



Customer Agreement - SaaS/Cloud

Version: 3

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PARTIES

This Agreement is between Customer and Claromentis. "Customer" is defined as the legal entity for which this agreement is being signed. If the agreement is not for a legal entity, then the "Customer" is the individual who accepts the terms.

AGREED TERMS

1. Interpretation

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

Agreement: this agreement, the Order Form and the SMA;

Applicable Laws: (for so long as and to the extent that they apply to Claromentis) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

Authorised Users: those end users with individual rights to access the Software created by the primary admin user or any subsequent admin user.

Business Day: any day which is not a Saturday, Sunday or public holiday in England and Wales.

Confidential Information: information that can reasonably be considered to be proprietary or confidential or is clearly labelled as such including any information either party disclosed to the other in the feasibility phase.

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

DPA: means the Claromentis Data Processing Addendum available at <https://www.claromentis.com/legal/data-processing-addendum>



Data Protection Legislation: (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR.

Data Subject: an individual who is the subject of Personal Data.

Documentation: the document(s) made available to the Customer by Claromentis online via www.claromentis.com or such other web address notified by Claromentis to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Fees: the subscription fees payable by the Customer to Claromentis for the Services as set out in the Order Form.

Order Form: the order form attached to this Agreement.

Personal Data: any information relating to an identified or identifiable natural person that is processed by Claromentis as a result of, or in connection with, the provision of the services under this Agreement; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Processing, processes and process: either any activity that involves the use of Personal Data or as the Data Protection Legislation may otherwise define processing, processes or process. It includes any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties.

Personal Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

Services: the software services provided by Claromentis to the Customer under this Agreement via www.claromentis.com or any other website notified to the Customer by Claromentis from time to time, as more particularly described in the Documentation.

Site: www.claromentis.com.



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

Software: the online software applications provided by Claromentis as part of the Services.

Support: the support services purchased by the Customer and set out in the SMA.

Virus: 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 programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme 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.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to writing or written includes faxes and e-mail.

1.6 The Data Processing Addendum forms part of this Agreement and will have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Data Processing Addendum.

2. Basis of Contract

2.1 The Order Form constitutes an offer by the Customer to purchase Services from Claromentis in accordance with this Agreement.

2.2 The offer to purchase the Services from Claromentis shall be deemed to be accepted and the Agreement shall come into existence on the commencement date as indicated in the Order Form or, in the absence of an Order Form, signed or otherwise, on the date in which Claromentis performed any act in the provision of any of the Services.



3. Authorised Users

3.1 Subject to the Customer complying with its obligations under this Agreement and the Order Form, Claromentis hereby grants to the Customer a non-exclusive, non-transferable licence to use, and to permit the Authorised Users to use, the Services and the Documentation during the Term in accordance with this Agreement.

3.2 The Customer shall not, and shall ensure that its Authorised Users shall not, access, store, distribute or transmit any Viruses to www.claromentis.com during the course of its use of the Services and Claromentis reserves the right, without liability to the Customer, to immediately disable the Customer's access due to the breach (whether actual or anticipated) of this clause.

3.3 The Customer shall not attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means.

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

4. Services

4.1 Claromentis shall, during the term of this Agreement, provide the Services with all reasonable due skill and care and make available the Documentation on the Framework to the Customer on and subject to the terms of this Agreement.

4.2 Claromentis shall use commercially reasonable and prudent endeavours to make the Services available 24 hours a day, seven days a week, except for the maintenance periods set out in the SMA. Claromentis warrants 99% continuous uptime and will upon the Customer's request provide, within the following 24 hours, a report of the immediate prior month's uptime performance.

4.3 Where applicable, Claromentis will provide the Customer with the online training and support services as set out in the Order Form and/or the SMA. While Claromentis reserves the right to change or modify the Services at any time, Claromentis is under no obligation to provide upgrades or modifications to the Services. Claromentis will give the Customer reasonable notice of all upgrades and modifications to the Services.

4.4 For the avoidance of doubt, the Customer acknowledges that it can only use the Services in conjunction with the Software.

4.5 In the event that the Customer has requested onsite services Claromentis shall:



- (a) provide the services with all due care, skill and ability and use best endeavours to promote the interests of your business;
- (b) use reasonable endeavours to meet any timetable or schedule that you may compile in respect of the services provided but time shall not be of the essence in relation to any consultancy or training; and
- (c) use reasonable endeavours to comply with all reasonable standards of safety and comply with the Company's health and safety procedures from time to time in force at the premises where the our services are provided and report to the Company any unsafe working conditions or practices.

4.6 The Customer shall:

- (a) provide, Claromentis, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the your premises, office accommodation, data and other facilities as reasonably required by us subject to any of the Customers reasonable restrictions for security, data security and privacy purposes; and
- (b) with a safe and clean working environment with telephone and broadband facilities together with appropriate access rights for a temporary user subject to any of the Customers reasonable restrictions for security, data security and privacy purposes.

5. Claromentis Promotional Use

Subject to the written approval of the Customer the Customer grants to Claromentis a non-exclusive, non-transferable licence to take screenshots of any Customer web page that incorporates the Services for publication on the Site for general advertising purposes, including, but not limited to, client testimonials, email campaigns, advertising and Site content.

6. Customer Data

6.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 Claromentis shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at <http://www.claromentis.com/privacy/> or such other website address as may be notified to the Customer from time to time, and such document may be amended from time to time by Claromentis in its sole discretion.

6.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6.3 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.



6.4 The parties acknowledge that for the purposes of the Data Protection Legislation, the Data Processing Addendum sets out the scope, nature and purpose of processing by Claromentis, the duration of the processing and the types of Personal Data and categories of Data Subject (as defined in the Data Protection Legislation).

6.5 Without prejudice to the generality of clause 6.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable Claromentis to lawfully process the Personal Data for the duration and purposes of this Agreement.

6.6 The Customer shall ensure that it has all the necessary consents from the Authorised Users and any relevant third parties to allow Claromentis to process the Personal Data.

6.7 If Claromentis processes any personal data on the Customer's behalf when performing its obligations under this Agreement, and in any such case shall:

(a) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(b) where the Customer acknowledges and agrees that the Personal Data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Claromentis' other obligations under this Agreement but always subject to Claromentis ensuring that Claromentis complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;

(c) Claromentis shall process the Personal Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time, unless Claromentis is required by Applicable Laws to otherwise process that Personal Data. Where Claromentis is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Claromentis shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Claromentis from so notifying the Customer; and

(d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection



Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

(g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement (we'll delete data within 30 days of the agreed date of termination, for disaster recovery purposes) , unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 6.7.

6.8 Upon notification from the Customer that the Customer's Data must be stored and hosted within the Customer's home country, Claromentis will make it's best efforts to provide such storage and hosting subject to the Customer bearing the reasonable costs of migration and any additional storage costs.

6.9 The Customer consents to Claromentis appointing the third-party processors of Personal Data listed in www.claromentis.com/legal/sub-processors, under this Agreement. Claromentis confirms that it has entered or (as the case may be) will enter with the third-party processor(s) into a written agreement substantially on that third party's standard terms of business incorporating terms which are substantially similar to those set out in clause 6.7. As between the Customer and Claromentis, Claromentis shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.9.

6.10 The Customer agrees to the terms of the Claromentis [Data Processing Addendum](#), in regards to the processing of Personal Data. Where the Customer wants a signed copy of the Data Processing Addendum they should request this in writing from Claromentis.

7. Claromentis' obligations

7.1 Claromentis undertakes that the Services will be performed substantially in accordance with the SMA and with reasonable skill and care, except to the extent of any non-conformance which is caused by use of the Services contrary to Claromentis' instructions or due to any unauthorised access or use.

7.2 If the Services do not conform with the foregoing undertaking, Claromentis will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly in accordance with the SMA. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Claromentis:



7.2.1 does not warrants that the Customer's use of the Services will be uninterrupted or error-free; but that the use of the Services and/or Documentation will meet the Customer's requirements as set out in the Order Form; and

7.2.2 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 and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 Claromentis warrants that the Customer's use of the Documentation and Services shall not infringe the intellectual property rights of any third parties during the term. Claromentis will defend the Customer against any claim or proceeding based upon infringement or violation of any breach of intellectual property right's claim directly related to this warranty, the Customer will notify Claromentis of any such claim or proceeding promptly after it receives notice thereof. Claromentis shall have exclusive control over the conduct of the claim or proceeding and Customer will provide such assistance in the claim or proceeding as Claromentis may reasonably request and shall reimburse the Customer for its reasonable costs and expenses incurred by the Customer in connection with any assistance provided Claromentis by the Customer as requested by Claromentis.

8. Customer's obligations and warranties

8.1 The Customer shall provide Claromentis with all necessary co-operation and access to information in relation to this Agreement, and shall:

8.1.1 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

8.1.2 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Claromentis' 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.

9. Charges and payment

9.1 The Customer shall pay the Fees to Claromentis for the Services in accordance with this clause 9 and as indicated on the Order Form/ on the Site from time to time, and time shall be of the essence in relation to this clause 9.1.

9.2 The Customer shall pay using one of the following methods: credit card, cheque, PayPal or standing order.



9.3 If Claromentis has not received payment within 15 business days after the due date without prejudice to any other rights and remedies of Claromentis, Claromentis may, without liability to the Customer, suspend or permanently disable the Customer's Services and Claromentis shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

9.4 Claromentis shall be entitled to reasonably increase the Fees from time to time (but not more than once per year) upon 30 days' prior notice to the Customer, providing that any increase is limited to the rate of RPI as published by the Office for National Statistics (ONS) from time to time, and the Order Form shall be deemed to have been amended accordingly.

9.5 In the event of an 'outage' or suspension of the Services received via www.claromentis.com for a period exceeding 1 Hour Claromentis shall provide the Customer with a pro rata credit of the applicable Fees until the outage or suspension has been resolved and either credit the account or refund the Customer within 14 Business Days.

10. Proprietary rights

The Customer acknowledges and agrees that Claromentis and/or its licensors own all intellectual property rights in the Services and the Documentation, and any additional services and/or features including, but not limited to, analytical materials and data, site maps any default design interfaces, pre-existing materials and any derivatives and variations developed by Claromentis during the course of any Term. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation. This clause 10 shall survive termination of this Agreement, however arising.

11. Confidentiality

Each party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes nor without the prior 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, without limitation, 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 Agreement, 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. This clause 10 shall survive termination of this Agreement, however arising.



12. Indemnity

12.1 The Customer hereby shall indemnify, and keep indemnified, Claromentis against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of the Customer's wilful and negligent breach of its obligations under this Agreement.

12.2 Claromentis hereby shall indemnify, and keep indemnified, the Customer against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of Claromentis's willful and negligent breach of its obligations under this Agreement but such indemnity shall not apply to a breach of the uptime provisions in clause 4.2. In relation to a breach of clause 4.2 Claromentis's liability shall be limited to a credit equivalent a pro rata proportion of the fees paid relating to the period of the outage or downtime.

13. Limitation of liability

13.1 Except as expressly and specifically provided in this Agreement:

13.1.1 the Customer assumes sole responsibility for the choice of Services the Customer has purchased, and any results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Claromentis shall have no liability for any actions taken by Claromentis at the Customer's direction; and

13.1.2 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.

13.2 Nothing in this Agreement excludes the liability of Claromentis:

13.2.1 for death or personal injury caused by Claromentis' negligence; or

13.2.2 for fraud or fraudulent misrepresentation.

13.3 Subject to clause 12.2:

13.3.1 Claromentis shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories: i) loss of profits; (ii) loss of business; (iii) depletion of goodwill and/or similar losses; (iv) loss or corruption of data



or information; (v) pure economic loss; (vi) special, indirect or consequential loss; or (vii) costs, damages, charges or expenses however arising under this Agreement

13.3.2 Claromentis' total aggregate liability in contract, tort (including negligence or breach of contemplated performance of this Agreement shall be limited to the total Fees paid for the 12 months immediately preceding the date on which the claim arose.

14. Term and termination

14.1 This Agreement shall commence on the date of the Order Form and shall continue indefinitely, unless either party gives the other party at least one month's written notice, in which case this Agreement shall terminate upon expiry of the notice period.

14.2 On termination of this Agreement for any reason:

14.2.1 all licences granted under this Agreement shall immediately terminate;

14.2.2 Claromentis shall, within 15 days of the Customer's request and charged at the applicable standard day rate, return the Customer Data to the Customer in an industry open format, e.g. XML or SQL;

14.2.3 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. Force majeure

Claromentis shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Claromentis 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 Claromentis or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. Waiver

16.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.



17. Severance

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

17.2 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.

18. Entire Agreement

18.1 This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover.

18.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

19. Assignment

Neither party shall, without the prior written consent of the other, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without the others written consent (such consent not be unreasonably withheld or delayed).

20. No partnership or agency

Nothing in this Agreement 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).

21. Third party rights

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



22. Notices

22.1 Any notice required to be given under this Agreement 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 this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email or fax to the other party's email address or fax number as set out in this Agreement.

22.2 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 or fax shall be deemed to have been received at the time of transmission.

23. Governing law and jurisdiction

23.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

23.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).