

1. OBLIGATIONS OF PRACTICE NET

Under this Agreement Practice Net or its sub-contractors undertakes to:

- 1.1 Grant to the Customer a licence to use the Software under the provisions of this Agreement.
- 1.2 Deliver the specified Software electronically via the Internet or by post, together with one copy of the appropriate Manuals (if applicable) to the Customer Premises.
- 1.3 Commencing upon delivery of the Software to offer the Customer the opportunity to purchase Ongoing Software Support Services in respect of the Software.

2 OBLIGATIONS OF THE CUSTOMER

Under this Agreement the Customer agrees:

- 2.1 To operate the Software only in accordance with the Licence conditions of this Agreement and to ensure that the actual number of users of the Software does not exceed the maximum number of users purchased.
- 2.2 To promptly pay Practice Net all sums due under this Agreement including ongoing annual licence and support as applicable.
- 2.3 When notified by Practice Net, to implement promptly any new releases or fixes of any system software necessary for the successful operation of the Software.
- 2.4 To nominate a suitable member of staff to be the System Controller and act as the liaison point with Practice Net on all matters relating to the supply of ongoing services under this Agreement, and to ensure that adequate commitment to training and management involvement is extended for the duration of this Agreement.
- 2.5 Not to assign this Agreement to any other party without the prior permission of Practice Net in writing.
- 2.6 That the Customer is the best judge of the value and importance of the data held and will be solely responsible for:
 - a) Instituting and operating all necessary backup procedures to ensure that data integrity can be maintained in the event of loss of data for any reason.
 - b) Taking out any insurance policy or other financial cover for loss or damage, which may arise from loss of data for any reason.

The Customer will indemnify Practice Net in the event of any third party claims against Practice Net as a result of loss of data for any reason.

3 SOFTWARE PRODUCT LICENCE

3.1 The Copyright and all other intellectual property rights in the Software, the Manuals, and in all documentation relating to the Software are and will remain vested in Practice Net or its licensor.

3.2 Under the terms and conditions of this Agreement Practice Net grants to the Customer a non-exclusive and non-assignable licence to use the Software, subject to the maximum number of users purchased.

3.2.1 To use the Software only for processing the Customer's own data (or those of its professional clients) and not to provide a data processing or bureau service to any third party (other than professional clients) whether by way of trade or otherwise.

3.2.2 To install and copy the Software to satisfy only the requirements of the Customer's business or its professional clients.

3.2.3 To make any such copies of the Software as are necessary for operational security and use. The license applies to such copies as it applies to the Software.

3.2.4 If the Customer relocates within the country of supply the Software may also be relocated provided that written notice has first been given to Practice Net and that the terms and conditions of this Agreement are acknowledged to continue to apply. This requirement shall not apply on processors specifically supplied as portable.

3.3 The Customer specifically agrees not to trade, lend, sell, hire or sub-license the Software to a third party to this Agreement.

3.4 The Customer will not make the Software or any copy available to, or allow use of all or part of the Software by any third party, including a facility manager, except with the express prior written consent of Practice Net on any terms Practice Net considers appropriate, but Practice Net has no actual or implied obligation to give such consent.

3.5 The Software is the confidential proprietary information of Practice Net or its licensor. To protect and safeguard the Software from use by unauthorised persons the Customer will exercise due diligence and care in the storage, use and copying of all or any part of the Software and will treat the Software with at least the same amount of reasonable care it takes to protect its own confidential materials. If any unauthorised use is made of the Software and such use is attributable to any act or default of the Customer then, without prejudice to Practice Net's other rights and remedies against the Customer, the Customer will be immediately liable to pay Practice Net an amount equal to the charges which the unauthorised user would have been obliged to pay if Practice Net had granted a licence or licences in respect of the otherwise unauthorised use.

3.6 Any Software that is identified as Third Party Software is sublicensed to the Customer under the standard terms of the appropriate original author's Distribution or Licence Agreement, including the Term of the contract.

3.7 For the purpose of this licence, a User is considered to be a successful log-on to an application, Users is the total number of such sign-ons at any one point in time.

3.8 If the Customer wishes to increase the maximum number of users of the Software then he will be required to pay the price for the increase ruling at the time.

4 ONGOING SOFTWARE SUPPORT SERVICES

The following terms and conditions specifically apply to the provision by Practice Net of support and corrective services relating to the Software licensed under this Agreement. The Services will commence upon delivery of the Software to the Customer's premises unless the Customer has chosen not to purchase such services.

4.1 Under this Agreement, Practice Net will provide a telephone, fax & email help desk support service from its Service Centre for the initial investigation of problems with the Software. If the problem discussed is identified as being a Program Error where the Software does not provide the facilities and functions described in the appropriate software manuals, Practice Net will provide staff to commence work within one working day and will diligently pursue the work to find a solution to the Program Error. In some cases, at Practice Net's discretion, minor faults may only be fixed in a subsequent release of the Software.

4.2 If the Program Error exists in the current version of the standard Software, Practice Net will make no additional charge for the effort to investigate the Program Error and find a solution. If the Program Error is in any other release of the Software, or any software not supplied by Practice Net, then Practice Net reserves the right to charge for all its effort relating to the investigation and fixing of the problem on a time and materials basis, plus expenses, at the standard rates that are applicable at the time.

4.3 Practice Net will deliver to the Customer electronically or on magnetic media, free of additional charge, all new releases of the package Software. Between the issue dates of major releases there may also be some minor releases, which will be versions of the Software issued to fix one or more faults in the current major release of the package.

4.4 If the Customer uses an excessive amount of telephone support time on problems not relating to Program Errors in the Software (e.g. operational problems, faults in software not supplied by Practice Net or general advice and guidance) Practice Net reserves the right to charge for such support after notification, in writing, of the abuse of this service.

4.5 Irrespective of the source of the problem, this Agreement excludes time spent by Practice Net on the Customer site. Any effort required by Practice Net on the Customer site for investigation, installation, testing, assistance or operational aspects, will be charged at the time and materials rates. However, where a problem exists and that problem cannot be recreated either on Practice Net's own computer, or, following connection to the Authorised Processor, by dial-in, then any effort required by Practice Net staff on the Customer site will not be chargeable. Where effort is required by Practice Net staff on the Customer site due to the inability to provide a dial-in connection or reasonable diagnostic information over the phone, or by post, then that time and effort will be charged at a time and materials basis, plus expenses at the standard rates that are applicable at the time.

4.6 If the fault in the Software is identified as being Third Party Software, Practice Net undertakes to report the fault to the Third Party Software supplier. The Customer agrees to accept the Third Party Software supplier's response as the resolution of the issue.

4.7 Practice Net will have no liability or obligations under this Agreement other than by the provision of labour and materials at Practice Net's expense to correct errors and defects in the Software where such errors or defects are capable of remedy. Practice Net will not have any liability to correct errors and defects in the Software where such errors and defects result from alteration, modification, update, amendments or improper use of the Software.

4.8 The Customer will assist Practice Net to provide the service by providing staff, machine time, printouts, dumps and any other resources required to investigate or fix reported faults.

4.9 The service will be provided between the Service Centre hours. In the event that the Customer requires Practice Net to provide services outside of these times or on Public Holidays, the provision of such services will be at the discretion of Practice Net and Practice Net will be entitled to an additional payment, which will be calculated at Practice Net's published overtime rates in force at the time.

4.10 Practice Net may change the location or make minor changes to the hours of its Service Centre by giving not less than one month's written notice to the Customer.

5 SYSTEM PERFORMANCE

The major factors, which affect response time, are outside Practice Net's control and it is not, therefore, possible for Practice Net to guarantee any performance of the software on the Customer's computer.

6 WARRANTY

6.1 Practice Net warrants that the Software will provide the facilities and functions described in the appropriate software manuals (if applicable). Such warranty will commence upon delivery of the Software and continue for so long as the Software is supported by Practice Net under the relevant terms and conditions of this Agreement.

6.2 Practice Net undertakes at its own expense and within a reasonable time, to remedy any Program Errors in the Software under the provisions of Section 4 provided the Customer has provided written notice of the breach.

6.3 Practice Net shall pass to the Customer the benefit of any warranties which may be available to Practice Net from the authors of any Software that is identified in the attached schedules as Third Party Software.

6.4 Except as stated above, no other warranty expressed or implied is granted in relation to performance, merchantability or fitness for purpose.

7 PAYMENT TERMS

All payments due under this Agreement will be paid under the following terms

7.1 All prices referred to in this Agreement are expressed in, sterling and are exclusive of Value Added Tax which is payable by the Customer at the relevant rate.

7.2 The prices charged with respect to ongoing licences and support services will be paid within 28 days from invoice date. Practice Net undertakes to provide at least 90 days prior written notice of any price increases after the initial Annual Invoice Date.

7.3 All invoices issued under the terms of this Agreement are due for payment within 28 days from invoice date. If any sum payable under this Agreement is in arrears for more than 28 days from the due date then (in addition to other remedies which may be available to it) Practice Net may charge interest on a daily basis from the original due date at the rate of 4% per annum above the base lending rate of National Westminster Bank plc.

8 LIABILITY OF PRACTICE NET

8.1 The total of Practice Net's liabilities under or in connection with this Agreement (whether arising from contract, negligence or howsoever) is limited in respect of each event or series of connected events to the following maxima:

- i) For negligence resulting in death or injury to persons, no limit; and
- ii) In respect of physical damage to or loss of tangible property caused directly by the negligent act or omission of Practice Net, its servants or agents, to, £25,000.

8.2 In no event will Practice Net be liable in connection with this Agreement for any special indirect incidental or consequential damages, including but not limited to loss of profits, data or systems use.

8.3 In no event will the total liability of Practice Net for any damages in any action based on contract or tort arising out of or in connection with this Agreement (other than any liability which may arise under clause 10.1) exceed the total value of the contract.

9 TERMINATION

9.1 Either party to the Agreement may without prejudice to any other right or remedy at its option terminate the licence and ongoing support services under this Agreement or suspend further working by written notice to the other party in the event that:

- i) The other party defaults in the payment of any sum due for a period of 14 days after written notice.
- ii) The other party defaults in any material way in the performance when due of any obligation under this Agreement and such default is not remedied within 30 days of the giving of notice of the default.
- iii) The other party commences to be wound up other than for the purpose of reconstruction or amalgamation of a solvent Company or carries on business under a Receiver for the benefit of its creditors or any of them or has an administrative Receiver appointed or compounds or enters into a scheme of arrangement with creditors or other conditions exist which are likely to have a substantially equivalent effect to the above.
- iv) The Customer provides 90 days written notice of termination to Practice Net, subject to the Agreement having been in force for a minimum of 12 months from the date of this Agreement and subject to clause 3.6.

9.2 Termination will not discharge the Customer from any obligation under this Agreement or from payment of sums already due, or, in the case of termination under Clause 9.1 from payment of sums which would necessarily have become due if the licence had not been terminated.

9.3 Practice Net may without prejudice to any other right or remedy at its option terminate the on-going support services under this Agreement or suspend further working by giving 90 days written notice of termination to the Customer, subject to the Agreement having been in force for a minimum of 12 months from the date of this Agreement.

10 FORCE MAJEURE

Neither the Customer nor Practice Net will be liable in any circumstances for any failure to perform any obligations where such failure is due to any cause beyond their reasonable control.

11 PATENTS, TRADE SECRET AND COPYRIGHT INDEMNITIES

11.1 Practice Net will defend, at its expense, any action brought against the Customer to the extent that it is based on a claim that the use of the Software within the scope of this licence infringes any United Kingdom patent, trade secret or copyright. Practice Net will indemnify the Customer from all costs, damages and fees finally awarded against the Customer by a court of competent jurisdiction which are attributable to such claim, provided that the Customer notifies Practice Net promptly of the claim. The Customer will permit Practice Net to defend, compromise or settle the claim and will provide all information, assistance and authority to enable Practice Net to do so, provided that Practice Net reimburses the Customer for such activity. The Customer has no authority to settle any claim on behalf of Practice Net.

11.2 Practice Net will have no liability for any claim of copyright, trade secret or patent infringement based on:

- i) The use of other than the latest unaltered release of the Software from Practice Net, if such infringement could have been avoided by the use of the latest release of the Software and such latest version had been supplied or offered to the Customer, or
- ii) The use or combination of the Software with software, hardware or other materials not provided by Practice Net.

11.3 Should the Software become, or in Practice Net's opinion be likely to become, the subject of a claim of infringement of a patent, trade secret or copyright, Practice Net will have the option, at its expense, to:

- i) Procure for the Customer the right to continue to use the Software,
- ii) Replace or modify the Software to make it non-infringing, provided that the same function is performed by the replacement or modified Software, or
- iii) If i) and ii) are not commercially reasonable, terminate the licence to use the Software, remove it and repay the licence fees paid by the Customer, depreciated on a straight-line 3 year basis.

11.4 This clause states the entire liability of Practice Net for infringement of patents, trade secrets and copyrights by the Software and Practice Net will have no additional liability for any alleged or proven infringement.

11.5 The Customer will keep Practice Net fully and effectively indemnified against all costs, claims, demands expenses and liabilities arising out of or in connection with any claim relating to the use by Practice Net of any information or material supplied by the Customer.

12 CONFIDENTIALITY

12.1 All written information and data expressed to be confidential and made available by one party to the other in the performance of this Agreement will be treated as confidential, and each party undertakes to treat such confidential information with the same care as it would reasonably treat its own confidential information.

12.2 Each party will use all reasonable endeavours to ensure that the other party's confidential information is not copied or disclosed to any third party in any manner whatsoever except upon the prior written authority of the other party, provided that such confidential information is not already in the public domain and does not subsequently become publicly available by default of the receiving party.

12.3 Upon expiration or termination of this Agreement each party will return to the other party all confidential information not previously returned.

12.4 The requirement to confidentiality will survive termination of this Agreement by 3 years.

13 TRANSFER OF PROPERTY

The property in the goods shall remain in Practice Net until Practice Net has received payment in full for the goods and all other sums owing under this Agreement. So long as the property in the goods remains in Practice Net, then Practice Net shall have the right without prejudice to the obligation of the Customer to purchase the goods, to re-take possession of the goods. Nothing in this condition shall confer any right upon the Customer to return any goods sold hereunder. Practice Net may maintain an action for the price notwithstanding that property in the goods may not have passed to the Customer.

14 RISK

Upon delivery of the goods to the Customer the risk therein shall pass to the Customer.

15 ENTIRE AGREEMENT

No representation statement promise term condition or obligation will be binding upon either party unless incorporated in writing in this Agreement or its Schedules.

16 JURISDICTION

This Agreement will be governed and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.

17 DISPUTE RESOLUTION

Any dispute between the parties about any matter relating to the performance of this Agreement (other than in relation to the payment of any monies due) which cannot be resolved by the parties within 60 days of notice of the dispute being served by one party on the other, will first be referred to mediation or other alternative dispute resolution procedure as agreed between the parties, each acting in good faith. If the parties are unable to agree a procedure or any aspect of a procedure they will seek assistance from the Centre for Dispute Resolution at 100 Fetter Lane London EC4. Unless otherwise agreed the parties will share equally the costs of mediation, and the use of mediation will be without prejudice to the rights of the parties in all respects if the mediation does not achieve an agreed resolution of the dispute

DEFINITIONS

In this Agreement the following expressions have the following meanings:

the Contract Price - means

The payment to be made by the Customer to Practice Net in accordance with this Agreement.

the Manuals - means

The existing Manuals, if applicable, in hard copy or in downloadable form or on-line help form relating to the Package Programs and Third Party Software supplied under this Agreement and described in Schedule 1.

the Package Programs - means

The standard Package Programs supplied under this Agreement.

A Program Error - means

(a) An Error in code written and supplied by Practice Net which causes the Software to be inoperative or causes incorrect data to be displayed, printed or stored in the database or causes a published feature to be unusable.

OR

(b) Errors or malfunction in the documentation supplied by Practice Net which causes incorrect usage to occur.

EXCLUDING:

(c) Errors or malfunctions in the programming language or operating system.

(d) Equipment malfunctions or incorrect use or maintenance of Equipment.

(e) Cosmetic errors which do not affect the correctness of information.

(f) Problems due to incorrect action taken by the Customer.

(g) Program failures due to corrupt database.

(h) Response time/throughput problems.

(i) Problems due to inadequate database or workfile size.

(j) Operation of the Software and any associated hardware in any manner other than that contemplated by the published manuals or documentation therefore.

(k) Use of the Software by a person not authorised to use it or not properly qualified or adequately trained to use the Software.

(l) The use of computer programs not included in the Software and not approved by Practice Net.

(m) The amendment of the Software or the creation of new Versions other than by Practice Net.

(n) The incorrect loading of a new version of the Software.

the Software - means

The Package Programs and the Third Party Software.

Third Party Software - means

The software supplied by Practice Net under licence from the original author. All such Third Party Software is sub-licensed to the Customer under the standard terms of the appropriate author's original distribution or licence arrangement.

Practice Net - means

Practice Net or its sub-contractors.

