

## **SOFTWARE MAINTENANCE AGREEMENT**

### **DEFINITION**

This agreement applies to all MedSyn standard software modules licensed for use by the Client, as listed in the original letter of proposal, and other software subsequently developed by MedSyn to be used by the Client.

The provisions under this agreement will work alongside the Terms of Business.

### **MEDSYN's OBLIGATIONS**

MedSyn agrees to provide the Client with reasonable telephone, email and remote access support for assistance with troubleshooting, feature explanations, and general guidance relating directly to the successful use of the software as defined above.

MedSyn agrees to correct any errors or faults in the software defined above that is a fault or defect of the software. MedSyn is not liable for any inoperable software that has been caused through the fault of the Client. All programming work shall be carried out on the premises of MedSyn. The Client is to provide sufficient evidence to support any problems encountered. Specific examples are required if the problem only happens occasionally.

The amount of support provided under this agreement is monitored on a monthly basis, and any surplus funds will be used to maintain the software with respect to enhancing the development toolset and the standard software modules in use, incorporating government legislation changes and minor modifications.

MedSyn agrees to supply new releases of the software on a mutually agreed media, at a frequency determined by MedSyn.

MedSyn agrees to provide a source management facility. The latest and most recent versions of software are maintained and stored at MedSyn's premises using strict version control. Secure offsite backups are also kept protecting the Client from losing their copy of the licensed MedSyn software through corruption, virus attack, malicious damage or otherwise.

### **COMMENCEMENT AND TERMINATION**

This agreement commences when written confirmation accepting the original letter of proposal is received, and this agreement is terminated when either party terminates the Agreement or any services provided by MedSyn. No party should be entitled to terminate without reason.

### **FEES**

Fees for this agreement are payable in advance at the rate and frequency as defined in the original letter of proposal, which is to form part of this agreement ("maintenance fees").

Fees and frequency are reviewed on a regular basis to take account of inflation and significant changes in cost structure.

Fees are calculated based on a formula taking into account factors such as the standard modules in use by the Client, the number of users, the extent of custom developments, the number of companies

and/or remote sites using the software, and whether the Client is using Microsoft Access Runtime software.

All fees are, unless otherwise stated, due for payment by the 20<sup>th</sup> of the month following the invoice date. If fees are not paid by their due date, this may result in suspension of our support obligations until the fees are paid in full. Recurring non-payment of the fee will entitle MedSyn to terminate the Agreement immediately.

#### **EXPENSES**

The Client, in addition to the agreement fees shall pay the cost of travel and accommodation expenses inclined by MedSyn, while providing support under this Agreement.

#### **SUPPORT AVAILABILITY**

Support under this agreement is available between the hours of 8.30 am and 5.00 pm (NZST) Monday to Friday excluding NZ statutory holidays. If support is required outside these hours and the Client gives MedSyn reasonable notice then MedSyn will make every reasonable endeavor to provide such support, however such support may be chargeable in addition to the maintenance fee.

#### **NOTIFICATION OF FAULTS**

On discovery of an error or fault in the software, which requires the support of MedSyn, the Client will email or telephone MedSyn at the email address or phone number supplied by MedSyn to advise details of the error or faults and request that it be rectified.

#### **DELIVERY AND INSTALLATION**

MedSyn shall work to best industry practice to deliver the software to the Client on the delivery date, such date to be agreed between MedSyn and the Client. ‘

MedSyn shall work to best industry practice to install the software at the Client's site on or before the installation date, such date to be agreed between MedSyn and the Client.

#### **Excessive Support**

If the amount of the support required under the agreement is, in the opinion of MedSyn, excessive, MedSyn will inform the Client and both parties will discuss the reason for the excessive support, in order to reduce the amount of support required. The Client will provide all necessary assistance in this regard. MedSyn may impose a Time Allowance in respect of the agreement, fixing a maximum limit on the number of hours of support that MedSyn is required to provide per month. Any support incurred in excess of this Time Allowance shall be chargeable at an additional fee to the support fee at our current charge-out rates. The Time Allowance shall be cancelled when, in the opinion of Solution Plus, the support required under the contract is no longer excessive.

#### **REMOTE SUPPORT FACILITY**

As efficient support can require remote access to a *Client's* database, the *Client* is responsible for ensuring suitable telecommunication hardware and software is properly installed on their premises and is liable for all costs incurred for this. *MedSyn* agrees to provide the *Client* with the information required to enable the installation to be carried out.

### **PERFORMANCE REVIEWS**

From the date that the software is installed, *MedSyn* and the *Client* shall regularly review the operation of the software, such review to be conducted at a frequency as agreed between the Client and MedSyn. There will be no additional cost to the client for these performance reviews other than costs incurred as defined under the expenses clause of this agreement.

### **EXCLUSIONS**

The Support services to be provided by *MedSyn* under this agreement exclude the following:

- Any changes not made by *MedSyn* to the software, where they are required to address program errors, or as enhancement to the software;
- The correction of data or defects in the software caused by any modification, revision, variation, for information or alteration of the software not authorized by *MedSyn*;
- The correction of data or defects in the software caused by the failure of the Client to provide suitably qualified and adequately trained staff for the operation of the software;
- The correction of data or defects in the software arising directly or indirectly out of the *client's* failure to comply with this agreement or any other agreement between *MedSyn* and the *Client* relating to the software;
- The correction of data that may have become corrupted as a result of software or any other cause;
- Support of *the Client's* own Access development(s)';
- Support of hardware;
- Support of software products not defined under the Definition clause of this agreement;
- Training in the use of the licensed software modules or custom developed software;
- On-site support. This can be minimised/eliminated by the *Client* installing a remote support facility.
- Development of any enhancements to be software not provided for under the Definition clause of this agreement.
- Any new releases of the software other than releases scheduled by *MedSyn*, as defined in the MedSyn's Obligations clause of this agreement;
- Installation of new releases of the software.

### **PROVISION OF SOURCE CODE**

If *MedSyn* is incapable of providing ongoing support to the Client, MedSyn will provide the Client, upon request, a copy of the software, including the source code for the Client's own and for the sole purpose of finding a replacement software provider.

*MedSyn* is only incapable of providing ongoing support if:

- *MedSyn* becomes insolvent; or
- A receiver or a liquidator is appointed over any of the property of assets of *MedSyn*.

"Incapable of providing ongoing support" excludes instances where;

- The Client is dissatisfied with the support;
- Any of the services, including those under any Software Support Agreement of the Software Maintenance Agreement, are terminated due to a default of the Terms of Business of the Terms of any such Agreement; or
- *MedSyn* sells or merges its business with another company.

The *Client* acknowledges where the software, including the source code has been provided to the Client for such a purpose, the Intellectual Property Rights (as defined in the Terms of Business) continues to belong to MedSyn and the Client shall not do any act that might invalidate or be inconsistent with *MedSyn Ltd.*'s Intellectual Property Rights, including but not limited to selling or copying the software. The Client shall also do everything that is reasonably possible to ensure that the new software provider does not do any act that might invalidate or be inconsistent with *MedSyn Ltd.*'s Intellectual Property Rights.

#### ***LIMITATIONS OF LIABILITY***

*MedSyn* shall not have any liability or responsibility to the Client for any loss, damage or injury, whether arising in contract, tort, equity or otherwise which does not flow directly or naturally (that is, in the ordinary course of things) from a breach of this Agreement including, in each case consequential loss of business or loss of profits.

*MedSyn* shall only be liable for direct losses which flow directly or naturally from a breach of this agreement up to a maximum of the amount of maintenance fees paid for the last six months from the date of the breach.