



Standard Terms and Conditions - Support and Update Agreement

1. MAINTENANCE OBLIGATION

Prodacapo AB (the Developer), in association with partner, ABM Systems Pty Ltd (the Australian Distributor), undertakes to maintain the proDacapo Software (software developed by Prodacapo AB and included on the installation CD) in accordance with the terms and conditions stated in this Agreement.

1.1 The maintenance obligation includes:

- Correction of defects preventing the proper functioning of the proDacapo Software, including instructions on circumvention of such defects, provided that ABM Systems' or Prodacapo AB's support staff have been able to verify (repeat) such defects.
- Improvements to the functioning and/or way of working of the proDacapo Software at Prodacapo AB's discretion.
- Support regarding the handling of the proDacapo Software in accordance with the user documentation (DOCUMENTATION) accompanying the proDacapo Software.
- Delivery to you, if available, of updated versions of the proDacapo Software (UPDATES) which eliminate previous defects or improves the function of the software as described in the DOCUMENTATION.

1.2 Prodacapo AB shall maintain an organisation and preparedness, with a staff properly qualified and competent to perform these obligations. Maintenance shall be supplied at such speed as may be required by circumstances.

1.3 Maintenance shall be supplied by telephone or by e-mail during ABM Systems' normal office hours, which are 9am to 5pm Eastern Australian Standard Time. Outside these hours, 24 hour support is available via ABM Systems and Prodacapo AB's Support Web sites. In addition, telephone or by e-mail maintenance may be provided by Prodacapo AB, outside ABM System's normal office hours. If specially agreed, maintenance can also be carried out on your premises against a separate fee payable in accordance with clause 4.2 below.

1.4 The provision of maintenance hereunder is conditional upon payment by you of the fees and remuneration payable under this Agreement.

1.5 Support and Maintenance shall be provided with regard to the 'current' minor and major RELEASE, or the 'current' service pack, and the minor and major RELEASE that has preceded the 'current' RELEASE. A major RELEASE is numbered 4.0, 5.0, 6.0 etc. A minor RELEASE is numbered 4.1, 5.1, 6.1 etc. A service pack is numbered 4.1.1, 5.1.1, 6.1.1 etc.

1.6 If available, Prodacapo AB shall deliver new RELEASES to you via ABM Systems, on the following terms and conditions:

- Prodacapo AB has the choice of when and how delivery of the RELEASES shall be made and is not responsible for installation of the RELEASES. Normally, Prodacapo AB issues one major and two minor RELEASES each year.
- You are entitled to RELEASES without payment of any additional new licence fee.
- This Agreement applies equally to any RELEASES delivered hereunder.

1.7 Prodacapo AB is entitled to correct defects in earlier versions of proDacapo Software by delivering the latest version of the proDacapo Software, if the defect has been corrected therein.

2. EXCEPTIONS FROM MAINTENANCE OBLIGATION

2.1 Prodacapo AB's maintenance obligation and stated fees do not cover:

- Defects caused by faults in the hardware, operating system or other system programs.
- Defects caused by your use of proDacapo Software on other equipment or with other parts or software not provided by Prodacapo AB or not intended for the combination with proDacapo Software.
- Defects resulting from the use of proDacapo Software in a different way than described in the DOCUMENTATION or through accident, misuse or neglect of proDacapo Software by you, your staff or any other third party outside Prodacapo AB's control
- Defects caused by an error in Third Party Software used in connection with the proDacapo Software or otherwise affecting the proDacapo Software, or
- Measures that must be taken because there is no current backup copy.

3. YOUR OBLIGATIONS

3.1 You shall appoint a contact person and have the agreed competence. The DOCUMENTATION shall be kept available by you when this is required for carrying out the maintenance.

3.2 When reporting a defect you shall state and if necessary show how the defect manifests itself.

3.3 When necessary, the proDacapo Software in question shall be placed at ABM Systems and Prodacapo AB's disposal. You shall notify ABM Systems or Prodacapo AB in writing about defects in the proDacapo Software, defects in the DOCUMENTATION or if problems occur when the proDacapo Software are used in accordance with the DOCUMENTATION. Notification in writing shall be made even if an initial defect report has been made by telephone.

3.4 When maintenance is carried out on your premises in accordance with clause 1.3, you shall at your own cost provide the necessary working space to carry out the maintenance within a reasonable distance from the proDacapo Software. At Prodacapo AB's request, your representative shall be available during Prodacapo AB's work. Furthermore, consumable supplies and computer media necessary for carrying out the maintenance shall be provided by you.

3.5 You are responsible for taking backup copies and for storage of computer media.

4. MAINTENANCE FEE ETC

4.1 A fixed yearly maintenance fee is payable in advance, for the maintenance included under this Agreement. Payment shall be made within such time as specified in the invoice furnished by ABM Systems. This fixed maintenance fee is payable irrespective of to which extent ABM Systems or Prodacapo AB is called in to carry out maintenance. Prodacapo AB and ABM Systems are entitled to adjust the maintenance fee once a year in accordance with the list price current at the time of the renewal invoice.

4.2 This fixed maintenance fee does not cover maintenance carried out on your premises for which a separate fee will be payable in accordance with ABM Systems current list price.

5. SECURITY AND SECRECY

Neither party may, without the other party's consent, convey documents or in any way divulge to any third party information concerning the opposite party's internal circumstances other than to the extent necessary to carry out the maintenance obligation. This secrecy obligation does not include information that a party can show became known to him in another way than through the performance of this Agreement or which is generally known. This secrecy obligation shall survive the expiry of this Agreement.

6. RESPONSIBILITY

6.1 If, following a request by you, Prodacapo AB, or its partner ABM Systems, does not fulfil its obligations under clause 1.1 and as a consequence thereof your use of the proDacapo Software is significantly affected, they shall refund the maintenance fee for that period regarding the software module(s) in question. In order to be valid, the request for repayment shall be submitted no later than three months after the expiry of the period for which compensation is requested.

6.2 ABM Systems and Prodacapo AB's liability under this Agreement is limited to what has been stated above unless intent or gross negligence can be shown, and you cannot make other claims on ABM Systems or Prodacapo AB on account of failure in the maintenance obligation.

7. LIMITATION OF LIABILITY, FORCE MAJEURE

7.1 If a party is prevented from fulfilling this Agreement by circumstances outside the party's control and that they could not reasonably have foreseen at the time of the entering into force of the Agreement, and the consequences of which they could not reasonably have avoided or overcome, or if a subcontractor is prevented from fulfilling its delivery because of circumstances stated herein, this shall constitute grounds for discharge leading to postponement of the time of performance and exemption from penalties and other sanctions.

If a circumstance pertains to Prodacapo AB or ABM Systems side in accordance with the above and you for this reason are unable wholly or partly to use the product, you are entitled to reduction of the maintenance fee for that period regarding the software component(s) in question. If fulfillment of the Agreement is prevented to a considerable degree for longer than a month due to circumstances stated above, either party may withdraw from this Agreement without liability to pay compensation by notifying the other party in writing. Irrespective of the above, Prodacapo AB and ABM Systems are not liable for the loss of data, and database backup procedures are not the responsibility of Prodacapo AB or ABM Systems.

7.2 The liability of either party to damages, and unless intent or gross negligence can be shown, shall be limited to cover direct losses amounting to a total of at most 12 months maintenance fees.

8. RELOCATION AND CHANGE OF PRODUCT

8.1 If you intend to relocate the proDacapo Software, ABM Systems shall be notified in writing in advance of the measures being contemplated. If the relocation entails increased maintenance costs, ABM Systems shall be compensated or be entitled to have its maintenance terms adjusted. ABM Systems shall notify you in writing, in advance of such action, and must obtain a written approval to proceed. The same shall apply for such changes/upgrades of machine products that you have specifically ordered and which entail increased maintenance costs.

9. TRANSFER OF THE AGREEMENT

9.1 Neither party may transfer this agreement without written authority from the other party.

10. PERIOD OF VALIDITY

10.1 The Agreement enters into force upon delivery of the proDacapo Software to you and is valid for 12 (twelve) months thereafter. If notice of termination has not been given, the Agreement will automatically be prolonged with 12 (twelve) months each time. Notice of termination can be given by both parties by notice in writing no later than 3 (three) months before the expiry of the term of the Agreement.

10.2 If you do not pay the fee stated in clause 4.1 within 30 days after the date stated on a separate invoice, ABM Systems and Prodacapo AB's responsibilities under this Agreement shall cease until such fee has been paid.

10.3 ABM Systems and Prodacapo AB will remain responsible for maintenance carried out during the term of the Agreement, and also after the Agreement has expired, provided that you notify ABM Systems or Prodacapo AB of any defect within reasonable time and in any event no later than three months after maintenance was carried out.

11. DISPUTES

11.1 The parties will endeavour to resolve any dispute, speedily, by negotiation.

11.2 If the dispute is not resolved by negotiation, then before either party has recourse to litigation, the party must submit the dispute for expert determination. If the parties do not agree upon an independent expert ("Expert"), either may request the Secretary General of the Australian Commercial Disputes Centre to nominate an Expert.

11.3 This Agreement shall be governed by the laws of New South Wales, and be subject to the jurisdiction of New South Wales courts.