3 under the Contract Rights of Third Parties Act 1999, provided that the enforcement of such rights shall be subject to Clauses 11, 14.4, 14.6, 14.7, and 14.10.
- 10.7 For the purposes of this Clause 10, “**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**”, and “**Process**” shall have the meaning specified in the GDPR (as amended); and “**Applicable Laws**” means (for so long as and to the extent that they apply to Clarity) the law of the European Union, the law of any member state of the European Union and/or the Data Protection Legislation.
- ## 11. LIABILITY
- 11.1 Clarity shall not exclude or limit its liability for: (a) death or personal injury caused by its negligence; and / or (b) fraudulent misrepresentation.
- 11.2 Clarity shall not be liable to the Customer for any loss of profit, loss of revenue, loss of anticipated savings, and/or loss of goodwill.
- 11.3 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).
- 11.4 Clarity’s Contractual Liability to the Customer shall not exceed fifty thousand Pounds (£50,000). “**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 11.1; (b) excluded pursuant to Clauses 11.2 and 11.3.
- 11.5 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.
- 11.6 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.
- ## 12. ASSIGNMENT AND SUBCONTRACTING
- 12.1 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.
- 12.2 Clarity shall not be entitled to assign or novate 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 this Contract to any company that is directly or indirectly controlled by any parent company of Clarity.
- 12.3 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. CHANGES
- 13.1 No changes to this Contract shall be valid unless made in writing and signed by the authorised representatives of both parties.
- 13.2 If the Customer wishes to add or remove types or quantities of services or licences, it may only do so with the prior written approval of Clarity. The Customer acknowledges that the pricing in the Order Form has been based on the combination and quantities of licences and services that the Customer has ordered, and if on renewal of this Contract the Customer requires different types or quantities of services or licences, it will require a new quotation from Clarity (captured in a draft Order Form, which if signed would constitute a new contract) and the unit prices that form the basis of any draft Order Form may vary.
- 13.3 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.
- ## 14. GENERAL PROVISIONS
- 14.1 **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.
- 14.2 **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).
- 14.3 **Third Party Rights.** Subject to Clause 10.6, 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.
- 14.4 **Force Majeure.** Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by any circumstances beyond its reasonable control. Without limitation, the following shall be regarded as causes beyond either party’s reasonable control: (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) acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental agency or local authority; (e) import or export regulations or embargoes.
- 14.5 **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.
- 14.6 **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.
- 14.7 **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.
- 14.8 **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.
- 14.9 **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 13.3 or 12.2 by update to the website <https://clarity.co.uk/training> (deemed served 14 days after publication), or in respect of notifications under Clauses 6.4 or 6.5 by email in the form of a quotation.
- 14.10 **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.