



Terms of Service

Last modified 7 April 2020

These Terms of Service (the "**Terms**") set out the conditions for using the getclayton.com and clayton.io websites (each a "**Site**") and, along with an Order, the Services provided by the Supplier.

1. Interpretation

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

Active Contributor	any individual, such as an employee, external collaborator or Affiliate who has directly contributed to the development of an Application at least once in any ninety (90) day period immediately prior to, or during, the Subscription Term.
Add-On Services	those supplementary services which are provided to a Customer to enhance their Subscription(s) experience, as set out in an Order.
Affiliate	any entity that directly or indirectly controls, or is controlled by, or is under common control with, another entity.
Aggregated Data	non-personal, non-proprietary information in an anonymous aggregated form generated by the Supplier from the Generated Data, Customer Data and any other data received by the Supplier in the course of providing Services to Customers.
API	an application programming interface utilised by the Customer or an Authorised User for the purpose of using the Services or integrating with third-party applications, as further described in clause 5.
Application	any software development project undertaken by the Customer for which the Services are being utilised.
Authorised User	those individuals, employees, agents, third-party suppliers, service recipients, independent contractors or Affiliates of the Customer who are authorised by the Customer to use the Services, as are further described in clause 5.
Beta Services	any services or functionality that may be made available by Supplier in its sole discretion, to a Customer at no additional charge, which is clearly designated a beta, pilot, preview, non-production or evaluation services, as further described in an Order.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Charges	all fees and payments due from and payable by the Customer to the Supplier under the Agreement in accordance with clause 12.

Confidential Information	means all information (whether in oral, written or electronic form) relating to a party's business which may reasonably be considered to be confidential in nature including in relation to Supplier, information relating to the Supplier's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers.
Customer	the business customer using the Services.
Customer Data	the data inputted by (or retrieved from) the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of Supplier's provision of the Services or facilitating the Customer's use of the Services, excluding the Generated Data and Aggregated Data.
Data Protection Legislation	(i) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.
Documentation	the supporting documentation for each applicable Service, as updated by the Supplier from time to time and accessible via help.clayton.io or as otherwise provided by the Supplier to the Customer by any other means.
Effective Date	the date of first use of the Services by the Customer, as set out in an Order.
Free Services	any services provided by the Supplier to a Customer, in its sole discretion, without charge and for a limited period, including Beta Services, Freemium Services and any other Services which are provided as part of a Free Trial, as set out in an Order, and further described at clause 13.
Freemium Services	any services which are provided by the Supplier to a Customer, in its sole discretion, without charge and for a limited period or with limited functionality, as set out in an Order, and further described at clause 13.
Free Trial	the provision of Services by the Supplier to a Customer, in its sole discretion, without charge and for a limited period, as set out in an Order, and further described at clause 13.
Generated Data	the data, results, reports, insights, data visualisations, analytics, interpretations and statistics generated during the course of the Supplier's provision to a Customer of the Services, excluding Customer Data.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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.

Malicious Code	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
Monitoring Services	the continued monitoring, in near-real time or scheduled on a regular cadence, of a Customer's designated Applications, as set out in an Order.
Normal Business Hours	9.00 am to 5.30 pm local UK time, each Business Day.
On-Demand Services	the provision by the Supplier to a Customer, on an on-demand basis, of ad-hoc assessments, code audits, security reviews, scans, code analysis, organisational assessments, technical debt assessments or any similar services, for the Customer's designated Applications, as set out in an Order.
Order	the Customer's written request for the Services to be provided by the Supplier under these Terms, as accepted by the Supplier, by way of an Order Form, the Supplier's online purchasing portal accessible via help.clayton.io or any other means as may be directed by the Supplier in writing from time to time.
Order Form	a written order in the form prescribed by Supplier, which is executed by the Customer and Supplier detailing <i>inter alia</i> , the Services to be supplied by Supplier, the Term of supply and the Subscription Fees payable by Customer in respect of the Services.
Permitted Usage	the maximum usage limits granted to a Customer under a Subscription, as set out in an Order, the Terms of Use, the Documentation or otherwise as may be communicated by the Supplier in writing from time to time (and any updates thereto), including limitations related to permitted Authorised Users and the maximum number of Active Contributors or Applications.
Renewal Period	the period described in clause 18.1.
Services	the provision of access for the Customer and Authorised Users to those Monitoring Services, On-Demand Services and Add-On Services to which Customer has subscribed, in addition to the Support Services and any Free Services provided to a Customer by the Supplier in its sole discretion, as set out in an Order, and in accordance with these Terms.
Software	the underlying software applications which are proprietary to the Supplier and which are provided by the Supplier to

operate/as part of the Services.

Specification	the specification outlined in relation to each Subscription, as set out in an Order.
Subscription	each subscription purchased by the Customer pursuant to clause 12.1 (subject to applicable allowances and the Permitted Usage) which allow Authorised Users (and, where stated in the Specification, API associated with those Authorised Users) to access, use or receive the benefit of the Services in accordance with these Terms, the Terms of Use and a relevant Order.
Subscription Fees	the subscription fees payable by the Customer to the Supplier for a Subscription, as determined by the Services to which Customer has subscribed under an Order.
Subscription Term	has the meaning given in clause 18.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
Supplier	Space Heroes Ltd, a limited company incorporated in England and Wales with company number 09425439 and registered office at Suites 5 & 6 The Printworks Hey Road, Barrow, Clitheroe, Lancashire, England, BB7 9WB
Support Services	means any error corrections, troubleshooting, assistance, training, updates or any other support that the Supplier may provide to the Customer or perform with respect to the Services under these Terms.
Terms of Use	the terms of use located at www.getclayton.com/legal

2. Contacting Us

- 2.1. The Services are operated by the Supplier.
- 2.2. To contact the Supplier, please email hello@clayton.io.

3. Acceptance of these Terms

By using the Services, the Customer confirms acceptance of these Terms, the Terms of Use and each Order under which it has subscribed for the Services (which together shall constitute the “**Agreement**”) and agrees to comply with them.

4. Changes to these Terms, the Site or the Services

- 4.1. The Supplier reserves the right to amend these Terms from time to time, and to display the amended Terms on the Site. By continuing to access the Site or use the Services, the Customer agrees to be bound by the Terms, as they may be amended from time to time.
- 4.2. The Supplier shall be entitled to update and change the Services, Specification, Site and/or its contents from time to time to reflect changes to the service (including the Services), users' needs (including Customer's or Authorised User's needs), applicable laws and the Supplier's business priorities, as well as to maintain the security and/or performance and availability of the Services. The Supplier will use commercially reasonable endeavours to give the Customer reasonable notice of any major changes under this clause 4.

5. Subscriptions

- 5.1. Subject to the Customer purchasing a Subscription in accordance with clause 12.1 (except when receiving Free Services, the provision of which shall be solely in the Supplier's discretion and in accordance with any Permitted Usage or other restrictions set out in a relevant Order), the restrictions set out in this clause 5 and the other terms and conditions of these Terms, the Terms of Use, and an Order, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users and, where applicable, API, to use the Services during the Subscription Term, solely for the Customer's and Authorised Users' internal business operations, as may be relevant.
- 5.2. In relation to the use of the Services, the Customer undertakes that:
 - 5.2.1. it will procure that Authorised Users and API shall adhere to the terms of the Agreement (in particular the Terms of Use) and will be liable for all acts and omissions of any Authorised Users and API;
 - 5.2.2. it will not use, and shall ensure that Authorised Users shall not use, the Services in excess of the Permitted Usage; and
 - 5.2.3. it shall maintain a written, up to date list of relevant and current Applications, Authorised Users, Active Contributors and API and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times.
- 5.3. The Supplier reserves the right to read and track the Customer's use of the Services and if the Supplier detects any breach by the Customer of the Agreement, including use of the Services in excess of the agreed Permitted Usage, the Supplier will notify, and discuss with, the Customer, its usage requirements. Following such discussion, Supplier may, in its sole discretion:
 - 5.3.1. amend a relevant Customer Order to increase the Permitted Usage which accurately reflect the Customer's usage needs. The Supplier shall be entitled to increase the Customer's Subscription Fees to reflect any amendments to the Permitted Usage (charged from the time of breach), and the Customer shall pay such increased Subscription Fees in accordance with clauses 6 and 12 of these Terms; or
 - 5.3.2. grant to the Customer, a timeframe for the Customer to rectify the breach to ensure compliance with the agreed Permitted Usage set out in a relevant Order. Supplier reserves the right to charge the Customer a pro-rated Subscription Fee to reflect the period of time during which Customer's use of the Services exceeded the Permitted Usage set out in a relevant Order, and Customer shall pay such pro-rated Subscription Fee in accordance with clause 12.
- 5.4. If the Customer does not comply with its obligations under clause 5.3 within 7 days of notification by Supplier of its intended course of action under clauses 5.3.1 or 5.3.2 above, the Supplier reserves the right to suspend the provision of a relevant Service, including access to the Generated Data, and to charge the Customer a pro-rated Subscription Fee to reflect the period during which Customer exceeded the agreed Permitted Usage set out in an Order, until such time as the Customer's use of the Services reflects its Permitted Usage (as may have been amended in accordance with clause 5.3.1). If the Customer fails to make payment of any increased/pro-rated Subscription Fee under clauses 5.3.1 or 5.3.2 above, or if Supplier detects that Customer's use continues to exceed, or later exceeds, the agreed Permitted Usage set out in an Order, the Supplier reserves the right to terminate the Agreement in accordance with clause 18.3.3 and charge the Customer a pro-rated Subscription Fee to reflect the period during which Customer exceeded the agreed Permitted Usage set out in an Order.
- 5.5. The Customer shall not, and shall procure that Authorised Users do not, access, store, distribute or transmit any Malicious Code, or any material during the course of its use of the Services that:
 - 5.5.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or

- racially or ethnically offensive;
- 5.5.2. facilitates illegal activity;
- 5.5.3. depicts sexually explicit images;
- 5.5.4. promotes unlawful violence;
- 5.5.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 5.5.6. is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's (and any Authorised User's) access to any material that breaches the provisions of this clause.

5.6. The Customer shall not, and shall procure that Authorised Users do not:

- 5.6.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:
 - 5.6.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - 5.6.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.
- 5.6.2. access all or any part of the Services in order to build a product or service which competes with the Services;
- 5.6.3. remove or alter any author metadata in the code of Applications designated by a Customer for the Supplier's supply of Services;
- 5.6.4. flag an Active Contributor as inactive where such Active Contributor continues to contribute code;
- 5.6.5. subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- 5.6.6. attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 5.

5.7. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

5.8. The rights provided under this clause 5 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

6. Changes to Subscriptions

6.1. Subject to clauses 6.2 and 6.3, the Customer may, from time to time during any Subscription Term, purchase additional Services or purchase access to Services for an increased number of Authorised Users or to reflect an increased number of Active Contributors and the Supplier

shall grant access to such Services and to such additional Authorised Users in accordance with the provisions of the Agreement.

- 6.2. If the Customer wishes to make changes to its Subscription pursuant to clause 6.1 above, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request(s) and respond to the Customer with approval or rejection of the request(s) (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the changes to Customer's Subscription within 2 Business Days of its approval of the Customer's request.
- 6.3. If the Supplier approves the Customer's request made in accordance with clause 6.2 above and subject to clause 12.4, the Customer's Order shall be amended accordingly including by way of an adjustment to the Customer's Subscription Fee, chargeable from the date on which changes to the Customer's Subscription were made.

7. Services

- 7.1. The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to these Terms, the Terms of Use, and each Order.
- 7.2. The Supplier shall use reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - 7.2.1. planned maintenance usually carried out at weekends during the maintenance window of 8.00 am to 12.00 am UK time (but such times are indicative only);
 - 7.2.2. unscheduled maintenance performed outside Normal Business Hours, which shall be notified to the Customer on the Site where the Customer has subscribed to receive maintenance updates; and
 - 7.2.3. any unavailability caused by circumstances beyond the Supplier's reasonable control, including for example a force majeure event pursuant to clause 19, denial-of-service attack, any delay or failure of third-party or Customer-operated version control systems, identity providers or other non-Supplier applications (including but not limited to the Applications), or any action or omission by the Customer which renders the provision of Services by the Supplier unfeasible including but not limited to failure by a Customer to meet its obligations under clauses 11.1.6 or 11.1.7.
- 7.3. The Supplier will, as part of the Services, provide the Customer with the Supplier's standard customer Support Services. The Supplier may amend the Support Services in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services as an Add-On Service separately at the Supplier's then current rates.

8. Customer Data and Data Protection

- 8.1. The Customer shall:
 - 8.1.1. own all rights, title and interest (including all Intellectual Property Rights) in and to all of the Customer Data; or
 - 8.1.2. where Customer does not own all such rights, title and interest (including all Intellectual Property Rights) in and to all of the Customer Data, shall ensure it secures all necessary licences, permissions and consents from such owner to enter the Agreement and to submit Customer Data on the terms of the Agreement,and (under both clause 8.1.1 or 8.1.2), shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 8.2. If the Supplier processes any personal data on the Customer's behalf when performing its

obligations under the Agreement, the parties shall comply with their obligations under the Data Protection Legislation. The Customer acknowledges and agrees that it is responsible for obtaining the relevant consent of, or providing the necessary notices to, data subjects whose personal data is provided to the Supplier as part of the Customer Data prior to the use of the Services, which complies with the Data Protection Legislation and is sufficient to allow the Supplier to process the data subject's personal data in accordance with these Terms.

- 8.3. By submitting the Customer Data for verification under the Services as part of an Application or otherwise, the Customer grants (and warrants that it has all necessary licences, permissions and consents (including but not limited to under clause 8.1.2 above) to grant) the Supplier a non-exclusive, royalty-free, worldwide, irrevocable and perpetual licence to access, retrieve, retain, store, use, copy and disclose such Customer Data solely:
- 8.3.1. in connection with the provision of the Services and to carry out its obligations under the Agreement;
 - 8.3.2. to protect the operation of the Services;
 - 8.3.3. to produce the Generated Data and Aggregated Data;
 - 8.3.4. in order for the Supplier to improve its services (including its provision of the Services) in accordance with clause 14.5; and
 - 8.3.5. to satisfy applicable legal, accounting or regulatory requirements.

9. Third-party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

10. Supplier's obligations

- 10.1. The Supplier undertakes that the Services will be performed substantially in accordance with the Specification and with reasonable skill and care.
- 10.2. The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 10.1. Notwithstanding the foregoing, the Supplier:
- 10.2.1. does not warrant that a Customer's or Authorised User's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - 10.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities,

including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 10.3. These Terms shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.
- 10.4. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.

11. Customer's obligations

The Customer shall:

- 11.1.1. provide the Supplier with:
 - 11.1.1.1. all necessary co-operation in relation to these Terms; and
 - 11.1.1.2. all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - 11.1.2. comply with all applicable laws and regulations with respect to its activities under these Terms;
 - 11.1.3. carry out all other Customer responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 11.1.4. ensure that the Authorised Users use the Services in accordance with the Agreement (including these Terms, the Order and in particular, the Terms of Use), and shall be responsible for any Authorised User's breach of the Agreement;
 - 11.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services (and including but not limited to under clause 8 above);
 - 11.1.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
 - 11.1.7. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
 - 11.1.8. comply with the agreed Permitted Usage set out in an Order.
- 11.2. Customer further represents and warrants that it is not, and for the duration of the Agreement that it will not be, receiving the Services as a (non-business) consumer or as an entity which operates within the same field of service as the Supplier, being the provision of software code analysis. A breach of this representation and warranty shall give the Supplier the right to terminate the Agreement with immediate effect in accordance with clause 18.3.2.

12. Charges and payment

- 12.1. The Customer shall pay the Subscription Fees to the Supplier for the Services to which it has subscribed under an Order in accordance with this clause 12 and as determined by the type of Subscription selected in accordance with clause 7.3, including any adjustments to the Subscription Fees which may be chargeable under clauses 5.3, 5.4, 6.3 or 12.5.
- 12.2. The Customer shall provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and the Customer hereby authorises the Supplier to bill such credit card on a recurring and periodic basis from:
- 12.2.1. the Effective Date; or
- 12.2.2. the date immediately following the expiry of any period during which Supplier, in its sole discretion, agrees to provide Free Services,
- as may be relevant and as is set out in an Order.
- 12.3. The Supplier shall provide the Customer with an invoice for the Services, which shall become due and payable immediately from the invoice date unless otherwise agreed between the parties and set out in an Order. If the Supplier has not received payment within 30 days of the due date, without prejudice to any other rights and remedies of the Supplier:
- 12.3.1. the Supplier may, without liability to the Customer, disable the Customer's password, account and access (including Authorised User's access) to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 12.3.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Supplier's bank in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 12.4. All amounts and fees (including the Subscription Fees) stated or referred to in these Terms:
- 12.4.1. shall be payable in pounds sterling (unless agreed otherwise);
- 12.4.2. are non-refundable; and
- 12.4.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 12.5. The Supplier shall be entitled to increase the Subscription Fees (including the Subscription Fees as amended pursuant to clause 6.3), at the start of each Renewal Period upon 90 days' prior written notice to the Customer. Should Customer fail to cancel its Subscription in accordance with clause 18.1.1 of these Terms, the increase in Subscription Fees shall be deemed agreed by the Customer and a relevant Order shall be considered amended accordingly.

13. Free Services

- 13.1. The Customer may request and the Supplier may, in its sole discretion and for a limited period, grant the Customer access to certain Beta Services, Freemium Services and such other of its Services as part of a Free Trial, the terms of which shall be set out in an Order.
- 13.2. The Customer may be required to enter its billing information in accordance with clause 12.2 in order to receive Free Services.
- 13.3. In addition to any other terms, restrictions and limitations of receiving Free Services set out in an Order, or within any Documentation which may be supplied by Supplier to Customer from time to time, and to which a Customer agrees to be bound, the Customer:

- 13.3.1. agrees to be bound by the Permitted Usage agreed and set out in an Order, the Documentation, or as may otherwise be communicated by Supplier from time to time. Any use of the Free Services in excess of the Permitted Usage may be subject to Charges in accordance with clauses 5 and 12 of these Terms; and
 - 13.3.2. acknowledges that the Supplier reserves the right to withdraw, suspend or terminate the Customer's access to the Free Services or any part thereof at any time in its sole discretion, and without any liability owed to the Customer (whether under these Terms or otherwise).
- 13.4. The Customer will not be charged by the Supplier for Free Services until the Effective Date of the Customer's Subscription, as set out in an Order. In respect of a Free Trial, unless the Customer cancels its access to Services received under a Free Trial by giving the Supplier not less than two (2) Business Days' prior written notice, the Customer will be automatically signed up for a Subscription to access the same Services received by the Customer under a Free Trial, and will be charged the applicable Subscription Fees for that Subscription.

14. Intellectual Property

- 14.1. Save as otherwise expressly set out in the Agreement, nothing shall affect, or grant any right to, any Intellectual Property Rights owned by and/or licensed to either party prior to the commencement of the Agreement.
- 14.2. All Intellectual Property Rights in and to the Software, Generated Data, Aggregated Data, Documentation and Services are, and shall remain, the property of the Supplier and the Customer acknowledges that save as otherwise expressly set out in the Agreement, it shall acquire no rights (including Intellectual Property Rights) in and to the Software, Generated Data, Aggregated Data, Documentation and the Services by virtue of receiving Services under the Agreement. Should Customer, its Affiliates or Authorised Users acquire any Intellectual Property Rights in the Software, Generated Data, Aggregated Data, Documentation or Services by virtue of the Supplier's provision of the Services under the Agreement, the Customer hereby assigns to the Supplier, unencumbered and with full title guarantee, all such rights (including Intellectual Property Rights and in the case of moral rights, hereby waives such rights)), both existing and future, in and to the Software, Generated Data, Aggregated Data, Documentation and the Services. The Customer shall execute all such documents and take all such steps required in order to give effect to this clause 14.2.
- 14.3. Save in relation to the Generated Data and Feedback (the use of and rights in relation to which are governed by clauses 14.4 and 14.5 respectively), each party grants a royalty-free, non-exclusive, non-transferable licence without the right to grant sublicenses to the other party to use its (and in the case of Customer, to use all relevant third party's) relevant Intellectual Property Rights solely for the purpose of the other party exercising its rights and/or performing its obligations under the Agreement.
- 14.4. The Supplier also grants to the Customer, a royalty-free, non-exclusive, non-transferable and perpetual licence without the right to grant sublicenses to use the Generated Data for the Customer's and Authorised Users' internal business operations, as may be relevant. The Customer acknowledges that, in accordance with clause 17.1.1, the granting of such license in no way amounts to any warranty or representation by the Supplier relating to the accuracy of the Generated Data (including any errors in or omissions to the Generated Data), and Customer assumes sole responsibility for its use of and reliance on the Generated Data. For the avoidance of doubt, the Supplier shall in no way be liable to the Customer (or any third party), for any damage to or loss suffered by the Customer (or any third party) which may be attributable to the Customer's (or a third party's) reliance on the Generated Data (including but not limited to on account of any errors in or omissions to the Generated Data).
- 14.5. The Customer also grants the Supplier a royalty-free, non-exclusive and perpetual licence to use the Customer Data or any part thereof (including source code in relation to which Services are provided), in addition to any feedback, enhancement requests, recommendations, corrections and any other suggestions for improvement that the Customer may make during

the course of its receipt of the Services (together, the “**Feedback**”), in order for the Supplier to improve its services (including its provision of the Services). The Customer acknowledges that, in accordance with clause 8 and the terms of its Privacy Policy at www.getclayton.com/legal, Supplier may transfer Customer Data and Feedback to a third party during and after the expiry or termination of the Agreement, and the Customer hereby agrees to such transfer.

14.6. The Customer agrees that the Supplier has the right to create Aggregated Data pursuant to its provision of Services to a Customer. The Customer acknowledges that the Supplier may retain, use, combine and share Aggregated Data with any third party for the Supplier’s business purposes during or after the expiry or termination of the Agreement.

14.7. This clause 14 shall survive the termination or expiry of the Agreement.

15. Confidentiality

15.1. Customer shall not use and/or disclose any Confidential Information which is acquired by it about the Supplier’s business and/or given by Supplier to the Customer and/or generated by Customer from the Supplier’s Confidential Information except in the proper performance of the Agreement.

15.2. Notwithstanding clause 15.1, the Supplier may issue a press release (or if the Supplier wishes, another form of public communication) relating to the parties’ entry into the Agreement.

15.3. The Customer agrees that the Supplier may use the Customer’s company and trading name(s) and logo in its online and printed sales and marketing material strictly for the purpose of identifying the Customer as a customer of the Supplier.

16. Indemnity

16.1. The Customer shall defend, indemnify and hold harmless the Supplier against all claims (including third party claims), actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer’s (including Authorised Users’) use of the Services, including (but not limited to) use of the Services in contravention of clauses 8 and 14 of these Terms, provided that:

16.1.1. the Customer is given prompt notice of any such claim;

16.1.2. the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer’s expense; and

16.1.3. the Customer is given sole authority to defend or settle the claim.

16.2. In the defence or settlement of any claim which may be brought under this Agreement (whether under clause 16.1 or otherwise), the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate these Terms on 2 Business Days’ notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

17. Limitation of liability

17.1. Except as expressly and specifically provided in these Terms:

17.1.1. the Customer assumes sole responsibility for its use of the Services (including the Generated Data) by the Customer, and for conclusions drawn from such use (including conclusions drawn from the contents of (including any omissions within) the Generated Data). The Supplier shall have no liability for any damage caused by or loss suffered as a result of any errors or omissions in any information, instructions or scripts (including the Generated Data) provided by the Supplier to the Customer in connection with the Services, or any actions taken by the Supplier

at the Customer's direction;

- 17.1.2. neither the Supplier, nor its employees, agents or sub-contractors shall be liable to any Customer, Authorised User or other third party, without limitation, for any harm, loss, costs, damages, charges or expenses, or in connection to any claims (including third party claims), actions or proceedings which may arise on account of;
 - 17.1.2.1. the actions or omissions of the Supplier's third-party hosting provider;
 - 17.1.2.2. the Customer's use of any Free Services or Support Services;
 - 17.1.2.3. a modification of the Services by anyone other than the Supplier;
 - 17.1.2.4. the Customer's use of the Services in a manner contrary to the terms of the Agreement, or the instructions given to the Customer by the Supplier from time to time; or
 - 17.1.2.5. a claim that any Customer Data or Feedback submitted by a Customer infringes the intellectual property or other rights of a third party (including by way of Customer's breach of clause 8.1.2) and without prejudice to the generality of clause 16.1, the Customer shall be liable to Supplier in connection with any such claim in accordance with clause 16.1 above;
- 17.1.3. 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 these Terms; and
- 17.1.4. the Services are provided to the Customer on an "as is" basis.

17.2. Nothing in these Terms excludes the liability of the Supplier:

- 17.2.1. for death or personal injury caused by the Supplier's negligence; or
- 17.2.2. for fraud or fraudulent misrepresentation.

17.3. In any event and subject to clause 17.2:

- 17.3.1. the Supplier shall not 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, loss of reputation and/or similar losses or loss or corruption of data (including but not limited to Customer Data) or information, or loss or corruption of software or systems (including but not limited to Applications), or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms; and
- 17.3.2. the Supplier's total aggregate liability in contract , tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the total Subscription Fees paid for a relevant Subscription during the 12 months immediately preceding the date on which the liability arose.

18. Term and termination

- 18.1. The Agreement shall, unless otherwise terminated as provided in this clause 18, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, these Terms shall be automatically renewed for such successive periods as are set out in an Order

or as may otherwise be agreed in writing between the parties (each a Renewal Period), unless:

18.1.1. either party notifies the other party of termination, in writing, at least 14 days before the end of the Initial Subscription Term or any Renewal Period, in which case these Terms shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

18.1.2. otherwise terminated in accordance with the provisions of these Terms;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

18.2. The Supplier may terminate the Agreement by giving the Customer 30 days' written notice.

18.3. A party may immediately terminate the Agreement by written notice if the other party:

18.3.1. fails to make any payment when due;

18.3.2. breaches the terms of these Terms (and if remediable the breach has not been remedied in 14 days of receiving notice requiring it to be remedied);

18.3.3. persistently breaches any one or more terms of these Terms;

18.3.4. ceases or threatens to cease to carry on business; and/or

18.3.5. is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect or any of these circumstances.

18.4. On termination of the Agreement for any reason:

18.4.1. all licences granted under these Terms shall immediately terminate and the Customer shall immediately cease all use of the Services; and

18.4.2. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

18.5. Except as expressly stated in the Agreement, no refunds are available in respect of the Services.

19. Force majeure

The Supplier shall have no liability to the Customer under these Terms if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, sub-contractors or any other act or omission of a third party engaged by Supplier in the course of its provision of the Services. The Supplier will use commercially reasonable endeavours to notify the Customer of such an event and its expected duration.

20. Waiver

No failure or delay by a party to exercise any right or remedy provided under these Terms 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.

21. Rights and remedies

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

22. Severance

22.1. If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23. Entire agreement

23.1. The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

23.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

24. Assignment

24.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

24.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

25. No partnership or agency

Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

26. Third party rights

These Terms does not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

27. Notices

27.1. Any notice required to be given under these Terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in these Terms, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in these Terms.

27.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at 9 am on the first Business Day following delivery.

28. Governing law

These Terms 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.

29. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).