

TM2 SUPPORT SERVICE CONTRACT - STANDARD TERMS AND CONDITIONS

AS THERE ARE 2 OPTIONS FOR USING TM2, A LICENSE SUBSCRIPTION OR A LICENSE PURCHASE, A DIFFERENT SUPPORT AGREEMENT APPLIES TO EACH. THIS DOCUMENT SETS OUT THE RELEVANT SUPPORT AGREEMENT FOR EACH OPTION.

IF YOU ARE USING A SUBSCRIPTION FOR YOUR TM2 LICENSE, THE FOLLOWING SUPPORT AGREEMENT APPLIES:

1. Interpretation

In these Conditions the following words shall have the following meanings:

- 1.1 "Additional Charges" means the charges at TM2 Healthcare Solutions' rates from time to time for work undertaken on a time and materials basis;
- 1.2 "Support Charge" means the monthly charge for the Support Service set out in the Contract (referred to in Condition 1.6) as may be varied from time to time pursuant to Condition 3.2;
- 1.3 "TM2" means TM2 Healthcare Solutions;
- 1.4 "Compatible Software and Operating Systems" means Microsoft® Office or such other software as Blue Zinc may confirm in writing to the Customer is compatible with the Software, Operating Systems means Microsoft® Windows XP SP2, Windows 2000 SP4, Windows 2003 (all editions) SP1 or R2 and Vista Home Basic Operating Systems;
- 1.5 "The Customer" means the person, company or organisation requiring the service whose name and invoice address is set out in the Contract;
- 1.6 "The Contract" means the contract for the provision of the Support Service subject to these Conditions, details of which are set out below;
- 1.7 "The Designated Equipment" means the equipment referred to in the Contract;
- 1.8 "Documentation" means the instruction manuals, user guides and other information to be made available from time to time during this Contract by TM2 Healthcare Solutions at its discretion in either printed or soft copy form to the Customer;
- 1.9 "Effective Date" means the date set out in the Contract for the commencement of the Support Service;
- 1.10 "Insolvency Event" means if a party becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for amalgamation or reconstruction) or if the ownership or control of it shall pass into the hands of any other legal person, or an event analogous occurs in respect of a party in any jurisdiction to which that party is subject;
- 1.11 "New Release" means any improved modified or corrected version of any of the Software or Documentation from time to time issued by TM2 Healthcare Solutions pursuant to Condition 2.2 below;
- 1.12 "Normal Business Hours" means the working hours of 8.30am to 5.30pm, on a Working Day;
- 1.13 "The Site" means the Customer's premises specified in the Contract or such other premises as TM2 Healthcare Solutions may in writing agree;
- 1.14 "Software" means the software referred to in the Contract or any New Release thereof issued in accordance with Condition 2.2;
- 1.15 "Software License" means the license for the use of the Software on TM2 Healthcare Solution's standard terms;
- 1.16 "The Support Service" means the support of the Software to be provided to the customer by TM2 Healthcare Solutions as described in Condition 2;
- 1.17 "Working Day" means Monday to Friday inclusive but excluding statutory and public holidays in Australia;

2. Support Service

- 2.1 TM2 Healthcare Solutions in consideration of the payment by the Customer from time to time of the monthly charge in accordance with Condition 3 hereby undertakes to the Customer to provide, during Normal Business Hours, the categories of Support Services set out below.
- 2.2 The Support Service shall, comprise all or any of the following categories:
 - 2.2.1 advice by telephone on the use of the Software (category 'A');
 - 2.2.2 information and advice by telephone or email on forthcoming New Releases of the Software (category 'B');
 - 2.2.3 upon request by the Customer the diagnosis of faults in the software and the rectification of such faults (remotely or by attendance on Site as determined by TM2 Healthcare Solutions) by the issue of fixes in respect of the Software and the making of all necessary consequential amendments (if any) to the Documentation (category 'C');
 - 2.2.4 The creation and dispatch to the Customer from time to time at TM2 Healthcare Solution's sole discretion of New Releases of the Software or Documentation (category 'D').
- 2.3 The Customer shall supply in writing to TM2 Healthcare Solutions a detailed description of any fault requiring Support Services within category C above and the circumstances in which it arose forthwith upon becoming aware of the same.
- 2.4 TM2 Healthcare Solutions shall use its reasonable endeavours to respond within 24 Normal Business hours of receipt of a request for category C support.
- 2.5 The Support Service shall not include the diagnosis and rectification of any fault resulting from:
 - 2.5.1 the improper use, operation or neglect of either the Software or the Designated Equipment or any failure to comply with the terms of the Software License;
 - 2.5.2 the modification of the Software or its merger (in whole or in part) with any other software;
 - 2.5.3 the use of the Software on equipment other than the Designated Equipment or in conjunction with software other than Compatible Software and Operating Systems, (where the user chooses to install TM2 on a native Apple Mac Operating System, support for TM2 will only be provided for the application itself and support will not be given for any issue relating to the underlying operating system);
 - 2.5.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by TM2 Healthcare Solutions;
 - 2.5.5 any repair adjustment alteration or modification of the Software by any person other than TM2 Healthcare Solutions without TM2 Healthcare Solution's prior written consent;
 - 2.5.6 any breach by the Customer of any of its obligations under any support agreement in respect of the Designated Equipment;
 - 2.5.7 the Customer's failure to install and use upon the Designated Equipment in substitution for the previous release any New Release of the Software within seven days of receipt of the same.
 - 2.5.8 the infiltration of the Customer's computer system of virus or worm. Virus protection is the Customer's responsibility
- 2.6 TM2 Healthcare Solutions may, upon request by the Customer, provide the Support Service notwithstanding that the fault results from any of the circumstances described in Condition 2.5 above. TM2 Healthcare Solutions shall in such circumstances be entitled to levy Additional Charges in the manner set out in Condition 2.8 below.
- 2.7 TM2 Healthcare Solutions shall be entitled to levy reasonable Additional Charges in the manner set out in Condition 2.8 below if the Support Service is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request for the same to have been unnecessary.
- 2.8 Additional Charges shall be levied by TM2 Healthcare Solution monthly in arrears and shall be payable by the Customer (together with value

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added tax thereon) within 30 days of receipt of an invoice therefor.

3. Charges

- 3.1 The Support Charge (together with Goods and Services Tax thereon) shall be levied by TM2 Healthcare Solutions monthly in advance with effect from the Effective Date and shall be payable by the Customer by Direct Debit only.
- 3.2 TM2 Healthcare Solutions shall be entitled to alter the amount of the Charge by giving the Customer a written notice stating the new Charges, which is to become effective 60 Working Days thereafter.
- 3.3 If any sum payable under the Contract or under any other separate contract between TM2 Healthcare Solutions and the Customer is not paid within seven days after the due date then (without prejudice to TM2 Healthcare Solutions TM2 Healthcare Solution's other rights and remedies) TM2 Healthcare Solutions reserves the right:
 - 3.3.1 to charge interest on such sum on a day to day basis (whether or not as before any judgment) from the due date to the date of payment (both dates inclusive) at the rate of five 5% plus the rated fixed under section 2 of the Penalty Interest Rates Act for the time being in force; and/or
 - 3.3.2 to suspend performance of the Support Service until the date of payment in full (including any interest accrued).

4. Warranty

- 4.1 Subject to the exceptions set out in Condition 4.2 below and the limitations upon its liability in Condition 5 below TM2 Healthcare Solutions warrants that it will perform the Services with reasonable care and skill.
- 4.2 TM2 Healthcare Solutions shall have no liability to the Customer for loss or damage which arises as a result of any of the circumstances described in Condition 2.5 above.
- 4.3 Subject to the foregoing all conditions, warranties, terms and undertakings express or implied by law in respect of the provision of the Support Service are hereby excluded.

5. Limitation of Liability

- 5.1 TM2 Healthcare Solutions shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract, the Software, any other software, data, modem or other hardware, of other equipment, property or otherwise except to the extent that such liability may not be lawfully excluded.
- 5.2 Notwithstanding the generality of Condition 5.1 above, TM2 Healthcare Solutions expressly excludes liability for consequential loss or damage which may arise in respect of the Software, any other software, data, modem, router, switches, gateways, internet activity or other hardware, or other equipment, property or for loss of profit, business, revenue, goodwill or anticipated savings.
- 5.3 In the event that any exclusion or other provision contained in the Contract be held to be invalid for any reason and TM2 Healthcare Solutions becomes liable for loss or damage that could otherwise have been limited, such liability shall be limited to the original cost of the software.
- 5.4 TM2 Healthcare Solution's liability to the Customer for death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence shall not be limited.

6. Termination

- 6.1 The Contract shall continue from the Effective Date and thereafter on a monthly basis unless and until terminated:
 - 6.1.1 by either party upon giving written notice of no less than 30 Working Days' to the other party upon which the Contract is to expire at the end of a calendar month;
 - 6.1.2 forthwith by either party if the other commits any material breach of any term of the Contract and which (in the case of a breach capable of being remedied) shall not have been remedied within 10 Working Days of a written request to remedy the same;
 - 6.1.3 forthwith by either party if the other suffers an Insolvency Event;
 - 6.1.4 forthwith by TM2 Healthcare Solutions if the Software License is terminated.
- 6.2 Any termination of the Contract pursuant to this Condition shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 6.3 The Customer shall not on termination of the Contract be entitled to any rebate in respect of the Support Charge unless the Contract is terminated by the Customer pursuant to Condition 6.1.2.

7. Force Majeure

Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control.

8. Waiver

The waiver by either party of a breach or default of any of the provisions of the Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

9. Notices

- 9.1 Any notice required to be given by either party to the other shall be in writing and may be given by hand or sent by first class pre-paid letter post, facsimile transmission or any comparable means of communication to the other party at the address stated in the Contract or such other address as may be subsequently notified to the other party.
- 9.2 Any notice will be deemed to have been received if by hand upon delivery; if by post, three days after posting; and if by any instantaneous method of transmissions, upon being sent.

10. Invalidity and Severability

If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

11. Entire Agreement

- 11.1 The Contract, and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Contract.
- 11.2 The Customer acknowledges and agrees that in entering into the Contract, it does not rely on, and shall have no remedy in respect of any statement, representation (unless fraudulent), warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract as a warranty.

12. Assignment

The Customer shall not be entitled to assign or otherwise transfer the Contract nor any of its rights or obligations hereunder without the prior written consent of TM2 Healthcare Solutions.

13. **Law** - The Contract shall be governed by and construed in accordance with Australian law and the parties hereto agree to submit to the non-

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exclusive jurisdiction of the courts of Victoria.

IF YOU ARE PURCHASING YOUR TM2 LICENSE, THE FOLLOWING SUPPORT AGREEMENT APPLIES:

1. Interpretation

In these Conditions the following words shall have the following meanings:

- 1.1 "Additional Charges" means the charges at TM2 Healthcare Solutions' rates from time to time for work undertaken on a time and materials basis;
- 1.2 "Support Charge" means the annual charge for the Support Service set out in the Contract as may be varied from time to time pursuant to Condition 3.2;
- 1.3 "TM2" means TM2 Healthcare Solutions;
- 1.4 "Compatible Software and Operating Systems" means Microsoft® Office or such other software as Blue Zinc may confirm in writing to the Customer is compatible with the Software, Operating Systems means Microsoft® Windows XP SP2, Windows 2000 SP4, Windows 2003 (all editions) SP1 or R2 and Vista Home Basic Operating Systems;
- 1.5 "The Customer" means the person, company or organisation requiring the service whose name and invoice address is set out in the Contract;
- 1.6 "The Contract" means the contract for the provision of the Support Service subject to these Conditions, details of which are set out below;
- 1.7 "The Designated Equipment" means the equipment referred to in the Contract;
- 1.8 "Documentation" means the instruction manuals, user guides and other information to be made available from time to time during this Contract by TM2 Healthcare Solutions at its discretion in either printed or soft copy form to the Customer;
- 1.9 "Effective Date" means the date set out in the Contract for the commencement of the Support Service;
- 1.10 "Insolvency Event" means if a party becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for amalgamation or reconstruction) or if the ownership or control of it shall pass into the hands of any other legal person, or an event analogous occurs in respect of a party in any jurisdiction to which that party is subject;
- 1.11 "New Release" means any improved modified or corrected version of any of the Software or Documentation from time to time issued by TM2 Healthcare Solutions pursuant to Condition 2.2 below;
- 1.12 "Normal Business Hours" means the working hours of 8.30am to 5.30pm, on a Working Day;
- 1.13 "The Site" means the Customer's premises specified in the Contract or such other premises as TM2 Healthcare Solutions may in writing agree;
- 1.14 "Software" means the software referred to in the Contract or any New Release thereof issued in accordance with Condition 2.2;
- 1.15 "Software License" means the license for the use of the Software on TM2 Healthcare Solution's standard terms;
- 1.16 "The Support Service" means the support of the Software to be provided to the customer by TM2 Healthcare Solutions as described in Condition 2;
- 1.17 "Working Day" means Monday to Friday inclusive but excluding statutory and public holidays in Australia;
- 1.18 "Year" means the period of 12 months from the Effective Date and each consecutive period of 12 months thereafter during the continuance of the Contract.

2. Support Service

- 2.1 TM2 Healthcare Solutions in consideration of the payment by the Customer from time to time of the Annual Charge in accordance with Condition 3 hereby undertakes to the Customer to provide, during Normal Business Hours, the categories of Support Services set out below.
- 2.2 The Support Service shall, comprise all or any of the following categories:
 - 2.2.1 advice by telephone on the use of the Software (category 'A');
 - 2.2.2 information and advice by telephone or email on forthcoming New Releases of the Software (category 'B');
 - 2.2.3 upon request by the Customer the diagnosis of faults in the software and the rectification of such faults (remotely or by attendance on Site as determined by TM2 Healthcare Solutions) by the issue of fixes in respect of the Software and the making of all necessary consequential amendments (if any) to the Documentation (category 'C');
 - 2.2.4 The creation and dispatch to the Customer from time to time at TM2 Healthcare Solution's sole discretion of New Releases of the Software or Documentation (category 'D').
- 2.3 The Customer shall supply in writing to TM2 Healthcare Solutions a detailed description of any fault requiring Support Services within category C above and the circumstances in which it arose forthwith upon becoming aware of the same.
- 2.4 TM2 Healthcare Solutions shall use its reasonable endeavours to respond within 24 Normal Business hours of receipt of a request for category C support.
- 2.5 The Support Service shall not include the diagnosis and rectification of any fault resulting from:
 - 2.5.1 the improper use, operation or neglect of either the Software or the Designated Equipment or any failure to comply with the terms of the Software License;
 - 2.5.2 the modification of the Software or its merger (in whole or in part) with any other software;
 - 2.5.3 the use of the Software on equipment other than the Designated Equipment or in conjunction with software other than Compatible Software and Operating Systems, (where the user chooses to install TM2 on a native Apple Mac Operating System, support for TM2 will only be provided for the application itself and support will not be given for any issue relating to the underlying operating system);
 - 2.5.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by TM2 Healthcare Solutions;
 - 2.5.5 any repair adjustment alteration or modification of the Software by any person other than TM2 Healthcare Solutions without TM2 Healthcare Solution's prior written consent;
 - 2.5.6 any breach by the Customer of any of its obligations under any support agreement in respect of the Designated Equipment;
 - 2.5.7 the Customer's failure to install and use upon the Designated Equipment in substitution for the previous release any New Release of the Software within seven days of receipt of the same.
 - 2.5.8 the infiltration of the Customer's computer system of virus or worm. Virus protection is the Customer's responsibility
- 2.6 TM2 Healthcare Solutions may, upon request by the Customer, provide the Support Service notwithstanding that the fault results from any of the circumstances described in Condition 2.5 above. TM2 Healthcare Solutions shall in such circumstances be entitled to levy Additional Charges in the manner set out in Condition 2.8 below.
- 2.7 TM2 Healthcare Solutions shall be entitled to levy reasonable Additional Charges in the manner set out in Condition 2.8 below if the Support Service is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request for the same to have been unnecessary.

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- 2.8 Additional Charges shall be levied by TM2 Healthcare Solution monthly in arrears and shall be payable by the Customer (together with value added tax thereon) within 30 days of receipt of an invoice therefor.
- 3. Charges**
- 3.1 The Support Charge (together with Goods and Services Tax thereon) shall be levied by TM2 Healthcare Solutions monthly in advance, by equal instalments or by single annual instalment with effect from the Effective Date and shall be payable by the Customer by Direct Debit only.
- 3.2 TM2 Healthcare Solutions shall be entitled at anytime by serving not less than 60 Working Days' notice to alter the amount of the Charges, Provided that the Customer shall on receipt of such notice be entitled to serve not less than 20 Working Days' notice to terminate this Agreement with effect from the date on which such increase becomes effective.
- 3.3 If any sum payable under the Contract or under any other separate contract between TM2 Healthcare Solutions and the Customer is not paid within seven days after the due date then (without prejudice to TM2 Healthcare Solutions TM2 Healthcare Solution's other rights and remedies) TM2 Healthcare Solutions reserves the right:
- 3.3.1 to charge interest on such sum on a day to day basis (whether or not as before any judgment) from the due date to the date of payment (both dates inclusive) at the rate of five 5% plus the rated fixed under section 2 of the Penalty Interest Rates Act for the time being in force; and/or
- 3.3.2 to suspend performance of the Support Service until the date of payment in full (including any interest accrued).
- 4. Warranty**
- 4.1 Subject to the exceptions set out in Condition 4.2 below and the limitations upon its liability in Condition 5 below TM2 Healthcare Solutions warrants that it will perform the Services with reasonable care and skill.
- 4.2 TM2 Healthcare Solutions shall have no liability to the Customer for loss or damage which arises as a result of any of the circumstances described in Condition 2.5 above.
- 4.3 Subject to the foregoing all conditions, warranties, terms and undertakings express or implied by law in respect of the provision of the Support Service are hereby excluded.
- 5. Limitation of Liability**
- 5.1 TM2 Healthcare Solutions shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract, the Software, any other software, data, modem or other hardware, of other equipment, property or otherwise except to the extent that such liability may not be lawfully excluded.
- 5.2 Notwithstanding the generality of Condition 5.1 above, TM2 Healthcare Solutions expressly excludes liability for consequential loss or damage which may arise in respect of the Software, any other software, data, modem, router, switches, gateways, internet activity or other hardware, or other equipment, property or for loss of profit, business, revenue, goodwill or anticipated savings.
- 5.3 In the event that any exclusion or other provision contained in the Contract be held to be invalid for any reason and TM2 Healthcare Solutions becomes liable for loss or damage that could otherwise have been limited, such liability shall be limited to the original cost of the software.
- 5.4 TM2 Healthcare Solution's liability to the Customer for death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence shall not be limited.
- 6. Termination**
- 6.1 The Contract shall continue for a period of 12 months from the Effective Date and thereafter on a monthly basis unless and until terminated:
- 6.1.1 by either party upon giving not less than 30 Working Days' notice to the other such notice to expire at the end of a calendar month;
- 6.1.2 forthwith by either party if the other commits any material breach of any term of the Contract and which (in the case of a breach capable of being remedied) shall not have been remedied within 10 Working Days of a written request to remedy the same;
- 6.1.3 forthwith by either party if the other suffers an Insolvency Event;
- 6.1.4 forthwith by TM2 Healthcare Solutions if the Software License is terminated.
- 6.2 Any termination of the Contract pursuant to this Condition shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 6.3 The Customer shall not on termination of the Contract be entitled to any rebate in respect of the Support Charge unless the Contract is terminated by the Customer pursuant to Condition 6.1.2.
- 7. Force Majeure**
- Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control.
- 8. Waiver**
- The waiver by either party of a breach or default of any of the provisions of the Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 9. Notices**
- 9.1 Any notice required to be given by either party to the other shall be in writing and may be given by hand or sent by first class pre-paid letter post, facsimile transmission or any comparable means of communication to the other party at the address stated in the Contract or such other address as may be subsequently notified to the other party.
- 9.2 Any notice will be deemed to have been received if by hand upon delivery; if by post, three days after posting; and if by any instantaneous method of transmissions, upon being sent.
- 10. Invalidity and Severability**
- If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 11. Entire Agreement**
- 11.1 The Contract, and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Contract.
- 11.2 The Customer acknowledges and agrees that in entering into the Contract, it does not rely on, and shall have no remedy in respect of any statement, representation (unless fraudulent), warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract as a warranty.
- 12. Assignment**
- The Customer shall not be entitled to assign or otherwise transfer the Contract nor any of its rights or obligations hereunder without the prior

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written consent of TM2 Healthcare Solutions.

13. **Law** - The Contract shall be governed by and construed in accordance with Australian law and the parties hereto agree to submit to the non-exclusive jurisdiction of the courts of Victoria.