Clio service terms and conditions

TERMS AND CONDITIONS

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services and related services shall be governed by these Terms and Conditions.

1.   Definitions

1.1   Except to the extent expressly provided otherwise, in these Terms and Conditions:

"**Account**" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"**Agreement**" means a contract made under these Terms and Conditions between the Provider and the Customer;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 EST/EDT on a Business Day;

"**Charges**" means the amounts specified in Invoice;

"**Customer**" means the entity requesting the Provider's hosted services;

"**Customer Data**" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"**Customer Personal Data**" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement;

"**Data Protection Laws**" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"**Documentation**" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"**Effective Date**" means the date upon which the Provider sends to the Customer an order confirmation;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of

the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Hosted Services**" means Clio Interlibrary Loan System, which will be made available by the Provider to each Customer as a service via the internet in accordance with these Terms and Conditions;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Personal Data**" means any personally identifiable information;

"**Platform**" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"**Provider**" means Clio Software, having its registered office at 114 Bedford Rd New Boston NH 03070;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"**Supported Web Browser**" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari;

"**Term**" means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2; and

"**Terms and Conditions**" means all the documentation containing the provisions of the Agreement, namely the main body of these Terms and Conditions and Schedule 1 (Acceptable Use Policy), including any amendments to that documentation from time to time.

2. **Term**

2.1 The Agreement shall come into force upon the Effective Date.

2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 14.

2.3 Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

3. Hosted Services

3.1 The Provider hereby grants to the Customer a non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for Interlibrary Loan processing in accordance with the Documentation during the Term.

3.2 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 3.1 is subject to the following prohibitions:

(a) the Customer must not sub-license its right to access and use the Hosted Services;

(b) the Customer must not permit any unauthorised person to access or use the Hosted Services;

(c) the Customer must not use the Hosted Services to provide services to third parties;

(d) the Customer must not republish or redistribute any content or material from the Hosted Services;

(e) the Customer must not make any alteration to the Platform; and

(f) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

3.3 The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.

3.4 The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.

3.5 The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator Account comply with Schedule 1 (Acceptable Use Policy).

3.6 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

3.7   The Customer must not use the Hosted Services:

(a)   in any way that is unlawful, illegal, fraudulent or harmful; or

(b)   in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

3.8   For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform or Hosted Services, either during or after the Term.

3.9   The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

4.   Customer Data

4.1   The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, and distribute the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.

4.2   The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

5.   Support Services

5.1   The Provider shall provide the Support Services to the Customer during the Term.

5.2   The Provider shall make available to the Customer an email-based helpdesk.

5.3   The Provider shall provide the Support Services with reasonable skill and care.

5.4   The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

5.5   The Provider shall respond promptly to all requests for Support Services made by the Customer through the helpdesk.

5.6   The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

6. No assignment of Intellectual Property Rights

6.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

7. Charges

7.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.

7.2 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated inclusive of any applicable value added taxes.

8. Payments

8.1 The Customer must pay the Charges to the Provider in advance of the period to which they relate.

9. Data protection

9.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

9.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.

9.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement, the Personal Data of interlibrary loan users of the following types: contact details, interlibrary loan orders; and the Provider shall only process the Customer Personal Data for the following purposes: provision of interlibrary loan services.

9.4 The Provider shall only process the Customer Personal Data during the Term, subject to the other provisions of this Clause 9.

9.5 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area).

9.6 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

9.7 Notwithstanding any other provision of these Terms and Conditions, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information.

9.8 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

9.9 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including the measures specified in the information security policy of the Provider.

9.10 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate the Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third party processor is subject to the same legal obligations as those imposed on the Provider by this Clause 9.

9.11 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the following third parties: Microsoft Azure.

9.12 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

9.13 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject. The Provider shall report any Personal Data breach relating to the Customer Personal Data to the Customer within 24 hours following the Provider becoming aware of the breach.

9.14 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 9 and the Data Protection Laws.

9.15 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

9.16 The Provider shall allow for and contribute to audits, including inspections of infrastructure, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of

Customer Personal Data with the Data Protection Laws and this Clause 9. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 9.16.

9.17 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under these Terms and Conditions, then the parties shall use their best endeavours promptly to agree such variations to these Terms and Conditions as may be necessary to remedy such non-compliance.

10. Warranties

10.1 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

10.2 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

11. Acknowledgements and warranty limitations

11.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

11.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

11.3 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

12. Limitations and exclusions of liability

12.1 Nothing in these Terms and Conditions will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law.

12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in these Terms and Conditions:

(a) are subject to Clause 12.1; and

(b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

12.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

12.4 The Provider will not be liable to the Customer in respect of any loss of profits or anticipated savings.

12.5 The Provider will not be liable to the Customer in respect of any loss of revenue or income.

12.6 The Provider will not be liable to the Customer in respect of any loss of use or production.

12.7 The Provider will not be liable to the Customer in respect of any loss of business, contracts or opportunities.

12.8 The Provider will not be liable to the Customer in respect of any loss or corruption of any data, database or software.

12.9 The Provider will not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

12.10 The liability of the Provider to the Customer under the Agreement in respect of any event or series of related events shall not exceed the greater of:

(a) $1000; and

(b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.

12.11 The aggregate liability of the Provider to the Customer under the Agreement shall not exceed the greater of:

(a) $2000; and

(b) the total amount paid and payable by the Customer to the Provider under the Agreement.

13. Force Majeure Event

13.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement, that obligation will be suspended for the duration of the Force Majeure Event.

14. Termination

14.1 Either party may terminate the Agreement by giving to the other party at least 30 days' written notice of termination.

14.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of these Terms and Conditions.

14.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

    (a)   the other party:

        (i)   is dissolved;

        (ii)   ceases to conduct all (or substantially all) of its business;

        (iii)   is or becomes unable to pay its debts as they fall due;

        (iv)   is or becomes insolvent or is declared insolvent; or

        (v)   convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

    (b)   an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or

    (c)   an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement).

15. Effects of termination

15.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.8, 8, 9.1, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.16, 9.17, 12, 15, 18 and 19.

15.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

15.3 Within 30 days following the termination of the Agreement for any reason:

(a)   the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and

(b)   the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,

without prejudice to the parties' other legal rights.

16. Notices

16.1 Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods:

(a)   sent by email to the relevant email address specified through the Hosted Services, in which case the notice shall be deemed to be received upon receipt of the email by the recipient's email server; or

(b)   sent using the contractual notice mechanism incorporated into the Hosted Services, in which case the notice shall be deemed to be received upon dispatch,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

17. Subcontracting

17.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

18. General

18.1 No breach of any provision of the Agreement shall be waived except with the express written consent of the party not in breach.

18.2 If any provision of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

18.3 The Provider may vary the Agreement by giving to the Customer at least 30 days' written notice of the variation. Subject to this, the Agreement may only be varied by a written document signed by or on behalf of each of the parties.

18.4 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

18.5 The Agreement shall be governed by and construed in accordance with US law.

18.6 The courts of New Hampshire shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

19. Interpretation

19.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

19.2 The Clause headings do not affect the interpretation of these Terms and Conditions.

19.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

19.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

SCHEDULE 1 (ACCEPTABLE USE POLICY)

1.   Introduction

1.1   This acceptable use policy (the "**Policy**") sets out the rules governing:

(a)   the use of the website at yourdomain.clioshoting.com, yourdomain-staff.cliohosting.com, any successor website, and the services available on that website or any successor website (the "**Services**"); and

(b)   the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").

1.2   References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to Clio Software (and "we" and "our" should be construed accordingly).

1.3   By using the Services, you agree to the rules set out in this Policy.

1.4   We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.

1.5   You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

2.   General usage rules

2.1   You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

2.2   You must not use the Services:

(a)   in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or

(b)   in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.

2.3   You must ensure that all Content complies with the provisions of this Policy.

3.   Unlawful Content

3.1   Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

3.2   Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

(a)   infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;

(b) infringe any right of confidence, right of privacy or right under data protection legislation;

(c) be in contempt of any court, or in breach of any court order;

(d) constitute a breach of official secrets legislation; or

(e) constitute a breach of any contractual obligation owed to any person.

3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

4. Marketing and spam

4.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering. We will not without your written permission use your name for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.

4.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.

4.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.

4.4 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs. We must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.

4.5 You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

5. Monitoring

5.1 You acknowledge that we do not actively monitor the Content or the use of the Services.

6. Data mining

6.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services. We must not process your data for any purpose other than the provision of the Services.

7. Harmful software

7.1 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

7.2 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.