

## ClarityEnglish Terms of Service

Last updated: 18 July 2018

### 1. Parties

In this Agreement 'ClarityEnglish' or 'our' means Clarity Language Consultants Limited and 'you' and 'your' means the person or institution who has agreed to access and pay for one or more of the ClarityEnglish online services on these terms and conditions.

### 2. Description of the Online Services and applicability of this Agreement

ClarityEnglish offers a range of online services including, but not limited to, the following components which may be accessed via [www.clarityenglish.com](http://www.clarityenglish.com), [www.ieltspractice.com](http://www.ieltspractice.com), or other websites which may be added from time to time (the Clarity websites), or which may be hosted by you:

- a. Content  
Tense Buster, Study Skills Success, Active Reading, Business Writing, Clear Pronunciation, Dynamic Placement Test, Practical Writing, Road to IELTS and other programs are pre-packaged, content-based online learning resources.
- b. Admin  
Results Manager and Admin Panel are student tracking mechanisms enabling teachers to monitor student activity.
- c. Teacher support  
ClarityEnglish provides web-based resources to help teachers use ClarityEnglish products and services more effectively.

(the 'Online Services'). These are the terms and conditions on which ClarityEnglish provides the Online Services and which apply to your use of any of the Online Services from time to time.

### 3. Email notices

Email forms an integral part of the Online Services. You agree that ClarityEnglish may notify you of updates to the Online Services and changes to these terms and conditions or provide any other information or notices pertaining to the Online Services to you or your users by email to the address(es) provided by you in the course of ordering the Online Services or in the course of creating login accounts.

### 4. Description of licences and provision of the Online Services

#### (i) Components

- a. Results Manager is licensed for a number of Teacher login accounts associated with you or your institution not exceeding 10% of the number of Learner licences or 30 whichever is the lower.
- b. The Content components of the Online Services are made available in three licence types:
  - i. Learner Tracking licence  
A ClarityEnglish Content Online Services Learner Tracking licence is for a specific number of named users. A named user is defined as a single login account in the Results Manager database. Licences are non-transferable even if the named user is deleted from Results Manager. The Learner Tracking licence is renewable on an annual basis.

## ii. Anonymous Access licence

A ClarityEnglish Content Online Services Anonymous Access licence is for a total number of concurrent users per licence period who will access the component. The Anonymous Access licence is renewable on an annual basis.

## iii. Individual licence

A ClarityEnglish Content Online Services Individual licence is for one named person who will access the component. The Individual licence is time limited and non-transferable.

## (ii) Notifications and responsibilities

a. ClarityEnglish will send you a licence confirmation email stating the components of the Online Services in respect of which you have paid the relevant licence fees and are licensed to use, and the exact nature and duration of the licence for each component (your 'Licensed Components').

b. It is your responsibility to ensure that no person other than the named user uses a named user account to access the relevant components, and in the case of Anonymous Access licences, that no person other than those authorised under this Agreement accesses the licensed components.

### c. Online Access Mode

This version of clause 4 applies where you have agreed to access the Online Services via the Clarity websites. ClarityEnglish hereby grants to you a non-exclusive non-transferable licence to access and use the Licensed Components of the Online Services via the Clarity websites on the terms of this Agreement. Subject to clauses 17 and 18 and the other terms and conditions of this Agreement, ClarityEnglish shall, throughout the relevant licence period, use reasonable endeavours to ensure the normal operation of the Licensed Components of the Online Services substantially in accordance with the feature and functionality description of the components on the Clarity websites; and to facilitate your access to the Licensed Components of the Online Services in accordance with the licence granted to you.

### d. Institutional Hosting Mode

This version of clause 4 applies where you have agreed to access the Online Services via a self-managed intranet or internet server. ClarityEnglish hereby grants to you a non-exclusive non-transferable licence to download, install and use the software and data files comprising the Licensed Components of the Online Services on the terms and conditions of this Agreement (the 'Download Files'). The licence covers a single installation of the Download Files on one server computer only. You agree not to make any copies of the Download Files with the sole exception that you may make, install and use one copy for your own backup purposes only. You may not give, distribute or in any way transfer or copy the Download Files to any third party. ClarityEnglish retains all intellectual property rights in the Download Files.

Subject to clauses 17 and 18 and the other terms of this Agreement, ClarityEnglish warrants that throughout the relevant licence period the Download Files shall, when installed in accordance with the technical requirements specified on the Clarity websites, perform substantially in accordance with the feature and functionality description of the relevant components also described on the Clarity websites.

ClarityEnglish shall throughout the relevant licence period use reasonable endeavours to provide you with remote technical support for the Licensed Components of the Online Services as follows: technical support by email.

## 5. Acceptance of terms

By clicking on the 'I Agree' (or equivalent) button in the course of the online payment mechanism or on first use of the Online Services and by your continued use of the ClarityEnglish Online Services from time to time you agree to the terms and conditions of service in this Agreement.

ClarityEnglish reserves the right, but is under no obligation, to update and modify the content or operation of the Online Services from time to time and any such changes may be posted on the ClarityEnglish website or notified to you by email at ClarityEnglish's option. By continuing to use the Licensed Components after any such modification and notification you are deemed to agree to the modifications.

## 6. Obligations on registering

By registering for any ClarityEnglish Online Service, you warrant that:

- a. you are a corporation of good standing or a natural person of legal age to enter into a binding contract,
- b. you are providing true, accurate and complete information about yourself on the registration form, and
- c. you will keep your registration information properly updated.

## 7. ClarityEnglish's privacy policy

ClarityEnglish is committed to protecting the privacy of those using its websites. A copy of our current privacy policy is available via a link on the ClarityEnglish.com home page. ClarityEnglish shall use reasonable endeavours to comply with the policy when collecting and processing your personal data.

## 8. Security of your account

Access to your ClarityEnglish teacher and student login accounts is by username and password. You are fully responsible for any activities that take place under your accounts. You agree to protect the secrecy of all your passwords and to ensure a proper log-off is performed at the end of each session.

## 9. Conduct

You agree not to use any component of the Online Services to post material that is illegal, obscene, libellous, blasphemous or in any way offensive, indecent or objectionable. You agree that ClarityEnglish has the sole right to determine whether material is offensive, indecent or objectionable. You further agree to comply with copyright and other intellectual property laws, and not to post material that violates such rights of any third party. You agree not to post materials that intentionally or unintentionally violate the laws of any country.

## 10. Non-commercial use

You agree that you will use the Online Services exclusively for educational and training purposes and that you will make no charge for use either of the teacher or student components to any user associated with you.

## 11. No assignment

Your rights to use the Licensed Components of the Online Services are personal to you. You may not sell, lease, sub-license or assign your licence to use the Online Services to any third party without written permission from ClarityEnglish. Any attempt to do so constitutes a breach of this provision and the purported sale, lease or assignment shall be void.

## 12. Intellectual property rights

- a. Copyright in all components of the Online Services, except those components which ClarityEnglish licenses from third parties, vests exclusively in ClarityEnglish. For the avoidance of doubt, nothing in this Agreement should be construed as transferring any intellectual property rights in any software and/or data or other work other than the licence to use the software and/or data as described in this Agreement from ClarityEnglish or any third party licensor to you.
- b. You agree not to copy or reverse engineer any ClarityEnglish software, not to attempt to access the source code or modify or attempt to modify any part of ClarityEnglish Online Services in any way. You further agree not to use the content, software or data forming any part of ClarityEnglish Online Services to create a derivative work, not to copy the data by taking screenshots, rewriting or in any other way, and not to attempt to run ClarityEnglish Online Services data through other applications.
- c. You may save in soft copy and print off in hard copy any legible content of any of the Licensed Components for your personal use or use within your institution up to a number of copies equivalent to the size of your licence. As an example, a 20-user licence entitles you to print a maximum of 20 copies. All other copying and printing including but not restricted to photocopying is prohibited.

## 13. Links

ClarityEnglish may provide links to third party websites. Using an external hypertext link means that you are leaving ClarityEnglish Online Services and ClarityEnglish takes no responsibility for and gives no warranties, guarantees or representations in respect of linked sites. ClarityEnglish does not guarantee the continued availability of these sites or of their content for any period of time.

## 14. Termination

- a. ClarityEnglish may terminate your use of any of the Licensed Components of the Online Services and close all login accounts created by you immediately, without notice and without compensation in the following circumstances:
  - i. should you be in material breach of this Agreement and have failed to remedy such breach within 30 days of receipt of notice in writing from ClarityEnglish specifying the breach and requiring its remedy,
  - ii. should you request that your account be closed, or
  - iii. should you have a subscription account which you have failed to renew.
- b. ClarityEnglish may at its convenience and without any need to have any reason to do so terminate your use of any of the Licensed Components of the Online Services and close all login accounts created by you by giving not less than 60 days' notice. If ClarityEnglish exercises the right to do so ClarityEnglish shall make a *pro rata* repayment to you of the

fees paid by you in respect of the Licensed Components in respect of the unelapsed portion of the relevant licence period.

## **15. Consequences of termination**

Author Plus. Where your Author Plus account is terminated for any reason other than Cl 14.a (i) above, your Author Plus data files will be made available for download for seven days after the date of termination of the account. Thereafter, Clarity's policy is to store the files for you to retrieve on request. However Clarity can accept no responsibility or liability arising in connection with Author Plus files.

## **16. Indemnity**

You and ClarityEnglish agree to indemnify and hold harmless each other against all liability, costs and expenses in respect of any claim made by a third party arising out of content posted in any component of the Online Services by any person using any login account relating to use of ClarityEnglish Online Services.

## **17. Disclaimers**

ClarityEnglish Online Services are supplied 'as is'. Except as expressly provided in this Agreement, no warranty whatever is made by ClarityEnglish that the Online Services will be uninterrupted, error-free, that they will meet your requirements, that they are of any particular quality, that they will achieve any particular result or that any errors found will be corrected. Access may be temporarily suspended, hindered or restricted at any time without notice to you.

You agree that no communications received from ClarityEnglish will create any warranty not expressly included in this Agreement.

ClarityEnglish is under no duty to update any statements or information in the Online Services and, therefore, such statements or information should not be relied upon as being current as of the date you access them. Materials available in the Online Services may include technical inaccuracies or typographical errors.

ClarityEnglish does not warrant that the Online Services are free from viruses or other unintended content or anything which may have a harmful or undesirable effect on any technology or property.

## **18. Limitation of liability**

While making every effort to keep this website up to date, ClarityEnglish does not represent or warrant that the information accessible via this website is accurate, complete or current. Price and availability information is subject to change without notice. Except as specifically stated on this website, to the fullest extent permitted by law, neither ClarityEnglish nor any of its affiliates, directors, employees or other representatives will be liable for damages arising out of or in connection with the use of this website or the information, content, materials or products included on this site. This is a comprehensive limitation of liability that applies to all damages of any kind, including (but not limited to) compensatory, direct, indirect or consequential damages, loss of data, income or profit, loss of or damage to property and claims of third parties.

Due to the nature of the electronic transmission of data over the Internet or internal networks and the number of users who may access the Online Services at any time, you agree that ClarityEnglish shall have no liability whatever and however arising for any loss or damage (even if ClarityEnglish has been advised in advance of the possibility of such loss or damage) arising from

your inability to access the Online Services or the Clarity websites at any time or from any use of the Online Services.

ClarityEnglish or you shall have no liability whatever and however arising for any loss or damage that may result from the transmission of any such material from the Clarity websites or via any files which are available for download from the Clarity websites.

To the extent permitted by law, you agree that ClarityEnglish shall have no liability whatever and however arising for:

- a. any loss of data from the Clarity websites or any locally-hosted instance of the Online Services,
- b. any loss of profit, revenue, goodwill, opportunity, business or anticipated savings, or
- c. any indirect or consequential loss or damage of any kind, in contract, tort (including, but not limited to, liability for any negligent act or omission) or otherwise (even if ClarityEnglish has been advised in advance of the possibility of such loss or damage) arising directly or indirectly from:
  - i. anything done or omitted to be done wholly or partly in reliance upon any part of the content of the Online Services,
  - ii. the use of any data or materials in the Online Services or unauthorised access to this Online Services, or
  - iii. any breach by ClarityEnglish of this Agreement or any negligence in connection with the Online Services.

ClarityEnglish is not responsible for any breach of this Agreement caused by circumstances beyond its reasonable control. ClarityEnglish's total aggregate liability to you of whatever kind and however arising in connection with:

- i. the performance, non-performance or misperformance of this Agreement, or
- ii. the Online Services, or
- iii. any innocent or negligent act, omission or statement relating to (i) or (ii)

in respect of all causes of action arising in any 12-month period shall be limited to the fees paid by you to ClarityEnglish in those 12 months.

Nothing in this Agreement excludes or limits ClarityEnglish's liability for fraud or personal injury or death in connection with this Agreement or the Online Services.

## 19. Miscellaneous

- a. You agree that ClarityEnglish is under no obligation to create updates or, where created, to make them available. Where you download updates, ClarityEnglish has no responsibility for their installation.
- b. You agree that ClarityEnglish is free to make use of any suggestion for improvement of service you make without any obligation to remunerate or compensate you.
- c. You accept that, while this is not a current policy, ClarityEnglish may choose to display advertisements on any part of the ClarityEnglish website or on any other ClarityEnglish websites.
- d. You accept that use of ClarityEnglish may involve setting session variables and using the Flash player's local memory on the computer used to access the Online Services.

## 20. General

- a. This Agreement together with the content of the ordering mechanism via which you purchased access to one or more of the Online Services and the licence confirmation email

sent to you by ClarityEnglish constitutes the whole agreement between you and ClarityEnglish in relation to its subject matter.

- b. The clause headings are inserted for convenience only and shall be ignored in construing this Agreement.
- c. Where these terms of service are translated in another language and there is any conflict between that version and the English language version, the English language version shall prevail.
- d. The failure of ClarityEnglish to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.