

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT
MEMORANDUM
06/03/2024

TO: FRAQMD BOARD OF DIRECTORS
FROM: Christopher D. Brown, AICP, APCO
SUBJECT: Authorize the APCO to continue the annual software license agreement for 7 licenses for Clarity.IO air monitoring software for a total of \$8,794.50 dollars.

RECOMMENDATION:

Authorize the APCO to enter into an annual software license agreement for 7 licenses for Clarity.IO air monitoring software for a total of \$8,794.50 dollars.

BACKGROUND:

The Clarity Air monitoring system is unique in that it provides monitoring hardware and maintenance at no cost with the purchase of an annual software license. In addition, the Clarity.IO hardware is completely self-powered (solar) and communicates with a built-in cellular modem. No external power or WiFi is required. All other available devices require power, WiFi, or both, to function properly. In addition, since Clarity retains ownership of the hardware, they are responsible for any repairs or replacements.

FISCAL IMPACT:

The District has included this item in the draft FY 24/25 budget which is for consideration at this meeting.

Clarity Movement Co.
Service Terms

These Service Terms (“Service Terms”) apply by and between Customer and Clarity Movement, Co. whose principal place of business is at 808 Gilman Street, Berkeley, CA 94710, USA (“Clarity”) and you (also referred to as “Customer”) when purchasing a subscription to Clarity’s software-as-a-services for monitoring Clarity hardware products to the extent applicable to your order from Clarity. Please carefully read these Service Terms. By submitting an order for the Service, Customer is agreeing to be legally bound by these Service Terms in addition to Clarity Service Terms. IF YOU DO NOT UNDERSTAND OR ACCEPT ANY PART OF THESE SERVICE TERMS, DO NOT PLACE AN ORDER FOR THE SERVICE.

1. DEFINITIONS.

- a. “Authorized Users” means Customer’s employees and other individuals who Customer has authorized to use the Service.
- b. “Documentation” means the online guides, and documentation made available by Clarity relating to the deployment and use of the Software, as may be updated by Clarity from time to time.
- c. “Fees” means the fees and expenses set forth in each Order.
- d. “Intellectual Property Rights” means all forms of proprietary rights, titles, interests, and ownership relating to patents, copyrights, trademarks, trade dresses, trade secrets, know-how, mask works, moral rights, and all similar rights of every type that may exist now or in the future in any jurisdiction, including without limitation all applications and registrations therefore and rights to apply for any of the foregoing.
- e. “Order” means an order form entered into by Clarity and Customer for Service, to which these Service Terms are incorporated by reference, either via the online store on Clarity’s website or through a signed Clarity Order Form.
- f. “Product(s)” means Clarity’s hardware product(s) licensed by Customer, as referenced in the applicable Order.
- g. “Product Data” means data collected and stored within a Product and/or transmitted to Clarity in the course of using the Service.
- h. “Usage Limitations” means monthly bandwidth caps and other limits and restrictions applicable to Customer’s use of the Service, as set forth in an Order.
- i. “Service” means the version of Clarity’s proprietary hosted service for monitoring the Products that is referred to in the applicable Order.
- j. “Site” means Clarity’s website located at <https://clarity.io/> or such other URL referred to in the applicable Order.
- k. “Subscription Term” means the subscription term listed in an Order for the Service.

2. THE SERVICE

- a. Use Rights for the System. Clarity will provide the Products and access to the Service and Documentation as described in the applicable Order for Customer and its Authorized Users to use in accordance with the terms and conditions of this Agreement. Subject to the terms and conditions of this Agreement and the applicable Order, Clarity hereby grants Customer and its Authorized Users a non-transferable, non-exclusive, non-sublicensable and limited use license during the applicable Subscription Term to: (i) install and use the Products specified in the applicable Order solely to connect to and use the Service; (ii) access and use the Service to collect and process data collected from such Products in accordance

with the applicable Usage Limitations; (iii) use and reproduce a reasonable number of copies of the Documentation in connection with Customer's authorized use of the System, and (iv) use and reproduce the reports provided by the Service, and distribute or publicly display information derived from such reports but not such reports in whole. Clarity reserves the right to modify and update the features and functionality of the Service from time to time. Except for as expressly set forth herein and in the applicable Order, Customer is solely responsible for purchasing or leasing and configuring all hardware, software, network connectivity and services (including Products) that may be necessary or desirable for Customer's use of the Service.

- b. Restrictions. Customer agrees not to use the Service other than as authorized in its Order and these Service Terms. Except as expressly permitted under Section 2.a, Customer may not attempt to, nor allow any third party to: (i) resell, distribute, rent, lease, lend, sublicense, transfer or share the Service with any third party, (ii) decompile, reverse engineer, or disassemble or attempt to discover any source code for the technology which is embedded in the Products, which provides the Service or interfere with its functionality, (iii) access the Service for competitive purposes; (iv) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on the Service or during the use and operation thereof; (v) publicly disseminate performance information or analysis (including benchmarks) relating to the Service or the Products; (vi) disable or circumvent any security features of the Service or permit unauthorized access to the Service; (vii) access or use the Service for competitive purposes; or (viii) use the Service in a manner which violates or infringes any laws, rules, regulations, third party Intellectual Property Rights, or third party privacy rights. Customer may not use any automated means, including agents, robots, scripts, or spiders, to access or manage the Service, except solely to the extent as may be specifically enabled and authorized by Clarity in writing.
- c. Accounts. Customer is responsible for any activity occurring under Customer's account and for the Authorized Users compliance with these Service Terms. Customer shall, and shall instruct its Authorized Users to, use all reasonable means to secure usernames and passwords, and shall promptly notify Clarity if it suspects that any user name and password has been compromised.
- d. Products. The Products are only provided to Customer for use as part of the Service during the Subscription Term and provision of the Products to Customer is a bailment. Customer shall maintain the Products in good working order and shall be solely responsible for loss or damage to the Products and maintain insurance policies with sufficient coverage for such Products.
- e. Third Party Services and Modifications. The Service may include features or functionality that interoperate with online services operated by third parties (such services, "Third-Party Services"), pursuant to agreements between Clarity and the operators of such Third-Party Services (such agreements, "Third-Party Agreements" and such operators, "Operators") or through application programming interfaces or other means of interoperability made generally available by the Operators ("Third-Party APIs") which Clarity does not control. Third-Party Agreements and Third- Party APIs (and the policies, terms and rules applicable to Third-Party APIs) may be modified, suspended or terminated at any time. Any such modification, suspension or termination shall not affect any payment obligations under these Service Terms and Clarity shall have no liability with respect thereto. Without limiting the foregoing, Customer is responsible for ensuring that Customer's use of the Service in connection with Third-Party Services complies with all policies, terms and rules applicable thereto.

3. PROPRIETARY RIGHTS AND DATA

- a. Clarity IP. Clarity and its licensors own all Intellectual Property Rights applicable to the Products and the Service (including without limitation all underlying software and technology used to provide the Products and the Service, and any modifications or

enhancements) and any other related materials provided by Clarity to Customer. Nothing herein shall be construed to transfer any rights, title or ownership of the Service, the Documentation or any Clarity software, technology, materials, information or Intellectual Property Rights to Customer. Customer is not required to provide any ideas, feedback or suggestions regarding any of Clarity's products or services ("Feedback") to Clarity. If Customer elects to provide Feedback, Clarity may freely use and exploit in any manner such Feedback without payment of any royalties or other consideration to Customer or other obligations or restrictions.

- b. Personal Data. Customer acknowledges and agrees that Clarity may store, share, process and use data collected from Customer's Order and the Authorized Users for the purposes of processing the Order and providing the Service. Clarity describes all policies related to its collection and use of data in its current Privacy Policy at <https://clarity.io/privacy-policy>, which is incorporated into these Service Terms by this reference and which may be update from time to time in accordance with the terms of the Privacy Policy.
 - c. Product Data. During the Subscription Term, Customer's Products will collect Product Data which will be transmitted from Customer's Products to Clarity. As between the Clarity and Customer, Customer shall own all right, title and interest in the Product Data provided to Clarity and Customer hereby grants Clarity perpetual right to use, reproduce, modify, distribute the Product Data transmitted to Clarity for the purpose of (i) providing and improving the Service, (ii) as may be required by law or legal process, or (iii) in an aggregated and anonymized manner which does not specifically identify Customer or its Authorized Users. Product Data is private by default, which means that only Customer and its Authorized Users have access to the Product Data in Customer's Account and Clarity will not resell, reuse or distribute, or permit any third party to resell, reuse or distribute any of Customer's Product Data, except that Customer can affirmatively select the option, in its sole discretion, to share its Product Data on Clarity's open data portal ("Open Map"), and upon such selection, Customer grants Clarity an irrevocable, perpetual, transferable, sublicensable and worldwide license under any rights Customer owns such Product Data, to view, use, copy and distribute such Product Data. Any Product data licenses under the foregoing sentence will not be displayed or distrusted that designates the Customer as the source of the Product Data.
4. **PAYMENT**. Customer agrees to pay Clarity the applicable Fees for subscription to the Service and the use or the purchase of the Products (including any shipping charges and taxes), as specified in the applicable Order. By placing an Order for Service and the Products, Customer agrees to pay Clarity the applicable subscription price for the Service and the subscription and/or purchase price for the Products set forth in the applicable Order (including any taxes). For orders placed through the online store at the Site, Customer shall make payment using one of the approved payment vendors made available to Customer during the checkout process of the online store. For signed Clarity Order, invoices will be sent to the billing contact identified in the Order and all amounts are due and payable within thirty (30) days from invoice date unless otherwise agreed in writing by Clarity and Customer. Payment will be charged or invoiced, as applicable, and payment must be received prior to shipment of the Product to Customer unless waived by Clarity. Customer's use of the Service may be suspended if Clarity is unable to process Customer's payment for any reason or if Customer's account is more than thirty (30) days past due with respect to such units of Product. Delinquent payments shall bear interest at the rate of one percent (1%) per month (or if less, the highest rate permitted by law) from the payment due date until paid in full and Clarity shall be entitled to recover its costs of collection for all delinquent amounts that are more than thirty (30) days past due.
5. **TERM; TERMINATION**
- a. Term. The term of these Service Terms shall start as of the date of the initial Order. The initial Subscription Term of Customer's subscription under each Order shall start forty-five (45) days from the date of delivery of the applicable Product and shall continue for the length subscription term specified in the applicable Order, including, if applicable any

renewal terms.

b. Termination.

i. Either party may terminate an individual Service Order in accordance with the termination provisions (if any) described in the applicable Service Order.

ii. Either party may terminate these Service Terms or any applicable Service Order effective immediately if the other party is in material breach of any obligation, representation or warranty hereunder and fails to cure such material breach (if capable of cure) within thirty (30) days (or ten (10) days in the event of breach of payment obligations) after receiving written notice of the breach from the non-breaching party.

c. Suspension. Clarity may also terminate Customer's access to or use of the Service and/or terminate these Service Terms at any time if Clarity reasonably determines that (i) Customer's is using the Service in a manner that creates a security vulnerability or harms Clarity's system or network; or (ii) Customer or any Authorized User attempts to access or use the Service in an unauthorized manner, or otherwise violates or infringes any laws, rules, regulations, third party Intellectual Property Rights, or third party privacy rights.

d. Effect of Termination. All rights and obligations of the parties under Sections 3, 4, 5.d, and 7 through 16 shall survive expiration or termination of these Service Terms. The Customer will uninstall the Products and ship them back to Clarity at Customer's cost in accordance with Clarity's instructions.

6. WARRANTIES

a. Mutual Warranties. Each party represents and warrants to the other party that: (i) it has the full power and authority to enter into these Service Terms; and (ii) the performance of its obligations under these Service Terms does not violate any other agreement to which it is a party.

b. Service Warranty. Clarity warrants that during the applicable Subscription Term: (i) the Service will function substantially in accordance with the Documentation, and (ii) such functionality will not be materially decreased. Customer's sole and exclusive remedy for Clarity's breach of the foregoing warranty will be for Clarity to use commercially reasonable efforts to modify the Service to achieve in all material respects the warranted functionality and if Clarity cannot restore such functionality, Customer will be entitled to terminate the applicable Service Order and receive a pro rata refund of the unused Subscription Fees previously paid for the terminated portion of the then- current Subscription Term. Clarity shall have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the first instance of any material functionality problem. This Service warranty only applies if the Service has been used in accordance with the Documentation, these Service Terms, and applicable law.

c. Product Warranty. Clarity warrants to Customer that the Product shall be substantially free of defects of materials and workmanship under normal use for the duration of Company's paid subscription to the Service ("Warranty Period").

d. Exclusions. Notwithstanding the foregoing, this limited warranty shall not apply to: (i) any Product that has been customized, altered or repaired by anyone other than Clarity or its authorized representative; (ii) any Product that has been subjected to abuse, misuse, neglect, accident, physical damage, abnormal operation, improper handling and storage, exposure to fire, fluids, biological waste, hazardous materials, chemicals, excessive moisture or dampness, extreme changes in climate or temperature or other conditions beyond Clarity' published limitations for the Product (including, without limitation, environmental conditions and power requirements); (iii) any use or operation of the Product other than in accordance with Clarity's instructions and published specifications for the

Product and these Sales Terms; (iv) breakdowns, fluctuation or interruptions in electric power or the telecommunications network, or (iv) any non-Clarity products, even if packaged or sold with Clarity hardware. Customer's sole and exclusive remedy and Clarity's and its suppliers sole and exclusive liability for a breach of this limited warranty shall be, at Clarity's sole discretion, commercially reasonable efforts to repair or replace the non-conforming Product, or in the event Clarity is unable to repair or replace the non-conforming Product, refund the purchase price for such Product. Repair or replacement may be made with a new or refurbished product or components. If the Product or a component within it is no longer available, Clarity may, at its sole discretion, replace the Product with a similar product of similar function. Any Product that has been repaired or replaced under this limited warranty will be covered by the terms of this limited warranty for the remainder of the original Warranty Period.

- e. RMA Procedures. To make a warranty claim, Customer must contact Clarity within the Warranty Period and obtain a Return Materials Authorization ("RMA") from Clarity customer service. Customer shall return the Product with the RMA and all included accessories (and any promotional merchandise supplied with the Product) within the fourteen (14) days following the RMA issuance. Customer will be responsible for all costs associated with returning the Product (including uninstallation and the cost of shipping the Product back to Clarity) and Clarity's return shipping back to Customer of such Products unless waived by Clarity.

7. **DISCLAIMERS.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTY SET FORTH IN SECTION 6.B IS IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, WRITTEN OR ORAL (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT) WITH RESPECT TO THE SERVICE. CLARITY DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. CLARITY DOES NOT WARRANT THAT PERFORMANCE OF THE SERVICE OR PRODUCT COMPLIES WITH ANY LOCAL OR STATE REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL REGULATIONS. THE SERVICE ENABLES THE CUSTOMER TO COLLECT PRODUCT DATA REGARDING THE PRODUCTS AT THE LOCATION WHERE THE PRODUCTS ARE INSTALLED ("LOCATION"). ALL PRODUCT DATA COLLECTED BY CLARITY AND PROCESSED BY THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE". CLARITY CANNOT GUARANTEE THAT IT IS CORRECT OR UP TO DATE. IN CASES WHERE IT IS CRITICAL, ACCESSING PRODUCT DATA THROUGH THE SERVICE IS NOT A SUBSTITUTE FOR DIRECT ACCESS OF THE INFORMATION AT THE LOCATION. FURTHERMORE, CUSTOMER UNDERSTANDS THAT THE PRODUCTS AND SERVICE, WHETHER STANDING ALONE OR INTERFACED WITH THIRD-PARTY PRODUCTS OR SERVICES, ARE NOT SPECIFICALLY DESIGNED AS A LEGAL COMPLIANCE TOOL, INCLUDING WITH RESPECT TO APPLICABLE LAWS RELATING TO AIR QUALITY AND MONITORING AT THE LOCATION. CUSTOMER MAY ELECT TO USE THE PRODUCTS FOR SUCH PURPOSES, HOWEVER IT IS CUSTOMER'S SOLE RESPONSIBILITY TO DETERMINE HOW TO ACT UPON THE DATA THE SERVICE PROVIDES. CLARITY IS NOT RESPONSIBLE FOR THIRD PARTIES OR THEIR PRODUCTS AND SERVICES. CLARITY HEREBY DISCLAIMS AND CUSTOMER HEREBY DISCHARGES, WAIVES AND RELEASES CLARITY AND CLARITY'S SUPPLIERS, LICENSORS, PARTNERS, AFFILIATES, CONTRACTORS, EMPLOYEES AND AGENTS FROM ANY PAST, PRESENT, AND FUTURE CLAIMS, LIABILITIES, AND DAMAGES, KNOWN OR UNKNOWN, ARISING OUT OF OR RELATING TO CUSTOMER'S INTERACTIONS WITH SUCH THIRD PARTIES AND THEIR PRODUCTS AND SERVICES.

8. **INDEMNIFICATION**

- a. Customer Indemnity. Customer agrees to, at its own expense, indemnify, hold harmless,

defend and/or settle any claim, action or suit brought by a third party against Clarity or its directors, officers or employees ("Clarity Indemnitees") arising out of or relating to Customer's (i) use of the Products or Service in a manner which violates or infringes any laws, rules, regulations, third party Intellectual Property Rights, or third party privacy rights or (ii) publication, display or otherwise sharing access to Product Data (a "Claim").

- b. Clarity Indemnity. Clarity agrees to, at its own expense, defend and/or settle any claim, action or suit brought by a third party against Customer, or its directors, officers and employees ("Customer Indemnitees"), arising from a third party claim that the Customer's operation of the Service infringes such third party's Intellectual Property Rights (unless Customer's use of the Service was in a manner for which Customer is indemnifying Clarity under Section 8.a above) (an "IP Claim"), Clarity will pay those amounts finally awarded by a court of competent jurisdiction against the Customer Indemnitees or (subject to the terms of Section 8.c) payable pursuant to a settlement agreement with respect to the IP Claim. If Clarity, in its sole discretion, believes an IP Claim or an adverse judgment in connection with an IP Claim is likely, then Clarity may, at its option, (a) obtain a license from such third-party claimant that allows Customer to continue the use of the Service, (b) modify the Service so as to be non-infringing, or (c) if neither (a) nor (b) is available to Clarity on commercially reasonable terms, terminate these Service Terms upon written notice to Customer and provide Customer a pro rata refund of the unused Subscription Fees previously paid for the terminated portion of the then-current Subscription Term. Clarity will have no obligation or liability relating to any IP Claim that: (x) is based on modification or customization of the Service at the direction of Customer or any third party; (y) is based on the combination or use of the Service (or any component of either) with any software, hardware, system, method, Product or materials not provided or required by Clarity; or (z) results from Customer's use of the Service in a manner that is inconsistent with its intended use or is in breach of these Service Terms. This Section 8.b sets forth the entire liability of Clarity and the sole and exclusive remedy of Customer in the event of any claim that the Service infringes any third-party Intellectual Property Right.
- c. Indemnification Procedure. Each party shall promptly notify the other party in writing of any action for which such party believes it is entitled to be indemnified pursuant to Section 8.a or Section 8.b. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Claim or IP Claim and employ counsel qualified to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 9.c will not relieve the Indemnitor of its obligations under this Section 9 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor may settle a Claim or IP Claim so long as any settlement (i) does not, without Indemnitee's prior written approval, (x) involve the admission of any wrongdoing by any Indemnitee, (y) restrict any Indemnitee's future actions, or (z) require any Indemnitee to take any action, including the payment of money, and (ii) includes a full release of the Indemnitees.

9. **CONFIDENTIALITY.** Each party shall keep confidential the terms of these Service Terms, all information and materials provided or made available by the other party, whether or not marked as confidential or proprietary that the receiving party knows or should have reasonably known is confidential or proprietary at the time of disclosure ("Confidential Information"). For clarity, the features, functionality and content of the Service (excluding Product Data), any Documentation, the Fees charged in connection with the Service and any information regarding planned modifications or updates to the Service or other Clarity products and services constitutes Confidential Information of Clarity. Each party shall keep and instruct its employees and agents, and in the case of Clarity, its third-party contractors, to keep the other party's Confidential Information confidential by using at least the same care and discretion as used with that party's own confidential information, but in no case less than a prudent and reasonable standard of care. Neither party shall use the other party's Confidential Information for purposes other than performing its obligations hereunder or as

otherwise authorized by the disclosing party. Information or materials shall not constitute Confidential Information if it is: (i) in the public domain through no fault of the receiving party, (ii) known to the receiving party prior to the time of disclosure by the disclosing party, (iii) lawfully and rightfully disclosed to the receiving party by a third party on a non-confidential basis, or (iv) developed by the receiving party without reference to Confidential Information. A receiving party may disclose Confidential Information of the other party when required by law or legal process, provided that the receiving party promptly provide notice to the disclosing party of such request or requirement so the disclosing party may seek appropriate protective orders. If a party, its employees or agents breaches or threatens to breach the obligations of this Section 10, the affected party may seek injunctive relief from a court of competent jurisdiction, in addition to its other remedies, as the inadequacy of monetary damages and irreparable harm are acknowledged.

10. **Compliance with Laws.** The Products are designed and certified for use in specific countries so Customer agrees to only use the Service with Products that have been certified for the location in which Customer has installed such Products. For information on current certifications for the Products, contact us at contact@clarity.io. Additionally, there may be laws, regulations, ordinances, building codes and other similar requirements applicable to where and how to install or use that Product in the jurisdiction in which Customer is located. It is solely Customer's responsibility to determine and ensure that its use of the Service complies with all applicable laws, regulations and ordinances. In addition, the Products may be subject to import and export laws and regulations in the United States and elsewhere. Customer must comply with all domestic and international import and export laws and regulations that apply in connection with the Products and accepts responsibility for its use of the Products outside the United States.

11. **Limitation of Liability.**

a. Limitation on Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL (A) CLARITY OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES TO CUSTOMER OR ANY THIRD PARTIES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE MANUFACTURE, SALE, SUPPLYING OR FAILURE OR DELAY IN SUPPLYING OF THE SERVICE OR THE USE OF THE PRODUCT OR RESULTING PRODUCT DATA, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF CLARITY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, AND (B) CLARITY AND IT SUPPLIER'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO CLARITY FOR THE SERVICE IN THE PRIOR SIX (6) MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. This section and all limitations will apply even if the above stated remedy fails of its essential purpose or if the other party knew or should have known of the possibility of such damages.

b. Customer Decisions. PRODUCT DATA IS PROVIDED FOR INFORMATIONAL PURPOSES. CUSTOMER IS SOLELY RESPONSIBLE FOR ALL DECISIONS REGARDING THE CONDUCT OF CUSTOMER'S BUSINESS, AND UNDER NO CIRCUMSTANCES SHALL CLARITY BE LIABLE FOR SUCH DECISIONS OR THE CONSEQUENCES OF SUCH DECISIONS, REGARDLESS OF THE EXTENT TO WHICH SUCH DECISIONS MAY BE MADE IN RELIANCE ON PREDICTIONS AND OTHER INFORMATION PROVIDED BY THE SERVICE.

12. **Publicity.** Customer agrees Clarity is permitted to use Customer's name and logo for the purpose of listing Customer as a client of the Clarity in external communications, marketing materials, and on Clarity's website.

13. **Notifications.** By submitting an order for Products, Customer consents to receiving certain electronic communications from Clarity as further described in Clarity's Privacy Policy. Please read Clarity's

Privacy Policy to learn more about choices regarding Clarity's electronic communications practices. Clarity may provide notifications to Customer as required by law or for marketing or other purposes via (at its option) email to the contact email associated with Customer's Clarity account, hard copy, or posting of such notice on the Clarity websites. Customer agrees that any notices, agreements, disclosures, or other communications that Clarity sends to Customer electronically will satisfy any legal communication requirements, including that such communications be in writing. Clarity is not responsible for any automatic filtering Customer or its network provider may apply to email notifications.

14. Force Majeure. Clarity will not be liable or responsible for any failure to perform, or delay in performance of, any of Clarity's obligations under a contract that is caused by an act or event beyond Clarity's reasonable control, including without limitation acts of God, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, terrorist attack, war, fire, explosion, storm, flood, earthquake, epidemic or other natural disaster, failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
15. U.S. Government Restricted Rights. If Customer is a government end user, then this provision also applies to Customer. The software contained within the Products and the Services and provided in connection with these Service Terms has been developed entirely at private expense, as defined in FAR section 2.101, DFARS section 252.227-7014(a)(1) and DFARS section 252.227- 7015 (or any equivalent or subsequent agency regulation thereof), and is provided as "commercial items," "commercial computer software" and/or "commercial computer software documentation." Consistent with DFARS section 227.7202 and FAR section 12.212, and to the extent required under U.S. federal law, the minimum restricted rights as set forth in FAR section 52.227-19 (or any equivalent or subsequent agency regulation thereof), any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by these Service Terms and shall be prohibited except to the extent expressly permitted by these Service Terms.
16. Governing Law and Jurisdiction. These Service Terms shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws principles. Customer agrees to submit to the personal jurisdiction of the state and federal courts in or for San Francisco County, California for the purpose of litigating all such claims or disputes.
17. General. These Service Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Service Terms, are the entire and exclusive understanding and agreement between Customer and Clarity regarding Customer's offer to purchase the Service and the other matters described in these Service Terms. These Service Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Service Terms. Customer may not assign its rights under these Service Terms without Clarity's prior written consent. Customer expressly agrees and acknowledges that these Service Terms inure to the benefit of Clarity, its affiliates, transferees, and successors. If any provision of these Service Terms shall be held illegal, unenforceable, or in conflict with any law of any authority having jurisdiction over these Service Terms, the validity of the remaining portions or provisions hereof shall remain in full force and affect. Failure or delay by us to enforce these Service Terms will not constitute a waiver of either party's rights against the other and does not affect a party's right to require future performance under these Service Terms.