ENIGMA STANDARD SUPPORT AGREEMENT – POCTConnect (version 1.0)

These standard terms and conditions (as varied from time to time) ("Terms") govern the support services to be provided by Enigma Solutions Limited ("Enigma") to the Customer in respect of the Software.

Enigma may vary these Terms from time to time by email notification to the Customer and/or by uploading the updated terms and conditions on Enigma's POCTConnect website (www.POCTConnect.co.nz). By continuing the use of the Software following such notification and/or uploading onto Enigma's website the Customer will be deemed to have accepted such varied Terms.

1.   Interpretation

1.1   In these Terms, unless the context otherwise requires:

"**Customer**" means the person or legal entity specified as the customer in the Registration Form;

"**Commencement Date**" has the meaning given to it in the Licence Terms;

"**Default Rate**" means the overdraft interest rate charged by Enigma's bankers plus a margin of 5% per annum;

"**Equipment**" has the meaning given to it in the Licence Terms;

"**Healthlink Messaging**" has the meaning given to it in the Licence Terms;

"**Initial Support**" means the support services referred to in clause 2.1(a);

"**Licence**" means the limited licence to use the Software granted to the Customer by Enigma on the Licence Terms;

"**Licence Terms**" means the terms headed "Enigma Standard Licence Terms – POCTConnect (version 1.0)", as available for viewing on www.POCTConnect.co.nz;

"**Ongoing Support**" means the support services referred to in clause 2.1(b);

"**PMS**" has the meaning given to it in the Licence Terms;

"**Purchase Order**" means a purchase order for Ongoing Support in a form specified by Enigma from time to time and signed by the SPC or another duly authorised representative of the Customer;

"**Rate**" means Enigma's then standard charge rate for the Software Support as advised to the Customer from time to time (which, as at the date of these Terms, is $165 plus GST per hour);

"**Registration Form**" means the registration form pursuant to which the Customer registers their use of the Software with Enigma and pursuant to which they agree to be bound by these Terms;

"**Service Request**" means the request for Software Support pursuant to clause 2.5;

"**Single Point of Contact**" or "**SPC**" means the person or persons whom the Customer nominates at the time of accepting these Terms as the person(s) within its organisation authorised to initiate Service Requests;

"**Site**" means any location other than Enigma's premises from which the Customer requires Enigma to undertake Software Support;

"**Software**" has the meaning given to it in the Licence Terms;

"**Software Support**" means the Initial Support and the Ongoing Support;

"**Support Charges**" means the sums payable by the Customer at the Rate for the Software Support;

"**Update**" has the meaning given to it in the Licence Terms;

"**Working Hours**" means the hours from 8.30am until 5.00pm Monday to Friday excluding New Zealand public holidays and Auckland anniversary day holiday and excluding all days between Christmas and New Year's day.

2.   Software Support

2.1   Enigma will provide the Customer with Software Support for the Software. The Software Support will comprise of:

(a)   Initial Support: being assistance in connection with the initial installation and set-up of the Software. The Initial Support will be for a maximum of 30 minutes duration in aggregate and will only be available from the Commencement Date until the date falling 30 days after the Commencement Date;

(b)   Ongoing Support: being all support services provided by Enigma to the Customer under these Terms other than the Initial Support.

2.2   Unless otherwise agreed by Enigma in writing:

(a)   Software Support will be provided remotely by telephone, email and via internet based remote meeting software (GoToMeeting or similar); Enigma has no obligation to provide on-site support under these Terms;

(b)   Enigma will only accept a Service Request from the Customer's Single Point of Contact;

(c)   Software Support will be provided during Working Hours only; and

(d)   Enigma will only be required to provide Ongoing Support once it has received a signed Purchase Order with respect to such Ongoing Support.

2.4   Nothing in these Terms or elsewhere will require Enigma to carry out (with or without charge) any alteration or modification to the Software.

2.5   The Single Point of Contact may raise a Service Request to Enigma by telephone or email or directly to Enigma's Service Request management system.

3.   Enigma's Obligations

3.1   Enigma shall:

(a)   Provide the Software Support with the standards of skill, care and diligence normally practiced by suitably qualified and experienced contractors providing services or a similar nature to the Software Support;

(b)   Ensure that suitably qualified personnel are used in the provision of Software Support; and

(c)   Use all reasonable endeavours to respond to each Service Request within 6 Working Hours, provided that with respect to Ongoing Support the 6 Working Hours will commence from the time that Enigma receives a signed Purchase Order with respect to the Ongoing Support.

4.   Support Charges

4.1   Initial Support will be provided by Enigma to the Customer free of charge.

4.2   All Ongoing Support will be charged at the Rate.

4.3   Actual hours spent by Enigma in providing the Software Support may be rounded up to the nearest one quarter (0.25) hour for each Service Request in order to calculate overall hours expended and the Support Charges payable.

4.4   The Customer will pay all reasonable travel and accommodation expenses incurred by Enigma in relation to visits to a Site for the purpose of providing Software Support provided such expenses have previously been authorised in writing by the Customer.

5. Payment

5.1 The Customer will pay the Support Charges by the 20th of the month following the month of invoice. If payment of any invoice is not made in full by the due date, Enigma may charge interest on the overdue amount at the Default Rate. Such interest will accrue on a daily basis (both before and after judgment) and will be payable on demand.

5.2 Enigma may withhold Software Support until all amounts due by the Customer to Enigma under these Terms have been paid in full.

5.3 The Customer will pay to Enigma all Goods and Services Tax (where applicable and at the applicable rate) in addition to the Support Charges and on any other payments payable by the Customer under these Terms.

6. Default and Termination

6.1 Either party may by written notice to the other terminate the Software Support and these Terms:

 (a) On 90 days' notice in writing to the other party;

 (b) Immediately, if the other party breaches any of its obligations under these Terms and fails to remedy such breach within seven days after notice from the other party specifying the breach and requiring it to be remedied;

 (c) Immediately, iIf the other party becomes bankrupt or goes into liquidation or has a receiver, administrator or statutory manager appointed of its assets or any of them or becomes insolvent, ceases to carry on its business or makes any composition or arrangement with its creditors.

6.2 The Software Support and these Terms will automatically terminate if the Licence expires or is terminated for any reason.

6.3 Termination will not impact the rights and obligations of the parties accrued prior to termination, including the obligation of the Customer to make payment for all Software Support provided prior to termination.

7. Warranties / Limitation of Liability

7.1 Enigma does not warrant that the Software Support will meet the Customer's data processing, reporting, analytical requirements or other requirements.

7.2 Except as expressly set out in these Terms, all representations, indemnities, conditions and warranties (whether express or implied, statutory or otherwise and including warranties as to the merchantable quality or fitness for any particular purpose of the Software Support) are expressly excluded.

7.3 Enigma shall not be liable to the Customer for any indirect or consequential loss, or loss of profits however suffered in connection with these Terms, the Software Support, the Licence or the use of the Software. Furthermore, in no event shall Enigma's liability relating to these Terms, the Software Support, the Licence or the use of the Software (in each case whether in contract, tort or otherwise) exceed NZ$10,000 in aggregate.

7.4 This clause shall survive termination of these Terms and the Software Support.

8. General

8.1 The rights granted to the Customer under these Terms are personal to the Customer and are non-assignable.

8.2 No waiver of any breach of these Terms will be deemed to be a waiver of any other or subsequent breach. The failure of Enigma to enforce any provision of these Terms will not be interpreted as a waiver of the provision.

8.3 These Terms are subject to the laws of New Zealand and the Customer submits to the exclusive jurisdiction of the New Zealand courts with respect to matters relating to the Licence and these Terms.