

# Clariti Client Terms of Service

Effective October 1 2019

These Client Terms of Service (the **“Client Terms”**) describe your rights and responsibilities when using our cloud based software platforms (the **“Services”**). These Client Terms govern your access and use of our Services. Combined with the Sales Order(s), or a written agreement with Clariti if that pertains, and the [HIPAA Business Associate Agreement](#), together form the binding Contract (the **“Contract”**). Please read them carefully. “You”, “yours” and “Client” refer to the organization that is subscribing to the Services. “We,” “our”, “us” and Clariti refers to Clariti Health, LLC.

## Subscriptions

A subscription allows a Client and its Authorized Users to access the Services. A subscription is required prior to accessing the Services, and is typically procured through Clariti’s online ordering system, however, in some cases a separate written order executed between Clariti and Client may replace the online order (each a **“Sales Order”**).

## Authorized Users

Individuals authorized by a Client to access the Services (an **“Authorized User”**), including employees or any authorized third parties or contractors, will be provided with online access to the Services, allowing them to access any licensed Clariti product. This access may include, based on security privileges; patient information; financial information; survey content; survey results; accessing reports; exporting data; messages; and settings, collectively known as **“Client Data”**. As an Authorized User, access may result in the access, use, disclosure, modification or deletion of certain Client Data. It is important that Clients ensure that Authorized Users understand their choices and responsibilities. Each Authorized User must agree to the [User Terms](#) to access the Services.

In addition, you should inform Authorized Users of all Client policies and practices that are relevant to their use of the Services and access to Client Data; and obtain all rights, permissions or consents from Authorized Users that are necessary for the lawful access and use of Client Data and the operation of the Services.

Client must comply with the Contract and ensure that its Authorized Users comply with the Contract and the User Terms. Clariti is not responsible for the content of any Client Data or the way Client or its Authorized Users choose to use the Services to store or process any Client Data.

## Privacy Policy

Please review our [Privacy Policy](#) for more information on how we collect and use personal and client data relating to the Services and our websites.

## Our Responsibilities

### Activate the Services and Provide Assistance

Upon receipt of the Sales Order, Clariti will activate your subscription; including establishing the Authorized Users, configuring the licensed products, providing Authorized Users with training tools and support during the startup period, and any other assistance outlined in the Sales Order.

## **Support You and Your Patients**

We will provide unlimited phone and email assistance during our support hours to you, your Authorized Users, and any patients that may contact us for assistance as outlined in our current client support policies.

## **Provide You with the Functionality You Expect**

We will ensure that the Services materially perform in accordance with the current advertised features and content, and we will not materially decrease the features available to you under any subscriptions. For any breach of a warranty in this section, Client's exclusive remedies are those described in the section titled "Termination for Cause".

## **Keep the Services Available**

We will use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, and when possible we will notify you in advance of any planned downtime.

## **Maintain Compliance**

We will maintain the Services in compliance with applicable laws; including HIPAA, federal and state laws and agencies. We will make all reasonable efforts to maintain compliance with accrediting organizations that Clients may utilize.

## **Keep Your Data Safe**

We will protect Client Data by maintaining physical, administrative and technical safeguards in accordance with current commercial practices. Those safeguards will include measures for preventing unauthorized access, use, modification, disclosure or deletion of Client Data by our personnel. We are not responsible for what Client's Authorized Users do with Client Data.

## **Your Responsibilities**

### **Provide Internet Access**

You shall provide Internet access, including obtaining and paying for all necessary equipment, third party services and technical support.

### **Authorized Users**

We need your assistance in identifying the Authorized Users, specifying their roles and responsibilities, and being responsible for ensuring their security privileges are appropriately configured. In addition, in order to access and use the Services, you and your Authorized Users will need to be accessible for training and instruction in reasonable accordance with our recommendations.

### **Access to Your Data**

Client represents and warrants that it has secured all rights in and to Client Data as may be necessary to grant this license and provides Clariti with the right to use the Client Data as part of delivering the Services. In addition, you will assist us with provisioning and access to your patient data, where appropriate.

### **Protect our Intellectual Property**

We own and will continue to own our Services, including all related intellectual property rights. We grant to Client a non-sublicensable, non-transferable, non-exclusive, limited license for Client and its Authorized Users to use the

Services and in accordance with the Contract and the [User Terms](#). All of our rights not expressly granted by this license are hereby retained.

You agree not to attempt to damage, modify, deny service to, reverse-engineer, or otherwise interfere with the Services in any manner and will promptly notify us of any suspected unauthorized use.

You agree not to resell, rent or lease the Services without our prior written consent.

## **Payment Obligations**

### **Invoicing and Payment Terms**

The Fees are specified in your Sales Order. Clients are invoiced in advance each month based on their expected case volume. Fees must be paid in advance and payment obligations are non-cancellable or refundable, except as expressly stated in the Contract. Invoices are delivered via email and full payment is expected within thirty (30) days from the invoice date. Clients may pay by credit card, check or ACH. Fees are stated exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Client will be responsible for paying all Taxes associated with its purchases, except for those taxes based on our net income.

### **Travel Expenses**

We do not anticipate any need to travel to Client locations. However in the event Client may request onsite support, and we mutually agree to provide such support, we will provide an estimate of travel costs in advance of such travel and Client will be responsible for payment of our travel costs. In the event we decide to visit you at our request all travel costs will be borne by us.

### **Non-Payment**

If any fees owed to us by Client, excluding any amounts disputed reasonably and in good faith, are thirty (30) days or more overdue, we may, without limiting our other rights and remedies, discontinue Client access to the Services until those amounts are paid in full, so long as we have given Client ten (10) or more days' prior notice that its account is overdue. In addition, Clariti will apply a monthly late fee of 1.5% or a minimum of \$15.00 (or the greatest amount allowed by state law) for any payment more than fifteen (15) days delinquent. Client shall be responsible for all collection and legal fees necessitated by lateness or default in payment. Suspending access for non-payment does not relieve Client of their full subscription payment responsibilities.

### **Satisfaction Guarantee**

Clariti is committed to making sure you are completely satisfied with the Services and all Clients are entitled to our Satisfaction guarantee. If for any reason you are dissatisfied with the Services please let us know. In order to be effective, any such request must be received by us within ten (10) days of the first complete month's use of the Services. Client must have reasonably provided the content requested by Clariti to setup the Services, made staff available for training, and utilized the Services to be eligible for the Satisfaction Guarantee. If so opted, Clariti will refund or credit all subscription fees and provide Client with the option of terminating their subscription moving forward. Implementation and travel costs, if applicable, are not eligible for credit and will remain payable by the Client.

## **Term and Termination**

The Contract becomes effective immediately upon execution of the Sales Order and shall remain in full force and effect for the period stipulated in the Sales Order, and this section, and remains in effect until all subscriptions or

free trials ordered under the Contract have expired or been terminated or the Contract itself terminates. Termination of the Contract will terminate all subscriptions and all Sales Orders.

## Free Trials

Free Trial subscriptions commence with the online order of a free trial. If you elect not to enter into a paid subscription, your free trial will end thirty days after your free trial begins unless we mutually agree to extend.

## Paid Subscriptions

Paid subscriptions begin with initiation of a Sales Order. The effective billing date will be stipulated in the Sales Order and is determined by the go-live date, at which time the Services will be enabled for Client use. Unless otherwise stipulated in a Sales Order, the go-live date will be no longer than thirty (30) days from the order date.

## Term

Unless a Sales Order specifies otherwise, all subscriptions have a three year initial term and then automatically renew for additional one year periods. The Term specified in the Sales Order or this section commences with the first billable production use of the Software. Either party can give the other notice of non-renewal at least thirty days before the end of a subscription term to stop the subscriptions from automatically renewing, or with a minimum of thirty days written notice after the initial term.

## Termination for Cause

We or Client may terminate the Contract on notice to the other party if the other party materially breaches the Contract and such breach is not cured within thirty (30) days after the non-breaching party provides notice of the breach. Client is responsible for its Authorized Users, including for any breaches of this Contract caused by its Authorized Users. We may terminate the Contract immediately on notice to Client if we reasonably believe that the Services are being used by Client or its Authorized Users in violation of applicable law, or there is a credible risk of harm to us, the Services, Authorized Users, or any third parties.

## Effect of Termination

Upon any termination for cause by Client, we will refund Client any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by us, Client will pay any unpaid fees payable to use for the period prior to the effective date of termination and covering the remainder of the term of those subscriptions after the effective date of termination.

Following termination or expiration of a Client's Contract, we will have no obligation to maintain or provide any access to the Services or Client Data and may thereafter, unless legally prohibited, delete all Client Data in our systems or otherwise in our possession or under our control. Client may request a copy of their Client Data, which we will assist with. In the event the provision of Client Data cannot be facilitated with existing export tools available to Clariti we cannot guarantee that Client Data will be available or without additional cost. Client will return to Clariti or destroy any documentation delivered by us to Client related to the Services.

## Survival

In the event of termination or expiration of the Contract the following sections will survive; Payment Obligations, Effect of Termination, Survival, Representations; Disclaimer of Warranties, Limitation of Liability, Indemnifications, and General Provisions.

## Representations; Disclaimer of Warranties

Client represents and warrants that it has validly entered into the Contract and has the legal power to do so. Client further represents and warrants that it is responsible for the conduct of its Authorized Users and their compliance with the terms of this Contract and the User Terms. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, THE SERVICES AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CLIENT ACKNOWLEDGES THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

## Limitation of Liability

OTHER THAN IN CONNECTION WITH A PARTY’S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER CLIENT’S OR CLARITI’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT OR THE USER TERMS (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE LAST EVENT GIVING RISE TO LIABILITY. THE FOREGOING HAS NO EFFECT ON CLIENT’S PAYMENT OBLIGATIONS FOR THE SERVICES.

IN NO EVENT WILL EITHER CLIENT OR CLARITI HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

Client is responsible for all login credentials, including usernames and passwords, for administrator accounts as well the accounts of your Authorized Users. We will not be responsible for any damages, losses or liability to Client, Authorized Users, or anyone else, if such information is not kept confidential by Client or its Authorized Users.

The limitations under this “Limitation of Liability” section apply with respect to all legal theories, whether in contract, tort or otherwise, and to the extent permitted by law. The provisions of this “Limitation of Liability” section allocate the risks under this Contract between the parties, and the parties have relied on these limitations in determining whether to enter into this Contract and the pricing for the Services.

## Indemnifications

### Our Indemnification of Client

We will defend you from and against any and all third party claims, actions, suits, proceedings, and demands alleging that the use of the Services as permitted under the Contract misappropriates or infringes a third party’s intellectual property rights (a “**Claim Against Client**”), and will indemnify Client for all reasonable attorney’s fees incurred and damages and other costs finally awarded against Client in connection with or as a result of, and for amounts paid by Client under a settlement we approve of in connection with, a Claim Against Client; provided,

however, that we will have no liability if a Claim Against Client arises from (a) Client Data, (b) an interfaced or integrated third party that we did not provide; and (c) any modification, combination or development of the Services that is not performed by us. Client must provide us with prompt written notice of any Claim Against Client and allow us the right to assume the exclusive defense and control, and cooperate with any reasonable requests assisting our defense and settlement of such matter. This section states our sole liability with respect to, and Client's exclusive remedy against us for any Claim Against Client.

## Client's Indemnification of Us

You will defend Clariti, and any employees or third party contractors used by Clariti (the "**Clariti Indemnified Parties**") from and against any and all third party claims, actions, suits, proceedings, and demands arising from or related to Client's or any of its Authorized Users' violation of the Contract or the User Terms (a "**Claim Against Us**"), and will indemnify the Clariti Indemnified Parties for all reasonable attorney's fees incurred and damages and other costs finally awarded against a Clariti Indemnified Party in connection with or as a result of, and for amounts paid by a Clariti Indemnified Party under a settlement Client approves of in connection with, a Claim Against Us. We must provide Client with prompt written notice of any Claim Against Us and allow Client the right to assume the exclusive defense and control, and cooperate with any reasonable requests assisting Client's defense and settlement of such matter. This section states your sole liability with respect to, and the Clariti Indemnified Parties' exclusive remedy against Client for, any Claim Against Us.

## Limitations on Indemnifications

Notwithstanding anything contained in the two preceding sections, (a) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and (b) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties, with such consent not to be unreasonably withheld, if (i) the third party asserting the claim is a government agency, (ii) the settlement arguably involves the making of admissions by the indemnified parties, (iii) the settlement does not include a full release of liability for the indemnified parties, or (iv) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

## Confidentiality

We are dedicated to protecting confidential information and shall maintain appropriate physical, technical and administrative safeguards to ensure the confidentiality and security of Client Data. We will not disclose Client Data except as expressly provided in or by permitted by this Agreement or as compelled by law.

## Confidential Information

Each party ("**Disclosing Party**") may disclose "**Confidential Information**" to the other party ("**Receiving Party**") in connection with the Contract, which is anything that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including all Sales Orders, as well as non-public business, product, technology and marketing information. Confidential Information of Client includes Client Data. If something is labeled "Confidential," that's a clear indicator to the Receiving Party that the material is confidential. Notwithstanding the above, Confidential Information does not include information that (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party.

## Protection and Use of Confidential Information

The Receiving Party will (a) take reasonable measures to prevent the unauthorized disclosure or use of Confidential Information, and limit access to those employees, affiliates and contractors, and legal and financial advisors who need to know such information in connection with the Contract; and (b) not use or disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of this Contract.

As part of the Services, Clariti may at times use Client Data to help provide comparative statistics and benchmarks based on data from similar clients. Clariti reserves the perpetual right to use Client Data for such purposes only and at no time will Client Data be attributable to you or identifiable. At all times Clariti will comply with applicable laws, including HIPAA.

## Compelled Access or Disclosure

The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is required by law; provided, however, that the Receiving Party gives the Disclosing Party prior notice of the compelled access or disclosure, to the extent legally permitted, and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the access or disclosure.

## ***General Provisions***

### Force Majeure

Neither us nor Client will be liable by reason of any failure or delay in the performance of its obligations on account of events beyond the reasonable control of a party, which may include denial-of-service attacks, a failure by a third party hosting provider or utility provider, strikes, shortages, riots, fires, acts of God, war, terrorism, and governmental action.

### Relationship of the Parties; No Third Party Beneficiaries

The parties intend to create an independent contractor relationship, and nothing contained in any Agreement shall be construed to make either Clariti or Client partners, joint venturers, principals, agents or employees of the other. Neither party shall have any right, power or authority, express or implied, to bind the other. There are no third party beneficiaries to the Contract.

### Publicity

Client grants us the right to use Client's organization name as a reference for marketing or promotional purposes in public or private communications with our existing or potential Clients. We will not identify any Clients who do not wish to be so identified and, if so, Client may send us an email to [admin@clariti-health.com](mailto:admin@clariti-health.com) stating that it does not wish to be noted as a customer of Clariti.

### Notices

Except as otherwise set forth herein, all notices under the Contract will be sent by email. Notices to Clariti will be sent to [admin@clariti-health.com](mailto:admin@clariti-health.com). Notices will be deemed to have been duly given the day after it is sent.

## Modifications

Over time we may change the Contract and User Terms -- but not Sales Orders. If we make a material change to the Contract, we will provide Client with reasonable notice prior to the change taking effect via email to the Client's current contact email address. You can review the most current version of the Client Terms, User Terms, Privacy Policy and HIPAA Business Associate Agreement at any time by visiting this page. A materially revised Contract will become effective on the date set forth in our notice, and all other changes will become effective upon posting of the change. If Client, or any Authorized User, accesses or uses the Services after the effective date, that use will constitute Client's acceptance of any revised terms and conditions.

## Waiver and Severability

Any waiver or modification of this Agreement will not be effective unless executed in writing and signed by Client and Customer. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement will not be deemed to be a waiver or modification by such party of any of its rights under this Agreement. If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement.

## Assignment

Neither party may assign or delegate any of its rights or obligations hereunder, whether by operation of law nor otherwise, without the prior written consent of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign the Contract in its entirety, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Client will keep its billing and contact information current at all times by notifying Clariti of any changes. Subject to the foregoing, the Contract will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

## Governing Law

The Contract, and any disputes arising out of or related hereto, will be governed exclusively by the laws of the State of Connecticut. The state and federal courts located in New Haven County, Connecticut will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the Contract or its formation, interpretation or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Contract. In any action or proceeding to enforce rights under the Contract, the prevailing party will be entitled to recover its reasonable costs and attorney's fees.

## Entire Agreement

The Contract constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, or prior electronic versions concerning its subject matter. Unless otherwise agreed in writing, no terms or conditions of any Client purchase order, vendor agreement or other Client documentation will be incorporated into the Contract, and all such terms and conditions will be null and void. To the extent of any conflict or inconsistency between the Client Terms and the Sales Order, the Sales Order will prevail.



## Contact

Please also feel free to contact us if you have any questions about Clariti's Client Terms. You may contact us at [admin@clariti-health.com](mailto:admin@clariti-health.com), by phone 844.696.6741, or mail to Clariti Health 26 Bayberry Lane Branford, CT 06405.