C-DAC Medical Informatics Support and Subscription Services Terms and Conditions

Under these Support and Subscription Services Terms and Conditions (this **"Agreement"**), Centre for Development of Advanced Computing, a premier Research & Development organization of Department of Information Technology (DeitY) under Union Ministry of Communication & Information Technology, Government of India (**"C-DAC"**), shall provide technical support and subscription services as more fully described herein to Customer, according to the Support Level, for the relevant Product, purchased by Customer commencing on the Effective Date. Applicable C-DAC entity, **Customer**, **Effective Date**, applicable **Software**, and **Support Level** are as specified on either a Support and Subscription Services Order Form, on Customer's purchase order (**"Purchase Order"**) or, if Customer has purchased support on a per incident basis (**"Per Incident"**), in the registration form completed by Customer upon such purchase (collectively the **"Order"**).

1. Definitions

"**Additional Module**" means a module including additional features or functionality that were (1) made available by C-DAC in conjunction with a Major Release but not initially purchased by Customer or (2) subsequently made available by C-DAC. Additional Modules are made available for purchase pursuant to separate licensing fee and separate purchase of Services. C-DAC in its discretion will designate what if anything constitutes an Additional Module, designating such by means of a descriptive name change (e.g. Software>>Software Clustering Module). Additional Modules will be considered "Software" for the purposes of this Agreement upon the purchase of Services for the Additional Module(s).

"**Computer**" means the Customer's workstations or Servers, physical or virtual, on which the applicable Software is installed.

"**Server**" means a single physical or virtual Computer regardless of the number of processors in the Computer. Multiple Computers that share processing power or operate in a networked configuration as a single logical computer, such as in a "server farm" or similar arrangement, constitute multiple servers in the context of this Agreement.

"**Contract Term**" means the period for which Customer has purchased the Services and any subsequent renewal periods. For Software Product Licenses for which Services are mandatory, the Contract Term shall commence on the date of shipment of the applicable Software Product License. For Software Product Licenses for which Services are optional, the Contract Term shall commence on the date of purchase of the Services.

"**Business Critical Support (BCS) Customer Team**" means a Customer team that: (i) consists of no more than two technical contacts, (ii) is centrally responsible for managing and supporting the Customer's software infrastructure, and (iii) provides front line support for the software supported, making use of available technical repositories and experience to resolve known issues.

"**Documentation**" means any user instructions, manuals or other materials, and on-line help files regarding the use of the Software, as revised by C-DAC from time to time, that are generally provided by C-DAC in connection with the Software.

"**Error**" means a failure in the Software to materially conform to the specifications as described in the applicable Documentation. Decision of C-DAC regarding the applicability of the term to any reported issue shall be final.

"**Fees**" means those fees for the Services at the level specified in the Order and as specified in the related C-DAC invoice for the Contract Term.

"**License Administrator**" means Customer-specified employee on the Order who is responsible for: (a) facilitating election, purchase, and, if applicable, renewal of the Services; (b) receiving and administering Software Product Licenses, Maintenance Releases, Minor Releases, and Major Releases from C-DAC; and (c) Customer adherence to the license restrictions of this Agreement. Customer may change its License Administrator upon reasonable advance written notice to C-DAC.

"**License Key**" means a serial number (or file and accompanying serial number) that enables the Customer to activate and use the Software or Additional Module.

"**Maintenance Release**" means a generally available release of the Software that typically provides maintenance corrections or fixes only, designated by C-DAC by means of a change in the digit to the right of the second decimal point (e.g. Software 5.0 >> Software 5.0.1).

"**Minor Release**" means a generally available release of the Software that may introduce a limited amount of new optional features and functionality, designated by C-DAC by means of a change in the digit to the right of the decimal point (e.g. Software 5.0>>Software 5.1).

"**Major Release**" means a generally available release of the Software that may contain functional enhancements or extensions, designated by C-DAC by means of a change in the digit to the left of the first decimal point (e.g. Software 5.0 >> Software 6.0).

"**Modified Code**" means any modification, addition and/or development of code scripts (whether created by C-DAC, Customer or any third party) that deviates from the predefined product code tree(s)/modules developed by C-DAC for production deployment and/or use.

"**Open Source Software**" means components provided with the Software, for which the source code is generally available and are licensed under the terms of various published open source software license agreements or copyright notices accompanying such software components.

"**Services**" means, collectively, the Technical Support and Subscription Services as further described on the C-DAC website (http://cdac.in/).

"**Software**" means one or more individual C-DAC software products or software product suite, including Additional Modules, made generally available by C-DAC and specified in the Order. Software does not include Open Source Software, Modified Code or customized deliverables that C-DAC creates specifically for Customer.

"**Software Product License**" or "**SPL**" means a license to the Software, together with the License Key allowing the Customer to activate and use the Software.

"**Subscription Services**" means the provision of Maintenance Releases, Minor Releases and Major Releases to the Software, if any, and corresponding Documentation to Customer's License Administrator.

"**Support Administrator**" means Customer-specified contact designated on the Order responsible for communicating and engaging C-DAC for Technical Support services with respect to problem reports. Customer may change its Support Administrator upon reasonable advance written notice to C-DAC.

"**Technical Support**" means the provision of technical assistance by C-DAC to the Support Administrator(s) with respect to installation (if covered by your Support Level), analysis of problem reports, and Errors, at the support level purchased by the Customer as indicated on the Order.

"**Third Party Products**" means any third party software or hardware manufactured by a party other than C-DAC, including, without limitation, Open Source Software.

"**Update**" means a Maintenance Release or a Minor Release.

"**Upgrade**" means a Major Release.

2. Service Terms

2.1. **Provision of Services.** Subject to the terms of this Agreement, C-DAC shall provide the Services for which Customer has paid the applicable Fees. As part of the provision of applicable Services, Customer agrees to receive from C-DAC communications via e-mail, telephone, and other formats, regarding Service renewals, quotes, and other topics that are considered an essential part of the Services (including, but not limited to, communications concerning an Error or other technical issue and the availability of new releases). Customer further agrees to ensure that Customer's Support Administrator is available to provide necessary assistance to C-DAC in providing the Services, in accordance with Customer's reasonable security and confidentiality procedures. This service does not entitle the Customer to any fixes or updates, unless granted the same under provision of the Service, nor is C-DAC under any obligation to provide any fix or correction for the reported Errors or change requested. However, in case a remedy is not available in terms of a fix or correction, C-DAC may provide a workaround to the problem / Error or inform (by way of specific notice or general publication on its website) the Customer of the fix or correction, when it becomes available.

2.2. **Product End of Availability.** C-DAC may, at its discretion, retire any Software at any time ("End of Availability"). Notice of such End of Availability, which shall include the last date of general commercial availability of the Software, shall be provided via the C-DAC Support Services website. Eighteen (18) months after the last date of general commercial availability, C-DAC will discontinue Services for such Software. Any Service Contract that may be existing for term longer than the given period may continue to survive till their expiry or C-DAC

may refund the remain fee, on pro-rata basis, as it may choose.

2.3. **Requirements.** Customer may purchase initial Services only for the most current, generally available release of the Software. Subject to Section 2.2, in accordance with C-DAC's support life cycle policies, provided that C-DAC reserves the right to amend its support life cycle policies from time to time:

a) C-DAC will provide Services with respect to:

    i. the most current release of the Software for the Contract Term; and

    ii. the immediately preceding release of the Software, but only for a period of eighteen (18) months following the next Major Release of the Software within the Contract Term

b) For all current and additional Software Product Licenses or Additional Modules purchased for a particular C-DAC Software product or suite, Customer must purchase and/or renew Services at the same support level in a given functional discipline.

c) For most Software, including Additional Modules, a minimum of one Services Pack / Level must be purchased. C-DAC will provide Services for an initial term for which Customer has paid the applicable Fees, unless a different term is expressly provided for in the applicable Order. For multi-year Contract Terms, the terms and conditions of this Agreement, including Services, may be amended by C-DAC, in its sole discretion, after the first year of the Contract Term. If such a change is determined by C-DAC to adversely and materially impact the Customer, Customer will be provided with written notification at least thirty (30) days prior to the effect of any such change. Except as otherwise expressly set forth herein or in the applicable Order, Services

previously purchased will not automatically renew for successive terms.

d) C-DAC, during the course of providing Technical Support, may be required to analyze whether or not a reported problem is related to any Modified Code. Applicable response times shall be suspended while C-DAC conducts such analysis. Where C-DAC suspects that a problem may be related to Modified Code, C-DAC at its sole discretion, reserves the right to request that the Modified Code be removed. If C-DAC cannot directly identify the root cause of a problem, or reasonably suspects that the problem is related to Modified Code, Customer shall be informed that additional assistance may be obtained by Customer directly from various product discussion forums or via engagement for an additional fee with C-DAC's consulting services group.

2.4. **Eligibility.** Problems caused by the following situations are not included in Services but may be addressed separately upon request at C-DAC's then-current hourly rates for consulting, subject to the then-current standard consulting services terms and conditions:

a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by C-DAC; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use; or

b) improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the Documentation; or

c) actual or attempted modification, alteration or addition to the Software undertaken by Customer or any third party; or

d) Third Party Products, other than the interface of the Software with the Third Party Products; or

e) Modified Code, with the exception of the predefined product code tree(s)/modules developed by C-DAC for production deployment and/or use with the C-DAC product; or

f) any technical issue unrelated to an Error.

2.5. **Customer Responsibilities.** Customer's obligations regarding Services are subject to the following:

a) Customer is solely responsible for the use of the Software by its end user personnel.

b) Customer shall promptly report to C-DAC all problems with the Software, and shall implement any corrective procedures provided by C-DAC reasonably promptly after receipt.

c) Customer is solely responsible for protecting and backing up the data and information stored on the Computers on which the Software is used and should confirm that such data and information is protected and backed up before contacting C-DAC for Technical Support; C-DAC is not responsible for lost data or information in the event of Errors or other malfunction of the Software or Computers on which the Software is used.

d) Customer shall properly train its end user personnel in the use and application of the Software and any Computers on which the Software is used.

3. Fees
3.1. **Fee Schedule**

a) Except for purchases of Technical Support on a Per Incident basis, and unless otherwise indicated on the Order, Fees are payable on the Effective Date

or, in the case of a renewal term, no later than the date of commencement of the applicable Contract Term, and due in accordance with Section 3.3 below. Customer agrees that Purchase Orders do not have to be signed, by either or both parties, to be valid and enforceable.

b) The Fees for Services, including renewals, are at the then-current list price. If Customer elects not to renew the Services or, in the case of Software that may initially be purchased without Services, if Customer elects not to purchase the Services when Customer acquires the Software Product License, Customer may later re-enroll or enroll, as the case may be, for the Services, subject to Subsection 3.1(c) below.

c) If Customer purchases Services after acquiring the Software Product Licenses, or had elected not to renew Services and later wishes to re-enroll in the Services, Customer must move to the then-current latest release of the Software, and must pay:

   i.   the applicable Fees for the current Contract Term, and

   ii. the amount of Fees that would have been paid for the period of time that Customer had not enrolled in the Services, and

   iii. a 20% reinstatement fee on the sum of the fees in (i) and (ii).

d) Fees for Services are non-refundable upon payment.

3.2. **Taxes.** All Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse C-DAC for all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement (other than taxes on the net income of C-DAC).

3.3. **Invoicing and Late Payments; Currency.** All invoices issued hereunder by C-DAC are due and payable within thirty (30) days of the date of the invoice. All amounts that are not paid on time by Customer shall be subject to a late charge equal to one and one-half percent (1.5%) per month, or, if less, the maximum amount allowed by applicable law. If payment of any Fee is overdue, C-DAC may also suspend performance until such delinquency is corrected. All Fees shall be payable in Indian Rupees. All references to "rupees," "INR," and "Rs." shall mean Indian Rupees. However, if the customer so desires, it can pay the Fees in currency of choice provided, that C-DAC is paid the full invoiced amount (excluding any conversion, transaction, or other charges) in the currency given in invoice.

4. Limited Warranty

C-DAC warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall be comparable to industry standards. Upon Customer providing C-DAC with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the non-conformance, C-DAC will re-perform the Services to achieve commercially reasonable conformance with the above warranty. THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

5. Limitation of Liability

C-DAC SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. C-

DAC'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO C-DAC UNDER THIS AGREEMENT DURING THE SERVICE SUPPORT PERIOD APPLICABLE ON THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

6. Termination

C-DAC may suspend performance of Services if Customer fails to meet its cooperation obligations as set forth under this Agreement. C-DAC may terminate Services if such failure continues for thirty (30) days after C-DAC's written request to meet these obligations. C-DAC may terminate the Agreement and all Services at any time if (1) it is discovered that Customer is currently in breach of its Software license restrictions, pursuant to Customer's Software Product License or (2) Customer is in material breach of this Agreement.

7. MISCELLANEOUS

Customer may not assign or delegate this Agreement to any third party without the prior written consent of C-DAC. This Agreement is governed by the laws of India without regard to conflict of laws principles. The parties consent to the exclusive jurisdiction of the courts located in Pune, India. This Agreement constitutes the entire agreement of the parties with respect to the provision of the Services by C-DAC to Customer, and supersedes all prior written or oral communications, understandings and agreements. This Agreement may not be amended by Customer except in a written document signed by both parties. Any waiver of the provisions of this Agreement must be in writing to be effective. Except as expressly set forth herein, no terms of any Purchase Order or other business form that Customer may use will affect the obligations of the parties under this Agreement, and any such Purchase Order or other business form of Customer which contains additional or conflicting terms are hereby rejected by C-DAC. If any provision of this Agreement is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law.

Any questions concerning this Agreement, or to contact C-DAC for any reason, please contact or write to: Head (Legal), Centre for Development of Advanced Computing (C-DAC), Main Building, Pune University Campus, Ganesh Khind, Pune - 411007, Maharashtra, India.