

HealthCheck License Agreement

This Agreement shall govern the provision of the Licensed Software by Continuity Software (“**Continuity**”) to the Customer. By downloading, installing or using the Licensed Software, you the Customer agree to be bound by the terms of this Agreement.

1. Definitions

For the purpose hereof the terms below are defined as follows:

“**Agreement**” means this license agreement.

“**Customer**” means the legal entity that has ordered the HealthCheck.

“**HealthCheck**” means a service provided by Continuity using the Licensed Software, as defined in the accompanying SOW.

“**Licensed Software**” means the Continuity software solution to be used in performing the HealthCheck.

“**License Key**” means the key provided to the Customer by Continuity governing the number servers and the period of time for which the Licensed Software may be used.

“**Intellectual Property**” means any and all patents, copyrights, trademarks, designs, trade secrets, know-how and any other intellectual property rights, whether registered or not, in the Licensed Software or in the services provided as part of the HealthCheck.

“**Site**” means the Customer’s premises.

2. Delivery

Continuity will deliver the Licensed Software.

3. The License

As of delivery of the Licensed Software, Continuity will grant Customer a non-exclusive, non-transferable, royalty-free license to use the object form of the Licensed Software on the Customer’s computer systems at the Site for use only in conjunction with the HealthCheck and only for such number of servers and for such duration as provided by the License Key (the “**License**”). The License shall terminate upon the earlier of (i) the expiration of the License Key; or (ii) the termination of this Agreement, as set forth herein.

The License is personal to the Customer and does not include a right to grant sub-licenses of the Licensed Software, nor does it include a right to make copies of the Licensed Software, nor to market, distribute, sell or otherwise transfer the Licensed Software. Customer shall refrain from reverse engineering the Licensed Software and/or from making any improvements, modifications or enhancements to the Licensed Software. Customer shall have the right to make backup copies of the Licensed Software for use at the Site.

4. Intellectual Property

Except for the rights granted pursuant to the License, this Agreement shall not confer upon Customer any rights, title or interest in the Licensed Software, including any Intellectual Property therein. Without derogating from the generality of the above, ownership of all rights, title and interest in such Intellectual Property shall remain and/or vest exclusively with Continuity and/or its licensors.

5. Warranty

In the event that at any time during the term of the License, a significant error is discovered in the Licensed Software, Customer’s exclusive remedy shall be for Continuity to attempt, through reasonable efforts, to provide a correction for such error (the “**Warranty**”).

The following are excluded from the Warranty: (i) insignificant defects, such as errors that can be easily corrected and will not show up as a performance defect; (ii) defects discovered in the Licensed Software that has been modified, altered, or enhanced without Continuity’s prior consent; and (iii) other damage caused by abuse, misuse, neglect, adjustment, or unauthorized repair or installation, or by the misuse of the Licensed Software.

THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. Liability

Continuity agrees to defend, at its expense, any suit or claim brought against Customer to the extent such suit or claim is based upon an assertion that the Licensed Software infringes any Intellectual Property of a third party, and Continuity will pay the amount of any settlement and/or the costs, damages, and reasonable attorney’s fees finally awarded by a court in any such suit, claim or the like provided that (i) Continuity is notified promptly in writing by Customer of any notice of threatened or actual suit or claim; (ii) Customer makes no admission relating to the suit or claim; (iii) Continuity has sole control of the defense and settlement of such suit or claim or related settlement negotiations; (iv) Customer gives Continuity full information and reasonable assistance which is available to Customer and is useful or necessary to defend such claim; and (v) Customer has paid all fees due to Continuity under this Agreement and continues to pay all such fees as such fees become due. Continuity’s duty of indemnification is in lieu of any and all other remedies of the Customer.

Continuity's liability to Customer under this Agreement shall be limited to the fees actually paid by Customer to Continuity pursuant to this License Agreement. Continuity's limitation of liability is cumulative with all Continuity's expenditures being aggregated to determine satisfaction of the limit.

EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY CONTINUITY'S NEGLIGENCE, IN NO EVENT WILL CONTINUITY BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS, INCLUDING BUT NOT LIMITED TO LOSS OF OPPORTUNITY, USE, INCOME OR PROFIT, OR INTERRUPTED OPERATION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR ARISING OUT OF OR IN CONNECTION WITH CONTINUITY'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Termination and Consequences

Without prejudice to any of Continuity's other rights, Continuity may terminate this Agreement if Customer fails to comply with the terms and conditions of this Agreement. In such event, Customer shall cease from using the Licensed Software, shall return or destroy all copies of the Licensed Software and the License shall terminate.

The provisions of sections 4 (Intellectual Property), 5 (Warranty), 6 (Liability), 7 (Termination and Consequences), 8 (Confidentiality), 9 (Jurisdiction) and 11 (General) shall survive termination of the Agreement.

8. Confidentiality

During the term of the Agreement and for 5 years thereafter, the parties shall (i) treat as confidential and proprietary all information which is disclosed by one party to the other and is identified as confidential or proprietary, or which can be reasonably deemed to be such ("**Confidential Information**"); (ii) shall take reasonable steps to protect such Confidential Information from disclosure (which steps should at least include those steps that it takes to protect its own Confidential Information); (iii) shall require any employee or subcontractor with access to such Confidential Information to have an executed confidentiality agreement protecting such information; and (iv) shall avoid disclosing Confidential Information to any employee or subcontractor not having a specific need to know such information for the purposes of the Agreement.

The foregoing shall not apply to any information which the receiving party can prove (i) is already in the receiving party's possession, other than as a result of the breach of a legal obligation; (ii) is or becomes a part of the public knowledge or literature through no wrongful act of the receiving party; (iii) is approved for release in

writing by the disclosing party; (iv) is or was developed independently; or (v) is disclosed pursuant to the lawful requirement or request of a governmental agency or judicial process.

The parties acknowledge and agree that any breach of the restrictions contained in this section 8 may cause irreparable harm to the non-breaching party, entitling such party to seek injunctive relief in addition to all other legal remedies.

9. Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, USA, without reference to its conflict of laws principles and the competent courts of New York, NY shall have exclusive jurisdiction over any dispute arising herein.

10. Assignment

The Agreement may not be assigned by either party without the express written consent of the other party, which shall not be unreasonably withheld, provided that either party may assign or transfer the Agreement, in whole or in part, to any of its affiliates or to any successors of substantially that part of its business to which the Agreement relates.

11. General

This Agreement may not be modified or any right of a party waived, except by means of an amendment which expressly refers to these terms and is duly executed by each of the parties.

Continuity shall not be liable for any delay or failure to perform resulting from acts beyond its control. Such acts shall include natural disasters, labor conflicts, acts of war or civil disruption, or governmental regulations beyond the reasonable control of Continuity. All such causes entitle Continuity to a postponement of the performance of Continuity's duties equal to the delay resulting from such cause.

The parties acknowledge and agree that they are dealing with each other hereunder as independent contractors. Nothing contained in this Agreement shall be interpreted as creating an employer-employee relationship or as constituting either party the joint venturer or partner of the other party or as conferring upon either party the power or authority to bind the other party in any transaction with third parties.

The terms of the Agreement comprise the entire understanding between the parties and they shall supersede and prevail over any oral or written understanding, commitment, representation, or undertaking entered into prior to this Agreement.

Any notice required or permitted hereunder shall be given in writing and shall be deemed given upon personal delivery confirmed in writing, or 5 business days after deposit with the postal service, if sent by registered airmail to the address of the other party.