



HEALTH ONE USERS LICENCE AGREEMENT

between **MED-E-MASS** (PTY) LTD (registration no 1999/013744/07)

2nd Floor, Buren Building, Kasteelpark, Jochemus Street, ERASMUSKLOOF and P O Box 11528, ERASMUSKLOOF 0048
and the **USER** (as identified below)

FOR INTERNAL USE ONLY	Ref No:
Account No:	Contact Number:
Salesperson / Dealer:	Fax Number:

User's full name:	
Co / CC / ID No:	VAT No:
Practice Name:	Practice Type:
PCNS No:	Practice No: <input type="text"/>
Physical Address:	
Postal Code:	
Postal Address:	
Postal Code:	
Contact Person:	
Tel No:	Fax No:
Cell:	E-mail:

MARK THE OPTIONS SELECTED BELOW WITH A CROSS ("X")

Dispensing practice:	<input type="checkbox"/> Yes	<input type="checkbox"/> No								
Software:	<input type="checkbox"/> Elixir	<input type="checkbox"/> ME +	<input type="checkbox"/> Mass	<input type="checkbox"/> Med2000	<input type="checkbox"/> Fusion	<input type="checkbox"/> Mastermed	<input type="checkbox"/> Mastermed Premier	<input type="checkbox"/> MedAd2000	<input type="checkbox"/> Medcodes	<input type="checkbox"/> Other:
Interface with 3rd Parties:	<input type="checkbox"/> Switch	<input type="checkbox"/> Healthbridge	<input type="checkbox"/> MediKredit	<input type="checkbox"/> Nexion	<input type="checkbox"/> Coretalk	<input type="checkbox"/> Medprax	<input type="checkbox"/> TurboCash			
Hire of Attix5 disk-based backup system	<input type="checkbox"/> Yes	<input type="checkbox"/> No								

DESCRIPTION	QTY	UNIT PRICE	MONTHLY COST	TOTAL UPFRONT
Registration Fee				
Monthly Licence Fee				
Service and Support Fee				
Additional Site Licence Fee				
Training and Installation				
Conversion @ Labour Rate per Hour				
Backup system rental per month (if applicable)				
Additional Directories - Support				
Sub Total		R	R	R
	14% VAT	R	R	R
	TOTAL	R	R	R
	PAYMENT DUE	R	R	R
	TOTAL MONTHLY DUE	R	R	R

METHOD OF PAYMENT:	<input type="checkbox"/> Once off	<input type="checkbox"/> Debit Order	<input type="checkbox"/> Cash	<input type="checkbox"/> Cheque	<input type="checkbox"/> EFT
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DEBIT ORDER The User authorises Med-e-Mass to debit the User's Bank Account, details of which appear below, in payment of monies payable to Med-e-Mass for whatever reason (a copy of a cancelled cheque of the User must be enclosed herewith).		
Bank name:	Branch:	Branch Code:
Account name:	Acc No:	Acc Type:

Signed by: _____ (full name) who hereby warrants his/her authority and binds himself/herself as surety and co-principal debtor on behalf of the User in terms of this AGREEMENT

for and on behalf of the **User** _____ for and on behalf of **Med-e-Mass** _____

DATE OF SIGNATURE: _____ / _____ / 20____ COMMENCEMENT DATE: _____ / _____ / 20____

(See the Terms and Conditions overleaf)

[If extra space is needed, the details of additional practitioners shall be furnished on a separate sheet and attached hereto.]

Terms and Conditions

1 DEFINITIONS

For purposes of this agreement and Appendix "A" hereto:

- 1.1 "backup system" means the Attix5 disk-based backup system;
- 1.2 "commencement date" means the commencement date indicated on the front page of this agreement;
- 1.3 "funders" means medical schemes, healthcare insurers and other funders of healthcare services as well as government agencies which provide healthcare services and, if applicable, includes administrators of medical schemes and entities which perform claims evaluation services on behalf of funders;
- 1.4 "HEALTH ONE system" means the system in which the software is embodied and in connection with which the services are rendered;
- 1.5 "medical service provider" means any medical practitioner, pharmacy, hospital, nursing home, clinic, pathology laboratory, optician or other entity, which provides medical services;
- 1.6 "quotation" means the quotation of fees on the front page of this agreement;
- 1.7 "representatives" means a party's trustees, directors, officers, employees, affiliates, agents or professional advisers;
- 1.8 "services" means the services to be rendered by Med-e-Mass concomitant with the software in terms of this agreement; and
- 1.9 "software" means the HEALTH ONE software licensed to the User in terms of this agreement and, in Appendix "A", the software embodied in the backup system.

The User qualifies as a "consumer" in terms of the Consumer Protection Act 68 of 2008 if it is a company, a close corporation, a partnership, an association or a trust whose asset value or annual turnover is less than R2 million or if he or she is a natural person (a human being) who conducts the practice on his or her own, irrespective of his or her asset value or annual turnover. In what follows "section" refers to a section of the aforesaid Act.

2 GRANT AND TERMS OF LICENCE

- 2.1 Med-e-Mass grants the User a non-exclusive and non-transferable licence to use the software and services supplied in terms of the quotation subject to the terms and conditions set out in this agreement.
- 2.2 Med-e-Mass retains ownership and all the intellectual property rights in or relating to the software and any copy thereof. The software is not sold and the User is only entitled to use it under licence for the User's own processing and storing of data and for communication purposes.
- 2.3 This agreement shall commence on the commencement date, and shall remain in force until terminated by either the User or Med-e-Mass by giving the other party at least 90 (ninety) days' written notice.
- 2.4 On termination of this agreement, for whatever reason, the User shall forthwith cease to use the software and return the software and any copy thereof to Med-e-Mass, failing which, Med-e-Mass shall be entitled to have unhindered access at any reasonable time to the User's premises and computers in order to remove the software.

3 OBLIGATIONS OF THE USER

- 3.1 The User shall pay Med-e-Mass the fees payable in terms of the quotation in advance before or on the 7th day of each month. The User authorises Med-e-Mass, in terms of the foregoing debit order, to withdraw all the amounts due by the User in terms of this agreement from the relevant account. If the User should fail to pay any amount due in terms of this agreement timeously:

- 3.1.1 Med-e-Mass shall be entitled forthwith to withdraw the use of the software and services by withholding access thereto;
- 3.1.2 the unpaid amount or amounts shall bear interest at a rate two percentage points above the prime rate charged by Standard Bank of South Africa from time to time; and
- 3.1.3 Med-e-Mass shall be entitled to re-submit any debit order or cheque that is returned "unpaid" by the bank and all the resulting bank charges will be debited to the User's account. If it should become necessary for Med-e-Mass to institute legal proceedings to recover fees from the User, the User shall be liable for tracing fees, collection commission and legal costs (on the attorney and own client scale) reasonably incurred by Med-e-Mass.
- 3.2 Irrespective of the foregoing, Med-e-Mass shall be entitled to cancel this agreement and terminate its services forthwith if the User should fail to pay the fees timeously, or if the debit order given by or on behalf of the User is not honoured.
- 3.3 Med-e-Mass may from time to time increase the fees by an amount which is fair and reasonable in view of:
 - 3.3.1 any enhancement of the services that Med-e-Mass renders to the User; or
 - 3.3.2 any increase in the CPI since the previous fixing of the fees;

provided that Med-e-Mass gives the User 30 (thirty) days' notice of its intention to do so. If the User does not terminate this agreement within the aforesaid notice period of 30 (thirty) days, it shall be deemed to have accepted the increase.
- 3.4 The User shall, subject to the provisions of clause 3.6.2 below, not at any time use or attempt to use the software on a stand-alone basis at more than one site.
- 3.5 All persons attached to the User, who will be using the software, shall undergo initial basic training in its use.
- 3.6 The User shall notify Med-e-Mass in writing:
 - 3.6.1 at least 30 (thirty) days in advance of any change of its physical or postal address;
 - 3.6.2 timeously if it should wish to have the software installed at an additional site; and
 - 3.6.3 forthwith if there is an increase in the number of doctors attached to the User's practice.
- 3.7 In any of the events referred to in clauses 3.6.2 or 3.6.3 above the fees payable in terms of this agreement will be adjusted accordingly.
- 3.8 The User shall at all times maintain a full set of current back-up data and Med-e-Mass shall not be responsible for any loss or damage howsoever arising from the loss of data. If the User elected to hire the backup system, the provisions set out in appendix "A" hereto will apply.
- 3.9 The software contains copyrighted material, trade secrets and other proprietary effects. The User shall not merge, modify, alter or adapt the software in any way, including disassembling, de-compiling or otherwise reducing the software to human perceivable form, or permit any third party to modify or alter or adapt the software in any way, or remove or alter any proprietary notices, logos or labels on or in the software or front end User interface.
- 3.10 The User shall give auditors or representatives of Med-e-Mass at any time during business hours full and unfettered access to its records at any of its sites and allow Med-e-Mass to inspect them, take extracts from them or make copies of them for the purposes of establishing whether the User has paid and is paying Med-e-Mass the fees due in terms of clause 3.1 above. The User shall co-operate fully with the auditors or representatives of Med-e-Mass when they carry out an inspection as aforesaid.

4 INFORMATION SECURITY AND PRIVACY

- 4.1 Where the **User** is required to make use of a username, password or other security mechanism in order to use the **software**, the **User** shall notify **Med-e-Mass** in writing of any unauthorised or fraudulent use of such username, password or security mechanism. The **User** indemnifies and shall hold **Med-e-Mass** and its **representatives** harmless, from any claims, losses, damages and expenses caused by any unauthorised or fraudulent use of the **User's** username, password or security mechanism.
- 4.2 Where the **User** is required to connect to the Internet in order to make use of the **software**, the **User** shall bear all the risks involved in the use of Internet applications, including the risks of exposure of sensitive or confidential information to persons for whom it was not intended, hacking, viruses, exposure to contaminated files and objectionable material, spamming, electronic fraud and other security risks. **Med-e-Mass** shall not be liable for any intrusion or hack to the **software** nor for any unauthorised access to the information or data stored or communicated by the **User** or any other person using the **software** or the **services**. It is the **User's** own responsibility to ensure that only authorised persons have access to such information or data through adequate information security standards and procedures to be implemented and monitored by the **User**.
- 4.3 **Med-e-Mass** does not guarantee the non-exposure of personal information and, notwithstanding the terms of **Med-e-Mass's** privacy policy, the **User** assumes the risk of any breaches of privacy.
- 4.4 The **User** gives **Med-e-Mass** permission to use data extracted from the **HEALTH ONE system** for comparative or commercial purposes as long as the identity of the **User**, the patient and member is not disclosed.

5 USE OF PATIENT INFORMATION

- 5.1 Subject to the provisions of clauses 5.2 and 5.3 below, a patient's information recorded in the **ONE HEALTH system** may be made available to:
- 5.1.1 **funders**; and
- 5.1.2 **medical service providers** other than the **User**;
- however, only if the **User** has obtained the prior consent of the patient, or of the patient's guardian, curator or caretaker, if the patient is not legally competent to give such consent.
- 5.2 The consent referred to in clause 5.1 above shall be given by the signature of the consent form attached hereto as appendix "B" by the patient or on behalf of the patient by his or her guardian, curator or caretaker .
- 5.3 Notwithstanding the foregoing, the **User** shall furnish the patient or his guardian, curator or caretaker with a pin number which shall be used by the patient, guardian, curator or caretaker to enable a **funder** or other **medical service provider** to gain access to the patient's information; **provided that**, if the patient is in need of urgent medical care to prevent his or her suffering irreparable physical or mental harm, the **funder** or other **medical service provider** concerned, will be entitled to dispense with the use of the pin number and will be allowed access to the patient's information at such level as may, in the discretion of the of the **funder** or other **medical service provider**, be necessary and justified in the best interests of the patient.

6 OBLIGATIONS OF MED-E-MASS OR ITS ACCREDITED DEALER

Med-e-Mass, or its accredited **Dealer** designated to service the **User**, shall, before or on the **commencement date** install the **software** at the site or sites of the **User** and for the duration of this agreement maintain the **software**, provided always that **Med-e-Mass's** obligation to maintain the **software** shall be limited to, and comprise only the examination and testing of the **software** and effecting adjustments thereto necessitated by the normal use of the **software** within the specifications of the **software**.

Consumers' attention is specifically drawn to the foregoing clause in compliance with the provisions of section 49(1)(a).

7 SOFTWARE MAINTENANCE AND SERVICES

Med-e-Mass or the **Dealer** shall, render maintenance and support **services** to the **User** as set out below.

7.1 General services

Med-e-Mass shall provide the following to the **User**:

- 7.1.1 telephonic support provided the call is made by the **User** and does not exceed 10 (ten) minutes;
- 7.1.2 **software** enhancements, which will comply with all legal requirements as well as the requirements of SAMA and BHF;
- 7.1.3 new releases of the **software**; and
- 7.1.4 customized developments requested by the **User**, which will be charged on a time and material basis at **Med-e-Mass's** ruling rate.

7.2 Corrective maintenance

On notification of a breakdown or deterioration in **service** due to a fault in the **software**, **Med-e-Mass** or the **Dealer** shall carry out repairs including the replacement of **software**, if necessary, and restore service.

7.3 Fault Reporting

The **User** shall report a breakdown of the **software** to **Med-e-Mass** or the **Dealer**. **Med-e-Mass** or the **Dealer** shall respond to such report in accordance with the foregoing provisions.

7.4 Training

Med-e-Mass shall provide training to the **User's** members of staff who operate the **software**. The **User** shall ensure that every operator completes the **Med-e-Mass** basic training course on the use of the **software**. It is also the continued responsibility of the **User** to keep its staff trained in the use of the **software**. **Med-e-Mass** will evaluate the competency level of operators from time to time (in line with **Med-e-Mass's** records of support required by the **User** or by on-site spot checks) to ensure effective use of the **software**.

7.5 Availability of support services

The telephonic and on-site support referred to in clauses 7.1.1 and 7.2 above shall be available between 08:30 and 17:00 from Mondays to Fridays, excluding Public Holidays.

8 USE OF THE SOFTWARE

The **User** shall be fully responsible for the supervision, use, care and control of the **software**, including operating procedures of the designated computer. The **software** shall be used on a computer system approved for that purpose by **Med-e-Mass**, failing which; any warranties given by **Med-e-Mass** will lapse.

9 EXCLUSIONS

Consumers' attention is specifically drawn to the provisions of this clause 9 in compliance with the requirements of section 49(1)(a).

The support and maintenance services do not include the following:

- 9.1 maintenance or repairs of electrical works or telecommunication lines, computing equipment, hardware, circuits and apparatus connected to computers or any accessories or devices;
- 9.2 all items of any nature not forming an integral part of the **software**;
- 9.3 the repair of equipment or software data corruption due to virus attack, **User** interference, **User** generated errors, failure to do back-ups, failure to do month-end routines, ignoring unbalanced or error reports or allowing an inadequately trained operator to use the system;
- 9.4 the repair of damage to the equipment or **software** or the restoration of lost service or data resulting from *vis major* or *causus fortuitus*, such as, but not limited to, strike, natural disaster, riot, flood, act of war, terrorism, accident, failure of transport, theft, fire, water, smoke, lightning, earthquake, neglect or misuse, including surge or outage of electrical power or the unavailability of water supply or means of communication or changes to the specified environment or any similar events which cannot, according to objective standards of reasonable conduct, be prevented or avoided by **Med-e-Mass**;
- 9.5 the supply of consumable items, such as cassettes, disks, batteries, lamps and ribbons;
- 9.6 repair of damaged equipment or restoration of service impaired directly or indirectly by the connection of accessories, attachments, devices or software, without the prior written consent of **Med-e-Mass**;

- 9.7 alterations or additions to the equipment or the service of operator facilities;
 - 9.8 **services** necessitated by relocation or removing the equipment or any part thereof;
 - 9.9 the cost incurred as a result of a request by the **User** to attend to an apparent fault or the restoration of service apparently lost or impaired due to misuse, malicious damage, incorrect operation or negligence or the failure of lines or other equipment or apparatus either directly or indirectly connected to the equipment, whether due to the **User**, its employees, agents, contractors, anyone on the **User's** premises or any other person or cause beyond the control of **Med-e-Mass**; or
 - 9.10 additional assistance if the **User** employs untrained staff or staff is on leave or sick.
- 10 WARRANTY AND LIMITATION OF LIABILITY**
- 10.1 **Med-e-Mass** warrants that the **software** will perform substantially in accordance with its published specifications, which the **User** acknowledges it has received, provided always that the **software** is used on computer hardware, and in conjunction with an operating system, for which the **software** is designed.
 - 10.2 **Med-e-Mass** or its accredited **Dealer** shall not be liable for any fault in the computer hardware or the software nor does **Med-e-Mass** warrant the integrity of any third party data or electronic information, including but not limited to converted data. **Med-e-Mass** or its accredited **Dealer** shall, in particular, not be liable for any consequential loss which the **User** may suffer as a result of any fault in the **software** and its aggregate liability arising from breach of this agreement will, in any event, not exceed the fees charged by **Med-e-Mass** for 1 (one) month.
 - 10.3 **Med-e-Mass** gives no undertakings or warranties in addition to the undertaking and warranty respectively contained in clauses 6 and 10.1 above.

Appendix "A"

Data Backup - Terms and Conditions

1 INTRODUCTION

The following terms and conditions apply to the **User** if the **User** indicated that it wishes to avail itself of the **backup system** for a period of 12 (twelve) months at the rental indicated on the front page of this document.

2 BACKUPS

- 2.1 The **User** acknowledges that, while **Med-e-Mass** undertakes in good faith to provide and maintain the general routines and maintenance regarding the backup of the **User's** data, owing to the very nature of data management, **Med-e-Mass** cannot warrant that the **User's** data backups will in all circumstances remain intact and available.
- 2.2 The making of backups of the **User's** data, of any nature whatsoever, does not form part of the **services** and it is accordingly entirely the responsibility of the **User** to make its own back-ups on a regular basis or upon such basis as may be prescribed by **Med-e-Mass**.
- 2.3 The **User** hereby agrees to indemnify and hold **Med-e-Mass** and its **representatives** harmless against all and any loss, damage or action that **Med-e-Mass** or its **representatives** may suffer or incur in consequence of the failure of any of the aforesaid backups of the **User** or any failure to make such backups.

3 OWNERSHIP

Ownership of the **Backup software** shall vest in **Med-e-Mass**. The **User** shall have use of the **software** only for a period of 12 (twelve) months starting from the **commencement** date. Nothing in these terms and conditions shall be construed as conferring on the **User** any right, title or interest in the **software** except to use it in accordance with these terms and conditions.

4 MAINTENANCE

Med-e-Mass shall be responsible for the maintenance of the **software** and **hardware** forming part of the "goods" specified in clause 5 below, subject, *mutatis mutandis*, to the provisions of clauses 7 and 9 of the USERS LICENCE AGREEMENT to which this Appendix is attached.

5 GENERAL

- 5.1 Monitoring of backup's and backup success and selection of data for backup purposes is the responsibility of the **User**. **Med-e-Mass** will help set-up the selection.
- 5.2 That servers, desktops and laptops have enough local disk space to store the local data and run the system
- 5.3 The amount of history the backup will contain will depend on the amount of storage space the storage platform has.
- 5.4 Any unreasonable assistance required from **Med-e-Mass** will be at **Med-e-Mass's** standard charges for time and material.
- 5.5 Owing to encryption, loss of encryption keys will result in a total loss of all data and a failure to recover in the event of a disaster. Preservation of this information is the responsibility of the **User** solely. **Med-e-Mass** shall not be liable for any damage suffered in consequence of the loss or unavailability of the **User's** encryption keys.

6 GOODS

Med-e-Mass lets the following goods to the User in terms of this Appendix:

- 6.1 Attix5 Software - 1 x Attix5 Desktop/Laptop User License
- 6.2 Hosting of critical data – Capped at 2GB (Compressed)

Consumers' attention is specifically drawn to clauses 10.2 and 10.3 in compliance with the requirements of section 49(1)(a).

11 NON-TRANSFERABILITY

- 11.1 The **User** shall not, without **Med-e-Mass's** prior written consent, cede, assign, delegate or otherwise transfer its rights in terms of this agreement to any third party nor shall it allow any third party to use the **software**.
- 11.2 The licence will *ipso facto* lapse if there is a change in the membership, ownership or control of the **User**. In such event the **User** will have to apply for a new licence and pay the applicable registration fees.

Accepted and signed by or on behalf of the **User** by the signatory who warrants his or her authority

.....

.....
Full name

.....
Designation