

SMA041101 - Software Maintenance Agreement – Terms & Conditions

It is highly recommended that you renew your support agreement to ensure the successful operation of the software. Once your pre-purchased support agreement expires, an ongoing support fee will apply. If the support agreement is not renewed you will not be entitled to any further support, enhancements or upgrades.

Terms and conditions, features, procedures, pricing and availability of support are subject to change at any time without notice. Benefits of support under this agreement are limited to Salon Master. Master Software Global reserves the right to limit or cease providing support to a customer who uses the service in an abusive, fraudulent or excessive way.

Please note – Out of contract support services are provided on a COD (Cash on Delivery) basis. Our best efforts will be provided in giving you this service but all in-contract calls and current members will take priority.

Please ensure that a valid credit card number is provided prior to engaging our out of contract support service or pay per call service.

1. **BACKGROUND**

- 1.1. The Customer operates a licensed copy of the Master Software Global Salon Master Software system.
- 1.2. Master Software Global is the developer of the Salon Master Software system, and offers a software maintenance service.
- 1.3. The Customer has agreed to a software maintenance service for the software component of the system on the terms and conditions of this Agreement.
- 1.4. Active and Paid Up Choice Rental Customers are entitled to Software Maintenance according to these terms and conditions

2. **DEFINITIONS**

- 2.1. "**Relevant Price**" means the relevant price for the software maintenance service as set out in the Software Maintenance Agreement.
- 2.2. "**Software**" means the object code ("machine-readable") form of any operating system supplied for use with the Hardware (including firmware in which it resides) and any application software described in the Software Schedule and any updates, revision, modification and enhancements thereto supplied by and from time to time.
- 2.3. "**Upgrade Services**" means supply of an upgraded version of the software.
- 2.4. "**Generic Changes**" means general changes to the software. It does not include major changes or re-writes.
- 2.5. "**POS down**" means point of sale down, unable to trade

3. **TERMS OF AGREEMENT**

This software maintenance agreement is valid for the initial period as specified in the Software Maintenance Agreement. (Choice Rental Customers are covered for as long as they remain active and paid up Choice Rental Members. Cover is as per Gold Member entitlements).

4. **PAYMENT**

This software maintenance agreement is valid only where the Customer pays by the relevant due date(s) the relevant price(s) under the payment scheme as specified on the Software Maintenance Agreement.

5. **PROVISION OF SUPPORT SERVICES**

5.1. **SUPPORT SERVICES PROVIDED**

As part of the software maintenance agreement support is provided on the following basis:

5.1.1. **Help Desk Hours:**

Support of Master Software Global software packages are provided for during Helpdesk Hours. Helpdesk Hours are from 9:00AM to 5:30PM Australian Eastern Standard time Monday to Friday excluding observed public holidays.

5.1.2. Response Time:

Master Software Global will ensure that a Helpdesk technician will answer your query as soon as possible but cannot guarantee that you will not experience some delay as a result of factors including, but not limited to, call volume variations and system downtimes. Master Software Global offers a 4 hour response time which means that as a general rule Master Software Global will respond to your call within 4 hours from when you call the Help Desk (provided calls are made during Helpdesk Hours).

5.1.3. After Hours Emergency Support:

If you ring outside of Help Desk Hours you will be greeted by an answering machine. If it is an emergency, there are telephone numbers available to you on the answering machine.

Access to After Hours Help Desk support is strictly limited to "POS Down" situations (unable to trade). For example:

- Salon Master will not open
- Inability to perform critical functions eg. Cannot make an appointment.

The Master Software Global technician will advise you if your issue is not considered "POS Down". For example, the inability to produce a report will not be deemed "POS Down" and such faults should be reported to Master Software Global during Helpdesk Support Hours.

5.1.4. Support Methods:

Support is limited to telephone, modem ("Dial-In") and email based support during the help desk hours specified above.

5.1.4.1. Telephone Support

Telephone support entitles you to telephone the friendly Master Software Global help desk team during Helpdesk Hours who will guide you through your issue over the phone. Whether it is a Salon Master 'how to' request or a problem with the operation of Salon Master, you will be assisted step-by-step.

5.1.4.2. Email Support

Email support entitles you to email the friendly Master Software Global help desk team during Helpdesk Hours who will guide you through your issue via email or over the phone. Whether it is a Salon Master 'how to' request or a problem with the operation of Salon Master, you will be assisted step-by-step.

5.1.4.3. Dial-In Support

Available during Helpdesk Hours. If an issue within Salon Master cannot be rectified by telephone the Helpdesk technician may assist you by dialing directly into your system utilising PcAnywhere software (Client must have a working version of Symantec PcAnywhere on their system for dial in support to be provided). Please note that it is our intention to minimise any disruption to your business. The Helpdesk may also use this functionality to demonstrate the product.

Inquiries are limited to initial installation of Salon Master, upgrade assistance and basic 'how to' operations. Basic 'how to' operations cover functions such as adding a new employee, adding a new service, running a standard report, etc but does not include inquiries on accounting/taxation issues, consulting and training.

Telephone and / Or Dial In support are available during Help Desk hours above. Requests to perform support services outside of the standard help desk hours, if accepted by Master Software Global, will incur after hour support charges.

5.1.5. Service Pack / Fixes:

Master Software Global agrees to provide to Customer via download from Master Software Global website or email, service packs / fixes to problems that may have occurred within the software. Such modifications, when delivered and installed, shall become part of the Salon Master Software Global System and shall otherwise be subject to all the terms of the License Agreement. Errors or malfunctions will be addressed at the discretion of Master Software Global.

If Master Software Global, in its discretion, requests written verification of an error or malfunction discovered by Customer, Customer shall promptly provide such verification, by email, fax, or overnight mail, setting forth in reasonable detail the respects in which the Programs fails to perform. The Customer shall provide Supplier remote access to Customer's computer system for the purpose of remote diagnostics.

Customer shall pay Master Software Global at Master Software Global's then current time and material rates for work of Master Software Global spent investigating an error or malfunction that Master Software Global reasonably determines to have been caused by a modification to the Programs not made nor authorised by Master Software Global.

5.2. SUPPORT SERVICES EXCLUDED

- 5.2.1. Support is not provided for third party software, eg. Microsoft Word, Microsoft Excel,
- 5.2.2. Loading or configuring of third party software packages,
- 5.2.3. Support is not provided for Windows and operating systems related queries
- 5.2.4. Support is not provided for hardware and hardware maintenance issues, unless a hardware maintenance agreement is also entered into.
- 5.2.5. Support is not provided for problems where the Customer does not make available a phone line and modem of 14400 baud capacity or greater.
- 5.2.6. Resolving data corruptions caused by management failure to address repetitive "power glitches" with sufficiently capable power conditioners and/or un-interruptible power supplies.
- 5.2.7. Assistance with "management issues" - training both new and existing staff, etc.
- 5.2.8. Business Training - providing a consulting service.
- 5.2.9. Training new Dealers over the telephone.
- 5.2.10. Resolving problems that arise due to lack of basic skill (e.g. typing skills) and delayed effort in learning and updating skills.
- 5.2.11. Use of after hours emergency service for "non critical and basic training issues".
- 5.2.12. Management of facilities such as modem/fax lines.
- 5.2.13. Failure to adhere to advised backup procedures.
- 5.2.14. Support to the Customer may be limited or ceased where the Customer uses the service in an abusive, fraudulent or excessive manner.
- 5.2.15. Master Software Global does not claim to resolve connectivity issues caused by third-party services, service providers, hardware or software, or networking problems.
- 5.2.16. Whilst Master Software Global acknowledges that the internet is an ever increasing business tool Master Software Global will under no circumstances be responsible for:
 - any viruses, corruptions, hardware faults that are caused by accessing the internet (including emails).
 - viruses that are imported from other sources including but not limited to any media source introduced to the business computer system. Media source examples include CDs, floppy disks, etc.Master Software Global highly recommends Anti Virus software which should be regularly updated and system scanned. This should reduce but not necessarily eliminate computer viruses.
- 5.2.17. Master Software Global reserves the right to refuse helpdesk and support services to a Customer that has invoices that are past the due date.

5.3. ADDITIONAL CHARGES MAY APPLY

Support may be provided but additional charges levied where:

- 5.3.1. Resolving data corruptions caused by Hardware failures and associated problems. Hardware problems can and do occur without prior warning (these can be due to, but not limited to, faulty or aging hardware, power cuts, surges, or network communication problems), "power glitches" with sufficiently capable power conditioners and/or un-interruptible power supplies. Of course there is no guarantee that data will be able to be restored completely or at all so it is extremely important to back-up data regularly to minimise any data losses. You should also notify Master Software Global as soon as problems or errors are evident.
- 5.3.2. The Client loads external software which affects the operations of Salon Master,
- 5.3.3. The Client adds, changes or relocates computers which affects the operations of Salon Master,
- 5.3.4. The Client requests that Master Software Global assist with any hardware or equipment,
- 5.3.5. Supporting equipment external to the business, including computers, modems and software.
- 5.3.6. Damage caused by malicious damage, misuse, accident, operator error, negligence, invalid or unauthorised intervention.
- 5.3.7. Master Software Global is unable to dial-in successfully due to any changes or configurations that impact on PcAnywhere (refer to clause 7.5 below).
- 5.3.8. Support services resulting from damage caused by natural disasters, storm, flood, electrical disturbance or phenomena or other external causes.
- 5.3.9. Support services resulting from computer viruses on the Customer's system regardless of how the virus was introduced.
- 5.3.10. Where the Master Software Global Helpdesk is required to call you on a mobile phone during dial support due to no available land lines available at the Customer's location.
- 5.3.11. Requests to perform "POS Down" or other support services outside of support hours as per Clause 5.1.1 above.
- 5.3.12. Master Software Global reserves the right to require Customer to reimburse Master Software Global for long distance telephone charges incurred by Master Software Global in the provision of telephone and dial-in / modem support.

- 5.3.13. Where this Agreement requires Customer to pay an additional time and materials, hourly, or per diem charge, such charge shall be billable to Customer at Master Software Global's then current rates.
- 5.3.14. Customer agrees to pay when due (or, if necessary, reimburse Master Software Global) any applicable taxes.
- 5.3.15. replacement Salon Master Installation CD's are required.

6. PROVISION OF UPGRADE SERVICES

6.1. INTRODUCTION

Upgrades are newly incorporated software developments intended to enhance the program. Software must be able to keep up with the rapid changes occurring in the business world and incorporate the changes that are important to your industry and more importantly, your business.

Master Software Global Salon Master Gold members are entitled to any upgrades free of charge* if such upgrades become available during the term of the support agreement. On occasions, such upgrades may only be available free of charge as a download from the Master Software Global web site. On these occasions requests for an upgrade via CD(s) will incur a shipping and handling fee.

* Client requires a CD-Rom and ability to install the new version. A call-out service charge will apply if Master Software Global is required to install on site.

6.2. UPGRADE SERVICES PROVIDED

As part of the software maintenance service Master Software Global provides an upgrade to the software on the basis that:

- 6.2.1. The Customer automatically receives generic changes to the software.
- 6.2.2. The Customer is a Gold member as per the Software Maintenance Agreement
- 6.2.3. The upgrade be provided at Master Software Global's elective,
- 6.2.4. Such modifications, when delivered and installed, shall become part of the Salon Master Software Global System and shall otherwise be subject to all the terms of the License Agreement.
- 6.2.5. The Customer has no invoices outstanding.

6.3. UPGRADE SERVICES EXCLUDED

Software maintenance does not provide for upgrades of:

- 6.3.1. Specific Customer requests. Customer may at any time request that Master Software Global make additional modifications to the Programs to add functions or improve performance. Master Software Global shall at its discretion respond to a request for such work with the terms on which it may be willing to undertake such work. Specific requests are to be paid for independently by the Client.
- 6.3.2. Upgrades of third party software packages
- 6.3.3. Major non-generic developments or re-writes. Supplier may charge an additional commercially reasonable fee for versions in which platform upgrades, substantial additional functionality or improved performance are provided.

7. CUSTOMER RESPONSIBILITIES

The Customer agrees to be responsible for the following:

- 7.1. Regular daily back ups of your business data generated by Salon Master and safe storage thereof,
- 7.2. Keeping secure copy of Salon Master and data and reloading same.
- 7.3. Making equipment and staff available to Master Software Global or a Service Provider for remedial maintenance during contracted Hours.
- 7.4. Adequate regular maintenance of computer hardware and computer peripherals and preventing the introduction of computer viruses, spam, etc.
- 7.5. Appropriately licensed and working version of Symantec PcAnywhere remote dial in software on the Customer's system and ability for Master Software Global to dial in to the Customer's system in order to conduct support services. Master Software Global recommends a dedicated telephone line as a preference, otherwise a modem to be shared with the EFTPOS line. Master Software Global reserves the right to refuse support to the Customer until the Customer has PcAnywhere set up and working.
- 7.6. Provide Master Software Global with a valid and appropriately authorised credit card number for all chargeable support services and out of contract support services.
- 7.7. Keeping secure all drivers associated with the hardware and software.

Note on Data Back Ups

Backing up data appropriately is an extremely important business responsibility that you and your business should take very seriously. It is important to back up data for the following reasons:

- To protect your business data should anything go wrong with your computer (eg. Virus, power outage, natural disasters, hardware failures or other data damaging failures)
- Master Software Global strongly recommends that you back up your data as often as possible. The frequency of back ups is a business decision for you to make to suit your business requirements but should include consideration to factors including, but not limited to, size of data entered, importance of data entered, etc. Basically, the objective should be to minimise any inconvenience that would be caused by failures or problems that may result in lost data. We recommend at minimum a daily back up.
- Backing up data should also take into account that the back up device should not remain at the same location as the source to prevent damage to both the source and back up device against factors including but not limited to fires, theft, etc. In fact consideration should be given to multiple back up devices used on a rotational basis.

8. NETWORK

Support of systems that are networked is limited to the set up of Salon Master that enables networking of the software through the network system. Any associated cables, connectivity issues outside of the Salon Master Software Global is not supported.

9. DELIVERY

In order to satisfy any delivery obligation, Master Software Global may, at its option, send to, have delivered, email or provide via the Master Software Global website to Customer corrected Program(s) or "patches" in electronic, CD-ROM or magnetic form a copy of any modification, error correction, fix, or release to the Programs provided pursuant to this Agreement, together with installation instructions.

10. INTELLECTUAL PROPERTY

The modifications to the Programs, including all intellectual property rights associated therewith, made or provided by Master Software Global pursuant to this Agreement, whether alone or with any contribution from Customer or its personnel, shall be owned exclusively by Master Software Global and its licensors.

11. TERMINATION / RENEWAL

At the conclusion of the initial contract period of the Software Maintenance Agreement unless otherwise instructed by the customer, Master Software Global may automatically renew your membership at the then current month by month Renewing Members rate and amend existing direct debit payments to match that rate. It is the responsibility of the customer to advise Master Software Global in writing at least one month prior to the expiry of the agreement that they no longer require membership. Of course the Customer may enter into a new agreement.

After the initial period of the agreement and if the Customer is on the month by month Renewing Members membership price plan, either party can terminate the agreement by providing one month's written notice to the other party.

12. NO ASSIGNMENT, DELEGATION OR SUBCONTRACT

This Agreement shall not be assigned, delegated, subcontracted or otherwise transferred by the Business undertaking this agreement. Master Software Global may, at its sole discretion, elect to assign, delegate or otherwise transfer this Agreement to another party.

13. LIMITATION OF LIABILITY

Master Software Global will not be responsible for the cost of reconstruction of data stored on disc files, tapes, memories, etc., as may be lost during the course of support services or at any other time. Master Software Global will also not be responsible for any losses incurred as a result of using Salon Master, Master Software Global support services and /or other Master Software Global services, products or facilities, whether directly or indirectly related. The aggregate liability of Master Software Global (including its subcontractors and suppliers) for all claims, whether in contract, tort (including negligence and product liability), or otherwise, arising out of, connected with, or resulting from any performance or nonperformance hereunder shall not exceed the fees allocable to the services that give rise to the claim. In no event shall Master Software Global be liable for any incidental, consequential, indirect, or special

damages, including, without limitation, damages for loss of revenue, cost of capital, claims of customers for service interruptions or failure of supply, and costs and expenses incurred in connection with alternate repairs and correction services.

14. ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties, and supersedes all prior agreements and communications, whether oral or in writing, between the parties with respect to the subject matter of this Agreement. No amendment or modification of this Agreement shall be effective unless made in writing and signed by Master Software Global and Customer.

15. FORCE MAJEURE

Master Software Global shall not be liable in the event that it is prevented from performing its duties under this Agreement due to reasons outside its control. This includes, but is not limited to, riots, strikes, terrorism, civil and military disturbances and disorders, earthquakes, floods and other natural disasters, disease and epidemic, government intervention.

16. OTHER

16.1. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, the remaining provisions being deemed to continue in full force and effect.

16.2. A failure by either party to enforce any right under this Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Agreement.

17. LAWS OF VICTORIA

This agreement shall be governed and construed under the laws of the State of Victoria.