

Terms and Conditions Version: 2.0

Parties

(1) Claromentis Ltd incorporated and registered in England and Wales with company number 03672955 whose registered office is at The Old Casino, 28 Fourth Avenue, Hove, East Sussex, BN3 2PJ (Cardens);

(2) The Customer is _____ whose company address is _____

BACKGROUND

(A) The Supplier is the entire legal and beneficial owner and licensor of the Software and is willing to license the Customer to use the Software.

Agreed terms

1. Interpretation

1.1. The definitions and rules of interpretation in this clause apply in this licence.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

SMA: The Support and Maintenance agreement is available to view at the following link: <https://discover.claromentis.com/intranet/documents/616/3018>

Fee: the licence fee payable by the Customer to the Supplier under clause 5.

DATA Processing Agreement : Is available for signature online via https://signnow.com/s/YL83X97S?name_formula=DPA%20-%20%7Ccompany_name%7CDate_1

GDPR Policy: the standard GDPR policy made available to the Customer by the Supplier online via <https://www.claromentis.com/privacy/>

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software.

Order Form: the online sign up form sent to the Customer.

Site: the premises from which the Customer carries out its business as stated in the Order Form.

Services: the services provided by the Supplier to the Customer as set out in the Documentation and Support Services Policy.

Software: the number of software licenses provided by the Supplier as set out in the Order Form.

- 1.1. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.2. Unless the context otherwise requires:
 - (a) words in the singular shall include the plural and in the plural shall include the singular;
 - (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
 - (c) a reference to one gender shall include a reference to the other genders; and
 - (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3. In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the schedules or appendices, the provision in the body of this licence shall take precedence.

1.4. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

2. Delivery and installation

2.1. The Supplier shall deliver and install on the Customer's equipment the Software to the Customer at the address for the Customer (stated in the Order Form). Risk in any tangible media on which the Software is delivered shall pass on delivery.

2.2. The Customer shall be deemed to have accepted the Software when the Customer commences operational use of the Software.

3. Licence

3.1. In consideration of the Fee paid by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive licence for the full period of the copyright in the Software commencing on and including the date of this licence to use the Software.

3.2. In relation to scope of use:

- (a) for the purposes of clause 3.1, use of the Software shall be restricted to use of the Software for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).
- (b) the Customer may not use the Software other than as specified in clause 3.1 and clause 3.2(a) without the prior written consent of the Supplier; and
- (c) except as expressly stated in this clause 3, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.

3.3. The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 3.2(e) to create any

software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

3.4. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property.

3.5. The Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

3.6. The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

3.7. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.8. The Customer shall ensure that the Software is installed on designated equipment only;

4. Maintenance releases

The Supplier will provide the Customer with Maintenance Releases generally made available to its customers in accordance with the Documentation and Support Services Policy. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software.

5. Fees

5.1. The Customer shall pay to the Supplier licence fees in accordance with the Order Form and any support and maintenance fees in accordance with the Documentation and Support Services Policy.

5.2. All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.

5.3. If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6. Confidentiality and publicity

6.1. Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

6.2. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any

governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

7. Customer Data

- 7.1.** The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 7.2.** Both parties shall comply at all times with the Suppliers standard GDPR policy in respect of the Customer Data.

8. Supplier's warranties

- 8.1.** The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 8.2.** All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

9. Limits of liability

- 9.1.** Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Software by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Software, or any actions taken by the Supplier at the Customer's direction; and
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 9.2.** Nothing in this Agreement excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or

- (b) for fraud or fraudulent misrepresentation.

9.3. Subject to clause 9.1 and clause 9.2:

- (a) Neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) Each parties total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

10. Intellectual property rights

- 10.1.** The Customer acknowledges that all Intellectual Property Rights in the Software, Documentation and any Maintenance Releases belong and shall belong to the Supplier, and the Customer shall have no rights in or to the Software or Documentation other than the right to use it in accordance with the terms of this licence.
- 10.2.** The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this licence infringes the UK Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim.
- 10.3.** Clause 10.2 shall not apply where the Claim in question is attributable to use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this licence.
- 10.4.** If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

- (a) procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this licence;
- (b) modify the Software so that it ceases to be infringing;
- (c) replace the Software with non-infringing software; or
- (d) terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 9.1 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

10.5. Notwithstanding any other provision in this agreement, clause 11.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.

10.6. This clause 11 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 10.1.

11. Termination

11.1. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

- 11.2.** Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 11.3.** Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 11.4.** On termination for any reason:
- (a) all rights granted to the Customer under this licence shall cease;
 - (b) the Customer shall cease all activities authorised by this licence;
 - (c) the Customer shall immediately pay to the Supplier any sums due to the Supplier under this licence; and
 - (d) the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- 11.5.** Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement.

12. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. Remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

14. Entire agreement

- 14.1.** This licence and the documents referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 14.2.** Each party acknowledges that, in entering into this licence and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this licence or not) (**Representation**) other than as expressly set out in this licence or those documents.
- 14.3.** Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract..
- 14.4.** Nothing in this clause shall limit or exclude any liability for fraud.

15. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. Severance

- 16.1.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 16.2.** If any provision or part-provision of this agreement is deemed deleted under clause 17.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18. Third-party rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

19. No partnership or agency

19.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

19.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

21. Notices

21.1. Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to its main email address.

21.2. Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;

(c) if sent by email, at 9.00 am on the next Business Day after transmission.

21.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

22. Governing law and jurisdiction


22.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

22.2. Each party irrevocably agrees that any proceedings relating to any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation instituted against the Supplier by the Customer shall be brought in the courts of England and Wales and any such proceedings against the Customer by the Supplier shall be brought in the courts of the Customer's jurisdiction. Each party agrees that the specified courts shall have exclusive jurisdiction over such disputes or claims save that any counterclaim may be brought in any proceedings already commenced.

Signed on behalf of Claromentis Limited:

Name: Nigel Davies

Title: Director

Signature: 

Date: 07/07/22

Signed on behalf of the Customer:

Name:

Title:

Signature:

Date: