

Fishtech Group CNAP Terms of Service

IMPORTANT: BY USING THE CNAP SERVICES, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THESE FISHTECH GROUP, LLC (TOGETHER WITH ITS AFFILIATES AND SUBSIDIARIES, "FISHTECH") CNAP TERMS OF SERVICE ("TERMS OF SERVICE") AND THESE TERMS OF SERVICE WILL BE A LEGAL AND BINDING CONTRACT BETWEEN YOU AND FISHTECH. IF YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THESE TERMS OF SERVICE IN CONJUNCTION WITH YOUR EMPLOYMENT ON BEHALF OF YOUR EMPLOYER, A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS OF SERVICE. AS USED IN THESE TERMS OF SERVICE, "CLIENT" REFERS TO THE COMPANY OR OTHER LEGAL ENTITY ON WHOSE BEHALF YOU HAVE ENTERED INTO THESE TERMS OF SERVICE. THESE TERMS OF SERVICE WILL SUPERSEDE ANY AND ALL AGREEMENTS OR TERMS OF SERVICE GOVERNING ANY USE OF THE SUBSCRIPTION SERVICES PREVIOUSLY PROVIDED BY FISHTECH TO YOU.

- 1. Subscription Services.** Subject to the terms and conditions of these Terms of Service, Fishtech will provide Client access to and use of the Fishtech subscription services purchased by Client (collectively referred to as the "Subscription Services").
- 2. Restrictions on the Use of Services.** Client agrees not to (a) rent, lease, or loan the Subscription Services, or any part thereof, or provide or use the Subscription Services for or on behalf of a third party; (b) permit third parties to benefit from the use of the Subscription Services via timesharing, service bureau arrangements, or otherwise; (c) reverse engineer, recompile, or disassemble any software that provides the Subscription Services, or otherwise attempt to derive the source code of such software; or (d) download, export, or re-export any software or technical data received hereunder, regardless of the manner in which received, without all required United States and foreign government licenses.
- 3. Ownership.** As between the parties, the Subscription Services and the intellectual property that led to or produced the results of the Subscription Services (excluding data gathered from Client's network or reports and documents communicating the results of the Subscription Services to Client and any Client systems, Client confidential information, or Client-owned intellectual property) and all intellectual property rights, including any ideas, know-how or techniques relating thereto, are exclusively owned by Fishtech or its service providers, and Client acknowledges and agree that Client has no rights or interests thereto and will not obtain any rights or interests thereto, except as expressly granted in these Terms of Service. Client acknowledges that Fishtech has extensive experience, expertise, and proprietary products and tools in the line of business in which it operates, and that Fishtech intends to utilize such expertise, experience, products, and tools in providing professional services to other companies.
- 4. Third Party Products.** To the extent that Client is purchasing licenses to any third-party products ("Products") as a part of the Subscription Services, Client's use of and access to such Product(s) is subject to the Client's acceptance of the manufacturer's applicable end user agreement for the Product(s) being purchased ("End User Agreement"). All original manufacturers warranties apply for the Products provided by Fishtech hereunder. Fishtech does not give or imply that it gives any warranty on any Product(s), including merchantability and fitness for a particular purpose.
- 5. Confidentiality Obligations.** Either party may from time to time disclose (the "Disclosing Party") Confidential Information (as defined below) to the other party (the "Recipient"). As used herein, "Confidential Information" shall mean: (i) all nonpublic information concerning the business, finances, technology, products, services, internal structure and strategies of the Disclosing Party, specifically including, but not limited to, any designs, concepts, methodologies, inventions, source code, know-how, plans, records, files, layouts, documentation, data developments or procedures, and (ii) all such information clearly labeled by the Disclosing Party in writing as "confidential" prior to its disclosure or information for which Recipient knows, or reasonably should know, to be confidential. Recipient shall keep in confidence and trust and will not disclose or disseminate, or permit any employee, agent or other person working under Recipient's direction to disclose or disseminate, the existence, source, content or substance of any Confidential Information to any other person. The following information will not be considered Confidential Information: (i) information which was in the public domain prior to its disclosure; (ii) information which becomes

part of the public domain by any means other than through violation of these Terms of Service; or (iii) information which was independently developed by either party without use of Confidential Information.

6. **Subscription Services Data.** Client acknowledges that Fishtech will receive Client data, including personal data, necessary to provide the Subscription Services. Fishtech will only use this data subject to applicable law, including applicable data privacy laws, for the purposes of providing the Subscription Services and will keep such data confidential. Client acknowledges and agrees that Fishtech owns de-identified aggregate data, which is data collected from Client that is stripped of any information used to identify any end user's data, including personal data and statistical information related to the use and performance of the Subscription Services. Client acknowledges that Fishtech uses third party technology providers and sub-processors in order to provide the Subscription Services. In addition, Client acknowledges that Client (i) is responsible for the accuracy, quality and legality of the data Client provides to Fishtech, including the lawful use and transmission of the personal data provided by Client and Client personnel in connection with the Subscription Services and; (ii) will obtain all rights, permissions or consents from Client customers and personnel that are necessary for Fishtech to provide the Subscription Services.
7. **Warranties.** Fishtech represents and warrants that (i) it will perform the Subscription Services using personnel of required skill, experience and qualifications and (ii) it will perform the Subscription Services in a professional and workmanlike manner with commercially reasonable industry standards for similar services. In the event Client believes that the Subscription Services do not meet the warranties in this Section, Client shall provide Fishtech with written notice and details of such non-complying Subscription Services within ten (10) days after completion of the Subscription Services involved. After determination by Fishtech that such Subscription Services were not in conformance, Fishtech shall re-perform such non-complying Subscription Services at no additional cost to Client.
8. **Warranty Disclaimer.** EXCEPT AS OTHERWISE SET FORTH HEREIN, THERE ARE NO WARRANTIES, AND FISHTECH EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT OF THIRD-PARTY RIGHTS (EXCLUDING NONINFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS). FISHTECH'S AGENTS HAVE NO AUTHORITY TO GIVE SUCH WARRANTIES ON BEHALF OF FISHTECH. WITHOUT LIMITING THE FOREGOING, FISHTECH MAKES NO WARRANTY THAT THE SUBSCRIPTION SERVICE WILL BE ERROR-FREE, FREE FROM INTERRUPTION OR FAILURE, OR SECURE FROM UNAUTHORIZED ACCESS, OR THAT IT WILL DETECT EVERY VULNERABILITY TO CLIENT'S NETWORK, OR THAT THE RESULTS GENERATED BY THE SUBSCRIPTION SERVICES WILL BE ERROR-FREE OR COMPLETE. THE SUBSCRIPTION SERVICES MAY BECOME UNAVAILABLE DUE TO ANY NUMBER OF FACTORS INCLUDING SCHEDULED OR UNSCHEDULED MAINTENANCE, TECHNICAL FAILURE OF THE SOFTWARE, TELECOMMUNICATIONS INFRASTRUCTURE, OR THE INTERNET.
9. **Limitation of Liability.** The liability of either party for any breach of these Terms of Service or otherwise from any acts or omissions of its respective personnel will in all circumstances be limited to direct damages and in no event will either party have any liability to the other, whatsoever, for any special, consequential, indirect, incidental, exemplary or punitive damages of any kind arising out of these Terms of Service, or for lost profits or for the cost of procurement or substitute goods or services, however caused, whether in contract, tort or otherwise even if such party has been advised of the possibility of such damages.

IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THESE TERMS OF SERVICE WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF CLIENT'S PAYMENT(S) FOR THE SUBSCRIPTION SERVICES IN THE AGGREGATE OVER THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THESE TERMS OF SERVICE.

- 10. Indemnification.** Each party (each an "Indemnifying Party") shall indemnify and hold harmless the other party, its subcontractors and their respective partners, officers, directors, agents, advisors and employees (each an "Indemnified Party") from and against all claims, demands, losses, liabilities, costs, expenses and reasonable attorneys' fees, arising out of a claim by a third party against the Indemnified Party (i) resulting from any negligent or willful act or omission of the Indemnifying Party under or related to these Terms of Service, including but not limited to causes of action for death or bodily injury or the physical damage to or loss or destruction of any real or tangible personal property; (ii) for a breach of any confidentiality obligations hereunder; and (iii) when Client is the Indemnified Party, that the Subscription Services and any resulting use of the Subscription Services constitute an infringement of any intellectual property right of a third party. Notwithstanding the foregoing, Fishtech shall have no obligation to indemnify, defend or hold Client harmless for any claim of infringement caused by (a) use of the Subscription Services by Client in combination with any other products or services in a way not authorized by Fishtech, if the infringement would not have occurred but for such combination, or (b) any alteration, change or modification of the Subscription Services by Client not authorized by Fishtech, if the infringement would not have occurred but for such alteration, change or modification.
- 11. Method of Performing Services.** Fishtech is an independent contractor, and as such, shall have the right to determine the method, details, and means of performing the Subscription Services. Nothing in these Terms of Service shall operate to create any employment relationship between Client and Fishtech.
- 12. Personnel and Rates.** Fishtech shall have the sole right to designate the appropriate personnel necessary to accomplish the Subscription Services to be performed under these Terms of Service. Fishtech reserves the right to substitute personnel for any reason and in its own discretion.
- 13. No Assignment.** Client will be the end-user of the Subscription Services and will use the Subscription Services only for Client's internal business purposes and direct benefit. Client will not voluntarily or involuntarily in any form or manner, assign or transfer, including any assignment or transfer by operation of law, the Subscription Services or any rights under these Terms of Service.
- 14. No Publicity.** Neither party shall issue any announcement, news release, denial, or confirmation of these Terms of Service, or in any other manner advertise or publish, these Terms of Service, without the prior written consent of the other party. A party may, in its sole discretion, withhold consent to any publicity. Nothing in these Terms of Service grants a party the right to use any trademarks, trade names, or logos proprietary to the other party.
- 15. Governing Law.** These Terms of Service will be construed and governed in accordance with the internal laws of the State of Missouri, without regard to any rules of conflicts or choice of law provisions that would require the application of the laws of any other jurisdiction.