

# ClarionCall General Terms of Service for School

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## 1. INTRODUCTION, AGREEMENT & ACCEPTANCE

These are the terms and conditions governing your use of the services (the “Service” or “Services”) offered and provided to you by ClarionCall Limited (hereafter referred to as “CCL”). Any reference to “You”, “Your” and “Yours” refers to you the School, the user of the Service. Any reference to “We”, “Us”, “Our” and “Ours” refers to both CCL and You.

Your use of CCL’s products, software, services, service platform and websites is referred to collectively as the Service(s). Your use of CCL’s Services is subject to the terms of a legal agreement (“the agreement”) between You and CCL as set out in these General Terms of Service (“GTOS”) and any additional terms You accept either by (i) mutual agreement in writing or (ii) by clicking Your acceptance to the terms, where CCL provides this as an option on its website (iii) by actually using the Services. These additional terms are referred to below as the “Extended Terms”. The GTOS, together with any Extended Terms form a legally binding agreement between You and CCL. If there is a conflict between the Extended Terms and GTOS, the Extended Terms shall take precedence.

In using the CCL Service, You agree to be bound by the provisions of the GTOS listed below and You understand that CCL treats Your usage of it's Services as acceptance. For the avoidance of doubt, if You do not accept these GTOS then you may not use the Service.

CCL may amend or update these terms from time to time such as when it launches new Services. Your continued use of CCL’s Services shall constitute Your acceptance of such amended or updated terms. Accepting these terms shall form a binding contract between You and CCL and your acceptance shall be deemed to have occurred on the earlier of Your ordering or using any of the CCL Services.

CCL’s registered address is ClarionCall Limited, 78 Ember Lane, Esher, Surrey, KT10 8EN, registered number 5025788.

## 2. DEFINITIONS

“the agreement” is Our legally binding agreement incorporating these GTOS and any Extended Terms agreed by You. For the purposes of Clause 13 of the GTOS the start date of the agreement shall be the      day of              2018 or in the absence of a specific date the operative date shall be deemed to be the start date as hereafter defined.

“Service” is any CCL product, software, service, or website, including but not limited to CCL’s web based service enabling messages to be sent by voice, text and/or email from You to Your community members including parents, guardians, pupils, staff, employees, and governors, Your approved suppliers and contractors and other organisations such as Parent Teacher Associations specifically authorised by You. You will ensure that all the Parties specifically mentioned in this clause, as well as any other users accessing and using the CCL Service, have first given their permission to You to send voice, text, or email messages to them, or the content of the messages is such that they would not consider the message to be spam or otherwise unsolicited. CCL also provides E-forms and on-line web access capabilities that enable You to communicate relevant information to your community members, allow them to view their personal message history, and to view, respond to, or notify the school of changes or reply to requested information.

As CCL is constantly innovating, You accept that the nature and form of CCL's Services may change from time to time without prior notice. You also understand and accept that CCL may discontinue or cease (whether temporarily or permanently) to provide the Services or any functions within the Service to You and Your community at CCL's sole discretion.

"Service Platform" means the IT infrastructure and service logic environment. For the avoidance of doubt the provision of messaging (text) and email services do not form part of the Service Platform and are chargeable as separate individual services.

"Service Charges" means the charges for the Services and other periodic charges of whatever nature "Start date" means the date on which You formally commenced usage of the Service

"Start date" means in the absence of a specific date to the agreement and subject to Clause 13 the date on which You commenced usage of the Service.

"User Name" means the log-in(s) and related password(s) or other password(s) allocated by CCL for exclusive use by You and used to gain access to the Services under these terms

### 3. USER NAMES, PASSWORDS & PINS

At commencement of the Service, You will be provided with a user name, password and pin number. This user name will give You the ability to generate additional user names with differing access levels, together with their own passwords and pins. These user names, passwords, and pins are personal to Your organisation and should not be given, assigned, or sold to any third party without CCL's written permission.

You are responsible for all actions that take place as a result of access to the Service via Your user names, pins, and passwords. It is Your responsibility to ensure the security of Your passwords and pins, to maintain their confidentiality, and to regularly change them. You acknowledge that You are responsible for ensuring that no unauthorised access to the Service is obtained using Your password and pins and that You are liable for all such activities conducted through Your account whether authorised or not. It is your responsibility to inform CCL in writing as soon as You become aware that you believe the username, password, or pin has become known to an unauthorised third party.

CCL may cancel Your existing username, password, and pin and issue new ones to You either where: (i) CCL has reason to believe that the security of Your username, password, and pin has been compromised without Your knowledge (ii) You have requested either a new username, new password, or new pin in writing or have notified CCL of a breach of security (iii) CCL has reasonable grounds to believe that YOU have not in the past or are not currently complying with Our Agreement (iv) Our Agreement or any part thereof is terminated or suspended

### 4. CCL LICENSE

CCL gives You a non-assignable and non-exclusive license to use the Service and its related software, websites, and products. This license is for the sole purpose of enabling You to use and enjoy the benefit of the Service under the terms of Our Agreement. You may not assign or grant a sub-license of Your rights to use the Service and its software, grant a security interest in or over Your rights to use the Service and its software, or otherwise transfer any part of the rights to use the Software without CCL's express prior written permission. This license is automatically terminated on termination or cancellation of Our Agreement.



## 5. USE OF THE SERVICE

You agree to abide by the terms of Our Agreement and to use the Service only for purposes permitted by the GTOS. You agree to use Your best endeavours to ensure that all information provided to CCL is accurate and up-to-date including, but not limited to, the relevant contact details of members of Your community. You and any persons You allow to use the Service are not allowed to:

- (i) Use the Service for illegal purposes or in breach of any applicable law, statutes, regulation, or code of practice;
- (ii) Use the Service to send, receive, distribute, upload, download, publish or post any material which is offensive, abusive, defamatory, indecent, obscene, harassing or menacing to any other person
- (iii) Access the Service (or attempt to access the Service) through the use of CCL non-approved scripts, interfaces, or other automated means
- (iv) Collect and process others' personal data except in accordance with applicable data protection law and best practice;
- (v) Infringe any other person's or organisation's intellectual property rights, including copyright, service mark, or trade mark;
- (vi) Use the Service to post or otherwise distribute unauthorised or unsolicited advertising, junk, bulk email (also known as "spam"), Trojans, corrupting programs, corrupting data, or viruses in any way which shall cause or is likely to cause detriment or harm, in any degree, to CCL or other Service users or which is likely to cause damage to CCL's reputation or business operation or the reputation or business operation of any third party;
- (vii) Engage in any activity that disrupts or interferes with the Services and the underlying network and IT infrastructure used to provide them;
- (viii) Use the Services for business or commercial purposes nor reproduce, copy, sell, distribute, trade or otherwise market the Services for any reason without first having obtained CCL's permission in writing to do so;
- (ix) Publish the information contained on CCL's websites, products, software etc. without first having obtained CCL's written permission;
- (x) Decompile or reverse engineer the software that CCL uses to provide the Service or provide any information thereon to a third party
- (xi) Allow any third party to access, decompile, or reverse engineer, or copy any part of CCL's Services including but not limited to websites, software or products for the purposes of developing a competitive Service;
- (xii) Misuse or Infringe the intellectual property rights of CCL and any third parties when using the Service, nor cause or permit anything which may damage or endanger the intellectual property rights in the Service (or any software, product, or website of the Service), nor enable or allow others to do so

(xiii) Make fair use of the Service so that CCL can continue to offer attractive, reliable, and cost effective services to all CCL's clients. CCL's Services are based on each customer using the Service in a fair and considerate way. If You regularly use the Services in an unfair or excessive way, CCL reserves the right to place limits on usage including file storage limits, SMS volumes etc. at its sole discretion. Without prejudice to the generality of this sub-clause You agree in the usage of the messaging (text) service (if provided) to a charging formula based on pupil roll call numbers at the start of the autumn term: at present the charge is made on the basis of a deemed average usage of 22 texts per pupil and for the purposes of the agreement a reasonable usage shall be deemed to be up to and including 44 texts in any individual case. Any excess usage over such reasonable usage shall be charged at the appropriate credit top-up rate.

And You accept that (a) You are solely responsible for any misuse of the Service even if by another person using Your access to the Service; and (b) that CCL has no responsibility or liability to You or any third party for your breach of Your obligations under our Agreement

From time to time CCL may offer You the opportunity to evaluate and trial new services, software, or products. If You agree to trial/evaluate such services, software or products You accept that You will:

- (i) Only use the services, software or products for the purposes of a bona fide evaluation for the time period specified in the trial offer
- (ii) Pay for the use of the services, software or products if You continue to use them after the trial time period has expired
- (iii) Accept any additional Extended Terms prior to commencing trial and usage
- (iv) Vest any goodwill arising out of the use of the services, software or products in CCL, such that improvements, adaptations, and enhancements become the property of CCL without limitation.

## 6. PRIVACY AND DATA PROTECTION

Both CCL and you will comply with all applicable requirements of the General Data Protection Regulation ('GDPR') and any legislation which replaces the GDPR in the UK (together, the 'Data Protection Legislation').

For the avoidance of doubt, nothing in the agreement relieves CCL of its own direct responsibilities and liabilities under the Data Protection Legislation.

Both CCL and you acknowledge that for the purposes of the Data Protection Legislation you are the data controller and CCL is the data processor (where 'Data Controller' and 'Data Processor' have the meanings as defined in the Data Protection Legislation).

You will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to CCL for the duration and purposes of this agreement (where 'Personal Data' has the meaning as defined in the Data Protection Legislation).

CCL, shall, in relation to any Personal Data processed in connection with the performance of its obligations under this agreement:

(i) process that Personal Data only on your written instructions unless CCL is unable to do so because of the Data Protection Legislation, in which case CCL shall promptly notify you of this before performing the processing, unless the Data Protection Legislation prohibits CCL from notifying you.

(ii) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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

(iv) not transfer any Personal Data outside of the European Economic Area without your prior written consent.

(v) only engage a sub-processor with your prior consent and under a written contract which imposes on the sub-processor the same or equivalent terms and conditions as are imposed on CCL by this clause.

(vi) assist you, at your cost,

(a) in responding to any request from a Data Subject (where 'Data Subject' has the meaning as defined in the Data Protection Legislation); and

(b) in allowing a Data Subject to exercise their rights under the Data Protection Legislation; and

(c) in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with the Information Commissioner's Office ('ICO') or any other relevant supervisory authorities or regulators

(vii) notify you without undue delay on becoming aware of a Personal Data breach (where 'Personal data Breach') has the meaning as defined in the Data Protection Legislation)

(viii) submit, at your cost, to audits and inspections by the Customer or the Customer's designated auditor.

(ix) at your choice, delete or return all your Personal Data and any copies to you on termination of this agreement.

## 7. DISCLAIMER & LIMITATION OF LIABILITY

The CCL service is provided to You on an “as-is” and “as available” basis and CCL makes no warranties, express or implied, with respect to the Service whatsoever (including without limitation regarding their

satisfactory quality, fitness for a particular purpose, suitability, reliability, timeliness, accuracy, completeness, security, or that they are free from error) unless specifically set out in these GTOS. You recognise that the Service may, from time to time, be adversely affected by events outside our control including, without limitation, mobile network coverage, internet connectivity, and an internet service provider’s and/or internet network provider’s failure to deliver emails, instant messages, or designate such as spam. CCL uses every reasonable endeavour to ensure that the information within the Service is as accurate as the information You provide to CCL by synchronisation, and/or data entry into CCL’s servers, but Your access to the Service and any action You carry out on the basis of the data or information You obtain from or via the Service is carried out entirely at Your own risk and CCL accepts no liability for any losses that You may suffer as a result. This includes the risk and cost of any repairs or corrections to Your hardware and software due to the use of the Service. Furthermore, CCL shall not be liable for any revocation or alteration of any license, permission, or authorisation governing the operation of the Service, or Internet or telephony connections.

Accordingly, CCL will not be liable for any loss of use, profits, or data or any indirect or special or consequential damages or losses, whether such losses or damages arise in contract, negligence or tort, including without

- (i) Your use of, reliance upon or inability to use the Service
- (ii) The deletion with or without notice or cause of any of Your data or information stored on the service; or
- (iii) Damage to Your or any third party’s computer(s) from the use of the Service or from any viruses or malware
- (iv) Any loss of Your or Your community member’s data or material resulting from interruptions or a failure, suspension or withdrawal of all or part of the Service at any time; or
- (v) The removal from the Service of any material sent or posted by You or Your community members on or via the Service and/or blocking or suspension of Your access to the Service or any part thereof in accordance with these GTOS
- (vi) Nothing in the GTOS shall act to exclude or limit either Your or CCL’s liability for death or personal injury, fraud or any other liability which may not by applicable law be excluded or limited.

Without limiting the effect of the provisions of this clause 6 CCL’s liability under our Agreement (whether arising in negligence, breach, misrepresentation, or otherwise) will not exceed the total charges excluding VAT paid by You to CCL in respect of the Services in the twelve month period preceding the date of the breach.

## 8. CCL INTELLECTUAL PROPERTY & PROPRIETARY RIGHTS

You acknowledge and agree that CCL and its suppliers own all legal right, title, and interest in the Service including any Intellectual Property rights which subsist in the Services and its related software, products and websites whether registered or not.

CCL's Service, web/on-line content, and documentation are protected by Intellectual Property Law. Information from CCL's websites and documentation may only be produced with CCL's prior written consent. If Our Agreement is terminated for whatever reason, You agree to delete or destroy all electronic or paper copies of software, computing code and instructions, documentation relating to the implementation and/or operation of the Service provided to You by CCL.

In the event that the Service or associated documentation infringes any third party rights, CCL will defend and/or settle any third party claim that the Service infringes provided always that You promptly notify CCL of any such claim in writing, give CCL the sole control of any such action or proceedings and give CCL such assistance as it may reasonably require to settle and/or defend such action or proceedings (at the cost of CCL). In such event, CCL shall, at its option:

- (i) procure for You the right to continue to use the Service
- (ii) make the Service available without infringing so far as CCL is aware any third party Intellectual Property Rights; or
- (iii) terminate our Agreement forthwith on written notice to You.
- (iv) The indemnity above shall not apply to any infringement resulting from (a) the Use of the Service which does not comply with the uses permitted under Our Agreement, (b) any modification or change to the Service carried out by CCL at Your request, (c) the combination of the Service with any third party product and/or service or modification undertaken by You without the prior written consent of CCL

Furthermore, You agree that nothing in Our Agreement gives You a right to use any of CCL's trade names, logos, domain names, service marks, trademarks, and other distinctive ClarionCall features. You agree not to obscure or hide such marks or features nor create any confusion about the owner or authorised user of such marks or features.

CCL and its suppliers confirm that under Our Agreement CCL obtains no right, title, or interest from You or Your community members to any content that You and Your community members post, transmit, store, or display using the Service.

## 9. INDEMNITY BY YOU

You irrevocably agree to indemnify CCL, its officers, employees, and its suppliers fully against and to hold them harmless on demand from all losses, costs, proceedings, damages, expenses, (including reasonable legal and professional costs and expenses) or liabilities howsoever incurred by them or their Providers as a result of any claim by a third party resulting from Your use of the Service (or use of the Service by anyone other than Your employees who access the Service via Your password) in breach or non observance of these terms.

For the avoidance of doubt, this includes, but is not limited to:

- (i) Any claim being made by a third party where such a claim is in whole or in part the direct or indirect result of any act or omission on Your behalf
- (ii) You are negligent, in default or breach of Our Agreement
- (iii) You are in breach of the applicable Data Protection laws
- (iv) Any fraud or attempted fraud by You, Your employees, agents, or community members
- (v) Any loss of goodwill, business or reputation suffered by CCL as a result of Your negligence, breach or default of all or part of Our Agreement
- (vi) Any content or information created or inputted by You or Your community members

## 10. CONFIDENTIALITY

You acknowledge and agree that the Services may contain confidential information, which is defined as confidential by CCL and that You shall not disclose such information without CCL's prior written permission.

We agree and undertake during the term of our Agreement and thereafter in perpetuity to keep confidential and not use for its own purposes nor without the prior written permission of the other disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) which may become known to that party from the other party ("confidential information") unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of Our Agreement or subsequently comes lawfully into the possession of that party from a third party. To the extent necessary to implement the provisions of Our Agreement each party may disclose the Confidential Information to those employees and sub-suppliers as may be reasonably necessary or desirable provided that before any such disclosure each party shall make obligations of confidentiality under Our Agreement and shall at all times procure compliance by those employees and sub-suppliers with them.

CCL recognises and confirms that the content of all emails and messages sent to or received from You and any material published by You or Your community members and not put in the public domain when using the Service is confidential. In the normal provision of the Service, CCL would not access, read, or copy emails or their attachments or other content other than (i) by electronic methods for the purposes of providing the Service or (ii) as

required by law or the decision of a court of competent jurisdiction or other body with the necessary legal powers to instruct CCL to access, read, or copy emails/messages or their attachments and other content material published by You or Your community members. However, CCL reserves the right to utilise the Virus related content of such content, email/messages or its attachments solely for the purpose of: (i) maintaining and improving the performance or integrity of the Service; and (ii) complying with all regulatory, legislative, or contractual requirements.

## 11. SERVICE UPDATES & MAINTENANCE

CCL and its sub-suppliers/associates regularly introduce updates and improvements to the Services. CCL may add to the Service additional software, services or products via its website from time to time.

(i) CCL shall advise You by email of the implications of any updates and provide updated user manual, or help page, and/or other supporting documentation as necessary and as CCL deems fit.

(ii) Certain enhancements or new software products may be chargeable in which case they will be optional and may involve additional terms (Extended Terms), which You will be required to agree to before You access such Services. Such Extended Terms will be notified to You either by being made available on the CCL websites or in such a manner as CCL may at its sole discretion determine.

(iii) In the unlikely event, for legal or technical reasons, that an update will reduce functionality, CCL will discuss the update with You before its application.

(iv) CCL reserves the right to discontinue, delete, and change the content and purpose of the Websites, software, services, and products from time to time at its sole discretion

(v) CCL runs nightly backups at 4am. This backup will not impact synchronisation nor the transmission of any messages, which have already been sent. It will not, however, be possible to log on to the Service and send messages during this period.

(vi) Service updates are carried out on Sundays wherever possible and will generally involve no more than a 20 minute downtime. You will be given at least 3 days notice if an update will take more than 20 minutes. Updates will not be carried out if CCL is aware of a national or regional incident such as extreme weather conditions or a major security threat.

## 12. CHARGES & PAYMENTS

CCL will invoice You at the billing address shown on Your original quotation or as You notify CCL in writing from time to time. You shall pay all charges due within 30 days of the date of invoice. CCL may vary charges for the Service and will give you at least 30 days written notice of any increase in charges. If you fail to pay any amount payable under our Agreement, CCL may charge You interest on any amounts overdue at the rate of 1.5% (one and a half percent) per month or part thereof to run from the date for payment until receipt by CCL.

### 13. TERMINATION

Our Agreement is automatically renewed on the 1<sup>st</sup> August unless either party cancels it in advance writing. You are entitled to cancel or cease to use the Service at any time and may cancel the use of additional services, software or products without impacting your base Service and our Agreement.

It is important that You are aware that obligations defined in clauses 7, 8, and 9 under the GTOS of Our Agreement continue in perpetuity.

Our Agreement may be terminated by reason of the earliest occurrence of any of the following:

(i) By either party giving 120 days or one term's (whichever be the greater) written notice to the other. In the event termination or cancellation of the Agreement by you You shall not be entitled to any refund for the current year's Service or credits for any unused texts PROVIDED that if You give notice of termination after a period of 120 days from the operative date of the agreement You will be liable to a further charge of 1/3 of the annual contract i.e. 1 term.

(ii) If either party commits any serious breach of its obligations under this Agreement and fails within 30 (thirty) days of written notice to remedy the same, the other party may forthwith, by notice in writing, terminate the Agreement without prejudice to any other rights which may have accrued to it hereunder;

(iii) If either party is unable to pay its debts or enters into compulsory or voluntary liquidation (except for the purposes of amalgamation or reconstruction) or confirms with or convenes a meeting of its creditors or has a receiver appointed over all or part of its assets or takes any similar action in consequence of a debt, or ceases for any reason to carry on its business, the other party may forthwith by notice in writing, terminate the Agreement.

(iv) If either party is required to do so by law

(v) If a CCL supplier, with whom CCL offered the Services to You has terminated its relationship with CCL or ceased to offer the Service

(vi) If the provision of the Service in CCL's opinion is no longer commercially viable

If You fail to comply with the provisions of our Agreement, Your license to use the Service granted in this Agreement including all CCL products, software, websites etc. shall terminate automatically and CCL is entitled without redress to withdraw all usernames, passwords, and pins as set out in clause 3 of the GTOS. Furthermore, CCL may terminate Our Agreement if you are in breach of our Agreement or CCL reasonably suspects that You are in breach of our Agreement.

## 14. AMENDMENTS

CCL may from time-to-time issue a new copy of the GTOS or Extended Terms. When these changes are made CCL shall notify Your administrator by email (using the email address You provided) and shall make a copy available on CCL's website.

Save as provided in the GTOS and Extended Terms, no amendment or variation of these terms shall be effective unless in writing and accepted by the other party. For the avoidance of doubt, this may include You clicking to accept or agree Extended Terms, where the option is made available to You by CCL in the user interface for the Service.

You understand and agree that if You use the Services after the GTOS or Extended Terms have changed that CCL shall treat Your use as acceptance of the updated terms.

## 15. GENERAL PROVISIONS

It is Your sole responsibility to satisfy yourself prior to using the Service in any way that it is suitable for Your purposes.

You undertake not to assign, resell, or in any way transfer Your rights and obligations under Our Agreement.

Neither of Us will be liable for any breach of Our Agreement, which arises because of any circumstances that it cannot reasonably be expected to control including. But not limited to, Acts of God, inclement weather, act or omission of Government, the regulator, or public telephone operators or other competent authority or other party for whom either party is not responsible.

You agree that no joint venture, partnership, or employment or agency relationship exists between You and CCL as a result of Our Agreement. The Contracts (Rights of Third parties) Act 1999 does not apply to Our Agreement.

The GTOS plus the Extended Terms constitute Our entire Agreement relating to the Service and supersede any previous agreements whether written or verbal.

If any part of the GTOS or extended terms are determined to be legally invalid or unenforceable, then the invalid or unenforceable provision shall be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of our Agreement shall continue in effect.

You acknowledge and agree that You do and have not in the past relied on and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to Our Agreement or not other than expressly set out in these GTOS as a warranty. Nothing in Our Agreement shall, however, operate to limit or exclude any liability for fraud.

Our Agreement including the GTOS and any Extended Terms shall be governed and interpreted in accordance with the law of England and Wales and You and CCL both consent to the non-exclusive jurisdiction of the English courts.