

HiruMed®		Doc Revision: <b>1.0.3</b>
<b>COMMERCIAL IN CONFIDENCE</b>		Issue date: <b>18-06-2005</b>
<b>SOFTWARE SUPPORT AGREEMENT</b>		Author: <b>P. Sharp</b>

**Copyright Notice**

The contents of this document including but not limited to intellectual property, design details and 'know how' are Copyright to *HiruMed* Ltd ('HiruMed') whose registered office is at:

Integer House  
Coped Hall Business Park  
Wootton Bassett  
Swindon  
Wiltshire SN4 8DP

Tel: (01793) 854500 Fax: (01793) 855440 email: mail@hirumed.co.uk

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**DOCUMENT HISTORY**

Version	Primary Author(s)	Description of Version	Date Completed
Draft	PAS	Initial draft created for distribution and review comments	01-12-2003
1.0.0	PAS	Issue version 1.0.0	05-01-2004
1.0.1	PAS	Minor modifications to version 1.0.0	08-03-2005
1.0.2	PAS	Change to company address and contact numbers.	07-04-2005
1.0.3	PAS	Clause related to weekend cover added.	18-06-2005

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## 1. DEFINITIONS

**1.01** 'HiruMed' means HiruMed Ltd who's registered office is at:

Integer House  
Coped Hall Business Park  
Wootton Bassett  
Swindon  
Wilts SN4 8DP

Tel: (01793) 854500

Fax: (01793) 855440

**1.02** The 'Client' means the person or firm or company or party whose order HiruMed has accepted and whose registered address is at:

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**1.03** The 'Software' means the programmes supplied to run on the computer.

**1.04** The 'Hardware' means the physical components of the computer installation supplied by HiruMed.

**1.05** The 'Operating Software' means the software, which controls the internal functions of the Hardware.

**1.06** The 'EULA' means the Software End User Licence Agreement. This is an independent deliverable presented elsewhere.

## 2. GENERAL

**2.01** All Software Support Agreements are subject to the following express terms and conditions and no addition or variation thereto shall apply unless expressly agreed in writing by an authorised representative of HiruMed.

## 3. PRICES AND PAYMENT

**3.01** All prices are exclusive of Value Added Tax which is payable in accordance with current legislation.

**3.02** In the first year of the contract the Client shall pay the full annual Software Support charge, or due proportion thereof calculated on a time basis, within 28 days of the date of invoice. In subsequent years the Client shall pay the full annual Software Support charge in advance.

**3.03** If the Client fails to pay the price when due HiruMed reserves the right to:

**3.03.1** Charge interest on the overdue amount at the rate of 2% per month or part month from the date on which the payment becomes overdue until the date of payment; or

**3.03.2** Charge for support services provided after the date of payment; or

**3.03.3** Suspend the support service until all monies and interest are paid in full and without any allowance or rebate of the annual charge being made to the Client in respect of such period of suspension.

**3.04** The annual support charge may be varied by HiruMed from time to time but at intervals of not less than one year, the increase not to exceed the increase in the RPI since the previous change.

**3.05** Support provided outside of the times defined in Clause 5.01 below will be subject to the Client agreeing to pay an additional support fee of £250 per call.

## 4. SUPPORT SERVICES PROVIDED BY HiruMed

**4.01** HiruMed shall provide the following support services in respect of the Software and renewable annually up to a maximum of 3 years.

**4.01.1** For Software developed by HiruMed, to correct all programming faults detected by the Client in the Software where such faults indicate discrepancies from the specification for such Software.

**4.01.2** Where the Software has been developed by a third party, HiruMed will liase with the original developer of the Software in the investigation of any software faults.

**4.01.3** Amendments to the Software will be effected on the Client's computer by either telephone instructions or the despatch of the amended Software on suitable media and with sufficient instructions for installation.

**4.01.4** Assist by telephone with any enquiry that the Client has regarding the operation of the Software.

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**4.01.5** Assist by telephone with recovery procedures following accidental misuse of the system.

**4.01.6** Liase with the manufacturer of the Hardware during any investigation of hardware faults.

**4.01.7** Maintain a secure copy of the Software.

**4.01.8** Visits to Client's premises to resolve faults in the Software provided it is considered necessary in the professional opinion of HiruMed.

## 5. SUPPORT AVAILABILITY AND RESPONSE

**5.01** HiruMed shall normally provide the support service via the Support Desk (telephone number 01793-854500) at our registered office defined in Clause 1.01 above between the hours of 9:00am and 5:00pm, Monday to Friday, excluding English public holidays.

**5.02** The first response to a call is normally within 4 working hours although the actual time taken to resolve a problem may vary with the nature and complexity of the problem.

**5.03** HiruMed will provide the support service outside of the hours defined in Clause 5.01 above subject to the Client agreeing to pay the fee defined in 3.05 above.

## 6. CLIENT'S OBLIGATIONS

**6.01** The Client shall:

**6.01.1** Appoint a person(s) responsible for operating the Software who will be the primary contact. Any operation carried out by the Licensor within the framework of this Agreement may require the assistance of the primary contact; and

**6.01.2** Ensure that properly trained staff use the Hardware and Software taking full account of HiruMed's requirements and recommendations; and

**6.01.3** Ensure that adequate back-up plans, re-start procedures and checks for accuracy are defined and implemented; and

**6.01.4** Ensure that Security of data together with other necessary or recommended procedures are provided and adhered to without fail; and

**6.01.5** Use a room, electrical supply, a suitable environment, supplies and data processing supports in accordance with the Software specification *specified in the user instructions*, and more generally to comply with the *user instructions* designed to ensure satisfactory operation of the Software; and

**6.01.6** Ensure that computer equipment supplied by the Client is checked for suitability before installing the Software; and

**6.01.7** Carry out standard maintenance operations specified in the *user instructions*, under the conditions stipulated in those *user instructions*. This is to the exclusion of any other operation of whatever type.

**6.02** Ensure at all times that the requests for the Service hereunder shall be reasonable in the circumstances. If HiruMed shall be required repeatedly to provide the Service for reasons which in the reasonable opinion of HiruMed are trivial and do not justify such repetition of Service, HiruMed shall be entitled to require the Client to pay the standard rates for Service applicable at that time.

**6.03** All problems and enquiries must be reported to the Support Desk where a call monitoring system is in operation. HiruMed does not accept responsibility for the lack of progression of any items not reported to the Support Desk.

**6.04** Where necessary, the Client may be requested to provide information, documentary evidence or other details to assist in resolving a problem reported by the Client.

**6.05** The Client shall not allow any person or persons to amend or otherwise alter the Software other than authorised representatives of HiruMed.

**6.06** The Software must be used only on the Authorised Computer.

**6.07** The Hardware must be operated in accordance with the manufacturer's instructions and be covered by a hardware maintenance contract. All consumables used with the Hardware must meet the manufacturer's specifications.

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## 7. ACCESS TO THE SOFTWARE

**7.01** The Client shall provide HiruMed with full and unrestricted access to the Software and at the Client's expense make available suitable personnel, working space, and operating time on any applicable system as may reasonably be required by HiruMed to enable the proper performance of the Service.

**7.02** The Client shall accompany HiruMed personnel whilst present on the Client's premises.

**7.03** The Client shall take all reasonable precautions to ensure the health and safety of HiruMed personnel whilst on the premises of the Client and shall inform such personnel of any safety and other relevant rules and regulations for the time being applicable to and / or on such premises.

## 8. SERVICES EXCLUDED FROM THIS AGREEMENT

The following services are specifically excluded from this contract but can be provided by HiruMed at the rate or rates in force at the time of providing the service:

**8.01** Enhancements to existing Software, or the writing of additional Software.

**8.02** Maintenance support requested by the Client other than 4.01 (4.01.1).

**8.03** Diagnosis and/or rectification of problems not associated with the Software defined in the EULA.

**8.04** Faults or problems of any nature in the installed Operating Software.

**8.05** All visits to Client's premises not covered under Clause 4.01 (4.01.3), including, but not limited to, assistance with operational difficulties.

**8.06** Training and consultancy services, including audits of the Client's computer operations.

**8.07** Support required in any systems re-configuration including that required to accommodate additional equipment.

**8.08** HiruMed shall not be liable to provide the Service at any location other than as described herein. In addition, the Client shall notify HiruMed of the transfer of any Software to locations other than specified above. The Client shall be responsible for any such transfer. The assistance of the Client in transferring the Software will be charged at the applicable rate.

## 9. LIMIT OF LIABILITY

**9.01** HiruMed and the Client agree to indemnify each other against any liability arising in respect of injury including death to any person or loss or damage to any property, which results from the act, default or negligence of itself, its employees, agents or sub-contractors.

**9.02** Neither HiruMed nor the Client shall be liable to the other for any claims for indirect or consequential losses whether arising from negligence or otherwise.

**9.03** Neither party shall be liable for failure to perform its obligations under the contract if such failure results from circumstances beyond the party's control.

**9.04** HiruMed shall have no liability for any damage arising from the failure of the Client either to:

**9.04.1** inform HiruMed of any malfunction, of which the Client was aware: or

**9.04.2** to take any reasonable action recommended by HiruMed in regard to the repair or replacement of the Software or Hardware for any reason whatsoever.

**9.05** HiruMed shall have no liability for Software developed by a third party.

**9.06** Neither HiruMed nor the Client shall be liable for errors in the Software, which are caused by errors in the Operating Software.

## 10. SUPPORT DOCUMENTS

**10.01** The 'database' of technical support documents (collectively, the 'database') is provided for the convenience and private, internal use of HiruMed customers only. On line support documents can be found at: [www.hirumed.co.uk](http://www.hirumed.co.uk). The document giving detailed instructions on how to 'log on' to the online customer centre is an independent deliverable presented elsewhere.

**10.02** You may not copy or distribute any portion of this database for any purpose, except that you may make one printed copy of portions of this database for your own personal, internal use only, provided this entire disclaimer and copyright notice is included on such copy.

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**10.03** HiruMed assumes no responsibility for errors or omissions in the database. This database may include typographical errors, and changes may be periodically added to the information herein.

**10.04** HiruMed does not guarantee that solutions suggested in this database will be effective in the Client's particular situation. If the user is not familiar with any of the steps listed in the solution, HiruMed advises that the user does not proceed without first consulting additional resources.

## **11. RETURN MATERIAL AUTHORISATION (RMA)**

**11.01** HiruMed makes every attempt to provide its customers with the best possible service. From time to time however the Client may be required or request a return of the Software and / or Hardware to HiruMed (the 'Products'). Before HiruMed will accept a Product return the Client must obtain an RMA.

**11.02** In order to receive an RMA number the Client should write, fax or e-mail to:

Customer Service Department  
HiruMed Ltd  
Integer House  
Coped Hall Business Park  
Wootton Bassett  
Swindon  
Wilts SN4 8DP  
England

Tel: (01793) 854500  
Fax: (01793) 855440  
e-mail: returns@hirumed.co.uk

**11.03** The Client must provide any Product or packaging numbers that HiruMed may need. HiruMed will need to know the specifics of the problem the Client is experiencing (and in writing) in order to start the RMA process. All RMA numbers are subject to the warranty of the product in question. The Clients request for a return authorisation is subject to the following conditions:

**11.03.1** All Products must be shipped with the RMA number clearly written on the outside of the shipping package; otherwise the shipment will be refused.

**11.03.2** All Products to be returned, must be shipped to our registered office and freight prepaid. HiruMed will issue notice to reclaim any expenses it incurs during the return of the Products.

**11.04** All Products must be returned with all originally supplied parts (including manuals, cables, software, power adapters, etc.). HiruMed reserves the right to levy a replacement charge against missing or broken or damaged items.

## **12. TERMINATION**

**12.01** This Agreement shall be effective until terminated in accordance with the provisions of this Agreement. The Client may without prejudice to any other rights or remedies which it may have, immediately terminate this Agreement at any time after the Commencement Date and HiruMed may immediately terminate the Agreement in the event that the Client fails to comply with any term of this Agreement.

**12.02** Upon termination of this Agreement, all rights and obligations of the Parties under this Agreement shall automatically terminate except for any rights of action which may have accrued prior to termination and any obligations which expressly or by implication are intended to commence or continue in effect on or after termination.

**12.03** Upon termination, each Party shall immediately return to the other or dispose as the other may direct, all documents, papers or other material belonging to the other Party in its possession or under its control.

## **13. FORCE MAJEURE**

The Parties shall not be liable for any loss or damage of whatsoever nature howsoever arising caused by delay or for any other reason whatsoever in the performance or non-performance of any of its obligations hereunder where the same is occasioned by any cause whatsoever that is beyond the Parties' reasonable control including, but not limited to, any act of God, war or civil disturbance or fire.

## **14. NO PARTNERSHIP ETC**

**14.01** Nothing in this Agreement shall be construed as constituting a partnership or joint venture between the Parties hereto. The Parties also agree that they are, (including their servants, agents and employees), independent contractors and that neither

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Party is an agent or employee of the other. Without limiting the generality of the foregoing, neither Party is authorised to represent or make any commitments on behalf of the other.

## 15. NOTICES

**15.01** Any notice required to be given hereunder shall be in writing and shall be sent by hand, by pre-paid ordinary post or by facsimile to:

**15.01.1** HiruMed at its registered office defined in Clause 1.01 above or to the Client at the address presented in Clause 1.02 above.

**15.01.2** Or to such other address or fax number as is notified to the other party.

**15.02** A notice will be deemed to have been served or received four days after and excluding the day of posting and proof that notices were properly addressed and posted shall constitute conclusive evidence of service or receipt.

## 16. LAW

**16.01** This Agreement shall be governed by and interpreted in all respects in accordance with the Law of England.

**IN WITNESS** whereof the Parties have executed this Agreement the day and year first herein written

**Print Name:** \_\_\_\_\_

For and on behalf of the Client

**Print Name:** \_\_\_\_\_

For and on behalf of HiruMed Ltd