



CAPS END USER AGREEMENT

BY CLICKING ON THE BUTTON MARKED "AGREE" ON THE CAPS ACCOUNT REGISTRATION PAGE AND/OR BY USING THE CAPS WEBSITE OR SERVICE, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS, THE CAPS END USER AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR OTHERWISE USE THE CAPS WEBSITE OR SERVICE.

1. **Definitions:** As used in this Agreement,

- a. The term **"Agreement"** means this Agreement, as well as all other terms, conditions, and rules that may be published or displayed from time to time by CAPS on the CAPS website ("**Site**") or at any other link designated in this Agreement.
- b. The term **"BMS"** means the body shop management system operated by you.
- c. The term **"BMS Vendor"** means the party who supplies and maintains the BMS.
- d. The term **"CAPS"** means the Common Automotive Platform Standard, which is operated by CAPS Consortium Ltd, a company registered in England and Wales with company number 06044682, (hereafter "**CAPS**" or "**we**"), whose principal address is CAPS Office, Vicarage Road, Egham, Surrey, TW20 9FB, UK.
- e. The term **"CAPS Data"** means any data collected and/or maintained by CAPS and made available via the Service to include Claim Data provided to CAPS by you and compilations aggregations, and analyses of any such data.
- f. The term **"CAPS Data User"** means: (i) any Work Provider; or (ii) any party who is not a body shop repairer but has a requirement to receive Job Update Messages, including but not limited to vehicles manufacturers, parts manufacturers, vehicle rental business and accident management businesses.
- g. The term **"Claim Data"** means any data comprised in: (i) an FNOL; (ii) any Job Update Message.
- h. The term **"FNOL"** means an automated electronic first notification of a loss instruction (which notification may include details of a vehicle registration, insurance policy number and claim number) transmitted by a Work Provider.
- i. The term **"Job Update Message"** means a record or records relating to the status of a repair, connected to any given FNOL.
- j. The terms **"Member", "End User", or "you"** means the person (including, but not limited to, a corporation, limited liability company, partnership, or individual) completing the registration process. As used herein a "Member" is an entity or individual user that has privileges to use the Service, including any employer, employee, or other independent contractor of a Member.
- k. The term **"Service" or "Services"** means CAPS communication gateway service which contains certain web-based software programs that facilitate the exchange of Claim Data in the collision repair industry for the purpose of delivering a unified and automated view of motor claims information through independent body shop management systems (collectively, the "**Service**"), subject to the terms of the following End User Agreement.
- l. The term **"Work Provider"** means any party who has a requirement to issue FNOLs and receive Job Update Messages, including, but without limitation any insurers or insurers agents.



2. Entering into this Agreement:

- a. If you are entering into this Agreement on behalf of an entity, you represent and warrant to us (i) that you are 18 years old or older; (ii) that you are currently employed by or acting on behalf of the entity; (iii) that you have authority to enter into agreements and specifically this Agreement on behalf of the entity; (iv) that the entity agrees to be bound by the terms and conditions of this Agreement; and (v) that if the entity requires agreements to be entered into in any manner other than as suggested by this Agreement that you will promptly send to us written confirmation of such entity's acceptance of the terms set forth in this Agreement in the manner required by the entity.
- b. If you are entering into this Agreement as an individual, you represent (i) that you are an employee or authorized agent of an entity that has entered into this Agreement; (ii) you are 18 years old or older; (iii) that you agree to be bound to the terms and conditions of this Agreement; and (iv) that you will be able to perform your obligations under this Agreement.

3. General Limitations:

- a. The Service is provided to Members or End Users. Any unauthorized commercial use of the Service, or unauthorized resale of its services, is expressly prohibited.
- b. You agree to abide by all applicable local, state, national and international laws and regulations and are solely responsible for all acts or omissions that occur under your account or password, including the content of your account as used through the Service. By way of example, and not as a limitation, you agree not to:
 - i. interfere with or disrupt networks connected to the Service or violate the regulations, policies or procedures of such networks;
 - ii. attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means;
 - iii. place any software code (knowingly or unknowingly), on the Site or within the Service which may include, but not be limited to: cookies, bots, viruses, agents, sniffers or any and all other forms of user tracking processes, destructive processes or code, rerouting or jump functions, pop-up browser windows, or other forms of interference with the internal or external use of the Site or Service;
 - iv. use the Site or Service on behalf of or for any entity, business or activity that is considered illegitimate or illegal or is willfully breaking any civil or criminal laws with its activities;
 - v. interfere with another member's use and enjoyment of the Service or another entity's use and enjoyment of similar services;
 - vi. frame or otherwise co-brand the Site or any of its content; or
 - vii. deep link to any portion of the Site.
- c. CAPS reserves the right to reject your registration for any reason, at its sole discretion, and prohibit you from participating in the Service. In addition, CAPS reserves the right to terminate your use of the Service, immediately at any time at its sole discretion, if you violate the General Limitations set forth in Sections 3(b)(i)–(v) of the Agreement.



- d. CAPS reserves the right, for any reason, at its sole discretion, to terminate, change, suspend or discontinue any aspect of the Site or the Service, including, but not limited to, content, features or hours of availability. CAPS may also impose limits on certain features of the Service or restrict your access to part or all of the Site or the Service without notice or penalty. Furthermore, you are entirely responsible for any and all activities that occur under your account.
- e. You agree to notify CAPS immediately of any unauthorized use of your account or any other breach of security.
- f. You agree that CAPS may implement certain automated procedures for the purpose of providing lost or forgotten passwords to you. These automated procedures will require you to have the appropriate identifying information.

4. Use of Personal Information; use and ownership of CAPS Data:

a. Use of Personal Information:

- i. In the course of your use of the Service, you will provide certain information to CAPS during the registration process, or through e-mail features, etc., which may be personally identifiable to you, your employees, your customers, or your customer's insured (collectively the "End User Information"). You agree that (i) you are responsible for all End User Information, and CAPS has no obligation to you for the accuracy or completeness of the End User Information; and (ii) you shall maintain and update End User Information as necessary to keep it current, complete and accurate. Additionally, you acknowledge and agree that you are solely responsible for the ongoing accuracy and content of the End User Information that you have placed on the Site and within the Service.
- ii. CAPS will not edit, or disclose your personal information about you or your account, including its contents, without your prior written consent. Such express written consent may be obtained by CAPS from time to time in electronic form by using, without limitation, online agreements, or other acknowledgements on the Site. Notwithstanding the foregoing, you grant to CAPS the non-exclusive right to use your End User Information obtained under this Agreement for CAPS's internal purposes, to share such information with other Members in order to perform the Services and as otherwise set forth in this Agreement, and to provide certain user information in aggregate form to third parties. In addition, CAPS may disclose information if CAPS has a good faith belief that such action is necessary to (i) conform to legal requirements or comply with legal process; (ii) protect and defend the rights or property of CAPS; (iii) enforce this Agreement; or (iv) act to protect the interests of its Members or others.
- iii. You also agree that CAPS may access your account, including its contents, as stated above, or to respond to service or technical issues. You further agree that CAPS is not responsible or liable for the deletion or failure to store information.



b. Use of CAPS Data:

- i. You hereby grant CAPS and CAPS hereby accepts from you a perpetual, sub-licensable, non-exclusive, irrevocable, royalty-free, worldwide licence and right under your intellectual property rights (whether owned by or licenced to you) to use, reproduce, electronically distribute, transmit; have transmitted, modify, identify, perform, display, store, archive, aggregate, index and create derivative works from CAPS Data.
- ii. You hereby grant CAPS the full right and authority to: a) use CAPS Data to be incorporated into the Service for the purposes of creating and providing reports and analysis to you and to Claim Data Users for industry and internal analysis; and (b) summarise, recompile or combine CAPS Data with data from other sources for analytical purposes and share the results with third parties. The parties agree that CAPS' use of the CAPS Data may continue after the expiration or termination of this Agreement for support and archival purposes, including but not limited to internal and industry analysis.
- iii. You hereby consent to allow your BMS Vendor to facilitate (through your BMS) the automatic and uninterrupted transmission and exchange of Claim Data between you and any Claim Data User.

c. Member Responsibilities:

- i. You agree that you are solely responsible for obtaining consent (where appropriate) for any End User Information (which may include personal data, including data relating to your customers, suppliers or employees) in compliance with this Agreement and applicable data protection and privacy law.
- ii. You warrant and represent that: (a) all personal data included within End User Information has been and will be collected and used in a matter consistent with any notice given to the subjects of such data; (b) you will comply with all applicable laws, any and all other agreements to which you are a party, and any and all of your internal policies or procedures concerning the CAPS Data; and (c) you are entitled to transfer the relevant personal data to CAPS so that CAPS may lawfully process the personal data in accordance with this Agreement.
- iii. To the extent that CAPS processes any personal data on your behalf you acknowledge and agree that the personal data may be transferred or stored outside the country where the body shops and/or your End Users are located in order to provide the Service.
- iv. If applicable, both you and CAPS confirm that you process and store any personal data accessed via the Service either: (a) within the European Economic Area ("EEA"); or (b) in compliance with the EU Data Protection Directive 95/46/EC which may include: (i) acquiring explicit and informed consent; (ii) adopting transfer agreements containing approved model clauses; (iii) adopting binding corporate rules, or (iv) other appropriate methods demonstrating an adequate level of protection as determined by the European Commission and/or EU Data Protection Authorities."



- v. You agree to: (a) comply with all rules, policies, guidelines and other requirements with respect to the Service; (b) comply with all applicable laws relating to the Service; (c) supply, maintain and secure all computers, other equipment and software and a suitable internet connect necessary to meet Members' obligations under this Agreement and for utilising the Service; and (d) notify your customers of any terms and conditions related to the provision of data by Members to CAPS.
- vi. You agree not to: (a) access any part of the computer systems and networks of CAPS or download any data from CAPS, except in each case as made available by CAPS via the Service; (b) allow any unauthorised users to access the networks or other systems of CAPS; (c) download any unauthorised data from CAPS or the CAPS group of companies; or (d) resell, lease, licence, transfer, assign or redistribute any CAPS Data, in whole or in part, to any third party except as contemplated by this Agreement, in each case without the written permission of CAPS. You will not use the Service for any unlawful purpose or attempt to gain unauthorised access to the Service or CAPS Data.
- vii. You represent and warrant that CAPS will not be subject to any restrictions, fees or commissions imposed by any third party due to any relationship, network, agreement or affiliation of the Member.

5. Data Protection and Security:

- a. You acknowledge and agree that no data transmission over the internet or data storage system can be guaranteed to be 100% secure. If you have reason to believe that your interaction with CAPS is no longer secure please immediately notify CAPS of the problem by emailing security@caps.co.uk If CAPS reasonably believes that the transfer of any data will violate any applicable law, CAPS may suspend and not execute any such transfer.
- b. You represent and warrant that you will implement and at all times maintain security procedures and technologies for the protection of the Service, and any other networks, computer systems and/or CAPS Data which may be accessible by you, that are at least equivalent to: (a) security procedures and technologies then standard for similar body shop management services or; (b) such procedures and technologies you then use for your End Users, whichever provides the highest level of security. In addition, you must immediately notify CAPS at security@caps.co.uk within 24 hours of a security breach and remedy these known security breaches, incidents, holes or other problems that may impact the Service.

6. **Confidentiality:** You will hold in confidence and will not, without the consent of the disclosing member, use, reproduce, distribute, transmit, transfer, or disclose, directly or indirectly, in any form, by any means, or for any purpose, the disclosing member's end user information. You may only disclose a disclosing member's end user information to Members who (i) have a need to know such information in connection with the Service; and (ii) are obligated by the/this Agreement or otherwise in writing to not disclose the disclosing member's end user information. Without limiting the foregoing, you will exercise at least the



same standard of care in protecting the disclosing member's end user information as you do with your own End User Information, but in any event, no less than reasonable care.

7. **DISCLAIMER OF WARRANTIES:** THE SITE AND SERVICE, INCLUDING ALL CONTENT, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH THE SITE OR THE SERVICE, ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE. CAPS DOES NOT WARRANT THAT THE SERVICE OR THE FUNCTIONS, FEATURES OR CONTENT CONTAINED THEREIN OR IN THE SITE WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. IF YOU ARE DISSATISFIED WITH THE SITE, YOUR SOLE REMEDY IS TO DISCONTINUE USING THE SITE AND THE SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CERTAIN MEMBERS IF DICTATED BY APPLICABLE LAW.

8. **THIRD PARTY OFFERINGS:** CERTAIN SERVICE OFFERINGS, FEATURES AND FUNCTIONS ARE PROVIDED TO YOU BY THIRD PARTIES, AFFILIATES, AND ALLIANCE PARTNERS. YOUR RIGHTS WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES SHALL BE AS SPECIFIED BY THE THIRD PARTY, NOT THIS AGREEMENT. CAPS MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THIRD PARTY PRODUCTS OR SERVICES, AND YOU AGREE TO HOLD CAPS HARMLESS FOR ANY WARRANTIES OR REPRESENTATIONS THAT ARE PROVIDED BY ANY THIRD PARTY.

9. **LIMITATION OF LIABILITY:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, IS CAPS LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR THE INABILITY TO USE THE SERVICE, ANY CHANGES TO THE SERVICE, UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, ANY MATERIAL OR DATA SENT OR RECEIVED OR NOT SENT OR RECEIVED, OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. YOU SPECIFICALLY AGREE THAT CAPS IS NOT RESPONSIBLE OR LIABLE FOR ANY THREATENING, DEFAMATORY, OBSCENE, OFFENSIVE OR ILLEGAL CONTENT OR CONDUCT OF ANY OTHER PARTY OR ANY INFRINGEMENT OF ANOTHER'S RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS. IF YOU ARE DISSATISFIED WITH THE SERVICE, THE MATERIALS AVAILABLE ON OR THROUGH THE SERVICE, OR WITH ANY OF CAPS' TERMS AND CONDITIONS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CERTAIN END USERS IF DICTATED BY APPLICABLE LAW. IN PARTICULAR, NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT OR EXCLUDE CAPS' LIABILITY FOR (i) DEATH AND/OR PERSONAL INJURY CAUSED BY NEGLIGENCE; AND (ii) FRAUD OR FRAUDULENT MISREPRESENTATION. IF PERMITTED BY LAW, CAPS'S LIABILITY IS LIMITED TO AND WILL NOT EXCEED THE FEES PAID BY YOU TO CAPS IN THE 6 MONTH PERIOD PRIOR TO YOUR CLAIM FOR DAMAGES.



10. **Indemnification:** You shall indemnify, defend and hold CAPS, its officers, directors, employees, customers, and agents (collectively, the "Indemnified Parties"), harmless from and against any and all claims, losses, damages, liabilities, judgments and fees and expenses related thereto (including, without limitation, reasonable attorneys' fees), incurred by an Indemnified Party in connection with any claims arising out of, based upon or resulting from any breach or violation by you of this Agreement or any use by you of the Service or the Site. CAPS reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you shall not in any event settle or otherwise dispose of any matter without the prior written consent of CAPS.

11. **Access Fees:** Not Used

12. **Termination:**
 - a. Either party may terminate the Agreement upon giving to the other not less than 30 days' written notice.
 - b. CAPS may terminate this Agreement and your account at any time, without notice, in CAPS's sole discretion if you violate the General Limitations set forth in Sections 3(b)(i)–(v) of the Agreement. For any other material breach of this Agreement, this Agreement may be terminated by CAPS, which breach has not been cured within 15 days after you have received notice thereof. If we breach this Agreement in any manner, your sole recourse and our sole liability is for you to immediately (i) discontinue use of the Service; and/or (ii) notify CAPS of termination of membership.
 - c. Without limiting the foregoing, CAPS may terminate your account for inactivity, which is defined as failing to log into the Service for an extended period of time, as determined by CAPS or for failure to pay any fees in accordance with this Agreement. The amount of time that CAPS currently views as an "extended" period of time is a first log-on 30 days or later after registration and after an initial log-on, 180 days since your last log-on. Upon termination of the Service, your right to use the Service immediately ceases. CAPS shall have no obligation to maintain any content in your account.

13. **Advertisers:** Any dealings with advertisers on the Service or participation in promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such dealings or promotions, are solely between you and the advertiser or other third party. CAPS is not responsible or liable for any part of any such dealings or promotions. In certain cases, CAPS will be the billing party for such services and will be responsible for forwarding payment only. If a refund for services is provided by a third party, and CAPS has forwarded payment to such third party, then the third party and not CAPS will be responsible for any refund. You agree not to contact CAPS regarding such matters.

14. **Proprietary Rights To Content:** You acknowledge that content, including but not limited to text, software, music, sound, photographs, video, graphics or other material contained in either sponsor advertisements or email-distributed, commercially produced information presented to you by the Service, by CAPS, or CAPS's advertisers or other content providers, is protected by copyrights, trademarks, service marks,



patents or other proprietary rights and laws. You shall not commit or permit any act or omission that would infringe or impair the proprietary and intellectual property rights of CAPS and/or its licensors in relation to the Service. Except as permitted herein, you may not directly or indirectly copy any of the Service without the express written consent of CAPS. Except as permitted by applicable law, you may not modify, decompile, disassemble, de-encrypt, extract, reverse engineer, copy, reproduce, republish, upload, post, transmit, electronically transfer, or distribute in any way content available through the Service, including code and software. You understand that CAPS will pursue its rights under this Agreement and the law by any means legally available. CAPS may access your computers and networks and any and all digital storage files in the event that CAPS reasonably suspects you have violated its rights described in this paragraph.

15. **Choice of Law; Jurisdiction:** This Agreement (and any non-contractual disputes and/or claims arising out of or in connection with it) shall be governed by and in accordance with the laws of England and Wales without regard to conflicts of law's provisions. The parties hereby select the courts of England and Wales to have exclusive jurisdiction to resolve any disputes (including any non-contractual disputes and/or claims) relating in any manner to this Agreement.

16. **Notices And Disclosures:** Except as explicitly stated otherwise, any notices shall be given by e-mail to, in the case of CAPS, notices@caps.co.uk, or, in the case of an End User to (i) the e-mail address you provide to CAPS during the registration process; (ii) the mailing address provided to CAPS during the registration process by certified mail, postage prepaid and return receipt requested; or (iii) such other address as you may specify. Notice shall be deemed given twenty-four (24) hours after e-mail is sent, unless the sending party is notified that the e-mail address is invalid or, in the case of mailing, three (3) days after the date of mailing.

17. **Amendment:** We may, in our sole discretion, change or modify any term or portion of this Agreement at any time without notice to you by posting such changes on the Site. Your continued use of the Site and the Service after we post such changes will constitute your agreement to the amended terms of this Agreement. This Agreement may not be otherwise amended except in writing signed by both parties.

18. General Provisions:

- a. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be enforced to the maximum extent permissible so as to affect the intent of this Agreement, and the remainder of this Agreement shall continue in full force and effect.
- b. The failure by either you or CAPS to exercise or enforce any rights or provisions of this Agreement does not constitute a waiver of such right or provision.
- c. You agree that any cause of action arising out of or related to the Service or this Agreement must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.



- d. This Agreement comprises the entire agreement between you and CAPS and supersedes all prior agreements between the parties, regarding the subject matter contained herein. Each party acknowledges and agrees that in entering into this Agreement it does not rely on any representation, warranty or understanding (whether or not in writing) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement.
- e. All provisions in this Agreement regarding representations and warranties, indemnification, disclaimers, payment obligations and limitations on liability shall survive any termination of this Agreement.
- f. CAPS is not liable for loss or damage resulting from any cause beyond our reasonable control, including, but not limited to (i) Internet network failures or Internet capacity limitations, or acts or omissions of any Internet Service Provider (ISP), telecommunications provider, or electrical utility; (ii) compliance with regulations, orders or instructions of any federal, state or municipal government or any department or agent thereof that delay or restrict performance hereunder; or (iii) acts of God, acts or omissions of third parties.
- g. Headings of particular Sections are inserted only for convenience and are not to be considered a part of this Agreement or be used to define, limit or construe the scope of any term or provision of this Agreement.
- h. This Agreement is binding on and shall inure to the benefit of the parties hereto and their permitted successors and assigns.
- i. You may not assign your rights under this Agreement without CAPS' prior written consent. CAPS may assign its rights under this Agreement at its sole discretion.
- j. Save as expressly set out herein, this Agreement does not confer any rights on any third party whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

This Agreement was last updated on 4th August 2017.