

End-User License Agreement (EULA) for the Physiolutions Clarity App™

Last Updated: December 2, 2022

This End-User License Agreement (“EULA”) is a legal agreement between you (either an individual or a single entity) and Physiolutions, LLC (“Physiolutions”) regarding your use of the Clarity App™, which includes the app, computer software, associated media, printed materials, and “online” or electronic documentation (collectively, the “Clarity App”).

By installing, copying, or otherwise using the Clarity App, you agree to be bounded by the terms of this EULA.

If you do not agree to the terms of this EULA, do not install or use the Clarity App.

THE CLARITY APP LICENSE

a) The Clarity App was developed and is owned by Physiolutions. It is an interactive app designed for licensed physical therapists, chiropractors, medical doctors and other licensed health professionals (collectively, “licensed professionals”) to provide on their websites an on-line instructional guide to assist individuals assess if they have any spinal conditions that may require professional treatment. The Clarity App is not intended, nor should be used to exclusively diagnose or treat any spinal or medical condition, but simply assist in the initial identification of clinical signs of potential spinal conditions such as scoliosis and hyperkyphosis.

b) General Information about the License. The Clarity App is licensed non-exclusively to approved licensed professionals for commercial and educational uses on their websites or other digital platforms. It may be distributed to you (the licensed professional) by digital download or external storage media. You are NOT allowed to make a charge for hosting the Clarity App on your website or distributing the Clarity App as a stand-alone product, or as part of a compilation or anthology. If you license the Clarity App, it may only be distributed freely on your website that you own or control, and no part of it may be changed in any way.

1. **GRANT OF LICENSE.** This EULA grants you the following rights based on your payment of the required license fees.

License Fees.

A one-time set-up fee (as indicated on the payment page) to assist with white label customization for your practice and website.

Subscriptions are offered on a monthly, quarterly, and annual basis according to the selection and date of the confirmed registration.

The first quarter is free of charge so you can assess potential benefit and use; after that, you will be automatically billed the monthly, quarterly, or annual subscription fee (as selected on the payment page)

You can cancel or modify a subscription at any time; your request will take effect your next billing cycle.

Physiolutions can rescind or restrict your use of the Clarity App at any time if you misuse or misrepresent the app (see termination provisions below).

Your credit card is kept on file; should a credit card expire or become invalid, you will have a 30-day grace period in which to update your payment, after which time, access to the application will be discontinued. You will be sent three email notifications during the 30-day grace period as reminders.

Installation and Use. To use the Clarity App, you must pay the one-time set-up fee and all quarterly or annual licensing fees, keeping them current. Failure to pay any required license fee will result in the immediate termination of your license to use the Clarity App. Subject to the terms of this EULA, you may install and use a single copy of the Clarity App on your website to be distributed non-exclusively in connection with your professional practice. You acknowledge that other licensed professionals will also be using their own licensed versions of the Clarity App on their websites.

Reproduction and Distribution. You may only distribute the Clarity App through your website used for your licensed professional practice. No other use, reproduction or distribution of the Clarity App is authorized. Other than the customized branding offered as part of this white label product, no adaptations or changes to the content of the app are permitted.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

Limitations on Reverse Engineering, Decompilation, and Disassembly. You may not reverse engineer, decompile, or disassemble the Clarity App.

Update and Maintenance. Physiolutions upgrades of the app are included in the license fee.

No Support. Physiolutions has no obligation to provide support services for your use of the Clarity App. Nevertheless, Physiolutions, at its discretion, may attempt to assist you with basic technical issues that arise with your implementation and use of the Clarity App. All technical issues should be sent to Physiolutions at the following email address:

claritysupport@physiolutions.com

If Physiolutions is unable to assist you with technical issues, your sole remedy is to return the app for a refund of any unused, pre-paid license fees. Physiolutions shall have no liability for the unavailability of the Clarity App or the inability to provide maintenance for the app.

Separation of Components. The Clarity App is licensed as a single product. Its component parts may not be separated for use on more than one server.

Transfer of App and Software. You may permanently transfer all your rights under this EULA, provided the recipient is a licensed professional, is approved in advance by Physiolutions, and agrees to the terms of this EULA. You will provide Physiolutions with written notice of all proposed and actual transfers.

Termination. Without prejudice to any other rights, Physiolutions may terminate this EULA for any reason at any time or if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the Clarity App and all of its component parts. If Physiolutions terminates this EULA for any period that you paid a license fee, Physiolutions will refund to you the unused portion of the license fee that you paid. For further information regarding termination, see Miscellaneous Legal Provisions below.

3. COPYRIGHTS, TRADEMARKS AND PATENT RIGHTS.

All title and copyrights in and to the Clarity App™ (including but not limited to any images, photographs, clipart, libraries, and examples incorporated into the Clarity App), the accompanying printed materials, and any copies of the Clarity App are owned by Physiolutions. The Clarity App is protected by copyright laws and international treaty provisions. Therefore, you must treat the Clarity App like any other copyrighted material. The protected content of the Clarity App, including text, images and videos, may only be used by you in connection with the app; all other uses, copies, or distributions are unauthorized and require an additional written license from Physiolutions.

You understand that Clarity App™, PhysiolutionsSM, Kioko®, and Be Spine SmartSM, as well as associated logos and artwork are proprietary trademarks of Physiolutions. No use of these trademarks is permitted without a written license from Physiolutions.

You will not violate or interfere with any proprietary patent rights that Physiolutions has or may have in connection with the Clarity App.

4. WARRANTIES.

Title to Software. Physiolutions represents and warrants that it has the legal right to enter into and perform its obligations under this EULA, and that your use of the Clarity App, in accordance

with the terms of this EULA, will not infringe upon the intellectual property rights of any third parties.

Disclaimer. Except for the foregoing paragraph: Physiolutions expressly disclaims any warranty for the Clarity App; the Clarity App and any related documentation is provided “as is” without warranty of any kind, either express or implied, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose, and noninfringement; and the entire risk arising out of use or performance of the Clarity App, including your use of the app with other persons or possible patients, remains with you. You assume all risk of personal injuries or malpractice resulting from your use of the Clarity App.

Your Warranties. You warrant and represent the following:

- (i) that you are a licensed professional in good standing in your jurisdiction. Upon request, you will submit to Physiolutions proof of your license to practice your profession.
- (ii) you have a current malpractice insurance policy for no less than one million (\$1,000,000) dollars per claim. Upon request, you will submit to Physiolutions proof of your insurance and/or a certificate of insurance naming Physiolutions as an additional insured.
- (iii) your website that will host the Clarity App has a legally compliant Privacy Policy and Terms of Use that are applicable to your hosting of the Clarity App including your collecting any contact information or other personal data through the Clarity App.

5. NO LIABILITY FOR DAMAGES.

In no event shall Physiolutions be liable for any special, consequential, incidental or indirect damages whatsoever (including, without limitation, damages for personal injuries, malpractice, loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this product, even if Physiolutions is aware of the possibility of such damages and known defects.

6. ARBITRATION.

Except as stated below, any controversy or claim arising out of or relating to this EULA, or the breach hereof, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) before a single arbitrator in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration will take place in Miami at the office of the AAA or in

Fort Lauderdale, as decided by Physiolutions. The parties may appear by video conference (e.g., Zoom) if permitted by the AAA rules. The arbitrator is not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recover any such damages. Notwithstanding the foregoing, (i) claims for injunctive relief must be brought in the courts of Fort Lauderdale, Florida, and (ii) Physiolutions' claims for payments due may at its election be brought against you in either arbitration or small claims court. Judgment on the award may be enforced in any court of competent jurisdiction.

7. PRIVACY POLICY.

You consent to Physiolutions Privacy Policy and all its terms, which are incorporated by reference into this EULA. The Physiolutions Privacy Policy may be viewed [here](#).

8. MISCELLANEOUS LEGAL PROVISIONS.

a. Modifications to these Terms and Other Policies/Guidelines. Physiolutions reserves the right to modify these Terms and/or any other guidelines or policies affecting the Clarity App at any time, and may do so from time to time. Such revisions will become effective upon the earlier of: (i) posting of the revisions to the Clarity App section of the Physiolutions website, or (ii) distribution of the revisions by any written contact method Physiolutions has with you, including by email. For this reason, please visit the Clarity App section of the Physiolutions website on a regular basis and check the "Last Updated" date at the top of this EULA to ensure you are familiar with the most recent version of these terms. Your use of the Clarity App after the effective date of the revisions signifies your acceptance of any such revisions. If you do not agree, you must stop using the Clarity App immediately.

b. Modifications to The Clarity App features, design, user interface, etc. Physiolutions may, either partially or in its entirety and without being obligated to provide prior notice, modify, adapt or change the Clarity App and/or any of its services, features, the user interface and design, the extent and availability of the content in or on the app and any other aspect related to the app. You will have no claim, complaint or demand against Physiolutions for applying such changes or for failures incidental to such changes.

c. Statute of Limitations. You and Physiolutions agree that, regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Clarity App (including Physiolutions' content, services, or terms) must be filed within one (1) year after such claim or cause of action arose or be forever barred.

d. Assignment. You agree that Physiolutions may assign any of its rights, and/or transfer, sub-contract or delegate any of its obligations under this EULA, and the assignment of

any such rights, benefits or obligations will be binding upon and inure to the benefit of its successors and assigns. Your agreement to this EULA is only applicable to you, and you may not transfer or assign your rights and obligations under this agreement to any third party without Physiolutions' prior written consent.

e. No Third-Party Beneficiaries. Except as otherwise expressly provided in this EULA, there shall be no third-party beneficiaries to this agreement.

f. Termination. Physiolutions may terminate this EULA and its terms for any or no reason at any time by notifying you through a notice on the Physiolutions website, by email, or by any other method of communication. Any such termination will be without prejudice to Physiolutions' rights, remedies, claims, or defenses hereunder. Upon termination, you must immediately remove and destroy your copy of the Clarity App. Physiolutions will not have any obligation to assist you in terminating this license or making any changes to your website.

g. Export Control. You represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

h. Jurisdiction. If any court of competent jurisdiction finds the arbitration requirement in this EULA invalid or inapplicable, you irrevocably submit to the exclusive jurisdiction of, and venue in, the state and federal courts in Fort Lauderdale, Florida in any related action or proceeding and agree to not raise any claims as to Fort Lauderdale, Florida being an inconvenient forum.

i. Governing Laws. You agree the laws of the United States of America and the laws of the State of Florida, without regard to any principles of conflicts of laws, will govern this EULA, your Use of the Clarity App, and all matters relating to your access to and use of the Clarity App, including all disputes between you and us. You also agree that: (i) the Clarity App shall be deemed solely based in Florida; and (ii) the Clarity App shall be a passive app that does not give rise to personal jurisdiction over us, either specific or general, in any jurisdiction other than Florida.

j. Waiver. Any failure on Physiolutions' part to enforce any rights or provisions of this EULA shall not be deemed a waiver or relinquishment of such rights or provisions. Any waiver of any right or provision of this EULA must be in writing.

k. Severability. If any part of this EULA is determined to be invalid or unenforceable under applicable law, including the warranty disclaimers and liability limitations stated elsewhere herein, then the invalid or unenforceable provision(s) will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remainder of this EULA shall continue in full effect.

l. Entire Agreement. This EULA shall be deemed to include all other notices, policies, disclaimers and other terms and conditions contained in the Clarity App, including the Physiolutions Privacy Policy; provided, however, this EULA shall prevail in the event of a conflict with any such other documents. Any rights not expressly granted in this EULA are reserved to Physiolutions. This EULA and the Physiolutions Privacy Policy together constitute the entire agreement between you and Physiolutions and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and Physiolutions, with respect to your Use of the Clarity App, Physiolutions' services and its content.

m. Drafter. No party, nor any of the parties' attorneys, shall be deemed the drafter of this EULA for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between the parties.

n. No Partnership/Relationship/Joint Venture. This EULA and your use of the Clarity App do not, and shall not be construed as creating any relationship, partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship in any way and/or of any kind between the parties hereto. Your use of the Clarity App is intended for your physical therapy practice and business development, and the provision of the app to you (subject to your compliance with this EULA and the Physiolutions Privacy Policy) constitutes the sole and sufficient consideration that you are entitled to receive for any Submissions or other contributions you have made to Physiolutions and its products and Services.

o. Questions. If you have any questions about this EULA or the Clarity App, please contact claritysupport@physiolutions.com.