

# Terms And Conditions Of Service

The Terms And Conditions defined below regulate and govern Your usage of clasdiagnostix.com.

By using and subscribing to clasdiagnostix.com You agree to abide by and accept the below Terms And Conditions. We may change these Terms And Conditions from time to time; any changes that affect users will be e-mailed to the address registered with Us. You should also print a hard copy of these Terms And Conditions for future reference.

The Privacy Policy, available separately at clasdiagnostix.com, will be deemed to be part of these Terms.

## 1. Definitions

The following definitions apply when used in these Terms And Conditions, unless the context otherwise requires:

'We', 'Us', 'Our' refer to 'Class Diagnostix Ltd'

'You', 'Your' refer to the person or institution subscribing to and using the Service

'user' refers to any person (e.g. teacher, parent, guardian, carer or student) who is accessing and using the Service

'fee' refers to the fee payable by You to access, use or subscribe to the materials on clasdiagnostix.com

'Terms', 'Terms And Conditions' refer to these Terms And Conditions Of Service

'membership', 'subscription', 'agreement' refer to the usage of the Service

'Class Diagnostix', 'Service', 'website', 'product' refer to 'clasdiagnostix.com'

'material' refers to the text, images, features, assessments, answers, analyses, data and reports, all of which can be in digital or physical form, which You gain access to through clasdiagnostix.com

'Personal Data' refers to information about an individual person that can identify that individual person (e.g. full name or age).

## 2. Interpretation

2.01 Headings in these Terms And Conditions shall not affect their interpretation.

2.02 Words referring to any particular gender shall include any other gender.

2.03 Words importing the singular number shall include the plural number and vice versa including the definitions referred to in Clause 1 hereof.

2.04 Where any word or expression is defined in these Terms, the definition shall extend to all grammatical variations and cognate expressions of the word or expression so defined.

2.05 All references to provisions of statutes include such provisions as amended, modified or re-enacted.

2.06 You shall ensure that each and every of Your users complies with the provisions of these Terms. You shall be liable for any breach of these Terms by Your users as though the breach was committed by You.

### **3. The Website**

3.01. By subscribing to the website You agree to abide by these Terms And Conditions.

3.02. If You disagree with any of the Terms or conditions in this document then do not use or subscribe to the Service.

3.03. These Terms And Conditions may change in the future. We reserve the right to alter the access arrangements, appearance or materials available on the website.

3.04. We own the copyright trade mark, trade names, patents and all other intellectual property rights subsisting in or used in connection with this Service including all materials.

3.05. Except as expressly stated in these Terms, We do not grant You any intellectual property right or any other rights or licences.

### **4. Licence**

4.01. In consideration of Your agreement to these Terms And Conditions, We grant You a non-exclusive licence to use the Service in accordance with the clauses below.

4.02. If You bought the Service as a time-limited, renewable subscription, this licence terminates after the stated period of time. For example, an 'annual licence' terminates 1 calendar year after the date on which You purchase the Service.

4.03. This licence is not transferable and unless written permission is granted by Us, You shall not permit or enable any third party to use the Service on behalf of or for the benefit of any third party in any way whatever.

4.04. It is unlawful to use the Service without Our licence.

4.05. We are willing to license the Service to You only on the condition that You have purchased the Service, or are authorised by a School, Academy or College which has purchased the Service to act on their behalf, and You accept all these Terms And Conditions.

4.06. By using this Service You agree to be bound by the Terms of these Terms And Conditions and accept that it is provided for Your use or the use of Your school/academy/college only, not for across a multi-academy trust, unless explicitly stated in writing by Us.

4.07. As licensee You own only the right to use the Service. The Service and the copyright and other intellectual property rights are and shall remain Our property.

4.08. A licence is limited to a maximum of 1500 students, unless explicitly stated in writing by Us.

## **5. Permitted Use and Restrictions**

5.01. You may save unlimited copies of the Service's material on to any computer which is under Your control and You are permitted to use the Service across Your internal IT network.

5.02. Any or all parts of the Service may be shared on the school/academy/college's internal website (intranet) and Virtual Learning Environment (VLE).

5.03. You may print pages for use by Your own colleagues, students and parents/carers.

5.04. You may display the website and its materials on a projector, monitor, TV or whiteboard.

5.05. The Service may not be used by anyone for private, profit-making activities.

5.06. You may not sub-license, assign, rent, lease or transfer this licence, the Service, or make or distribute copies of the Service.

5.07. You may not commercially exploit any of the materials.

5.08. You may not attempt to modify, disclose, distribute, disassemble or reverse-engineer any form of the Service, except as allowed by any applicable law which is incapable of exclusion by agreement between Us and You.

5.09. You may not remove or alter any copyright notices or other means of identification or disclaimers on any of the materials provided or gained through the Service.

5.10. You agree to keep Your username and password secure. If there has been a disclosure, You agree to notify Us immediately so that the account can be secured.

5.11. You agree to ensure all of Your users keep their usernames and passwords secure. If there has been a disclosure, You agree to notify Us immediately so that the accounts can be secured.

5.12. You warrant that any Personal Data which You provide to Us complies fully with all relevant data protection laws including the Data Protection Act 2018 and You agree to indemnify and keep Us indemnified against breach by You of such data protection laws.

5.13. You agree to indemnify and keep Us indemnified for any losses, damages, fines arising from or which are connected to any breach by You or Your users from clause 5.12.

## **6. Payment**

6.01. There is a fee applicable when subscribing to clasdiagnostix.com as detailed on the website. The fee is displayed in GBP. The fee is payable by BACS to the details on the official invoice provided. Access will be granted to the relevant services and sections of the website only once full payment has been received.

6.02. We will request certain information from You to process Your order, this will be treated as confidential and will be used for the sole purpose of providing Our Service to You. Details will not be disclosed to a third party unless We are required to do so by law. Payment may also be arranged via credit or debit card via the payment section of the website.

6.03. Payment is due within 30 days of the invoice date. If payment has not been received within this time, access to the materials cannot be guaranteed, and, if already granted, will be revoked until payment is received.

## **7. Right of Cancellation**

7.01. You are entitled to cancel Your annual subscription to the Service within 14 days of Your membership being activated.

7.02. Cancellation needs to be received in writing to [hello@classdiagnostix.com](mailto:hello@classdiagnostix.com) or to the address on the invoice. At this point Your subscription will be cancelled, Your account suspended, and a full refund processed if done within 14 days of the licence start date.

7.03. Notice can be given in writing to end the subscription after the 14 day period, but, unless We are in breach of Our obligations to You, You will not be entitled to any refund of the fee paid by You.

## **8. Right to be Forgotten**

8.01. You have the right to have all of Your data removed from [classdiagnostix.com](http://classdiagnostix.com). This can be done by emailing [hello@classdiagnostix.com](mailto:hello@classdiagnostix.com) from Your registered email address.

8.02. This request may take up to one month to process.

8.03. If You have an active subscription and You use Your right to be forgotten, Your access to the site will be lost. In this case a refund will not be made.

## **9. Right of Access to Data**

9.01. You have a right to access all of Your data held by [classdiagnostix.com](http://classdiagnostix.com). This can be done by emailing [hello@classdiagnostix.com](mailto:hello@classdiagnostix.com) from Your registered email address.

9.02. This request may take up to one month to process.

## **10. Right to Object to Usage of Data**

10.01. You can object to any use of Your personal data. This can be done by emailing [hello@classdiagnostix.com](mailto:hello@classdiagnostix.com) from Your registered email address, and stating what usage You are objecting to.

10.02. This request may take up to one month to process.

## 11. Support

11.01. Please email [hello@classdiagnostix.com](mailto:hello@classdiagnostix.com) if You are experiencing difficulties.

11.02. We reserve the right to update and amend the Service and We reserve the right to discontinue the Service.

## 12. Disclaimer

12.01. We do not take responsibility for any effects of viruses, worms, malware, trojan horses, harmful components or corrupted data however introduced to Your systems.

12.02. You are responsible for implementing effective safeguards to protect the security and integrity of Your computer systems against any viruses, worms, malware, trojan horses, harmful components or corrupted data, and You are responsible for the entire cost of any service, repairs or connections of and to Your computer system that may be necessary as a result of Your use of the Service.

12.03. Except as expressly stated in these Terms, there are no conditions, warranties, representations or other Terms, express or implied, that are binding on Us. Any condition, warranty, representation or other term concerning the supply of the Service which might otherwise be implied into, or incorporated in, these Terms whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

## 13. Liability

13.01. Our liability to You for any losses shall not exceed the amount You originally paid for the Service.

13.02. This Clause 13 sets out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents, consultants, and subcontractors) to You including those arising from breach of contract, use made by You of the Service, and representation, statement or wrongful act or omission (including negligence) arising under or in connection with Your use of the Service.

13.03. Nothing in these Terms excludes Our liability for death or personal injury caused by Our negligence; or for fraud or fraudulent misrepresentation.

13.04. Subject to Clause 13.03 We shall not be liable to You for any:

13.04.1. indirect, consequential and/or special loss or damage;

13.04.2. loss of profit (whether direct or indirect);

13.04.3. loss of revenue, loss of teaching time or loss of business (in each case, whether direct or indirect);

13.04.4. loss of goodwill, loss of reputation or loss of opportunity (in each case, whether direct or indirect);

- 13.04.5. loss of anticipated saving or loss of margin (in each case, whether direct or indirect);
- 13.04.6. wasted management, operational or other time (in each case, whether direct or indirect);
- 13.04.7. loss of any data, content and/or material (in each case, whether direct or indirect);
- 13.04.8. liability of any of the other parties to third parties (whether direct or indirect), arising out of or in connection with these Terms and/or in connection with Your use of the Service, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of Our obligations under these Terms.

13.05. Subject only to Clause 13.03 but without prejudice to Clause 13.04, Our 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 these Terms shall be limited to the fee paid by You to Us during the 12 months preceding the date on which the claim arose. You acknowledge that this limitation is reasonable.

13.06. As the Service is purchased by You and made available by You to Your users, You irrevocably agree not to bring or threaten to bring any claims or proceedings directly against Us.

## **14. Our Obligations**

14.01. Subject to all provisions in these Terms and to Our right to carry out maintenance, We will:

- 14.01.1. use all reasonable endeavours to ensure that the Service is accessible to You;
- 14.01.2. ensure that material is created in a timely manner following the submission of assessment sheets;
- 14.01.3. ensure that Your data, information and reports are kept secure;
- 14.01.4. ensure that advice on best usage and best industry practice is provided to You.

14.02. We do not warrant that the use of the Service will be uninterrupted or error-free.

## **15. Data Protection and Privacy**

15.01 In the course of You accessing the Service, and Us complying with Our obligations to You, it will be necessary for You to provide to Us and for Us to collect and process personal data (e.g. full name, class code, year group and email address) from You.

15.02 The Terms governing the supply by You and use by Us of personal data is set out in Our Privacy Policy, available on Our website, and You agree to be bound by the Terms set out in Our Privacy Policy. The statement also sets out Our commitment to protecting Your personal information and provides guidance on Your rights under the General Data Protection Regulation 2018.

15.03 Our Privacy Policy, available separately at [clasdiagnostix.com](http://clasdiagnostix.com), will be deemed to be part of these Terms.

15.04 To the extent that We process any personal data for You, We will process that personal data in accordance with Your reasonable instructions which are compatible with Us carrying out Our obligations under these Terms. We will take such organisational and technical measures against the unauthorised or unlawful processing of that personal data and against accidental loss or destruction of, or damage to, that personal data which We process or store.

## **16. Withdrawal of Service**

16.01. We reserve the right at any time to withdraw the Service including any components within the Service (e.g. a type of report or feature) for any reason including:

16.01.1. if We no longer retain the right to publish such material; or

16.01.2. if in Our sole discretion, We believe that such material may infringe the Intellectual Property Rights of third parties or is defamatory, obscene, unlawful or otherwise objectionable.

16.02. In the circumstances given in Clause 16.01, We shall notify You of such withdrawal as soon as reasonably practical.

16.03. On receipt of the notice referred to in Clause 16.02, You shall promptly inform Your users and You agree to immediately cease all use of the withdrawn material and shall comply with Our instructions with respect to the deletion and/or removal of such withdrawn material.

## **17. Undertakings**

17.01. You undertake to:

17.01.1. ensure that, prior to use of the Service by Your employees, agents or students, all such parties are notified of these Terms And Conditions and the Privacy Policy;

17.01.2. supervise and control use of the Service in accordance with these Terms And Conditions;

17.01.3. ensure all of the materials are accurate;

17.01.4. report any errors to Us;

17.01.5. inform Us promptly if You become aware of any Intellectual Property Rights infringement or potential Intellectual Property Rights Infringement involving the Service.

## 18. Termination

18.01. The licence granted to use the Service automatically terminates if You fail to comply with any provisions of these Terms And Conditions.

18.02. Termination shall not affect any accrued rights or liabilities of either party.

18.03. Without prejudice to any rights which have accrued under these Terms, You or We may terminate these Terms if the other party:

18.03.1. is in material breach of any of its obligation under these Terms and if such breach is remediable, fails to remedy that breach within 7 days of that party being notified in writing of the breach; or

18.03.2 is made bankrupt, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if the other party ceases or threatens to cease to trade, or if the other party makes an assignment for the benefit of, or a composition with its creditors or other arrangement of similar import or has a receiver, administrative receiver, administrator or a similar officer appointed over all or a substantial part of its assets, or if a petition is passed or an order is made by a court of competent jurisdiction or resolution is passed for the winding up of the other party (other than for the purpose of a bona fide solvent reconstruction or amalgamation) or any similar circumstances arise in any jurisdiction.

18.04. On expiry or termination of these Terms or Your right to use the Service for any reason and subject to any express provisions set out elsewhere in these Terms:

18.04.1. all outstanding sums payable by You to Us shall immediately become due and payable;

18.04.2. all rights and licences granted to You to use the Service shall cease;

18.04.2. The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

18.05. If Your access to the Service ceases (e.g. the Licence Period has expired or has been terminated), You will no longer be able to access the Product and We reserve the right to delete Your account, associated data, reports, information and all other materials.

## 19. Force Majeure

19.01. We will have no liability to You if We are prevented from, or are delayed in performing Our obligations due to any circumstances and/or reasons which are outside of Our control. These circumstances and reasons include strikes, industrial action, lock-outs or



other industrial disputes (whether involving Our workforce or any other party), failure of a utility Service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, sanctions, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors and/or non-performance of any services by Our suppliers, banks or subcontractors.

## **20. Third Parties**

20.01. The parties do not intend that any provisions of these Terms And Conditions shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## **21. Notices**

21.01. All notices to be given under these Terms shall be in writing and shall either be delivered personally or sent by courier and shall be deemed duly served:

21.01.1. in the case of a notice delivered personally, at the time the same is left at the address of, or handed to a representative of, the party to be served;  
and

21.01.2. in the case of courier, two clear business days after the date of despatch.

## **22. Entire Terms And Conditions**

22.01. You have read and understand these Terms And Conditions.

22.02. You agree that this document constitutes the complete and exclusive statement of the subscription between Us with respect to the subject matter of these Terms And Conditions, and supersedes all previous Terms between You and Us relating to Your use of the Service.

22.03. We may amend these Terms from time to time. If We have to revise these Terms, We will give You at least one month's written notice of any changes to these Terms before they take effect. If You do not wish to accept the changes, You can choose to cancel the contract in respect of the Service and We will refund You any remaining portion of the fee paid by You on a pro rata basis.

22.04. A waiver of any right under these Terms is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

22.05. 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.

22.06. 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.

22.07. To the extent that it is applicable and legally enforceable, in the event of any inconsistencies between the provisions set out in these Terms and those in the Terms And Conditions governing the purchase of the Service from Us, the parties agree that the provisions in these Terms will prevail.

## **23. Law and Disputes**

23.01. These Terms of Use are governed and will be interpreted in accordance with English law.

23.02. The English courts shall have non-exclusive jurisdiction to settle any claim or dispute which might arise out of or in connection with these Terms.

23.03. If any part of the Terms are found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the Terms and the remainder of the Terms will continue to be valid and enforceable to the fullest extent permitted by applicable law.

23.04. We will only use Your personal information as set out in Our Privacy Policy.