

TERMS AND CONDITIONS

1. DEFINITIONS

In this document the following words shall have the following meanings:

Agreement	means the Conditions, an Order Acknowledgement and the relative Purchase Order for Software, Services and Products and if there shall be any inconsistency between the documents comprising an Agreement, they shall have precedence in the order herein listed;
You	means the organisation or person with whom an Agreement is made by us, whether directly or indirectly through an agent or factor who is acting for or instructed by or whose actions are ratified by such organisation or person;
Conditions	means these terms and conditions;
Software, Services and Products	means the articles or things described in the Agreement
Intellectual Property Rights	means patents, registered designs, trade marks and service marks (whether registered or not), domain names, copyright, database rights, moral rights, design rights and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, computer programs, confidential information, business names, goodwill and in applications for protection of the above rights;
Order Acknowledgement	is our acknowledgement of a Purchase Order for Software, Services and Products confirming acceptance of that Purchase Order;
Parties	means You and us
Purchase Order	shall mean an order for the purchase of Software, Services and Products submitted to us by You
We	means Captive Health Limited

2. GENERAL

- 2.1. The Conditions shall apply to all contracts for the release of Software, Services and Products by us to You to the exclusion of all other terms and conditions referred to, offered or relied on by You, whether in the negotiation or at any stage in the dealings between the Parties, including any standard or printed terms tendered by You, unless You specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been agreed by us in writing.
- 2.2. Any variation to the Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by and signed by a director on behalf of us.

3. ORDERS

- 3.1. Unless verbal or telephone Purchase Orders and any variations to Purchase Orders are confirmed in writing by You. We shall not be responsible for errors or subsequent misunderstandings.
- 3.2. Notwithstanding that We may have given a detailed quotation no Purchase Order shall be binding on Us unless and until it has been accepted in writing by Us by means of an Order Acknowledgement.

4. PRICE AND PAYMENT

- 4.1. All prices and fees estimated, quoted or invoiced are in Sterling (UK Pounds)
- 4.2. The fee for the Software, Services and Products will be the fee stated in the Order Acknowledgement, being, unless otherwise stated by Us, the list price of the Company current at the date of the Order Acknowledgement. Our fees are subject to adjustment to take account of any variation in our costs including (but not limited to) variations in wages, the cost of materials,

exchange rate fluctuations, alterations of duties and other costs since the date of our quotation or (if no quotation is issued) the Purchase Order. We accordingly reserve the right to adjust the invoice price by the amount of any increase or decrease in such costs after the fee is quoted or the Purchase Order is submitted (as applicable). The invoice so adjusted shall be payable as if the fee set out therein were the original Agreement price.

- 4.3. The fee is exclusive of VAT, which will be charged at the appropriate rate. The fee is also exclusive of transport, packaging, insurance and any other applicable duties or taxes, unless otherwise explicitly agreed.
- 4.4. All invoices shall unless otherwise agreed in writing by You within 30 days of the date of our invoice without deduction or withholding and free of set off or counterclaim. Time for payment shall be of the essence of an Agreement. We shall be entitled to render an invoice for the Software, Services and Products sold under an Agreement as soon as We have provided an Order Acknowledgement.
- 4.5. We shall be entitled to charge interest on overdue invoices from the date when payment becomes due until the date of payment at the rate of 5.00% per annum above the base rate of Bank of England.
- 4.6. If the payment of the fee or any part thereof is not made by the due date, We shall be entitled to:
 - 4.6.1. require payment in advance of delivery in relation to any Software, Services and Products not previously delivered;
 - 4.6.2. refuse to make delivery of any undelivered Software, Services and Products whether ordered under the Agreement or not and without incurring any liability whatever to You for non-delivery or any delay in delivery;
 - 4.6.3. terminate the Agreement.

5. SPECIFICATION OF SOFTWARE, SERVICES AND PRODUCTS

- 5.1. No description, specification or illustration contained in any product pamphlet or other releases or marketing literature of Ours and no representation written or oral, correspondence or statement shall form part of any Agreement.
- 5.2. Software, Services and Products described in our literature or elsewhere are subject to a continuing process of technical change and development and We therefore reserve the right to alter specifications without notice at any time before delivery. All descriptions, illustrations, specifications and dimensions are approximate and are only intended to present a general guideline as to the type of Software, Services and Products represented thereby. It is therefore agreed by You that Software, Services and Products supplied may not comply in all respects with the description in our literature or elsewhere.

6. DELIVERY

- 6.1. The date of delivery specified by Us is an estimate only given in good faith.
- 6.2. We undertake to use reasonable endeavours to deliver the Software, Services and Products on the agreed date, but does not guarantee to do so. Time of delivery shall not be the essence of the Agreement, unless expressly agreed in writing by Us. Software, Services and Products may be supported by third parties over whom We has no control and therefore We shall not be liable for any loss, damage or expense suffered by You or any other party by reason of any alleged delay in delivery.
- 6.3. Software, Services and Products shall be deemed to be delivered when You has been given access codes to our agreed representative, by means of any transmission, or they are otherwise in Your possession.
- 6.4. When delivery is refused by You or is delayed, We shall be reimbursed for costs relating to the delay or refusal.
- 6.5. No liability for non-delivery loss of or damage to the Software, Services and Products occurring prior to delivery or for any claim that the Software, Services and Products are not in accordance with the Agreement will attach to Us unless claims to that effect are notified in writing by You to Us: (a) within 7 days of delivery for loss damage or non-compliance with the Agreement or (b) for non-

delivery within 10 days of the delivery date specified by Us. If You fails to give such notice the Software, Services and Products shall be deemed to be in all respects in accordance with the Agreement and, without prejudice to earlier acceptance by You, You shall be bound to accept and pay for the same accordingly.

- 6.6. In the event of a valid claim for non-delivery loss damage or non-compliance with the Agreement We undertake at our option either to repair or replace the Software, Services and Products at its expense but shall not be under any further or other liability to any person in connection with such non-delivery loss damage or non-compliance.

7. INTELLECTUAL PROPERTY

- 7.1. Property in the Software, Services and Products shall not pass from Us to You.
- 7.2. You have no right to use the Software, Services and Products until such a time as the fee for all the Software, Services and Products under the Agreement has been paid from You to Us.
- 7.3. Until such time as property in the Software, Services and Products passes from We to You, You shall, upon request, deliver up such Software, Services and Products as have not ceased to be in existence or resold, to We. If You fails to do so, We may enter upon any premises owned or occupied or controlled by You where the Software, Services and Products are situated and repossess the Software, Services and Products.

8. LICENSEE'S OBLIGATIONS

- 8.1. You shall provide Us with any information reasonably required by Us as well as obtain all necessary permissions and consents including (without prejudice to the generality of the foregoing) promptly obtaining all necessary import licences, clearances and other consents necessary for the purchase of the Software, Services and Products.
- 8.2. Without prejudice to any other rights to which We may be entitled, in the event that You unlawfully terminates or cancels the Agreement, You shall be required to pay to Us, as agreed damages and not as a penalty, the full amount of any third party costs to which We have committed and in respect of cancellations on less than 56 days' written notice the full fee for the Software, Services and Products as set out in the Agreement, and You agrees this is a genuine pre-estimate of our losses in such a case.

9. ALTERATIONS TO THE AGREEMENT

- 9.1. The Parties may, at any time, mutually agree upon variations to the Agreement. Any alterations in the scope of Software, Services and Products to be provided under the Agreement shall be set out in a revised Order Acknowledgement, which shall reflect the changed Software, Services and Products and price and all other terms agreed between the Parties.
- 9.2. You may at any time within 30 days of the Order Acknowledgement request in writing alterations to the Agreement. On receipt of the request for alterations, We shall, within 10 days, or such other period as may be agreed between the Parties, advise You by notice in writing whether it is prepared to alter the Agreement in accordance with Your request and, if it is, the basis upon which it is prepared to do so having regard to the changes which We would require to the fee and any other terms previously agreed between the Parties ("an alteration notice").
- 9.3. You shall, within 10 days of receipt of an alteration notice, or such other period as may be agreed between the Parties, advise Us by notice in writing whether or not it wishes the Agreement to be altered on the basis set out in the alteration notice. If such a notice is given by You, the terms of the altered Agreement shall be set out in a revised Order Acknowledgement.

10. WARRANTY

- 10.1. The Agreement shall not constitute a release by description or sample
- 10.2. We warrant that We have the right to sell the Software, Services and Products, but otherwise the Software, Services and Products are provided on an "as-is" basis without warranty of any kind, express or implied, oral or written including, without limitation, any implied term as to quality, fitness for purpose or description, all of which are specifically and unreservedly excluded. In particular, but without limitation, no warranty is given that the Software, Services and Products are suitable for any specific purpose intended by You.
- 10.3. Where the Software, Services and Products have been manufactured by Us and are found under proper use (fair wear and tear excepted) to be defective, We shall repair, or in its sole discretion,

replace such defective Software, Services and Products free of charge within 90 days from the date of delivery, subject to the following conditions:

- 10.3.1. You notifying Us in writing immediately upon the defect becoming apparent;
- 10.3.2. the defect being solely due to faulty design, materials or workmanship.
- 10.4. Any Software, Services and Products to be so repaired or replaced shall be returned to Us at Your expense.
- 10.5. Where the Software, Services and Products have been manufactured and supplied to Us by a third party, any warranty granted to Us shall be passed on to You to the extent that We are able and subject to the Software, Services and Products having been accepted and paid for by You.
- 10.6. We shall be entitled in its absolute discretion to refund the fee for defective Software, Services and Products in the event that such fee has already been paid.

11. INDEMNITY

- 11.1. You shall indemnify Us against all claims, costs and expenses which We may incur and which arise, directly or indirectly, from Your breach of any of its obligations under the Agreement.

12. LIMITATION OF LIABILITY

- 12.1. The following provisions set out the entire financial liability of Us (including any liability for the acts or omissions of its employees, agents and sub-contractors) to You in respect of:
 - 12.1.1. any breach of the Agreement;
 - 12.1.2. any use made or rerelease by You of any of the Software, Services and Products, or of any product incorporating any of the Software, Services and Products; and
 - 12.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement
- 12.2. No liability of any nature shall be incurred or accepted by Us in respect of any representation made by Us, or on its behalf, to You, or to any party acting on its behalf, prior to the making of the Agreement, where such representations were made or given in relation to:
 - 12.2.1. the correspondence of the Software, Services and Products with any description;
 - 12.2.2. the quality of the Software, Services and Products; or
 - 12.2.3. the fitness of the Software, Services and Products for any purpose whatsoever.
- 12.3. No liability of any nature shall be accepted by Us to You in respect of any express term of the Agreement where such term relates in any way to:
 - 12.3.1. the correspondence of the Software, Services and Products with any description;
 - 12.3.2. the quality of the Software, Services and Products; or
 - 12.3.3. the fitness of the Software, Services and Products for any purpose whatsoever.
- 12.4. Save as expressly provided in the Agreement, all conditions, warranties and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Agreement.
- 12.5. Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the Agreement price.
- 12.6. In no event shall We be liable to You for any loss of business, loss of opportunity, loss of profits, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of contract, loss of use, loss or corruption of data or information or for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses whatsoever (howsoever caused) which arise out of or in connection with the Agreement. This shall apply even where such a loss was reasonably foreseeable or We had been made aware of the possibility of You incurring such a loss.
- 12.7. Nothing in the Agreement shall exclude or limit our liability for death or personal injury resulting from our negligence or that of its employees, agents or sub-contractors.

13.TERMINATION

- 13.1. We may, by written notice, terminate the Agreement immediately if You is in breach of any of the terms of the Agreement, which, if capable of remedy, is not remedied within 10 days of a notice served by Us requiring such breach to be remedied. Failure to pay any sums due is a breach of the terms of the Agreement which is not capable of remedy.
- 13.2. The Agreement shall be terminated if an order is made for bankruptcy of You or an effective resolution is passed for the winding-up of You or You makes a composition with creditors or if a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over the whole or any part of the assets of You.
- 13.3. The Agreement shall be terminated if either party ceases to carry on its business or substantially the whole of its business or where either party is declared insolvent.
- 13.4. Termination of the Agreement shall not affect any rights or obligations of the Parties arising prior to such termination.

14.INTELLECTUAL PROPERTY RIGHTS

- 14.1. The specification and design of the Software, Services and Products and all Intellectual Property Rights therein shall as between the Parties be the property of Us. Where any designs or specifications have been supplied by You for manufacture by Us or to the order of You then You warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Software, Services and Products shall not infringe the rights of any third party and You shall indemnify Us against all claims, costs, damages and expenses which We may incur and which arise, directly or indirectly, from Your breach of such warranty.

15.FORCE MAJEURE

- 15.1. We shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and We shall be entitled in these circumstances to delay or cancel delivery or to reduce the amount delivered.

16.ASSIGNMENT

- 16.1. You shall not be entitled to assign an Agreement or any part of it without the prior written consent of Us.
- 16.2. We may assign an Agreement or any part of it to any person, firm or company.

17.WAIVER

- 17.1. The failure by either party to enforce, at any time or for any period, any one or more of the terms and conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Agreement.

18.SEVERABILITY

- 18.1. If any term or provision of the Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

19.RIGHTS OF THIRD PARTIES

- 19.1. The Parties do not intend any part of the Agreement to be enforceable by any person not a party to it, by virtue of the Contracts (Rights of Third Parties) Act 1999.

20.GOVERNING LAW

- 20.1. The Agreement shall be governed by and construed in accordance with the law of England and Wales and the Courts of England and Wales shall have non-exclusive jurisdiction to hear all disputes arising in connection with the Agreement.