

## Terms and Conditions

These Terms and Conditions apply to the agreement (the “Agreement”) by and between Clarity and Client Company as each is defined in the Agreement. Clarity and Client Company are each a “Party” and collectively, the “Parties.”

### ARTICLE 1 - SCOPE OF WORK

**1.1 Services** - Unless the Agreement states otherwise, Client Company has engaged Clarity to provide services for Client Company on a time and materials basis. Client Company shall cooperate with Clarity in developing and providing information, examples and other actions to adequately develop the services, and shall take reasonable steps to timely test, report and debug the work product.

### ARTICLE 2 - INDEPENDENT CONTRACTOR

**2.1 Independent Contractor** - The relationship of the Parties created by the Agreement shall be that of independent contractors. Nothing contained in the Agreement shall be construed or interpreted as creating a relationship of joint venturers, partners, principal and agent, or employer and employee under any circumstances. No Party shall have the power to obligate or bind another in any manner.

### ARTICLE 3 – MILESTONE BASED BILLING

**3.1 Milestone Based Billing** - Unless the Agreement states otherwise, Clarity works on a time and materials basis. All time spent discussing, reviewing, supporting, or adjustments is considered billable. Billable work includes but is not limited to communication, meetings, development, design, dispute resolution, or other work associated to any particular task.

Clarity will work on a milestone-based billing model for the Scope of Work that will be further defined by Clarity within the discovery phase, to be outlined in the functional design document (the “Functional Design Document”), which will be approved by Client Company prior to beginning development. Upon Client Company approval, the Functional Design Document created after discovery will then become the Scope of Work. Any particular task that is requested but not encompassed by the Scope of Work will be considered as additional work.

**3.2 License Fees and Credited Billings** - All license fees due or paid hereunder (e.g., the Ecommerce License, Clarity Connect License, and Multi Currency License) are non-refundable and shall not be credited against any other fees due hereunder. Any time or materials, including but not limited to, hours, materials, software licenses, information, and consulting services provided by Clarity free of charge or at a discounted rate (“Credited Billings”) are understood to be offered in good faith evidencing Clarity’s commitment to the successful completion of the project. However, in the event of a breach, termination, or dissolution of the Agreement by Client Company, all Credited Billings become due immediately.

## ARTICLE 4 – TIMELINE OF THE PROJECT

**4.1 Timeline - While Clarity is not bound to a fixed date to launch, it will use reasonable efforts to meet one if specified.** The timeline for the project will be created after completion of the Discovery phase, where the Client Company has signed off on the Functional Design Document. Clarity will then create a Gantt Chart to define the timeline associated to the project milestones tasks. Factors such as, but not limited to, lack of payment, delayed response or design approval, failure to provide information or deliver content in a timely fashion, scope creep, removal of major pieces of functionality, unprofessional behavior, or other unforeseen circumstances will impact Clarity's ability to work towards a target launch date. Client Company acknowledges that its participation or lack thereof may increase or decrease the time it takes to complete a project.

## ARTICLE 5 - COMPENSATION FOR CONSULTING SERVICES

**5.1 Compensation -** Unless the Agreement states otherwise, when Client Company is using our Pre-payment model, Client Company shall pay a rate of \$125/hr for project management, design and front-end services and \$150/hr for custom development, back-end services and backend integrations, such as CRM or ERP platforms, when using our Pre-payment model, where all payments are made in advance of work to be performed during the term of the project. When using our Pre-payment model and to reduce the chance of delay, invoices will be sent in advance of hours being drawn down to a zero balance and payment is due upon receipt of the invoice. Unless the Agreement states otherwise, when Client Company is using our Post-payment model, Client Company shall pay a rate of \$150/hr for project management, design and front-end services and \$175/hr for custom development, back-end services and backend integrations, such as CRM or ERP platforms. When using our Post-payment model, invoices are sent out either when the task(s) are completed or after 30 days of services. All work within that timeframe will be invoiced for payment. Invoices are due upon receipt and up to 45 days will be given for payment to be received. If Client Company fails to pay Clarity the fees within 60 days when due hereunder, Clarity shall be entitled to collection costs and fees, including without limitation attorneys' fees as well as interest on any due but unpaid amounts at 18% per annum.

Unless the Agreement states otherwise, Client Company understands and agrees that although Clarity works to be as accurate as possible with its estimates, **this is not a fixed cost project** and **Clarity bills on an actual time and materials basis**. It is the responsibility of Client Company to (i) give as much specific detail about the requirements, features, scope, timeline, and expectations as possible up front to ensure Clarity has sufficient information to provide reasonable estimates, and (ii) cooperate with Clarity in the process to allow the development to stay within the estimates. If Clarity does not have enough detail to make a reasonable estimate, or if the scope of a particular task is not clearly defined in the estimating stage, then Client Company agrees and understands that the actual time to complete a task will be affected. If Client Company requests numerous changes and revisions, then Client Company may have to pay more or get less functionality than initially planned. It is Client Company's responsibility to confirm each set of hours was used as expected for the project before purchasing additional hours. Because this project is hourly based, if Client Company requests a refund at any time during the project only the unused hours will be refunded.

Due to the technical nature and complexity of the Client Company's specifications and in an effort to improve service and expedite efficient development, Client Company authorizes Clarity to record phone calls between Clarity and Client Company (including Client Company's representatives, agents, and employees). Client Company represents and warrants that Client Company has (or will secure) the consent of all such representatives, agents, and employees.

**5.2 After-Hours Rate Surcharge** – At Client Company's request (i.e. an unknown urgent issue arises, client wants to change launch plans or project timeline, etc.), Clarity has the ability to assign resources to a swing shift schedule. The hourly rate for requested after-hours (nights/weekends) work is an additional \$35/hr. and a \$70/hr. uplift for requested work during normally scheduled holidays. If Clarity's employees elect on their own to work after hours or weekends, that time **does not** incur the surcharge.

## **ARTICLE 6 - TERM AND TERMINATION**

**6.1 Term** - Unless the Agreement states otherwise, the Agreement shall be effective as of the Effective Date, and shall continue in full force and effect for six (6) months unless otherwise terminated as provided herein. The Agreement shall automatically renew for six (6) month renewal terms unless either Party provides written notice of its intent not to renew at least thirty (30) days prior to the end of the then-current term.

**6.2 Termination** - Either Party may terminate the Agreement for "Cause" after giving the other Party written notice of the reason. "Cause" shall mean a breach of Article 5 which breach continues for thirty (30) days following receipt of a notice. In addition, either Party reserves the right to terminate the Agreement for any reason without cause, after a thirty (30) day written notice. Upon termination, a pro-rata refund will be given for any pre-purchased and unused hours in Client Company's account.

**6.3 Survival** - The provisions of Article 5, Article 8, Article 9, Article 10, and this Section 6.3 of these Terms and Conditions shall survive the termination of the Agreement and remain in full force and effect thereafter.

## **ARTICLE 7 – DELIVERABLES**

**7.1 Project Governance Reporting** – Clarity shall manage the project with a written project plan. Clarity can provide status updates to the Client Company based on their preference of a weekly or bi-weekly basis that will include progress toward the completion of these deliverables.

**7.2 Consultation and Solution Design** – Clarity will work with the Client Company to understand and define a business process to deliver on the requirements. The defined approach will be documented and shared with the Client Company.

## **ARTICLE 8 - CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

**8.1 Obligation of Confidentiality** – During the term of the Agreement, the Parties will have access to certain Confidential Information (as hereinafter defined). Each Party agrees that neither it

nor its employees, agents or representatives will, use, directly or indirectly, the Confidential Information of the other Party for the benefit of any person, entity or organization other than the other Party either during or after the term of the Agreement, for as long as such information retains the characteristics of Confidential Information.

**8.2 Definition** – “Confidential Information” shall include, but not be limited to, documents, drawings, models, apparatus, sketches, designs, schedules, business plans, product plans, market research, marketing plans, financial information, technical procedures, manufacturing processes, software, source code, prototypes, samples, methodologies, formulations, patent applications, know-how, experimental results, specifications and other business information provided in connection with the Agreement, that is: (i) not generally known, (ii) proprietary to one of the Parties or to a third party for whom one of the Parties has a business relationship, or (iii) designated by a Party as Confidential Information or that the receiving Party has a reasonable basis to believe to be Confidential Information.

**8.3 Return of Property** – Upon the completion of the project (or sooner upon request), Clarity shall return to Client Company all documents, software, data and any other items provided by Client Company to Clarity for use in connection with services to be rendered hereunder, including without limitation all Confidential Information of Client Company.

**8.4 Intellectual Property** – Notwithstanding anything contained herein to the contrary, Client Company recognizes that Clarity owns and will continue to own all right, title and interest in and to any know-how, software, source code, information, trade secrets, materials, property or proprietary interest that it owned or licensed prior to the Agreement, or that it has or will create, modify, license or acquire during or after the Term of the Agreement (collectively, “Clarity IP”). Except as set forth below, all rights in Clarity IP are reserved to Clarity. **To the extent that Clarity incorporates any Clarity IP into the work product developed for Client Company, Client Company shall have a perpetual, non-exclusive, royalty-free and non-transferrable license to use such Clarity IP for so long as Client Company does not breach the Agreement.** Client Company hereby agrees not to sell, redistribute, transfer, assign, reverse engineer, or make any derivative works of the Clarity IP.

**8.5 Press Releases and Use of Logos** – Either Party may (but neither Party is required to) reference the other Party in press releases so long as the particular terms of the Agreement or any other Confidential Information are not disclosed without the prior consent of the other Party. In addition, Clarity may use the Client Company’s logos on Clarity’s website or in other marketing material unless requested not to do so in writing by Client Company.

## **ARTICLE 9 – DATA and WARRANTY DISCLAIMER**

**9.1 Data Ownership** – Except as set forth above or otherwise excluded as Clarity IP, all of Client Company’s data used to build the website pages are the property of Client Company.

**9.2 Warranty Disclaimer** – Clarity represents that to the best of its abilities, the Deliverables, which will be defined in the Functional Design Document or the Statement of Work and signed off by Client Company prior to starting development, will operate in all material respects as specified in the agreed-upon specifications upon delivery to Client Company at the time of delivery. Since the Client

Company Deliverable can be custom in nature, tailored to the documented Scope of Work, and the management and ability to modify core code is transferred to Client Company after delivery of the solution, post launch support will be on a time and materials basis as requested by Client Company.

THE DELIVERABLES ARE DELIVERED TO CLIENT COMPANY ON AN "AS-IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, QUALITY, PERFORMANCE OR NONINFRINGEMENT UPON THE RIGHTS OF ANY OTHER PARTY. CLARITY MAKES NO WARRANTY THAT THE DELIVERABLES WILL BE FREE FROM ERRORS OR BUGS. CLARITY MAKES NO WARRANTY THAT THERE WILL BE UNINTERRUPTED OPERATION OF THE DELIVERABLES. CLIENT COMPANY ACKNOWLEDGES AND AGREES THAT THE FOREGOING EXCLUSIONS AND DISCLAIMERS OF WARRANTIES ARE AN ESSENTIAL PART OF THE AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE SERVICES HEREUNDER.

## **ARTICLE 10 - GENERAL PROVISIONS**

**10.1 Construction of Terms** - If a court having proper jurisdiction holds a particular provision of the Agreement or these Terms and Conditions unenforceable or invalid for any reason, that provision shall be modified only to the extent necessary in the opinion of such court to make it enforceable and valid and the remainder of the Agreement and these Terms and Conditions shall be deemed valid and enforceable and shall be enforced to the greatest extent possible under the law. In the event the court determines such modification is not possible, the provision shall be deemed severable and deleted, and all other provisions of the Agreement and these Terms and Conditions shall remain unchanged and in full force and effect.

**10.2 Governing Law** - The Agreement and these Terms and Conditions shall be governed by and construed in accordance with the internal laws of the State of Texas, notwithstanding any state or other jurisdiction's choice of law provision to the contrary. Any proceeding to enforce, interpret, challenge the validity of or recover for the breach of any provision of the Agreement shall be subject to Article 10 of these Terms and Conditions.

**10.3 Complete Agreement** - The Agreement (together with these Terms and Conditions) constitutes the complete agreement and sets forth the entire understanding and agreement of the Parties as to the subject matter of the Agreement and supersedes all prior discussions and understandings in respect to the subject of the Agreement, whether written or oral. The Agreement may not be modified, amended, or waived in any manner except by an instrument in writing authorized by both Parties. In the event of any conflict or inconsistency between these Terms and Conditions and any terms or conditions set forth in any purchase order, statement of work, addendum, exhibit, or other document relating to the transactions contemplated by the Agreement, these Terms and Conditions shall prevail.

**10.4 Dispute Resolution** – The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement promptly by negotiation in good faith between executives who have the authority to settle the dispute. Either Party shall give the other Party written notice of any dispute

not resolved in the ordinary course of business. Within seven (7) business days after delivery of such notice, the Party receiving notice shall submit to the other a written response thereto. If the matter in dispute has not been resolved within thirty (30) calendar days of the initial dispute date, the Parties agree that such dispute or controversy will be arbitrated in accordance with proceedings under the rules of the American Arbitration Association, and such **arbitration will be the exclusive dispute resolution method under the Agreement**. The venue for dispute resolution will be in Travis County, Texas. The decision and award determined by arbitration will be final and binding upon both Parties. All costs and expenses, including reasonable attorney's fees and expert's fees, of all Parties incurred in any dispute which is determined and/or settled by arbitration pursuant to the Agreement will be borne by the Party determined to be liable in respect of such dispute; provided, however, that if complete liability is not assessed against only one Party, the Parties will share the total costs in proportion to their respective amounts of liability so determined. Except where clearly prevented by the area in dispute, both Parties agree to continue performing their respective obligations under the Agreement until the dispute is resolved.

**10.5 Successors and Assigns** - The Agreement may not be assigned by either Party without the express written consent of the other Party.

**10.6 Limitation of Liability** - EXCEPT FOR LIABILITIES ARISING FROM BREACH OF CONFIDENTIALITY, INFRINGEMENT, OR VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING FROM THE AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, REVENUE OR ANTICIPATED PROFITS, OR LOST BUSINESS. EXCEPT FOR LIABILITIES ARISING FROM BREACH OF CONFIDENTIALITY, INFRINGEMENT, OR VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THE AGREEMENT EXCEED THE GREATER OF: (i) FEES PAID TO CLARITY BY CLIENT COMPANY DURING THE THIRTY (30) DAY PERIOD IMMEDIATELY PRIOR TO THE ACCRUAL OF THE CLAIM, OR (ii) TWENTY PERCENT (20%) OF THE FEES PAID TO CLARITY BY CLIENT COMPANY DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE ACCRUAL OF THE CLAIM.

**10.7 Waiver of Reliance** – Client Company acknowledges that because it is not relying on any statements made by Clarity to Client Company or any other materials other than the Agreement and these Terms and Conditions, regarding the subject matter of the Agreement, Client Company will have no basis for bringing any claim for fraud in connection with any such statements.