

Clarity Access Agreement

OPERATIVE PROVISIONS

1. Application of this Agreement

- 1.1 This Agreement applies to the products and services provided by Clarity Cloud Pty Ltd (ACN 616 772 948) (**Supplier**)
- 1.2 In this Agreement, “Client” means the entity you represent in accepting these Agreement or, if that does not apply, you individually. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree to this Agreement on behalf of the party that you represent. If you don’t have the legal authority to bind your employer or the applicable entity please do not click “I agree” (or similar button or checkbox) that is presented to you. PLEASE NOTE THAT IF YOU SIGN UP FOR A CLOUD PRODUCT USING AN EMAIL ADDRESS FROM YOUR EMPLOYER OR ANOTHER ENTITY, THEN (A) YOU WILL BE DEEMED TO REPRESENT SUCH PARTY, (B) YOUR CLICK TO ACCEPT WILL BIND YOUR EMPLOYER OR THAT ENTITY TO THIS AGREEMENT, AND (C) THE WORD “YOU” IN THIS AGREEMENT WILL REFER TO YOUR EMPLOYER OR THAT ENTITY.
- 1.3 This Agreement is effective as of the date you first click “I agree” (or similar button or checkbox) or use or access the Software, whichever is earlier (the “Commencement Date”). This Agreement does not have to be signed in order to be binding. The Client may indicate assent to this Agreement by clicking “I agree” (or similar button or checkbox) within the Software.
- 1.4 We may modify this Agreement from time to time, with notice to you in accordance with or by posting the modified Agreement on our website. Together with notice, we will specify the effective date of the modifications.

2. Definitions and interpretation

Definitions

Authorised User means a third party individual person authorised to access the System by the Client arising out of this Agreement.

Business Day means a day on which banks are open for general banking business in New South Wales, Australia.

Cash Rate means the Reserve Bank of Australia’s official target cash rate as published by the Reserve Bank of Australia from time to time.

Commencement Date means the date specified in the clause 1.3 of this Agreement;

Confidential Information means information that is by its nature confidential but does not include:

- (a) information already known to the receiving party at the time of disclosure by the other party; or
- (b) information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this agreement;

Content means a creative expression and includes, without limitation, video, audio, photographs, images, illustrations, animations, logos, tools, written posts, replies, and comments, information, data, text, software, scripts, executable files, graphics, and interactive features, any of which may be generated, provided, or otherwise made accessible on or through the Software.

Client Data means data owned or supplied by the Client, or an Authorised User, or which may otherwise be generated, compiled, arranged or developed on the System at the request of the Client, or an Authorised User pursuant to this Agreement.

GST means:

- (a) the same as in the GST Law;

- (b) any other goods and services tax, or any tax applying to this agreement in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.

GST Law means the same as "GST law" in A New Tax System (Goods and Services Tax) Act 1999 (Cth);

End User Data means data owned or supplied by the Client, or an Authorised User, or which may otherwise be generated, compiled, arranged or developed on the System at the request of the Client, or an Authorised User pursuant to this agreement.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields;

Licence means the licence more specifically described at clause 3;

Licence Fee means the amount so specified in the Software, or the Supplier website;

Moral Right means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed;
- (c) a right of integrity of authorship; or
- (d) a right of a similar nature;

which is conferred by statute, and which exists or comes to exist anywhere in the world in a deliverable form comprised within this agreement;

New Release means software which has been provided primarily to implement an extension, alteration, improvement or additional functionality to the Software;

Personal Information means information or an opinion about an individual as defined in s 6 of the Privacy Act 1988 (Cth) which is collected, used, disclosed, stored or handled by the Supplier for the purposes of this Agreement

Software means the computer program and related documentation the software described as "Clarity Multi", an integrated cloud based platform that provides the software functionality needed to operate and manage aesthetic medical services business operating across multiple locations, and which is to be made available by the Supplier to the Client pursuant to this agreement;

System means the information technology systems of the Supplier which contains or provide access to the Software.

Term means the term of this Agreement, which will commence on the Commencement Date and continue thereafter for successive periods of one calendar month until this terminated by either party in accordance with this Agreement.

Terms of Use and Service means the terms of use and service available at <http://claritymulti.com>, and as amended from time to time.

Service Levels means the service levels set out in Annexure A.

Update means software which has been produced primarily to overcome defects in the licensed Software.

Interpretation

Words importing the singular include the plural and vice versa and words importing one gender shall include all other genders. Headings are for ease of reference only and shall not affect the interpretation of this agreement.

3. Licence and duration

- (a) Commencing on the Commencement Date, the Supplier grants to the Client the right to access and use the System for the duration of this Agreement, and on the terms set out in this Agreement.

- (b) The Supplier will provide the Client with access to the Software on a real-time basis. Access will be provided by way of standard web protocols.
- (c) Subject to the terms of this Agreement, the Licence will continue for the Term.

4. Conditions of Licence

- (a) The Supplier warrants that it has the authority to grant the Licence.
- (b) The Licence shall be a non-transferable, sub-licensable, world wide and non-exclusive to the Client.
- (c) The Client will not create or permit to exist a security interest over the Software or documentation or in any modifications to, or enhancements, Updates or New Releases of, the Software or documentation. For the purposes of the foregoing, "security interest" means a security interest that is subject to the Personal Property Securities Act 2009 (Cth) or any other mortgage, pledge, lien, charge or other arrangement of any kind which in substance secures the payment of money or the performance of any obligation, or that gives a creditor priority over unsecured creditors.

5. Fees and Payment

- (a) The Client must pay to the Supplier in advance the Licence Fee.
- (b) The Licence Fee is exclusive of all taxes, duties and surcharges payable in respect of the Software and in respect of this agreement.
- (c) If payment is not made within
 - (i) 7 days of the due date, access to the Software will be restricted pending receipt of payment;
 - (ii) 14 days of the due date, access to the Software will be suspended pending receipt of payment;
 - (iii) 1 calendar month of the due date, this will be deemed to be a Terminating Event.
- (d) If payment is not made within 7 days of the due date, interest will be payable by the Client at the Cash Rate plus 8% per annum on the overdue amount and, if any payment is owing after 30 days from the due date, the Supplier will be entitled to suspend its remaining obligations under this agreement and to revoke access to the System.
- (e) If the Client disputes the whole or any part of the amount claimed in an invoice submitted by the Supplier pursuant to this agreement, the Client will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to the dispute resolution procedure prescribed by this agreement. If it is subsequently resolved that a further amount is payable, the Client will pay that amount together with interest at the rate of Cash Rate plus 8%.
- (f) The Client grants to the Supplier a charge and security interest over any Content and Client Data uploaded to the Software to secure for the Supplier prompt and proper performance by the Client of its obligations under this Agreement, and payment of any Licence Fee and/or any other sum payable.
- (g) The Client waives, insofar as it is able, any right to receive notice of registration of any charge or security interest, or any other action required by the Supplier to improve or perfect its interest.

6. Ownership and Intellectual Property Rights

- (a) The Supplier retains ownership of the Software whether in its original form or as modified by the Client during the term of the Licence.
- (b) All Intellectual Property Rights in the Software are retained by the Supplier.
- (c) Nothing in this agreement affects the ownership of Moral Rights in the Software.
- (d) The Client agrees to be solely responsible for Content uploaded or submitted to the Software, and the consequences of submitting and publishing its Content on the Software. The Client affirms, represents, and warrants that it has the necessary licenses, rights,

consents, and permissions to publish Content that it submit.

- (e) The Client grants to Supplier a non-exclusive, transferable, sub-licensable, royalty-free, perpetual worldwide license for the use of any Content and Client Data uploaded or submitted to the Software.
- (f) The Client warrants that Content it submits to the Software will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless the Client is otherwise legally entitled to post the material and to grant to Supplier all of the license rights required under this Agreement.
- (g) The Client grants to the Supplier a non-exclusive licence to use any trade marks, logos or other branding images owned or controlled by the company for marketing and promotional purposes, exercisable with the consent of the Client where such consent may not be unreasonably withheld.
- (h) Supplier acknowledges that any Intellectual Property Rights in the Client Data remain with or vest in the Client, except as otherwise specified in this Agreement.
- (i) Supplier warrants that the Client's use of or access to the Software does not infringe the intellectual property rights of any third party.

7. Reverse engineering

Except as expressly permitted by law, the Client must not reverse assemble or reverse compile the Software or any part of the Software.

8. End User Data

- (a) The Client will take all reasonable steps to protect the System from unauthorised access, use or damage.
- (b) The Supplier will take all reasonable steps to maintain appropriate security over and protect Client Data and Personal Information in its possession against misuse or loss.

9. Indemnity and liability

- (a) The Supplier warrants that it has the right to grant the Licence to the Client.
- (b) Subject to subclause (c), the Supplier shall indemnify and hold harmless the Client against any claim made against the Client by a third party alleging that the Software infringes the copyright of that third party.
- (c) The Supplier shall not be liable to the Client under subclause (a) or (b) if:
 - (i) the Client does not notify the Supplier of the other person's claim or of infringement of copyright within seven days after becoming aware of the claim;
 - (ii) the Supplier's ability to defend the claim has been prejudiced by the Client's non-compliance with any of its obligations under this agreement;
 - (iii) the Client does not give the Supplier reasonable assistance in defending the claim;
 - (iv) the claim has arisen because of the use of the Software in combination with equipment, materials or computer programs not supplied or approved by the Supplier; or
 - (v) the Client does not permit the Supplier to have control of the defence of the claim and all related settlement negotiations.
- (d) Except in relation to liability for personal injury (including sickness and death), property damage or an infringement of confidentiality or Intellectual Property Rights, the liability of the Supplier in damages (including special, indirect or consequential damages, which damages will be deemed to include loss or revenue, loss or profit and opportunity loss) in respect of any act or omission of the Supplier in connection with its obligations under this agreement will not exceed the total sum of 3 calendar months of Licence Fees.

10. Termination

- (a) For the purpose of this agreement, each of the following is a **Terminating Event**:

- (i) the breach or threatened breach by either party of any of its material obligations under this agreement and is not capable of remedy or is capable of remedy and is not remedied by the defaulting Party within 30 days of notification by the other Party;
 - (ii) the appointment of any type of insolvency administrator in respect of the property or affairs of either party;
 - (iii) the entry or proposed entry by either party into any scheme, composition or arrangement with any of its creditors;
 - (iv) the permanent discontinuance of use of the Software or any part of the Software by the Client;
 - (v) the merger with or the takeover of either party by another person;
 - (vi) any event described in this agreement as a Terminating Event;
 - (vii) a change of control of the Client as defined in 50AA of the Corporations Act 2001 (Cth); and
 - (viii) the purchase of the Software by the Client pursuant to an agreement between the parties.
- (b) This agreement may be terminated with 7 days notice in writing on the happening of a Terminating Event at the option of the affected party.
 - (c) Any termination of the Licence shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this agreement which is expressly or by implication intended to continue in force after such termination.

11. Implied terms and consumer guarantees

- (a) Subject to subclause (b), any condition or warranty which would otherwise be implied in this agreement is hereby excluded.
- (b) Pursuant to ss 64A of the Australian Consumer Law, this subclause applies in respect of any goods or services supplied under this agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this subclause will not apply if the Client establishes that reliance on it would not be fair and reasonable. Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited:
 - in the case of goods, to any one of the following as determined by the Supplier:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - in the case of services, to any one of the following as determined by the Supplier:
 - (E) the supplying of the services again; or
 - (F) the payment of the cost of having the services supplied again.

12. Confidentiality

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of subclause (a) in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other party's Confidential Information.

- (d) Notwithstanding any other provision of this clause, a party may disclose the terms of this agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (e) This clause will survive the termination of this agreement.

13. Client obligations

- (a) The Client will
 - (i) not use the System for any activity which is obscene, indecent, offensive or defamatory;
 - (ii) refrain from tampering with, hindering the operation of or making unauthorised modifications to the System;
 - (iii) refrain from introducing any virus to or from the System;
 - (iv) refrain from changing, unless authorised, any administration settings on any part of the System;
 - (v) refrain from using any part of the System to send commercial electronic messages in contradiction of the Spam Act 2003 (Cth);
 - (vi) keep all passwords, account names, tokens or log in identifications required to access the System secure and confidential; and
 - (vii) refrain from uploading onto the System any material, or use the System in any way:
 - (A) which infringes the Intellectual Property Rights of any person; or
 - (B) which is unlawful or violates any law.
 - (viii) verify the identity of any person applying to be registered as an Authorised User;
 - (ix) verify that any person seeking access to the System is an Authorised User;
 - (x) take all reasonable steps to ensure that access to the System is available only to Authorised Users;
 - (xi) maintain a register of Authorised Users; and
 - (xii) ensure that the access rights of Authorised Users are reviewed at regular intervals.
- (b) The Client agrees to comply with all reasonable policies notified in writing by the Supplier to the Client from time to time.
- (c) The Client will do any and all reasonable things to ensure that any and all third parties granted access to the System arising out of this Agreement:
 - (i) not use the System for any activity which is obscene, indecent, offensive or defamatory;
 - (ii) refrain from tampering with, hindering the operation of or making unauthorised modifications to the System;
 - (iii) refrain from introducing any virus to or from the System;
 - (iv) refrain from changing, unless authorised, any administration settings on any part of the System;
 - (v) refrain from using any part of the System to send commercial electronic messages in contradiction of the Spam Act 2003 (Cth);
 - (vi) keep all passwords, account names, tokens or log in identifications required to access the System secure and confidential; and
 - (vii) refrain from uploading onto the System any material, or use the System in any way:
 - (A) which infringes the Intellectual Property Rights of any person; or
 - (B) which is unlawful or violates any law.

14. **Supplier's obligations**

- (a) The Supplier must obtain written consent from the Client before causing or permitting any End User Data or Client Data (in any form) to be transferred or stored outside of Australia.
- (b) The Supplier must ensure that appropriate and adequate training is provided to any Supplier's Personnel handling Client Data or End User Data in accordance with the Privacy Act 1988 (Cth) and the Australian Privacy Principles.
- (c) The Supplier must only provide End User Data or Client Data to its Personnel to the extent necessary to perform the obligations set out in this agreement.

15. **GST**

- (a) Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.
- (b) In addition to paying the Licence Fee and any other amount payable or in connection with this agreement (which is exclusive of GST), the Client will:
 - (i) pay to the Supplier an amount equal to any GST payable from any supply by the Supplier in respect of which the Licence Fee or any other amount is payable under this agreement; and
 - (ii) make such payment either on the date when the Licence Fee is due or within 7 days after the Client is issued with a tax invoice, whichever is the later.
- (c) The Supplier must, within 28 days of request from the Client, issue a tax invoice (or an adjustment note) to the Client for any supply under or in connection with this agreement.
- (d) The Supplier will promptly create an adjustment note for (and apply to the Commissioner of Taxation for) a refund, and refund to the Client, any overpayment by the Client for GST but the Supplier need not refund to the Client any amount for GST paid to the Commissioner of Taxation unless the Supplier has received a refund or credit for that amount.

16. **Enforcement**

- (a) All use of the System by an Authorised User is subject to the Terms of Use and Service, and the Client may not impose any other terms pertaining to their use of the System.
- (b) The Client must ensure that each Authorised User enters into the Terms of Use and Service in a manner that is legally binding upon the end user.
- (c) The Client agrees to immediately notify the Supplier of any known or suspected breach of the Terms of Use and Service or other unauthorised use of the System and to assist the Supplier in the enforcement of the terms of the Terms of Use and Service.

17. **General**

(a) **Entire agreement**

This agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the Software. No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

(b) **Governing law**

This agreement shall be governed by and construed in accordance with the laws for the time being in force in New South Wales, Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that New South Wales, Australia.

(c) **Waiver**

No forbearance, delay or indulgence by a party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

(d) **Agency, partnership etc**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

(e) **Severability**

Should any part of this agreement be or become invalid, that part shall be severed from this agreement. Such invalidity shall not affect the validity of the remaining provisions of the agreement.

(f) **Dispute resolution**

- (i) Where any dispute arises between the parties in relation to this agreement (**Dispute**), a party cannot commence any court proceedings relating to the Dispute unless this Dispute Resolution process is first complied with;
- (ii) Each party agrees to notify the other party of any matter that is likely to cause a Dispute as soon as practicable after that matter comes to its attention;
- (iii) If a Dispute arises, the party raising the disputed matter will give the other party a notice within 7 days giving details of the dispute and proposing to meet to resolve the matter in good faith;
- (iv) If the Dispute is not resolved within 21 days of giving of the notice, then the matter shall be submitted to mediation in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators and Mediators, Australia. During such arbitration, both parties may be represented by a duly qualified legal practitioner. The costs of the mediation will be borne equally by the parties;
- (v) If the Dispute is not resolved through mediation, then the parties can proceed to arbitration in the same manner as outlined above;
- (vi) Nothing in this Dispute Resolution clause prevents a part from seeking any urgent equitable relief from an appropriate court having jurisdiction over this agreement.