Healthshare
Health Solutions

General Terms and Conditions

Healthshare Terms and Conditions applicable on Acceptance of Healthshare's Client Proposal

1. Definitions and Interpretation

The following expressions shall have the following meanings.

1.1. "Acceptance" or "Acceptance date" means that on the date when a Client accepts a Proposal submitted by Healthshare, these Terms and Conditions shall be deemed to have been accepted by the Client on the same date, as if specifically incorporated into such Proposal accepted by the Client.

1.2. "Agreement" means the Proposal accepted on the Acceptance date, including these Terms and Conditions as if specifically incorporated therein, shall together constitute a binding agreement between the Client and Healthshare.

1.3. "Client" means any person who accepts a Proposal from Healthshare, whose details shall be reflected in such Proposal.

1.4. "Deposit" means the payment of 70% (fifty percent) of the Fee, or any other such percentage, which may be specifically agreed to and set out in the Proposal.

1.5. "Duration" means for as long as the Agreement between the Client and Healthshare endures.

1.6. "Effective date" means the Acceptance date of the Proposal.

1.7. "Fee" means the total amount payable by the Client to Healthshare in respect of the Services agreed to and set out in the Proposal on the Acceptance date.

1.8. "Healthshare" means Healthshare Health Solutions (Pty) Ltd, registration number 2004/000652/07, a company duly incorporated in accordance with the company laws of the Republic of South Africa.

1.9. "Initial Stage" means the stage where the Services have been rendered and/or the Project completed, but Client review is required.

1.10. "Intellectual Property Rights" means any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, knowhow, confidential information or process, any application for any of the above, and any other intellectual property right recognised in any part of the world whether or not presently existing or applied for.

1.11. "Party" means either the Client or Healthshare and "Parties" shall mean them collectively.

1.12. "Project" means, as part of the Services, the work to be done on any particular project as specified in the Proposal at the Effective date, in accordance with these Terms and Conditions.

1.13. "Proposal" means the written proposal for the Services, including the Project, if applicable, and/or any other value adding initiatives or deliverables, which Healthshare submits to clients from time to time.

1.14. "Services" means any service and/or project work Healthshare will provide to the Client, as set out in the Proposal at the Effective date, in accordance with these Terms and Conditions.

1.15. "Terms and Conditions" or "these conditions" means the Terms and Conditions, as set out herein, including any amended version thereof after Acceptance.

2. General

2.1. These conditions shall apply for the endurance of the Agreement between the Client and Healthshare and shall supersede any other documentation or communication between the parties.

2.2. Any variation to these conditions, shall be in writing and only if agreed to by Healthshare.

2.3. Nothing in these conditions shall prejudice any condition or warranty, expressed or implied, or any legal remedy to which Healthshare may be entitled in relation to this Agreement, by virtue of any statute, law, or regulation.

2.4. Any advice or recommendation given by Healthshare or its employees or agents to a Client, which is not confirmed in writing by Healthshare, is acted upon at the Client's own risk and accordingly Healthshare is not liable for any such advice or recommendation not so confirmed in writing.

2.5. Healthshare shall have the right to correct any error or omission to any Proposal issued by Healthshare prior to the Acceptance date, without any liability to Healthshare.

2.6. The Services shall be performed at Healthshare and/or the Client or such other location agreed to between the Parties.

2.7. Healthshare will provide the Services during the hours of 8am-4pm Monday to Friday (excluding public holidays). If an issue occurs outside these hours the Client may e-mail Healthshare or leave a telephone message on the office telephone number. Healthshare will endeavour to respond to the Client by the start of the next business day.

2.8. Dates given in respect of deliverables as it relates to the Services, are estimates only and not guaranteed. In this regard, where timeframes in respect of the deliverables do not go to the essence of the Agreement, Healthshare shall not be held liable for any loss, costs, damages, charges, or expenses caused directly or indirectly by any delay in respect of such deliverables. Further, where the timeframe in respect of the deliverables go to the essence of the Agreement and is stated as such therein on the Effective date, then Healthshare will endeavour to take all such reasonable steps to adhere to the timeframes as aforesaid.

3. Proposal

3.1. Healthshare will provide the Client with a written Proposal describing the Services that the Client required Healthshare to provide

3.2. The Client shall ensure the accuracy of any information provided to Healthshare and referred to in the Proposal.

3.3. The quantity, quality, description, and cost Services provided, are set out in the Proposal. Any variation to the Services required must be agreed to by Healthshare in writing.

3.4. Both parties may make any changes to the Proposal required to conform to any applicable statutory or industry requirements.

3.5. The Proposal will be valid for a period of 90 days of the date specified in the Proposal.

4. The Services

4.1. The Proposal, once accepted by the Client will become a Project and may not be cancelled by the Client except with Healthshare's written agreement and on terms that the Client is to indemnify Healthshare against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by Healthshare as a result of cancellation. Acceptance of the Proposal is deemed once the Client has signed a copy of the Proposal and returned it to Healthshare.

4.2. Once Healthshare have completed the Initial Stage, Healthshare will ask the Client to review the Services. The Client is required to provide feedback and comments to Healthshare within days. Healthshare will then attend to any adjustments, provided there is no deviation from the accepted Proposal. The Project will then be completed.

4.3. If the Client requires any amendments to the Project, which falls outside of the accepted Proposal parameters, Healthshare reserves the right to consider the required amendments, and if accepted, charge for these amendments to the accepted Proposal. The price for amendments will be given first, and the Client will have the option to refuse the amendments or agree to the amendments prior to proceeding.

5. Price and Payment

5.1. The Client shall pay Healthshare the Deposit on the Acceptance date. The Deposit is non-refundable.

5.2. The Client shall pay Healthshare according to the payment terms.

5.3. Any discount provided on the Proposal is only valid if the payment terms, which are set out in these Terms and Conditions read with the Proposal on Acceptance, are adhered to. If any payment is not paid by the due date as aforesaid, the discount will be forfeited, and the Fee on Acceptance shall be due.

5.4. All prices quoted are valid for period stipulated in the Proposal only.

5.5. Healthshare reserves the right, by giving notice to the Client at any time before the Project is complete, to adjust the Fee in respect of the Services to reflect any increase in the cost to Healthshare due to: -

5.5.1. any factor beyond the control of Healthshare.

5.5.2. any change in delivery dates or performance dates in respect of the Services requested by the Client; or

5.5.3. any delay caused by the Client or failure of the Client to give Healthshare adequate information required.

5.6. The Client is liable to reimburse Healthshare any disbursements incurred on behalf of the Client as it may relate to the Services and not provided for in the Proposal.

5.7. The Client must settle all payments in respect of the Fee related to the Services on the due date, unless otherwise agreed in writing between the Parties. Payment of any other Fee is due on the date stated on the invoice.

5.8. The Client will pay penalty interest on all overdue payments in respect of the Fee at a rate of 2% per annum.

5.9. Any legal costs incurred by Healthshare in the protection of its rights in terms of the Agreement shall be payable by the Client on an attorney and own client scale.

6. Client's obligations

6.1. The Client agrees to co-operate with Healthshare and shall provide any support, information, and facilities to Healthshare as they may require.

6.2. Where Healthshare is working on Client sites, the Client agrees to provide valid access credentials that Healthshare require prior to commencement of or during the Project.

6.3. The Client is responsible for obtaining all necessary permits or approval to enable Healthshare to provide the Services.

6.4. The Client agrees to refrain from directly or indirectly recruiting any person employed or engaged by Healthshare for the purposes of providing the Services for a period of 12 (twelve) months following completion of the Project.

7. Intellectual Property Rights and Ownership

7.1. Where the Client terminates the Project before completion, all work done towards the Project remains in ownership of Healthshare.

7.2. The Parties will take all reasonable steps to ensure that they, or others to whom work has been delegated during the Project, refrain from causing damage to the Intellectual Property Rights belonging to either Party.

7.3. The Client warrants that any material belonging to the Client and its use by Healthshare for the purpose of providing Services, will not infringe the copyright or other rights of any third party and the Client hereby indemnifies Healthshare against any loss, damages, costs, expenses, or other claim arising out of any such infringement.

8. Confidentiality

8.1. Each Party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical, business, financial and commercial information, and materials of the other Party ("Confidential Information").

8.2. Each Party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under this Agreement without obtaining written permission from opposite Party to do so, except as may be required by a court or statutory authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party or is otherwise properly received from a third party without an obligation of confidentiality.

9. Termination

9.1. The Agreement shall continue until the Services have been provided or any subsequent date as mutually agreed in writing by both Parties, and until terminated by either Party in accordance with these conditions.

9.2. Healthshare may terminate the Agreement if the Client breaches any of the terms of the Agreement and fails to rectify such breach within 5 (five) days of a written breach notice being sent by Healthshare.

9.3. Early termination of the Agreement by the Client shall render the Client liable for the full outstanding on the date of such early termination.

10. Limitation of Liability

10.1. Healthshare shall not be liable under any circumstances to the Client or any third party for any indirect or consequential loss of profit, consequential or other economic loss suffered by the Client howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise.

10.2. Notwithstanding anything contained in the Terms and Conditions, or in the Proposal, Healthshare's liability to the Client in respect of the Project, in contract, or howsoever otherwise arising, shall be limited to the Fee specified in the Proposal.

11. Indemnity

11.1. The Client hereby indemnifies Healthshare against all claims, costs, and expenses which Healthshare may incur, and which arise directly or indirectly from the Clients breach of any of its obligations under the Agreement.

11.2. The Client agrees that Healthshare is not liable for any claims, losses, costs incurred or damages due to any failure to render the Services within the timeframe as set out in the Proposal on Acceptance.

11.3. The Client hereby indemnifies Healthshare for all loss, damages, costs, and expenses incurred by Healthshare in connection with any claim for infringement of any intellectual property rights of any person.

12. Cession and Assignment

12.1. The Client shall not be entitled to cede or assign its rights or obligations or delegate its duties under this Agreement, without the prior written consent of Healthshare.

13. Relationship of Parties

13.1. Nothing in the Agreement shall be construed as establishing or implying a partnership or joint venture between the Parties or suggest that either of the Parties are an agent for the other.

14. Third Party rights

14.1. Nothing in these Terms and Conditions intend to or confer any rights on a third party.

15. Severance

15.1. If any term or provision of the Agreement 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.

16. Waiver

16.1. The failure by either Party to enforce at any time or for any period any one or more of the provisions of the Agreement, shall not be a waiver of them or of the right at any time subsequently to enforce the provisions of Agreement.

17. Notices

17.1. Any notice to be given by either Party to the other may be served by email, fax, personal service or by pre-paid registered post to the address of the other party given in the Proposal or such other address as such party may from time to time have communicated to the other in writing ("***domicilium citandi et executandi***"), and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by hand shall be deemed to have been served at the time at which the notice was delivered personally, or if sent by pre-paid registered post shall be deemed to have been delivered 2(two) days after being sent as such.

18. Entire Agreement

18.1. This Agreement supersedes any previous agreements, arrangements, documents, or other undertakings either written or oral between the Parties.

19. Governing Law

19.1. This Agreement shall be governed by and construed in accordance with the laws of South Africa and the parties hereby specifically submit to the exclusive jurisdiction of the South African High Courts.