



# Anima: G-Cloud 15 Terms and Conditions

## 1. Background

- 1.1. Anima provides various Software and Services to customers and their Authorised Users (as defined below).
- 1.2. The Customer would like to access Anima's Software and Services.
- 1.3. Anima has agreed to provide, and the Customer has agreed to purchase, various Software and Services as set out on the terms of this Agreement.

## 2. Definitions

Words and expressions used in this Agreement shall have the following meaning:

- 2.1. **Affiliate** means, with respect to any legally recognisable entity, any other entity Controlling, Controlled by, or under common Control with such entity.
- 2.2. **Authorised User** means an individual identified by the Customer as authorised to access the Software and/or Services in accordance with this Agreement.
- 2.3. **Call-Off Contract** means the contract entered into between Anima and the Customer under the G-Cloud 15 framework.
- 2.4. **Commencement Date** means, as appropriate, the date of signature of this Agreement, or the commencement date for Software and Services set out in the Call-Off Contract.
- 2.5. **Data Processing Agreement** means any data processing agreement that is provided by Anima to the Customer.
- 2.6. **Documentation** means any training materials, specification and/or technical information regarding any Software or Services provided by Anima to the Customer.
- 2.7. **End User** means any patient or other individual who interacts with the Software or Services, including through patient-facing interfaces.
- 2.8. **Fees** means the fees payable for Software and Services, as set out in the Call-Off Contract.
- 2.9. **Generated Output** means output generated by artificial intelligence.
- 2.10. **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights.
- 2.11. **Permitted Purpose** means use solely for the Customer's business operations, which may include making access to the Software or Services available to its Authorised Users, always in accordance with this Agreement.
- 2.12. **Services** means the services set out in the Call-Off Contract, or otherwise agreed in writing between the Parties, to be provided by Anima to the Customer.
- 2.13. **Software** means the software, set out in the Call-Off Contract, or otherwise agreed in writing between the Parties, to be provided by Anima to the Customer.



### 3. Application

These terms and conditions (the Terms) apply to, and are deemed incorporated in, all Call-Off Contracts (the Terms and all such Call-Off Contracts together being, this Agreement). By executing a Call-Off Contract, the Customer agrees to be bound by this Agreement.

### 4. Commencement and Duration

This Agreement is effective on and from the Commencement Date and shall continue for the term defined in the Call-Off Contract.

### 5. Services and Software Licence

5.1. In consideration for the Customer paying the Fees to Anima, Anima shall:

5.1.1. grant the Customer a non-exclusive, non-transferable licence, without the right to grant sublicences, to access and use the Software during the Term solely for the Permitted Purpose; and

5.1.2. provide the Services to the Customer in accordance with this Agreement and in accordance with reasonable care and skill.

5.2. Anima does not warrant that:

5.2.1. the Customer's use of the Software or the Services shall be uninterrupted or error free;

5.2.2. the Generated Output will not infringe the rights, including Intellectual Property Rights, of any third parties;

5.2.3. the Software or the Services will meet the Customer's requirements;

5.2.4. the Software or the Services will be free from vulnerabilities or viruses; or

5.2.5. use of the Software will produce any specific, pre-agreed results, and Anima is not liable for the consequences of the Customer or its Authorised Users or End Users relying on, or taking decisions based on, the output of the Software or Services, including Generated Output. In particular, the parties agree that Anima does not offer any medical advice as part of the Software or Services and the Customer shall, and shall ensure that its Authorised Users and End Users shall, rely on its / their own professional medical judgment when taking any decisions in relation to the Software, Services or Generated Output.

5.3. Anima will use reasonable endeavours to maintain the availability of the Software and Services, but cannot guarantee that the Software or Services will be available at all times.

5.4. Anima shall use reasonable commercial efforts to ensure that the Software and Services shall be available 99.5% of the time, measured monthly.

5.5. This Agreement shall not prevent Anima from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

5.6. Anima warrants that it has, and will maintain, all necessary licences, consents and permissions necessary for the performance of its obligations under this Agreement.

### 6. Authorised Users



Anima shall provide the Customer with a means to allow the Customer to make the Software available to its Authorised Users, subject always to those Authorised Users complying with (i) the terms of this Agreement, and/or (ii) any end user licence agreement required by Anima from time to time. The Customer is responsible for the acts and omissions of its Authorised Users as if they were their own.

## 7. Customer Obligations

The Customer shall, and shall ensure that each Authorised User shall:

- (a) provide Anima with all cooperation, access and information as may be reasonably required by Anima in order to provide the Software and Services;
- (b) obtain and maintain all necessary licences, consents, permissions, authorisations, registrations and certifications required to enable the Customer and its Authorised Users to use the Software and the Services in accordance with this Agreement; and
- (c) at all times and at its own expense comply with all laws and regulations that are applicable to its activities under this Agreement.

## 8. Restrictions

8.1. The Customer shall not:

8.1.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:

8.1.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

8.1.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

8.1.1.3. access all or any part of the Software or the Services in order to build a product or service which competes with the Software or the Services; or

8.1.1.4. except as permitted under this Agreement, use the Software, Services and/or Documentation to provide services to third parties; or

8.1.1.5. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software or the Services available to any third party except the Authorised Users; or

8.1.1.6. attempt to obtain, or assist third parties in obtaining, access to the Software or the Services;

8.1.1.7. upload any sensitive personal data beyond that which is necessary for the Permitted Purpose and in accordance with applicable Data Protection laws;

8.1.1.8. introduce or permit the introduction of, any virus into the Software or Anima's network or information systems.



8.2. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and the Services and, in the event of any such unauthorised access or use, promptly notify Anima.

## 9. Payment

**9.1. Fees and Charges.** The Customer agrees to pay the Fees as set out in the Call-Off Contract. The Customer will be charged the Fees from the Commencement Date, unless otherwise stated in the Call-Off Contract.

**9.2. Payment Terms.** Anima shall invoice the Customer for the Fees in accordance with the schedule set out in the Call-Off Contract, or at the end of each month if the Call-Off Contract is silent as to invoicing. During the Term, the Customer agrees to pay Anima the Fees in accordance with the payment terms set out in the Call-Off Contract and by the due date specified therein. Where no due date is specified, the Customer shall pay all invoices within thirty (30) days of the invoice date (the **Due Date**) to a bank account nominated by Anima from time to time.

**9.3. VAT and Taxes.** All Fees are stated exclusive of value added tax, which shall be added to the relevant invoice(s) at the appropriate rate where applicable. All amounts payable under this Agreement are denominated in pounds sterling and the Customer shall pay all such amounts in pounds sterling.

**9.4. Late Payment and Suspension.** If Anima has not received payment of the Fees within thirty (30) days of the Due Date, and without prejudice to any other rights and remedies of Anima:

9.4.1. Anima may, without liability to the Customer, and subject to ten (10) Business Days' written notice to the Customer, disable or suspend the Customer's and all Authorised Users' passwords, accounts, and access to all or part of the Software and/or Services until the invoice(s) concerned are paid in full; and

9.4.2. interest shall accrue on a daily basis on any unpaid amounts at an annual rate equal to 4% over the current base lending rate of the Bank of England from time to time, commencing on the Due Date and continuing until fully paid, whether before or after judgment.

**9.5. Fee Adjustments.** Anima shall be entitled to increase the Fees and any SMS Costs in accordance with any process set out in the Call-Off Contract.

**9.6. Disputed Invoices.** If the Customer in good faith disputes any portion of an invoice, the Customer must: (a) pay the undisputed portion of the invoice by the Due Date; and (b) submit a written claim to Anima for the disputed amount within fourteen (14) days from the date of invoice, setting out in reasonable detail the basis for the dispute. Failure to submit a dispute within such period shall constitute a waiver of the Customer's right to dispute that invoice.

**9.7. Non-Refundable.** All Fees are non-cancellable and non-refundable, except where expressly stated otherwise in the Call-Off Contract or where another customer subsequently enters into a separate agreement with Anima for the same Software and Services during overlapping periods, in which case any refund will be pro rata for the overlapping period only.

## 10. Intellectual Property



10.1. The Customer acknowledges and agrees that Anima and/or its licensors own all Intellectual Property Rights in the Software and the Services and that each party shall retain ownership of all Intellectual Property Rights owned or used by it prior to the date of this Agreement ("Background IP"). Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Services.

10.2. Any new Intellectual Property Rights that arise out of, or in connection with, this Agreement ("Foreground IP") shall be owned by Anima, and Anima hereby grants the Customer a non-exclusive, non-sublicensable licence to use the Foreground IP for the Permitted Purpose during the term of this Agreement.

10.3. Anima confirms that it has all the rights in relation to the Software and the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10.4. Anima warrants that the Customer's use of the Software and receipt of the Services, in accordance with the terms of this Agreement (excluding Generated Output) will not infringe the rights, including the Intellectual Property Rights of any third parties.

10.5. The Customer hereby grants Anima a limited, revocable, non-exclusive, non-transferable, worldwide and royalty-free licence to use the Customer's name and trade mark in order to reference the Customer as a customer on Anima's website and sales and promotion material, including case studies.

10.6. Anima may use any Customer feedback and suggestions for improvement relating to the Software or Services without charge or limitation ('Feedback'). The Customer hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee to Anima at the time such Feedback is first provided to Anima.

## 11. Non-Solicit

11.1. The Customer shall not, without the prior written consent of Anima, at any time from the date of this Agreement to the expiry of six months after the termination of this Agreement, solicit or entice away from Anima, or attempt to employ any person who is, or has been, engaged as an employee, consultant or sub-contractor of Anima in relation to the provision of the Software or Services.

## 12. Confidentiality

12.1. Each party undertakes that it shall not at any time during this Agreement, and for a period of three years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 12.2.

12.2. Each party may disclose the other party's confidential information:

12.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its



employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12;

12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 13. Data Protection

13.1. Each Party shall comply with all laws relating to privacy, data protection and data security which apply to such Party or the Software or Services ("Data Protection Laws") and the terms of any applicable Data Processing Agreement.

13.2. Where Anima processes personal data on behalf of the Customer, Anima shall act as a processor and the Customer shall act as a controller (as those terms are defined in the Data Protection Laws). The terms of any applicable Data Processing Agreement shall apply to such processing.

13.3. Anima shall notify the Customer without undue delay, and in any event within 48 hours, upon becoming aware of any personal data breach affecting Customer data.

13.4. A list of Anima's sub-processors is available or upon request.

## 14. Warranties

14.1. Subject to the remainder of this Clause 14, Anima warrants that (i) the Software will operate materially in accordance with the Documentation and (ii) it will provide each of the Services with reasonable care and skill.

14.2. The Software may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in software and that Anima shall have no liability for any such delays, interruptions, errors or other problems.

14.3. The warranties in Clause 14.1 are subject to the limitations set out below and shall not apply to the extent that any error in the Software or Services arises as a result of (in whole or in part):

14.3.1. incorrect operation or use of the Software or Services by the Customer, any Affiliate or any Authorised User (including any failure to follow the Documentation);

14.3.2. use of any of the Software or Services other than for the Permitted Purpose;

14.3.3. use of any Software or Services with third party software or services or on equipment with which it is incompatible;

14.3.4. any act by any third party (including hacking or the introduction of any virus or malicious code);

14.3.5. any modification of Software or Services (other than that undertaken by Anima or at its direction); or

14.3.6. any breach of this Agreement by the Customer (or by any Affiliate or Authorised User).

14.4. Other than as set out in this Agreement, and subject to Clause 15, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

## 15. Liability

15.1. Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence, or for fraudulent misrepresentation.

15.2. Subject to Clause 15.1:

15.2.1. Anima shall not be liable, whether in contract (including under any indemnity), in tort (including negligence), under statute or otherwise, under or in connection with this Agreement, for any loss of profit, loss of sales or business, loss of anticipated savings, loss of use, unavailability or corruption of software, loss of or damage to goodwill, pure economic loss or for any special, indirect or consequential loss howsoever arising; and

15.2.2. Anima's total aggregate liability under or in connection with this Agreement shall be limited to the total value of the Fees paid or payable to Anima by the Customer in the twelve (12) months prior to the first event that gave rise to the relevant cause of action.

15.3. The Customer shall indemnify and hold Anima harmless for any losses, damages, costs and expenses incurred by Anima in relation to any third party claim brought or threatened against Anima as a result of the Customer's use of the Software or the Services, other than in accordance with this Agreement.

## 16. Termination

16.1. Term and Termination provisions shall be as per the Call-Off Contract.

16.2. Any variation made to the Call-Off Contract will take effect under the terms of the Call-Off Contract and these Terms and Conditions.

16.3. The consequences of suspension, ending and expiry are as set out in the Call-Off Contract.

## 17. Subcontracting

Anima shall be entitled to engage subcontractors to deliver the Services on its behalf, without the Customer's prior consent and shall be responsible for the acts and omissions of any sub-contractors as if they were their own.

## 18. Assignment

The Customer shall not assign any of its rights and obligations under this Agreement without Anima's prior written consent. Anima may at any time assign any or all of its rights under this Agreement.



## 19. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

## 20. Severance

If any court or administrative body finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

## 21. Force Majeure

Except for the obligation to pay amounts due under this Agreement, neither Party will be liable for any failure or delay in the performance of its obligations under this Agreement due to any cause outside its reasonable control, including (but not limited to) acts of God, war, labour shortage or dispute, governmental act, failure of the internet, hosting provider, manufacturer or equipment failures, computer or malicious attacks, provided that the affected party notifies the other party in writing and uses its reasonable efforts to correct the failure or delay in performance.

## 22. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings, representations and agreements between them relating to its subject matter.

## 23. No Partnership or Agency

Nothing contained in this Agreement shall be deemed to constitute the relationship of principal and agent nor partnership as between Anima and the Customer.

## 24. Third-Party Rights

This Agreement is made for the benefit of the Parties and (where applicable) their successors and permitted assigns and is not enforceable by any person who is not a party to it, including Authorised Users.

## 25. Notices

Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and shall be: (i) delivered by hand or by pre-paid first-class post or other next business day delivery service at its registered office or its principal place of business; or (ii) sent by email to the address specified by each Party to the other from time to time.



## 26. Governing Law and Jurisdiction

26.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

26.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

*This Agreement has been entered into on the date stated on the relevant Call-Off Contract.*