Minfos Pilot Program Agreement

Terms & Conditions

September 2022

Together we can ©

Contents

1   Introduction

1.1.1   Please note that you are entering a legally binding agreement. By signing the *Minfos Pilot Program Contract* you agree to the terms and conditions outlined in this document.

1.2 Purpose

1.2.1   This document forms an agreement between Minfos ('Minfos') and the Partner ('Partner') agreeing to participate in a Minfos Pilot Program. The agreement outlines the obligations against both parties being participants to the Minfos Pilot Program.

1.3 Overview

1.3.1   The Minfos Pilot Program is a specialised form of customer-based early-release product useability testing that allows interested and suitable customers to actively assist with the trialling of new or experimental features or products. Pending the successful completion of Alpha testing phase by the Minfos QA team, a pilot program may be arranged with one or more customers to field test the new functionality and provide feedback prior to the full release. The pilot program will be closely managed by the Minfos Team but require a high level of engagement and feedback from the customer partaking in the program (the Partner). Pilot program duration will vary depending on the complexity and impact of the new functionality.

1.4 Participants

1.4.1   The key participants in the process of negotiating and managing this agreement are:

    a. The Minfos Product Portfolio Manager.
    b. The Partner.

1.5 Contacts

Minfos Support

Email: help@minfos.com.au

Phone: 1300 887 418

2   Terms & Conditions

2.1 About this agreement

2.1.1   You understand that by agreeing to participate in the Minfos Pilot Program, you are entering into a legally-binding agreement. You acknowledge that you have read, understood, and agree to be bound by these Terms of Agreement ('Terms'). If you are entering into this agreement on

behalf of a company or other entity, you represent and warrant that you have full legal authority to accept on behalf of that entity and bind it to these Terms. If you are not authorised, you may not accept the Terms of this agreement.

2.1.2   By signing this agreement you agree to fully comply with the terms. Failure to undertake the requirements of this agreement or within the set time frames will invalidate the agreement.

2.1.3   The Partner commits to undertake both formal and informal product testing as defined in the Pilot Scope. The Partner maybe requested to formally test a number of specific functional areas for correct operation and/or more generally evaluate the product through progressive use over the duration of the pilot program.

2.1.4   Because of the experimental nature of the software released under the pilot, issues may arise. All issues that affect the proper operation of Minfos as a result or as an unexpected consequence of the pilot should be reported to the Minfos Support Pilot Liaison as soon as possible. Assessment will be made as to the nature and criticality of the issue. Critical faults will be treated as high-priority and fixed accordingly. Prompt reporting of issues or faults is a requirement of this agreement.

2.2 Partner Responsibility

The following outlines the responsibilities of the Partner:

2.2.1   Requirements for formal evaluation or testing must be conducted in accordance with the evaluation criteria, as specified on the Pilot Scope supplied by Minfos ('Pilot Scope'). Non-formal evaluation to be conducted based on the Partner's discretion.

2.2.2   The Partner is required to update their Minfos systems to the Pilot Version ('Pilot Version') of the release software prior to the commencement of any evaluation of testing. At Minfos' discretion, Minfos will determine if assistance is required to update the Partner's system to the correct Minfos Version.

2.2.3   The Partner commits to apply any important patches or updates to the Minfos software as required under the terms of this agreement. At Minfos' discretion, Minfos will determine if assistance is required to update the Partner's system to the correct Minfos Version.

2.2.4   The Partner must ensure their Minfos system hardware and operating system versions remain up-to-date and adhere to the Minfos Hardware Specifications, outlined in the *Minfos System Requirements*.

2.2.5   The Partner commits to returning testing results ('Tests') for all objective testing tasks as outlined under the formal evaluation tasks of the Pilot Scope. Non-formal evaluation feedback should be included in accordance to the guidelines outlined in section 'Evaluation Guidelines and Criteria'.

2.2.6   Testing and evaluation should commence as soon as reasonably possible to the commencement of the Pilot Program.

2.2.7   All testing and evaluation must be completed by the defined Feedback Date as specified in the Pilot Scope.

2.2.8   Any observations of a test failure, defect or an issue affecting performance of the Minfos system as a result of the update is required to be reported to the Minfos Support Pilot Liaison for investigation in the first instance. Critical issues will be raised to the Minfos Product Portfolio Manager promptly for evaluation.

2.2.9   The Partner may be required to perform re-tests on enhancements or fixes that have been fixed and re-released during the Pilot Program. Test results from these tests need to be returned to Minfos on or before the Feedback Date, unless otherwise instructed by the Minfos Support Pilot Liaison.

2.2.10   The Partner is responsible for any software updates for critical patches that may be released to keep their computer operating systems up to date, in accordance with the requirements of this program.

2.2.11   The Partner agrees to allow Minfos staff full access to the Pilot systems during the Pilot Program. At the request of Minfos in writing, this may require unattended access to Minfos related systems.

2.2.12   The Partner assumes full responsibility for backing up all systems and software as required to protect the Partner from data-loss or malfunction prior to the installation of the Pilot software.

2.2.13   If the Partner is not utilising the Minfos Cloud Backup (MCB) service, the Partner grants Minfos permission to enable Minfos Cloud Backup for the purpose of troubleshooting and investigating pilot related issues for the duration of the Pilot period. After conclusion of the program, the MCB service will be disabled as appropriate, and any backups deleted.

2.3 Minfos Responsibilities

The following outlines the responsibilities of Minfos:

2.3.1   To ensure the Partner is suitably qualified and able to perform the update and testing/evaluation.

2.3.2   To ensure the Pilot Release software and testing criteria is made available prior to the start of the Pilot Program.

2.3.3   To provide technical assistance, where necessary, to ensure that the Partner is able to complete the required testing by the Feedback Date. Assistance will be offered on a priority basis at the discretion of the Minfos Product Portfolio Manager.

2.3.4   To ensure that any disruption that may arise as a direct result of installing the Pilot software or the testing process is reduced or removed, where at all possible. Pilot software is provided with the understanding that a complete QA testing cycle has been successfully completed and the associative risk to the store is minimal.

2.3.5   To ensure that any critical issue that severely affects the operation of the Partner store will be actioned and resolved in a timeframe that observes the 'Service Level Agreement' set by Minfos from the time of notification, as defined in the Minfos Customer Support Agreement.

2.3.6   To ensure the Partner is kept informed of issues that may arise from testing by the Partner or any other testing partner.

2.4 Evaluation Guidelines and Criteria

2.4.1   The Partner will provide Minfos with written reports as requested, which accurately describe in reasonable detail:

a. The portions of the Product that were evaluated.
b. The nature and extent of its use.
c. Any errors or difficulties encountered and any characteristic symptoms or conditions (to help Minfos recreate the same conditions).
d. Any observations of a failure, defect or an issue affecting performance of the Minfos system as a result of the update and any characteristic symptoms or conditions (to help Minfos to recreate the same conditions).

e.   Assessment of Product functions and performance, and

f.   Suggested improvements ("Feedback").

2.5 Evaluation Period

2.5.1   This agreement shall commence on the effective date and remain in effect until the earlier of:

a.   The agreed 'Duration' or

b.   Ninety (90) days after the start of the program or

c.   The mutual determination that the Pilot Scope and criteria have been satisfied.

3   Rights We Reserve

3.1 Support and Modifications

3.1.1   We may provide you with support or modifications for the test release in our sole discretion. We may stop providing support or modifications to you at any time without notice or liability to you. We may release subsequent versions of the test release and require that you use those subsequent versions when testing.

3.1.2   Conditions of support for Partners are outlined in the Minfos Support Agreement.

4   Ownership

4.1 Minfos Property

4.1.1   As between you and us, we own all rights, title, and interest, including all intellectual property rights, in and to, the:

a.   'Pilot releases', and all elements, components, and program versions the 'Pilot releases'.

b.   Our 'Minfos Website'; and

c.   Our Brand Features (clauses (a)-(c) collectively, the 'Minfos Materials'). Except for the express licenses granted in these Terms, Minfos does not grant you any right, title, or interest in the 'Minfos Materials'.

4.1.2   You agree to take such actions, including executing affidavits or other documents, as Minfos may reasonably request to effect, perfect, or confirm Minfos' rights to the 'Minfos Materials'.

4.2 Partner Property

4.2.1   The Partner owns all rights in their property which includes all data and customer information held within a Minfos system that is being used for the purposes of Pilot testing.

4.3 Contributions to Minfos

4.3.1   By submitting suggestions or other feedback regarding the 'Minfos Materials' in any way to Minfos, you acknowledge and agree that:

a. Your Contributions do not contain confidential or proprietary information.
b. Minfos is not under any obligation of confidentiality, express or implied, with respect to the Contributions.
c. Minfos shall be entitled to use or disclose (or choose not to use or disclose) such Contributions for any purpose, in any way, in any media worldwide.
d. Minfos may have something similar to the Contributions already under consideration or in development.
e. You irrevocably non-exclusively license to Minfos rights to exploit your Contributions; and
f. You are not entitled to any compensation or reimbursement of any kind from Minfos under any circumstances.

5   General Terms and Conditions

5.1 Representations and Warranties

5.1.1   You warrant that in entering into this Agreement you have not relied on any representation made by Minfos which has not been stated expressly in this Agreement, nor upon any descriptions, illustrations or specifications contained in any document, including any technical outline or publicity material, produced by or on behalf of Minfos, but have relied on your own skill and judgment.

5.1.2   Minfos does not represent or warrant that:

a. The 'Pilot release' will function as intended on hardware or operating environment specifications that do not comply with the minimum Minfos System Requirements.
b. The 'Pilot release' will function as intended if the System is not maintained in good working order.
c. The 'Pilot release' will meet Partner's requirements or operate in the configuration selected or requested by the Partner.
d. The operation of the 'Pilot release' will be uninterrupted or error free, or that Minfos will be able to correct all program errors in the 'Pilot release'.
e. Any required data conversion will be successful without any error including but not limited to the loss of data.
f. Any data stored or maintained as part of the 'Service Offering' will be error-free.

5.1.3   To the extent permitted by law, Minfos excludes all conditions and warranties in relation to the 'Pilot release' and in relation to any Services or training which would otherwise be implied or incorporated by law.

5.2 Limitation of Liability

5.2.1   If Minfos is held liable to You in relation to this Agreement. Minfos liability is capped:

In the case of the supply of goods, such liability shall be limited to any one or more of:

i.   The replacement of the goods or the supply of equivalent goods.
ii.   The repair of the goods.
iii. The cost of replacing the goods or of acquiring equivalent goods; or
iv.   The cost of having the goods repaired; or

In the case of the supply of services, such liability shall be limited to any one or more of:

v. The resupply of the services; or
  vi. The cost of the resupply of the services.

5.2.2 Neither party will be liable in any circumstances for indirect or consequential loss (including loss of profits and including the consequences flowing from loss of data or other information), howsoever caused; or an amount greater than an amount equal to the fees paid to Minfos under this Agreement in respect of the 12 months prior to the commencement of the calendar month in which the event giving rise to the liability occurred.

5.2.3 Neither party will be held liable to the other party to the extent that such liability is due to an event of force majeure.

5.3 Termination

5.3.1 A party (Minfos, Partner) may terminate this Agreement immediately at any time by written notice to the other party:

  a. If an 'Insolvency Event' occurs in respect of the other party; or
  b. If the other party commits any other breach of this Agreement and fails to rectify such breach within 14 days after receipt of written notice specifying the nature of the breach and requiring the other party to remedy the breach.

5.3.2 Either party may terminate this Agreement without cause with provision of 5 days written notice to the other party.

5.3.3 Upon termination or expiration of this Agreement for any reason whatsoever, the Partner must immediately cease use of the 'Pilot release' and must immediately contact Minfos Support to ensure your system is restored to operating a 'Generally Available' Minfos release.

5.3.4 Termination of this Agreement will be without prejudice to any claim either party may have against the other pursuant to this Agreement as at the date of termination.

5.4 Confidentiality Undertakings

5.4.1 The parties must keep the contents and subject matter of this Agreement, and any other information or data received by virtue of being a party to this Agreement ('Confidential Information') strictly confidential.

5.4.2 The parties agree not to share any Minfos 'Pilot release' updates with any parties not directly related to the 'Pilot partner'.

5.4.3 The parties agree to not use (whether for their own benefit or the benefit of a third party) or disclose any 'Confidential Information', whether orally or in writing, unless:

  a. Such information is available to the general public other than due to a breach of this Agreement.
  b. Such disclosure is required by law, in which case the disclosing party must provide the other party with written notification of the required disclosure as soon as possible.
  c. The other party has authorised the disclosure in writing (on such terms as the other party deems fit); or
  d. The disclosure is contemplated by this Agreement.

5.4.4 You must not include in, or place on, any website, search engine, bulletin board, news group or online discussion group any reference to the name of the Pilot Program or Minfos without obtaining the prior written consent of Minfos.

5.5 Notices

5.5.1 A notice in connection with this Agreement must be:

a. In writing.
b. Signed by an authorised officer of the relevant party; and;

5.5.2   Given to the recipient party:

a. By hand delivery.
b. By pre-paid mail sent to that party.
c. By email transmission to that party.

5.5.3   For the purposes of clause 5.5.1:

a. Deliveries must be delivered to the address of the recipient party set out in the Schedule.
b. Mail must be sent to the address of the recipient party set out in the Schedule and must be sent by airmail if that address is outside Australia.
c. Email messages must be transmitted to the email address of the recipient party set out in the Schedule; and
d. In each case, must be marked for the attention of the person specified in the Schedule in relation to the recipient party.

5.5.4   A party may change any of the notice details specified in the Schedule by providing not less than 5 business days' notice to the other party.

5.5.5   Proof of posting by pre-paid mail is proof of receipt of a notice on the second clear business day after posting.

5.5.6   Proof of transmission by facsimile or email is proof of legible receipt at the time of transmission, but if a transmission is not made on a business day or not made before 5.00pm, it will be deemed received at 9.00am on the next business day after transmission.

5.6 Entire Agreement

5.6.1   This Agreement comprises the entire understanding between the parties as to its subject matter. It supersedes all prior agreements, representations, conduct, and understandings.

5.6.2   No amendment of, or addition to, this Agreement is binding unless it is in writing and agreed to by the parties to this Agreement.

5.7 Severability

5.7.1   If any clause or sub-clause of this Agreement is deemed invalid, whether by a court or otherwise, it will be severed from this Agreement, and such invalidity will not affect the validity of the remainder of the Agreement.

5.8 No Waiver

5.8.1   A party's failure or delay to exercise a power or right under this Agreement is not a waiver of that right, and the exercise of a power or right does not preclude the future exercise of that or any other power or right.

5.9 Further Acts

5.9.1   The parties will do all things and execute all documents required to permit or facilitate the performance of this Agreement.

5.10 Counterparts

5.10.1   This Agreement may be executed in counterparts, which when taken together are one instrument.

5.11 Assignment and Sub-Licensing

5.11.1   Neither party is entitled to assign or sub-licence its rights under this Agreement without the prior written consent of the other party (which consent must not be unreasonably withheld), other than an assignment or sub-licence to a Related Body Corporate (as defined in the Corporations Act 2001 (Cth)) where notice of such assignment or sub-licence is provided to the other party.

5.12 User Privacy obligations

5.12.1   You must comply with the Privacy Act 1988 (Cth) and all other applicable privacy laws that may be in force from time to time which, amongst other things, regulate the collection, storage, use and disclosure of personal information.

5.12.2   Notwithstanding any other terms in this agreement, you must ensure that the use of the 'Pilot release' and the handling of any information stored using the 'Pilot release' do not breach any applicable privacy laws.

5.12.3   You will indemnify Minfos against all loss, damage, claim, demand, cost, or expense (other than in respect of consequential loss or damage) incurred by Minfos as a result of Your breach of clause 5.12.1 or 5.12.2 above.

5.13 Governing Law

5.13.1   This Agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

5.14 Interpretation Rules

5.14.1   In this Agreement words or expressions:

   a. Importing the singular include the plural and vice versa.
   b. Importing a gender include all other genders; and
   c. Denoting individuals include corporations, firms, unincorporated bodies, authorities, and instrumentalities.

5.14.2   A reference to this Agreement is a reference to this Agreement as amended, varied, novated, supplemented, or replaced from time to time.

5.14.3   A reference to a party to this Agreement includes that party's executors, administrators, successors, and permitted assigns.

5.14.4   Where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning.

5.14.5   A reference to a clause, sub-clause, item, Part or Schedule is a reference to a clause, sub-clause, item, Part or Schedule of this Agreement.

5.14.6   A reference to '$' or dollars is a reference to Australian dollars.

5.14.7   A reference to a business day means any day on which banks are open for general banking business in the State or Territory in which You are located, but does not include any Saturday, Sunday, or public holiday; and

5.14.8   A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in this Agreement.

6   Definitions

6.1.1   'Partner' means any entity that is currently a Minfos customer that accepts this agreement, as the individual(s) responsible for the pharmacy.

6.1.2   'Pilot Release' means a Pilot version of the Minfos software ('Service Offering') that has not yet been made 'Generally Available'.

6.1.3   'Generally Available' means a stable and publicly available release deemed ready for production deployment.

6.1.4   'Pilot Scope' means the Pilot Scope Document supplied by Minfos, which contains the features, enhancements and bug fixes that require formal Pilot testing for the specified Pilot version release.

6.1.5   'Confidential Information' means all non-public information disclosed by Us, Our affiliates, business partners or Our or their respective employees, contractors or agents, that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. 'Confidential Information' includes:

   a.   Non-public information relating to Our or Our affiliates' or business partners' technology, customers, business plans, promotional and marketing activities, finances, and other business affairs.
   b.   Third-party information that We are obligated to keep confidential; and
   c.   The nature, content, and existence of any discussions or negotiations between You and Us or Our affiliates. 'Confidential Information' does not include any information that:
      i.   Is, or becomes, publicly available without breach of this Agreement.
      ii.   Can be shown by documentation to have been known to You at the time of Your receipt from Us.
      iii. Is received from a third party who did not acquire or disclose the same by a wrongful or tortious act.
            or
      iv.   Can be shown by documentation to have been independently developed by You without reference to the Confidential Information.

6.1.6   'Content' means any information or data that belongs to Minfos or our Customers.

6.1.7   'Minfos Materials' means Content we or any of our affiliates make available in connection with the Services or on the Minfos Site to allow access to and use of the Services, including Service Offering(s), software libraries; command line tools; and other related technology.

6.1.8   'Force Majeure' means any act of God, fire, earthquake, storm or flood, industrial dispute, unavoidable accident, requirement or restriction of any Government, loss of supply of essential services including, but not limited to, electrical power and air conditioning, and any other cause beyond the reasonable control of Minfos.

6.1.9 'Insolvency Event' means, in relation to a party, except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of the other party, the happening of one or more of the following events:

    a. Process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed.

    b. An order is made that it be wound up or that a Controller be appointed to it or any of its assets.

    c. A resolution that it be wound up is passed.

    d. A liquidator, provisional liquidator, Controller, or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking; or

    e. An administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it.

    f. It enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or shareholders, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition.

    g. A reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected.

    h. Any action is taken by the Australian Securities and Investments Commission with a view to cancelling its registration or to dissolving it.

    i. It is insolvent within the meaning of section 95A of the Corporations Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts, or it is presumed to be insolvent under any applicable law.

    j. As a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand.

    k. It stops or suspends or threatens to stop or suspend:
        i. The payment of all or a class of its debts; or
        ii. The conduct of all or a substantial part of its business or threatens to do so.

    l. Any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it.

    m. It is, or makes a statement from which it may reasonably be deduced that it is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or

    n. Anything having a substantially similar effect to any of the events specified in the preceding paragraphs happens to it under the law of any jurisdiction.

6.1.10 'Intellectual Property Rights' means all industrial and intellectual property rights including, without limitation:

    o. Any rights in respect of or in connection with any copyright, patents, trademarks, design rights, or eligible layout rights (whether registered or not); and

    p. Any rights to apply for registration of any of the rights referred to in 4.1.10 (a).

6.1.11 'Minfos Website' means http://www.minfos.com.au and any successor or related site designated by Us.

6.1.12 'Privacy Policy' means the privacy policy currently referenced at https://symbion.com.au/privacy-policy, as it may be updated by Us from time to time.

6.1.13 'Service' refers to both services rendered by Minfos, as specified in this Agreement, and each of the web services made available by Us or Our affiliates, including those web services described in the Service Terms.

6.1.14 'Service Level Agreement' means all service level agreements that We offer with respect to the Services and post on the Minfos customer knowledge base website, as they may be updated by Us from time to time.

6.1.15   'Service Offering(s)' means the Services (including associated APIs), the Content, the Trademarks, the Minfos Website, and any other product or service provided by us under this Agreement.

6.1.16   'Set date' means the date the completed Checklist is due back to Minfos, as set and communicated by Minfos.

6.1.17   'System' means a computer hardware and operating environment that pertains to a particular pharmacy and business.

6.1.18   'Tests' means a defined set of formal testing criteria to be used to assess the correct functioning of the system.

6.1.19   'Third-Party Content' means Content made available to You by any third party on the Minfos Website or in conjunction with the Services.

6.1.20   'Trademarks' means any trademarks, service marks, service or trade names, logos, and other designations of Minfos and its affiliates that We may make available to You in connection with this Agreement.

Pilot Scope

This is an example of the Pilot Scope details that is required to be finalised before the commencement of the Pilot Program. The following details are required:

- Partner Name
- Partner Contact Details
- Site Address
- Pilot Duration and Expected End Date
- Pilot Release Version
- Scope
    – Outline of Expectations
    – Formal tests and evaluation criteria
    – Suggested tests and informal evaluation criteria
- Feedback Date

minfos