

INCAPLEX LIMITED

By accepting this agreement, either by clicking a box indicating your acceptance or by executing an order form that references this agreement, you (the Customer) agree to the terms of this agreement. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions, in which case the terms "Customer", "you" or "your" shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use the services.

If you register for a trial of Inca Clinic and related service, this agreement will also govern that trial.

AGREEMENT WITH:

Incaplex Limited
(registered in Ireland
under Company Number 482825
whose principal place of business is at
NovaUCD, Belfield Innovation Park
University College Dublin
Belfield, Dublin 4, Ireland
(hereinafter called "Incaplex")

RECITALS:

- A. Incaplex has developed certain software applications and platforms including its software called INCA CLINIC which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of recording and processing travel medical data.
- B. The Customer wishes to use Incaplex's service in its business operations.
- C. Incaplex has agreed to provide and the Customer has agreed to take and pay for the Incaplex's service subject to the terms and conditions of this Agreement.

1. Interpretation

- 1.1 The definitions and rules of interpretation in this Clause and in Clause 16.10 apply in this Agreement.

"Incaplex Data", the information and data used in or in conjunction with the Services that is proprietary of, or licensed by third parties to, Incaplex, **and which may include but is not limited to, lists of countries or regions, the risks associated with countries and activities, lists of medications, vaccines, products and associated properties, memoranda or schedules for vaccinations/vaccines;**

"Agreement", this Agreement and its schedules;

“Authorised Users”, those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in Clause 2.2.4;

“Business Day”, any day which is not a Saturday, Sunday or public holiday in the jurisdiction of the parties;

“Change of Control”, the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions;

“Confidential Information”, information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information;

“Customer Data”, the data inputted by the Customer, Authorised Users, or Incaplex on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services which includes the subset of data called “Patient Data”;

“Documentation”, the document made available to the Customer by Incaplex online via www.incaclinic.com or such other web address notified by Incaplex to the Customer from time to time which sets out a description of the Services and the user instructions for the Service;

“Effective Date”, the date of this Agreement;

Initial Subscription Term, the initial term of this Agreement as set out in Schedule 1;

“Normal Business Hours”, 8.00 am to 6.00 pm local Irish time, each Business Day;

“Patient Data”, data (including personal data) of or relating to a patient of the Customer which is disclosed or input directly into the Services by the patient of the Customer or by the Customer, and recorded on the Services;

“Renewal Date”, the periodical times/dates on which the Subscription Fees become due and payable for commencement of a Renewal Period as more particularly described in Schedule 1;

“Renewal Period”, the period described in Clause 14.1;

“Services”, the subscription services provided by Incaplex to the Customer under this Agreement via www.incaclinic.com or any other website notified to the Customer by Incaplex from time to time, as more particularly described in the Documentation including the Incaplex Data;

“**Software**”, the then current release and version (unless otherwise agreed between the parties) of the online software applications provided by Incaplex as part of the Services;

“**Subscription Fees**”, the subscription fees payable by the Customer to Incaplex for the User Subscriptions, as set out in Clause 1 of Schedule 1;

“**Subscription Term**”, has the meaning given in Clause 14.1;

“**Support Services Policy**”, Incaplex's policy for providing support in relation to the Services as made available at www.incaclinic.com or such other website address as may be notified to the Customer from time to time;

“**User Subscriptions**”, the user subscriptions purchased by the Customer pursuant to Clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement;

“**Virus**”, any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2. User subscriptions

2.1 Subject to the Customer purchasing the User Subscriptions in accordance with Clause 3.3 and Clause 9.1, the restrictions set out in this Clause 2 and the other terms and conditions of this Agreement, Incaplex hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations or as otherwise agreed by the parties from time to time in writing.

2.2 In relation to the Authorised Users, the Customer undertakes that:

2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

2.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User for example where a prior Authorised User has

terminated his/her employment with the Customer or otherwise changed job or function and no longer requires use of the Services, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

2.2.3 each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than MONTHLY and that each Authorised User shall keep his password confidential;

2.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Incaplex within 5 Business Days of Incaplex's written request at any time or times;

2.2.5 it shall permit Incaplex to audit (including on site and/or remotely through Incaplex's capture of IP and/or MAC addresses and other login/logout activity data to which it has access) the Services in order to establish the name and password of each Authorised User and verify use of the Services. Such audit may be conducted no more than once per quarter, at Incaplex's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

2.2.6 if any of the audits referred to in Clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Incaplex's other rights, the Customer shall promptly disable such passwords and Incaplex shall not issue any new passwords to any such individual; and

2.2.7 if any of the audits referred to in Clause 2.2.5 reveal that the Customer has underpaid Subscription Fees to Incaplex, the Customer shall pay to Incaplex an amount equal to such underpayment as calculated in accordance with the relevant prices set out in Schedule 1 within 10 Business Days of the date of the relevant audit.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.3.2 facilitates illegal activity;

2.3.3 depicts sexually explicit images;

2.3.4 promotes unlawful violence;

2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or

2.3.6 causes damage or injury to any person or property;

and Incaplex reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this Clause.

2.4 The Customer shall not:

2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(a) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means including any part of Incaplex Data, the data models or screens, and any data (including but not limited to care pathways, vaccine data, medication data, countries data, risk data, memos) that has been entered by Incaplex or one of its agents; or

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

2.4.3 except as provided for in this Agreement, use the Services and/or Documentation to provide services to third parties; or

2.4.4 subject to Clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 2; and

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Incaplex.

2.6 The rights provided under this Clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional user subscriptions

3.1 Subject to Clause 3.2 and Clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in Clause 1 of Schedule 1 and Incaplex shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Incaplex in writing. Incaplex shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or disapproval of the request (such approval not to be unreasonably withheld).

3.3 If Incaplex approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Incaplex's invoice, pay to Incaplex the relevant fees for such additional User Subscriptions as set out in Clause 2 of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

3.4 Except with the prior written consent of Incaplex, User Subscriptions (including additional User Subscriptions) ordered, cannot be decreased by the Customer prior to the end of the term for such subscriptions regardless of termination by the Customer, non-payment, non-use or other conduct or inaction by the Customer.

4. Services

4.1 Incaplex shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 Incaplex shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

4.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am Irish time or such times as Incaplex's providers require, of which Incaplex will endeavour to provide advance notice;

4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Incaplex has used reasonable endeavours to give the Customer at least 4 Normal Business Hours' notice in advance; and

4.2.3 unavailability due to matters detailed in Clause 15 Force Majeure.

4.3 Incaplex will, as part of the Services and at no additional cost to the Customer, provide the Customer with Incaplex's standard customer support services during Normal Business Hours in accordance with Incaplex's Support Services Policy in effect at the time that the Services are provided. Incaplex may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Incaplex's then current rates.

4.4 In the event that any of our service providers cease to make available or support functionality that Incaplex uses in the Services, Incaplex may cease providing such functionality without entitling the Customer to any refund, credit or other compensation.

5. Customer Data and Patient Data

5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data, other than the Patient Data which is the data of the patient of the Customer, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data used in conjunction with and/or entered into the Services. Incaplex shall make the Incaplex Data and the Customer Data available 'as is' and shall not be liable for any reliance placed by the Customer or any third party on the Software, Incaplex Data or Customer Data, whether for medical decisions or otherwise.

5.2 The Customer acknowledges and agrees that Patient Data is data of the patient. If a patient informs Incaplex in writing (including by email) of his/her wish to block access by the Customer to his or her data, Customer acknowledges that Incaplex will restrict the Customer's access accordingly to that patient's Patient Data to the extent that such is contained in the Services. Any disputes over such access shall be resolved between the patient and Customer.

5.3 The Customer shall and does hereby:

5.3.1 permit Incaplex to (a) anonymise the Customer Data, (b) monitor, analyse and use such anonymised data for purposes such as providing market data to the pharmaceutical industry (c) analyse use of the Services, (d) analyse how Incaplex might improve the Services, (e) use data from and analyses of the Services to improve the efficiency of the vaccine market and analyse the interactions of the various entities in the vaccine market;

- 5.3.2 authorise Incaplex to make the Patient Data available to other customers of Incaplex and to the actual patients of the Customer about whom the Patient Data relates, in accordance with the consent (including that referred to in Clause 5.3.3 below) of the patient;
 - 5.3.3 agree to procure and confirms that it shall procure the consent of its patients to the processing by Incaplex of the Patient Data as provided for in Schedule 2 in advance of processing such data in the Services;
 - 5.3.4 agree and confirms that all relevant third parties' whose data are contained in the Customer Data agree, that Incaplex may store the Customer Data in jurisdictions outside the European Economic Area;
 - 5.3.5 agree that Incaplex may access and disclose Customer Data as required by applicable law, as permitted by the Customer and as is required to provide the Services;
 - 5.3.6 agree to comply with the terms of Incaplex's third party providers as is required to use the Services.
- 5.4 Incaplex engages the services of third party providers who also provide back-up services for data stored in or entered (including Customer Data) into the Services. The details and scope of such back-up services can be obtained from Incaplex by accessing www.incaclinic.com/privacy. Subject to agreement in writing, Incaplex may permit Customers to back up their Customer Data to their own back up facilities. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Incaplex to use reasonable commercial endeavours to have its service providers restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained in accordance with the archiving procedure described in the relevant back up policies. Incaplex shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Incaplex to perform services related to Customer Data maintenance and back-up in which case Incaplex's liability shall be limited to the sums it recovers from such third parties sub-contracted by Incaplex).
- 5.5 Incaplex shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at www.incaclinic.com or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Incaplex in its sole discretion.

- 5.6 If Incaplex processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and Incaplex shall be a data processor and in any such case:
- 5.6.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Incaplex's other obligations under this Agreement;
 - 5.6.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Incaplex so that Incaplex may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
 - 5.6.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - 5.6.4 Incaplex shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and
 - 5.6.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. Third party providers

The Customer acknowledges that the Services may enable or assist it to access third party software and/or application programming interfaces and the website content of, correspond with, and purchase products and services from, third parties via third-party websites, software and application programming interfaces, and that it does so solely at its own risk. Incaplex makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website or application programming interfaces, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website or application programming interfaces is between the Customer and the relevant third party, and not Incaplex. Incaplex recommends that the Customer refers to the third party's website or application programming interface terms and conditions and privacy policy prior to using the relevant third-party website or application programming interface. Incaplex does not endorse or approve any third-party website or application programming interface nor the content of any of the third-party website made available via the Services.

7. Incaplex's obligations

7.1 Incaplex undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

7.2 The undertaking at Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Incaplex's instructions, or modification or alteration of the Services by any party other than Incaplex or Incaplex's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Incaplex will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 7.1. Notwithstanding the foregoing, Incaplex:

7.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

7.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 This Agreement shall not prevent Incaplex 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.

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

8. Customer's obligations

The Customer shall:

8.1.1 provide Incaplex with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by Incaplex;

in order to render the Services including but not limited to making Patient Data available to and accessible by patients via other clinics and other Incaplex services as may be available from time to time and in relation to security and configuration services.;

- 8.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 8.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Incaplex may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 8.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- 8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Incaplex, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- 8.1.6 ensure that its network and systems comply with the relevant specifications provided by Incaplex from time to time; and
- 8.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Incaplex's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. Charges and Payment

- 9.1 The Customer shall pay the Subscription Fees to Incaplex for the User Subscriptions in accordance with this Clause 9 and Schedule 1.
- 9.2 The Customer shall on the Effective Date provide to Incaplex valid, up-to-date and complete credit card details or approved purchase order information acceptable to Incaplex and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
 - 9.2.1 its credit card details to Incaplex, the Customer hereby authorises Incaplex to bill such credit card:

- (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (b) subject to Clause 14.1, on each Renewal Date for the Subscription Fees payable in respect of the next Renewal Period;
 - 9.2.2 its approved purchase order information to Incaplex, Incaplex shall invoice the Customer:
 - (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (b) subject to Clause 14.1, at least 15 days prior to each Renewal Date for the Subscription Fees payable in respect of the next Renewal Period,
- and the Customer shall pay each invoice within 15 days after the date of such invoice.
- 9.3 If Incaplex has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Incaplex:
- 9.3.1 Incaplex may, without liability to the Customer, disable the Customer's passwords, accounts and access to all or part of the Services and Incaplex shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 9.3.2 interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of Allied Irish Banks plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4 All amounts and fees stated or referred to in this Agreement:
- 9.4.1 shall be payable in euro unless otherwise agreed in writing;
 - 9.4.2 are, subject to Clause 13.4.2, non-cancellable and non-refundable;
 - 9.4.3 are exclusive of value added tax, which shall be added to Incaplex's invoice(s) at the appropriate rate.
- 9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space data transmission capacity or other limits as are specified in Schedule 1, Incaplex shall charge the Customer, and the Customer shall pay, Incaplex's then current excess data storage, capacity or applicable fees. Incaplex's excess data storage fees and data transmission fees current as at the Effective Date are set out in Schedule 1.

9.6 Incaplex shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to Clause 3.3 and/or the excess storage or data transmission fees payable pursuant to Clause 9.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

10. Proprietary rights

10.1 The Customer acknowledges and agrees that Incaplex and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

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

10.3 The Customer shall ensure that all titles, logos, trade marks, copyright and other notices applied by Incaplex to the Services or any materials provided or produced by Incaplex or the Services in connection with this Agreement shall be reproduced and not deleted or removed.

10.4 The Customer acknowledges that Incaplex may apply and use advertising in the Services which will be accessible by and to the Customer and Authorised Users.

10.5 The Customer agrees that Incaplex shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any Incaplex products or services any suggestions, enhancement requests, recommendations or other feedback provided by the Customer or its users relating to the operation of the Services or other products of Incaplex.

11. Confidentiality

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

11.1.2 was in the other party's lawful possession before the disclosure;

- 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Incaplex's Confidential Information.
- 11.6 Incaplex acknowledges that the Customer Data (other than Patient Data) is the Confidential Information of the Customer.
- 11.7 This Clause 11 shall survive termination of this Agreement, however arising.

12. Indemnity

- 12.1 The Customer shall defend, indemnify and hold harmless Incaplex against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- 12.1.1 the Customer is given prompt notice of any such claim;
 - 12.1.2 Incaplex provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 12.1.3 the Customer is given sole authority to defend or settle the claim.

- 12.2 Incaplex shall, subject to Clause 12.5, defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any Irish patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 12.2.1 Incaplex is given prompt notice of any such claim;
 - 12.2.2 the Customer provides reasonable co-operation to Incaplex in the defence and settlement of such claim, at Incaplex's expense; and
 - 12.2.3 Incaplex is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, Incaplex may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall Incaplex, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.4.1 a modification of the Services or Documentation by anyone other than Incaplex; or
 - 12.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Incaplex; or
 - 12.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Incaplex or any appropriate authority.
- 12.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Incaplex's (including Incaplex's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

- 13.1 This Clause 13 sets out the entire financial liability of Incaplex (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 13.1.1 any breach of this Agreement;
 - 13.1.2 any use made by the Customer of the Services and Documentation or any part of them; and

- 13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2 Except as expressly and specifically provided in this Agreement:
 - 13.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Incaplex shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Incaplex by the Customer in connection with the Services, or any actions taken by Incaplex at the Customer's direction;
 - 13.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement;
 - 13.2.3 the Incaplex Data Services and the Documentation are provided to the Customer on an "as is" basis; and
 - 13.2.4 the Customer acknowledges that Incaplex shall have no liability for the Incaplex Data, or content on or in the Services, and the Customer shall defend, indemnify and hold harmless Incaplex against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation, court costs and reasonable legal fees) arising from any claims by patients or other third parties due in whole or in part to the reliance by the Customer on the Incaplex Data, Services, Documentation or their content.
- 13.3 Nothing in this Agreement excludes the liability of Incaplex for fraud or fraudulent misrepresentation.
- 13.4 Subject to Clause 13.2 and Clause 13.3:
 - 13.4.1 Incaplex shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - 13.4.2 Incaplex's total aggregate 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 this Agreement shall be

limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14. Term and termination

14.1 This Agreement shall, unless otherwise terminated as provided in this Clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods as specified in Schedule 1 (each a "Renewal Period"), unless:

14.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

14.1.2 otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

14.2.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

14.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

14.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in Clause 14 of Schedule B1 to the Insolvency Act 1986); or

14.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

- 14.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - 14.2.6 the other party ceases, or threatens to cease, to trade; or
 - 14.2.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 14.3 Incaplex (but not the Customer) may terminate this Agreement on notice to the Customer, if there is a Change of Control of the Customer.
- 14.4 On termination of this Agreement for any reason:
- 14.4.1 all licences granted under this Agreement shall immediately terminate;
 - 14.4.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - 14.4.3 Incaplex shall in accordance with the patient's consent, retain and host the Patient Data on the Services notwithstanding termination, unless and until the patient notifies Incaplex of his/her wish for such to be deleted, and the Customer agrees that Incaplex shall retain and use the anonymised data for its own purposes;
 - 14.4.4 Incaplex may destroy or otherwise dispose of any of the Customer Data (other than the Patient Data and any other anonymised data) in its possession unless Incaplex receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Incaplex shall use reasonable commercial endeavours to make available the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Incaplex in returning or disposing of Customer Data. For the avoidance of doubt, any aggregate or anonymised data held by Incaplex, which does not constitute personal data as defined in the Data Protection Acts 1988 and 2003 shall not be subject to the provisions of this Clause 14.4; and
 - 14.4.5 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. Force majeure

Incaplex shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Incaplex or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. General

16.1 Assignment

The Customer shall not, without the prior written consent of Incaplex, assign, sub-License, delegate or transfer this Agreement or any of its rights under this Agreement to any other person, firm or company. No such assignment shall relieve Customer of its obligations hereunder. Incaplex may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement, with or without notice to the Customer.

16.2 Export Laws

The Customer acknowledges that the Software may be subject to export and import control laws (including United States export and import laws), and agrees to fully comply with any such laws in connection with the Software.

16.3 Notices

All notices to or by the respective Parties shall be in writing in the English language and shall be deemed to have been duly given when (a) delivered by hand, (b) posted by recorded delivery post (postage prepaid), (c) sent by reputable overnight courier (d) sent by fax or (e) sent by email to the party to which such notice is required to be given under this Agreement addressed to the parties as provided for in this Agreement; or to such other address, fax number or email address as either party may subsequently notify to the other in writing. Notices delivered by hand, sent by fax or by overnight courier shall be deemed received the first Business Day following such delivery or sending. Notices, which have been posted as above, shall be deemed received on the third Business Day following posting. Notices sent by email shall only be deemed delivered upon receipt by the sender of an acknowledgement of receipt from the recipient.

16.4 Third Party Rights

This Agreement does not confer any rights on any person or party other than the parties to this Agreement and their successors and assigns.

16.5 Waiver

Failure or neglect by Incaplex to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of Incaplex's rights pursuant to this Agreement nor in any way affect the validity of the whole or any part of this Agreement nor prejudice Incaplex's rights to take subsequent action.

16.6 Entire Agreement and Amendments

This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties prior to the signing of this Agreement that constitutes the entire understanding between the parties hereto. Except as otherwise provided in this Agreement, no addition, amendment or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of each party by a director or such other duly authorized officer as the case may be.

16.7 Severability

In the event that any or any part of the terms, conditions or provisions contained in this Agreement or any Schedule hereto shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

16.8 Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Ireland and the parties agree that any dispute relating to its terms or subject matter shall be subject to the exclusive jurisdiction of the Irish courts.

16.9 Process Agent

Customer agrees that upon request of Incaplex, it shall promptly and irrevocably authorise and appoint a person, company, law firm or other third party as its authorised agent to accept service of all legal process in Ireland on its behalf and service on such appointee shall be deemed to be service on Customer. Customer agrees that any failure by its process agent to notify it of legal process shall not invalidate the proceedings concerned.

Nothing contained in this Clause 16.9 shall affect the right of Incaplex to serve process in another manner permitted by law.

16.10 Interpretation

16.10.1 In this Agreement (except where the context otherwise requires):

- (a) any reference to a Recital, Clause or Schedule is to the relevant Recital, Clause or Schedule of or to this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement;
- (b) the Clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (c) use of the singular includes the plural and vice versa;
- (d) use of any gender includes the other genders;
- (e) A reference to writing or written includes faxes but not e-mail.
- (f) any reference to "persons" includes individuals, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not having separate legal personality);
- (g) any reference in this Agreement to any statute, statutory provision, subordinate legislation, code or guideline ("legislation") shall be construed as referring to such legislation as the same may from time to time be amended, modified, extended, varied, superseded, replaced, substituted or consolidated;
- (h) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

16.10.2 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any references to this Agreement includes the Schedules.

This Agreement has been entered into on the date of your indication of its acceptance.

SCHEDULE 1

Subscription Fees and Subscription Term

1. Subscription Fees

Unless otherwise agreed in writing, the Subscription Fees is a total of €90 per month for the first three (3) User Subscriptions. Payment for the service shall be paid in advance for the Subscription Term unless otherwise agreed.

2. Additional User Subscription Fees

Unless otherwise agreed in writing, additional User Subscriptions may be purchased by the Customer in accordance with Clause 3 at €35 per month per User Subscription.

3. Storage Space and Capacity; Excess Data Storage Fees

Storage capacity: 1GB in total for the first 5 Users and 20MB per User thereafter.

Unless otherwise agreed in writing, Incaplex's excess storage fees and data transmission fee current as at the Effective Date are:

File Storage – 1 GB: €60 p/a

File Storage – 10GB: €425 p/a

Data Storage – 500mb: €260 p/a

4. Prices exclude VAT. VAT may be applicable to customers in EU members if they are not registered for VAT. VAT is charged at the from time to time current Irish Rate (for information, this rate is 23% in January 2012)

5. Initial Subscription Term: 12 months

6. Renewal Date

Each anniversary of the Effective Date;

7. Renewal Period

12 calendar months from Effective Date

SCHEDULE 2

Patient Data Protection Consent

1. The patient should be aware that their data will be stored electronically and/or on paper by you. Your patient registration process should obtain the consent required for this.
2. Your clinic should comply with the Data Protection laws of your country; this may include making the patient aware of their rights using brochures, the clinic's web site and/or other media. This includes the right for a patient to access his/her record, where that right exists.
3. Inca Clinic stores patient data in secure environments such as Salesforce.com and Google App Engine. This may mean in certain circumstances that data is stored outside of the your country and in certain circumstances outside of your world region. If required by legislation within your country, this should be disclosed to your patients.

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