

# SOFTWARE SUPPORT AGREEMENT

**Som Imaging Informatics Pvt. Ltd.**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 3 Chowringhee Terrace, Kolkata – 700020, INDIA, hereinafter referred to as “**Somnetics**”, which unless the context otherwise requires includes its successors in interest and permitted assigns;  
**and**

**(Name of the client)** having its address at **(registered address of the client)** hereinafter referred to as “**End user**”, which unless the context otherwise requires includes its successors in interest and permitted assigns;

Whereas End user purchased from Somnetics, a non-exclusive and non-transferable licence to use Somnetics’s Software Product, mentioned in Appendix-A.

Whereas the End user has requested Somnetics to provide Software Maintenance Support for the product used by them and made payment of the support fee to Somnetics.

Subject to the above, Somnetics agree to provide the Support for the Product on the terms and conditions set below:

NOW IT IS HEREBY AGREED AS FOLLOWS:

## 1. Definitions

As used in this Agreement, the following terms shall have the meanings set forth below:

**1.1.1. APPENDIX-A** - contains the details of the Product / modules of the Product and the 'End user’s site' covered for Support under this agreement and is annexed to the Invoice.

**1.1.2. APPENDIX-B** - containing the details of the Tenure of this Support Agreement, Annual Support Fee under this support agreement and is annexed to the Invoice.

**1.1.3. APPENDIX-C** - contains the details for availability of Support Window.

**1.1.4. “INVOICE”** means the Invoice raised by Somnetics for the Support fees, plus taxes as applicable, together with APPENDIX-A and APPENDIX-B.

**1.1.5. “End user”** means a Company/Partnership/Proprietorship/Trust etc., which term shall unless the context otherwise requires includes its successors in interest and



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permitted assigns, who has purchased the “Product” and paid the Support Fee against an invoice raised by Somnetics .

**1.1.6. “End user SITE”** means the site where Somnetics has installed the product, more particularly described in APPENDIX-A in the Invoice.

**1.1.7. “RESPONSE-TIME”** means the elapsed time between the receipt of a Support Call and the target time within which Somnetics begins support as verified by a verbal or written confirmation to End user.

**1.1.8. “SERVICE-HOURS”** means Somnetics’s usual office hours, i.e. from 10.00 to 18.00hrs from Monday through Friday, excluding holidays as observed by Somnetics.

**1.1.9. “PRODUCT”** means the software owned by and provided by Somnetics to the End user for their internal use, more specifically defined in APPENDIX-A of the invoice, together with its associated documentation, which may include all Updates, Upgrades, new releases and such customizations developed by Somnetics for use by the End user, but does not include any THIRD PARTY software .

**1.2.0. “SUPPORT”** means provision of Level 1, Level 2 and Level 3 Support as provided under Section 2 and Support does not include on-site support, unless expressly agreed at such terms and conditions.

**1.2.1. “SUPPORT CALL”** means Support Call Category P1, P2, P3 or P4 jointly or separately.

**1.2.2. “SUPPORT CALL CATEGORY P1”** means that End user’s live system is at a halt and unable to process data through the Software as a result of a catastrophic event in the product, or a major application failure in a critical processing period.

**1.2.3. “SUPPORT CALL CATEGORY P2”** means a problem in the Product, which causes serious disruption of a major business function, which cannot be (temporarily) solved by a work-around.

**1.2.4. “SUPPORT CALL CATEGORY P3”** means any of the following

- I. A non- critical problem in the Product where the End user is able to continue to run the system and/or application or a work-around is available;
- II. A reported problem in the Product that does not qualify as a Support Call Category P1 or P2.

**1.2.5. “SUPPORT CALL CATEGORY P4”** means all questions and requests for information on the use or implementation of the Product.

**1.2.6. "SUPPORT TERM"** means a twelve-month period from the Effective Date contracted by End user for the delivery of Support.

**1.2.7. "TENURE"** means the period of Support by Somnetics, given in the Invoice and is generally for a 12 month period and such further extensions or renewals undertaken in accordance with this Maintenance Agreement.

**1.2.8. "UPGRADE"** means an improved version of the whole or any part of the product.

## 2. Support Services, Levels and Term

**2.1. Support:** During the tenure of this Maintenance Agreement, and subject to payment of Support fee, Somnetics shall provide Support to the End user in accordance with the terms and conditions as specified herein;

**2.1.1. Level 1 Support:** Somnetics shall assist End user by telephone or electronic mail, in identifying the problem in the Product based on the information provided by the End- User.

**2.1.2. Level 2 Support:** Somnetics shall address the problem and provide solutions to the same by providing information assistance, support releases, workarounds, update disks, immediate disk correction, patches, or other available solutions.

**2.1.3. Level 3 Support:** In the event that Level 2 Support does not address the problem faced by the End user, Somnetics shall provide reasonable efforts to fix the errors in the Product and to regularize the functioning of the product.

**2.1.4. Remote Access:** If Somnetics is unable to resolve an issue by giving support via telephone or mail, then the End user shall to provide remote access to their server to the technical support of Somnetics for trouble shooting and resolution.

**2.1.5. ON-Site Visit:** Even after using remote access if the issue is not resolved, then based on an approval from End user, Somnetics shall arrange for on-site visit of its consultant to trouble shoot and resolve the issue. This on-site visit Fee for the consultant's time shall be waived, if the root cause of the issue is due to software failure or bug in the product; However Somnetics shall be entitled to the out of pocket expenses including the Travel, Boarding, Lodging and conveyance expenses.

**2.1.6.** In the event that the End user requires on-site support, for whatever reason, the same will be provided under the commercial terms defined in APPENDIX-B.

**2.1.7. Support Location/s:** The scope of support will be restricted to only such site termed as 'End user's Site'.

**2.2. Product covered:** Support services will be provided only on the Product covered in Appendix-A of the Invoice and Somnetics shall not support product that is altered or modified independently by End user. Moreover, Somnetics shall have no liability to render Support services under this Agreement, in the event that the End user has failed to install an updates/upgrades provided by Somnetics.

**2.3. Support Ticket:** During the tenure of this Agreement, the End user may contact Somnetics' Support Department by way of logging a ticket in S.M.A.R.T. Customer Support Portal. The End user can contact Somnetics Support Team by telephone or e-mail during the Service Hours by giving the reference to the ticket number generated by the Customer Support Portal. The End user acknowledges that the rendering of the Support by Somnetics, within the Response Times mentioned below will depend on the information provided by the End user. Based on the information sent by the End user, Somnetics shall fix the Support Call category and provide the services herein covenanted as considered appropriate.

**2.4. Support Availability:** All Support will be available as per APPENDIX-C

**2.5. Support Limitations:** The parties agree that Support by Somnetics shall not include;

- The restoration of any data that has been lost due to the failure of End user in maintaining backup copies.
- The correction of any error, malfunction or fault in the Product due to a failure on the part of the End user, to operate the Product in accordance with the Technical Documentation provided by Somnetics.
- The correction of any error, malfunction or fault in the Product due to any accident or disaster affecting the system on which the Product is located.
- The correction of any error, malfunction or fault in the Product due to any modifications or alteration made by the End user.

**2.6. Contact Persons:** The contact personnel of Somnetics for rendering of the Support are defined in clause 13 of this Agreement and for End user in APPENDIX A. The communication is said to be complete if the correspondence is sent to the address given .

**2.7. Support Renewal:** Support will be renewed by the End user, thirty (30) days before the expiry of the initial Support Tenure. The agreement stands terminated automatically on the last day, if the Support is not renewed .

**2.8. Product Versions:** Any new version or upgrade of the Products that are released will be delivered free of charge by Somnetics Support team as part of this Agreement. However, the on-site visit (to End user site) for the implementation effort, if any, for installation will be charged as per the Fee given in Appendix-B.

### 3. Support Fee

**3.1. Fee:** In consideration of the Support services, the End user shall have paid a sum as given in APPENDIX- B plus applicable taxes and levies as Support fee, which is non-refundable, except under clauses 4.2 and 12.4 of this agreement. The said Support Fee pertain to such modules of the Product listed in APPENDIX-A only and the above fee shall be revised if the End user decides to purchase the license and support services for any additional modules at a later date. All Invoices raised for site visits and/or any other Fee shall be payable within ten (10) days from the date of Invoice.

**3.2. Revision of charges.** Somnetics shall be entitled to increase the Support Fee after a one year, by giving the End user not less than fourteen (14) days written notice, prior to the expiration of the then current Support Tenure. Where and whenever such notice is given, the End user shall have the right to terminate this Agreement as from the date on which such notice expires or End user decide not to accept the revision of charges and decide to discontinue the support services.

**3.3. Delay in payment:** If any sum payable under this Agreement is not paid within thirty days after the due date then without prejudice to the Somnetics' other rights and remedies), Somnetics reserves the right to charge interest on an unpaid amount on a day to day basis at the rate of 1.5% per month. In addition or in the alternative, Somnetics at its discretion may suspend the provision of Support until such time as payment is made.

### 4. Response Times

**4.1. Response time:** Support for the product will be provided during Service Hours with the following response times:

Support Call Category P1	Two (2) hour
Support Call Category P2	Four (4) hours
Support Call Category P3	Eight (8) hours
Support Call Category P4	Sixteen (16) hours

**4.2. Failure to Resolve:** The parties agree that in the event that Somnetics is not able to resolve a problem in the software product, Somnetics' sole obligation shall be to take all reasonable efforts to rectify the same. If for any reason, other than that contributed by the End user, Somnetics fails to provide the required Support, and provided the failure in product hinders or prevents the End user from using a material part and functionality of the Software, the End user is entitled to terminate this Agreement forthwith by giving written notice to Somnetics, in which case Somnetics shall refund the prorated Support fee for the unexpired tenure.

## 5. End user's Responsibilities

Somnetics' provision of Support to End user is subject to the following:

**5.1.** End user shall provide Somnetics with necessary access to End user's equipment. This access includes the ability to dial-in to the equipment on which the product is installed / operating and may also include the ability to obtain the same access to the equipment, as those of End user's employees and their IT Administrator, for such time and period, for the purpose of resolving the problems and issues faced by the End user in the product supplied by Somnetics.

**5.2.** End user shall implement procedures for the protection of information and ensure implementation of backup facilities, to enable restoration of data, in the event of errors or malfunction of the software product or equipment.

**5.3.** End user shall promptly report all detected errors or malfunctions of the product to Somnetics. End user shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time, as and when such procedures have been received from Somnetics.

**5.4.** End user shall maintain a current backup copy of all Programs and data.

**5.5.** The End user shall not permit or authorize anyone other than Somnetics to provide any maintenance services in respect of the Product during the Tenure of this agreement.

**5.6.** End user shall appoint up to two (2) individuals, skilled technically within each of End users' sites who serve as primary contacts between End user and Somnetics regarding the registry and report of Support Calls. The names of the said personnel shall be promptly intimated to Somnetics. All of End user's Support inquiries shall be initialized through these contacts.

## 6. Additional Services

- Somnetics may provide additional services such as on-site support, Somnetics process consultancy ad-hoc reports generation, new module deployment support, bulk data upload, minor customizations, non-production environment support, and additional training etc., on such terms and conditions as may be mutually agreed. These services will be made available on a time and materials basis, including expenses. The Fee for additional services is defined under APPENDIX-B.
- On regular basis the End user may need additional services such as the ones listed above for their smooth business operation. These services are not covered under the scope of work of standard support agreement.
- In order to engage with Somnetics for these services on regular basis for better cost benefit the End user can sign-up for Somnetics Managed Services. More information about Somnetics Managed Services can be found in Somnetics Customer Support Portal.

## 7. Intellectual Property and Confidentiality

**7.1.** In the course of providing Support under this Agreement, if Somnetics creates documentation or other material protected by copyright, or any other intellectual property right, all legal and beneficial rights to the same shall vest with Somnetics and End user shall have no rights to the same beyond a non-exclusive right to use for internal purposes.

**7.2.** Somnetics shall establish and maintain such security measures and procedures as are reasonably practicable to provide for the safe custody of the End user's information and data in its possession and to prevent unauthorized access thereto or use thereof. The parties shall treat as confidential the terms of this Agreement and any other information or data, which it receives from the other party in the course of this Maintenance Agreement and shall not disclose the same to any third parties or any of its employees except on a need to know basis.

**7.3.** The provisions of this Section 7 shall follow termination or expiration of this Agreement.

## 8. Subcontracting and Assignment

Somnetics may engage the services of sub-contractors to perform any of its duties of Support without the prior permission of End user. However, sub-contracting of such duties shall NOT relieve Somnetics of responsibility for their due performance, unless otherwise agreed in writing. End user may not assign its rights, obligations and interests herein without the prior written consent of Somnetics.

## 9. Limitation of Liability

Somnetics's entire liability under this Maintenance Agreement is limited to 12 months Support Fee payable by the End user under this Agreement. In no event shall Somnetics be liable to the End user for consequential, incidental, special or other indirect damages such as loss of profits herein whether by contract or tort, even if such party has knowledge of the likelihood of such damages.

## 10. Warranty

**10.1.** Somnetics hereby warrants that its title to the copyright and other intellectual property rights in the Software Program and the Documentation are free and unencumbered and that it has the right power and authority to grant this License.

**10.2.** Somnetics warrants that the Support services will be performed by appropriately qualified personnel with due care and diligence and to such high standards of quality as it is reasonable for the End user to expect in all the circumstances.

## 11. Indemnification

**11.1.** Somnetics shall have no liability to indemnify and make good any direct or indirect losses, damages and expenses suffered by End user due to a negligence of the End user under this agreement.

**11.2.** Somnetics will indemnify and hold harmless the End user on demand against any damages (including costs) which may be awarded or agreed to be paid to any third party and any costs loss or damage suffered directly by the End user in respect of or arising from any claim that the operation, possession or use of the Software Program by the End user in accordance with the terms of this Agreement infringes the intellectual property rights of such third party ("Intellectual Property Claim") provided that:



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- a. The End user gives notice to Somnetics of any Intellectual Property Claim forthwith on becoming aware thereof and does not at any time admit liability or otherwise attempt to settle or compromise such claim except on the express instructions of Somnetics;
- b. Somnetics shall have sole conduct of the defense or compromise of any Intellectual Property Claim and, as between the End user and Somnetics, shall have the sole right to any costs and damages awarded as a result thereof;
- c. End user acts in accordance with the reasonable instructions of Somnetics and gives Somnetics such assistance as it shall reasonably require in respect of the conduct of such defense or compromise.

**11.3.** Somnetics shall reimburse the End user its reasonable costs incurred in complying with the provisions of Clause 11.2, (a)-(c) above.

**11.4.** Somnetics shall have no liability to the End user in respect of any such claim or action if it results from a breach of the End user's obligations under this Agreement.

**11.5.** In the event of any Intellectual Property Claim Somnetics shall be entitled at its option to:

- a. Procure the right for the End user to continue using the Software; or
- b. Make such alterations modifications or adjustments to the Software that it becomes non infringing without incurring a material reduction in performance or function; or
- c. Replace the Software with non infringing substitutes provided that such substitutes do not entail a material reduction in performance or function.

**11.6. Altered Version:** Somnetics shall have no liability for any claim of infringement based on

- a. The use of a superseded or altered version of the Software Product if infringement would have been avoided by the use of a current or unaltered version of the Software Product which Somnetics made available to End user; or,
- b. The combination, operation or use of the Software Product with Software Product, hardware or other materials not furnished by Somnetics.

## 12. General Conditions and Governing Law

**12.1.** This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of India and the courts situated in Kolkata shall have the jurisdiction to the exclusion of all other courts situated elsewhere. In case, End user Site is situated in a country other than India, this agreement shall be governed by the local laws of the country to the extent this agreement contradicts local laws of that country.

**12.2.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or un-enforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or un-enforceable provision(s), with all other provisions remaining in full force and effect .

**12.3.** The failure of Somnetics to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Somnetics in writing.

**12.4.** Force majeure: Both parties shall not be liable for any breach of this Agreement arising by reason of Force Majeure, namely circumstances beyond the control of either Party which shall include (but shall not be limited to) acts of God, Civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, explosions, fires, earthquakes, floods, transportation embargoes, epidemics, acts of government, its agencies or officers. However, if as a consequence of such cause, performance of End user under this Agreement is affected for a period longer than one (1) month, then the End user shall have the right to terminate this Agreement and is entitled to Prorate Support fee paid for the Tenure. The terms of termination under this condition will be with no liabilities or penalties.

**12.5.** If any dispute or difference whatsoever arising between parties hereto out of or relating to the construction meaning and operation or effect of this agreement or breach thereof, which cannot be settled between the parties shall be settled in accordance with the provisions of Arbitration & Conciliation Act, 1996 and the Rules framed there under and the award made in pursuance thereof shall be final and binding on the parties. The venue of the Arbitration shall be at Kolkata. The Arbitration proceedings shall be conducted in English.

### 13. Escalation Matrix

Contact persons from Somnetics for rendering of Support are defined hereunder as follows:

Please visit URL <http://somnetics.in/escalation-matrix-for-software/> for the updated contact details

### 14. Online S.M.A.R.T Portal

Online S.M.A.R.T. Customer Support Portal is available at URL <http://cmms.somnet.co.in/smart/>

#### APPENDIX-A

Software Configuration  
 User configuration  
 Site Address  
 Software Configuration:

Software Name	Version
Module Name	Description
User Configuration	
Maximum user limited to	Maximum Concurrent user limited to

The End user’s site covered under this agreement for support is listed in the following table:

Site Name	Site Address	IP Address	Contact Person	Email ID



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**APPENDIX-B**  
**Tenure**  
**Charging and payment**

Agreement Tenure	From Date	To Date

The following are the commercial terms as applicable under the Support Agreement:

**Fee:**

Base Annual Support Fee in INR.	
In words:	
On-Site support fee/ Man day in INR.	
Customization charges/ Hr. In INR. XXXXXXXX subject to requirement and feasibility study and its acceptance upon a proper Purchase order from Customer.	

- All taxes extra as applicable.
- Software Support Fees are to be made 100% in advance on receipt of invoice.
- One Man Day equals 8 Hrs. Of work.

**APPENDIX-C**  
**Support Availability Window Matrix**

**Availability Matrix**  
**Complaint Log:**

Window	Monday - Friday	Saturday	Sunday
Service Desk	10:00 to 18:30 Hrs.	NA	NA
SMART Customer Portal	24X7	24X7	24X7

**Availability Matrix**  
**Telephonic/ On-Line Support:**

Window	Monday - Friday	Saturday	Sunday
Telephone	10:00 to 18:30 Hrs.	NA	NA
On-Line	10:00 to 16:30 Hrs.	NA	NA

**Availability Matrix**  
**On- Site Support:**

Window	Monday - Friday	Saturday	Sunday
Engineer Visit	11:00 to 18:00 Hrs.	NA	NA
On-Line	10:00 to 16:30 Hrs.	NA	NA

Revision No:	Date: