

SOFTWARE MAINTENANCE AND TECHNICAL SUPPORT AGREEMENT

BETWEEN: **BoneMonitor® srl** together with its affiliates and subsidiaries where applicable being a company incorporated in Belgium with company Tax identification number BE0743.691.674.
BoneMonitor® srl
Route Zénobe Gramme 39
4821 Dison
Belgium

Hereinafter referred to as “*BoneMonitor*”.

AND: *Hospital Name*
Hospital full address
Name of Signatory
Function of Signatory

Hereinafter referred to as the “*Client*”.

EFFECTIVE DATE:

DEFINED PERIOD:

DEFINITIONS:

Software Maintenance and Technical support Agreement hereinafter referred to as the “*Agreement*”

BoneMonitor® Lyosis® software hereinafter referred to as the “*Software*”

WHEREAS:

BoneMonitor will provide the Support Services listed below for the *Software* and the two contacts ('Designated Contacts') named by the *Client* at the end of this agreement.

1. SUPPORT

BoneMonitor will establish and maintain an organization and process to provide support for the *Software* to *Client*. Support shall include diagnosis of problems or performance deficiencies of the *Software* and a resolution of the problems or performance deficiencies of the *Software*.

BoneMonitor will provide telephone and email software support during normal business hours (Central European Time), excluding holidays and weekends.

BoneMonitor will use its best efforts to cure, as described below, reported and reproducible errors in the *Software*. *BoneMonitor* utilizes the following four (4) severity levels to categorize reported problems:

SEVERITY 1 - CRITICAL BUSINESS IMPACT

The impact of the reported deficiency is such that the customer is unable to either use the *Software* or reasonably continue work using the *Software*. *BoneMonitor* will commence work on resolving the deficiency within two (2) hours of notification and will engage staff during business hours until an acceptable resolution is achieved.

SEVERITY 2 - SIGNIFICANT BUSINESS IMPACT

Important features of the *Software* are not working properly and there are no acceptable, alternative solutions. While other areas of the *Software* are not impacted, the reported deficiency has created a significant, negative impact on *Client's* productivity or service level. *BoneMonitor* will commence work on resolving the deficiency within four (4) hours of notification and will engage staff during business hours until an acceptable resolution is achieved.

SEVERITY 3 - SOME BUSINESS IMPACT

Important features of the *Software* are unavailable, but an alternative solution is available or non-essential features of the *Software* are unavailable with no alternative solution. *Client's* impact, regardless of product usage, is minimal loss of operational functionality or implementation resources. *BoneMonitor* will commence work on resolving the deficiency within one (1) business day of notification and will engage staff during business hours until an acceptable resolution is achieved.

SEVERITY 4 - MINIMAL BUSINESS IMPACT

Client submits a *Software* information request, *Software* enhancement or documentation clarification which has no operational impact. The implementation or use of the *Software* by the *Client* is continuing and there is no negative impact on productivity. *BoneMonitor* will provide an initial response regarding the request within one (1) business week.

This agreement is not intended as a consulting agreement for customer services.

With respect to severity one (1) reported deficiencies, *BoneMonitor* may, with the concurrence of the *Client*, elect to send senior support or development staff to the *Client* location to accelerate problem resolution. *BoneMonitor* will be responsible for the costs associated with this escalated problem resolution if the problem is determined to be related to the supported *Software*. If it is determined that the problem was not related to the supported *Software*, *Client* agrees to pay reasonable travel and lodging expenses in addition to *BoneMonitor's* standard consulting rates. Travel time will be charged at consulting rates.

2. Maintenance

During the term of this agreement, *BoneMonitor* will provide the *Client* with copyrighted patches, updates, releases and new versions of the *Software* along with other generally available technical material. These maintenance materials including the *Software* may not be used to increase the licensed number of versions or copies of the *Software*. The *Client* agrees not to use or transfer the prior version but to destroy or archive the prior version of the *Software*.

All patches, updates, releases and new versions shall be subject to the license agreement related to the *Software*.

Our Service Level comprises the following parts:

- *Software* onsite installation support (remote)
- *Software* Version 1.x enhancements and feature upgrades
- Security platform updates and patches
- English email support
- Onboarding and technical troubleshooting
- Priority bug fixing
- Documentations and guidelines

3. Warranty

BoneMonitor will undertake all reasonable efforts to provide technical assistance under this agreement and to rectify or provide solutions to problems where the *Software* does not function as described in the *Software* documentation, but *BoneMonitor* does not guarantee that the problems will be solved or that any item will be error-free. This agreement is only applicable to the *Software* running under the certified environments specified for that product.

BoneMonitor will provide the *Client* with substantially the same level of service throughout the term of this agreement. *BoneMonitor* may from time to time, however, discontinue *Software* products or versions and stop supporting *Software* products or versions one year after discontinuance, or otherwise discontinue any support service.

THE FOLLOWING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR PROMISES TO *CLIENT* OR ANY THIRD PARTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING BY STATUE, LAW, COURSE OF DEALING, CUSTOM AND PRACTICE OR TRADE USAGE. EXCEPT AS PROVIDED ABOVE, THE SERVICES AND MAINTENANCE ARE PROVIDES 'AS IS'.

BoneMonitor is not liable for incidental, special or consequential damages for any reason (including loss of data or other business or property damage), even if foreseeable or if *Client* has advised of such a claim. *BoneMonitor's* liability shall not exceed the fees that *Client* has paid under this agreement. *Client* agrees that the pricing for the services would be substantially higher but for these limitations.

4. Termination

This agreement shall start on the stated *Effective Date*. This *Agreement* shall run for the *Defined Period* from the *Effective Date* and shall automatically renew for consecutive the same *Defined Period* unless either party provides written notice of termination within sixty (60) days prior to the end of the *Defined Period*.

Payment for each renewal term shall be due on the renewal date at the current rates for support of the *Software*. This agreement may be terminated for non-payment. Fees paid or due are non-refundable.

5. General

(a) Each party acknowledges that they have read this *Agreement*, they understand the agreement and agree to be bound by its terms. Further, both parties agree that this is the complete and exclusive statement of the *Agreement* between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this *Agreement*. This *Agreement* may not be modified or altered except by written instrument duly executed by both parties. The *Software* and the use thereof is subject to the license agreement related to the *Software*.

(b) Times by which *BoneMonitor* will perform under this agreement shall be postponed automatically to the extent that we are prevented from meeting them by causes beyond reasonable control.

(c) The Parties of this *Agreement* mutually agree that any differences or disagreements which may arise with regard to the interpretation and/or performance of the *Agreement* shall be resolved by the Courts of Liège, Belgium pursuant to Belgian law and expressly waive any other jurisdiction which may correspond to them.

(d) No action, regardless of form, arising out of the *Agreement* may be brought by *Client* more than one (1) year after the cause of action has arisen.

(e) If any provision of the *Agreement* is invalid under any applicable statute or rule of law, it is to that extent, deemed to be omitted.

(f) Customer may not assign or sub-license without the prior written consent of *BoneMonitor*, *Client's* rights, duties or obligations under the *Agreement* to any person or entity, in whole or in part. A sale of substantially all of Licensee's assets to a third party or any transfer of more than 50% of the voting stock of *Licensee* to a third party shall not constitute an assignment under this license.

(g) The prevailing party in any action related to this agreement shall have the right to recover its reasonable expenses including attorney's fees.

Designated Contacts

Full names followed by telephone number and e-mail address (Two maximum)

Contact 1:

Contact 2:

During the term of the *Agreement*, the *Client* may delete and add Designated Contacts by sending notification in writing on Customer's letter head and addressed to *BoneMonitor*. We may rely on such notice to make the change.

Party A – Client**Party B – BoneMonitor**

Name / function / date of signature

Werner Fehn / CEO / *date of signature*