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| **CSIRO** Australian E-Health Research CentreLevel 7, Surgical Treatment and Rehabilitation Service - STARS296 Herston Road, Herston 4029 Australia**ABN**: 41 687 119 230 | SOFTWARE LICENCE AND SERVICES AGREEMENT |  |
| **Health and Welfare Information Systems Centre (TEHIK)** | **CSIRO Technical Contact** | **CSIRO Project Manager** |
| **Pärnu mnt 132, 11317, Tallinn, Estonia** |
| **Scharlett Hansson** | **Michael LawleyGroup Leader** | **Sandy Farnworth** |
| **Tel**: scharlett.hansson@tehik.ee | **Tel**: +61 7 3253 3609 | **Tel**:+61 7 3833 5528 |
| **Email**: +372 7943 900 | **Email**: michael.lawley@csiro.au  | **Email:** sandy.farnworth@csiro.au |
| **Details of Licence and Services** |
| **Software**  | Ontoserver, the computer program developed by CSIRO and named “Ontoserver”, which acts as a terminology server for SNOMED CT and other FHIR Terminology resources.Snapper, the product developed by CSIRO and named "Snapper", which enables creation of maps from existing term sets to SNOMED CT concepts, and the authoring of the FHIR terminology resources: CodeSystem, ValueSet, and ConceptMap.OntoCommand, the product developed by CSIRO and named "OntoCommand", which enables general browsing and management of the content of an Ontoserver instance.Ontocloak, the product developed by CSIRO, and named “Ontocloak, which enables the ability to control access to Ontoserver.Atomio, the product developed by CSIRO and named “Atomio” which allows the distribution of content from Ontoserver via a syndication service.Snapper and OntoCommand are hosted and operated by CSIRO.The Software, other than OntoCommand and Snapper, is supplied in its binary (object code) form only, as Docker images. The current version of the Software only is licensed to you under this Agreement. Updates and Upgrades may be made available to you during the Licence Period if and when they are made available by CSIRO. |
| **Access** | The Client will provide CSIRO with 1 or more Quay.io accounts so that CSIRO can authorise access to the relevant docker images. The Client will then be able to access the images from Quay.io for the duration of the Contract. |
| **Third Party Software** | The Software, current as at the date of this Agreement requires, the following components with associated licences to be embedded in or bundled with the Software:Apache 2.**0 Licence**Spring BootEBay CORS FilterJWTH2 DatabaseJDOMGoogle GuavaOWL API ELKApache LuceneGoogle GsonHAPI FHIRMaven WagonApache POIPhloc SchematronRome ToolsJoda TimeJadira UsertypeFlywayTypescriptdompurifyfhirclientKeycloak**MIT Licence**ReactMaterial UIdate-fnshttp-status-codesmaterial-tablequery-stringreact-domreact-queryreact-router-domreact-scripts**PostgresSQL Licence (MIT/BSD like)** Postgresql connector**BSD Licence** ANTLR4**Eclipse Public Licence**AetherThird Party Software means any computer program developed by third parties, which CSIRO has incorporated into, or provided for use with, the Software. For clarity, this includes computer programs licensed under open-source software licences.These components are included with the current versions of the Software as at the date of this Agreement. Future versions of the Software released after the date of this Agreement may not include all components listed and may include additional open source third party software components. These components may not be included or may be replaced by other open source software in future versions of the Software. CSIRO will only incorporate or provide third party components in or with the Software where it has all relevant rights to on-license that software to the Client for the Permitted Use . |
| **Permitted Users** | Permitted Users are employees of the Client and other users of the Client’s systems and products located in the Territory, who need to use the Software with the Client’s systems and products. There is no limit on the number of Permitted Users. |
| **Permitted Use**  | The Software is intended for design-time and runtime use of HL7[[1]](#footnote-2) International’s Fast Healthcare Interoperability Resources (**FHIR®[[2]](#footnote-3)**) including CodeSystems, ValueSets and ConceptMaps through the FHIR API.The Client may use the Software in its own operations, and allow Permitted Users to use the Software with the Client’s systems or products, for the purpose of delivering healthcare within the Territory, in this instance, the Territory is Estonia. For the avoidance of doubt, such use must be in accordance with the purchased Components, Tier and Volume of Licence, and must not be:1. for the purpose of re-sale, re-supply, on-license or loan of the Software to third parties with the intent or effect of commercial exploitation; or
2. to deliver any service or product outside the Territory.

The Client may also use the Software for internal research and development purposes. |
| **Operating Environment** | Other than OntoCommand and Snapper, the versions of Software current as at the date of this Agreement may only be deployed in a Linux Docker virtual machine environment and requires access to a Postgres database instance.The requirements for running the version of the Software current as at the date of this Agreement is heavily dependent on the intended usage. For the basic usage pattern (< 20 concurrent users, syndicating a small number of binary indexes but not building indexes from source), the following resource levels are recommended in addition to a 64-bit Docker virtual machine environment.

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| **Resource** | **Minimum** | **Recommended** |
| CPUs or Cores | 2 | 4 |
| RAM | 4GB | 16GB |
| Storage/Disk | 10GB | 20GB |

Building indexes from sources (e.g. RF2) is very demanding on memory - in these cases, at least 16GB of RAM is recommended. The hardware requirements for running the Software licensed under this Agreement may change from time to time. |
| **Services** | Software support and other Services will be provided to the Client as described in Annexure 1. |
| **CSIRO Support Contact** | Dr Michael Lawley |
| **Dates** | **Start Date:** 25 May 2024 | **End Date:** 24 May 2027 unless the Agreement is terminated under clause 11, whichever is the earlier. |
| **Client Charges** |
| **Fee (Euros)** | The Fee of **EUR 141,999.99** is set out in Annexure 2 |
| **Additional Expenses** | If you wish to procure additional features to the Software, onboarding and implementation and other support and services in addition to what is set out in Annexure 1 during the Licence Period, these can be costed and agreed at a fixed price.  |
| **Payment Terms** | The Fee and any Additional Expenses are due in advance and will be invoiced on signing of this Software Licence and Services Agreement.The Fee and any Additional Expenses are due annually in advance and will be invoiced as follows:Invoice 1 : EUR 47,333.33 due on signing of this contract.Invoice 2 : EUR 47,333.33 due on 25 May 2025.Invoice 3 : EUR 47,333.33 due on 25 May 2026. |
| **This proposal to enter into an Agreement (which will consist of this cover page, the terms overleaf and any attachments) is valid for 30 days from the date shown at the top of this cover page. To accept this proposal, please have your authorised representative sign as per instructions provided to you by the CSIRO Project Manager** |
| **By signing below you confirm you have read and accepted the Agreement and that you are authorised to sign on behalf of the Client.** |
| **CSIRO** |  | by |  | on |  |
|  | *Signature* |  | *Name* |  | *Date* |
| **Client** |  | by |  | on |  |
|  | *Signature* |  | *Name* |  | *Date* |

**TERMS OF AGREEMENT**

1. **Definitions**

‘**Access**’ means the manner in which CSIRO will make available the Software to you for installation and use in accordance with this Agreement, as set out on the cover page.

‘Agreement’ means these terms together with the Cover Page and any annexures and attachments.

**'Confidential Information**' means all information other than Personal Information in any form or media, which is by its nature confidential or which either of us identify as confidential and all copies, notes and records made of such information. Information is not confidential if it is: (a) in the public domain (other than by a breach of this Agreement; (b) created by our own Personnel independently of each other’s Confidential Information; or (c) rightfully known by either of us as a consequence of the information being disclosed from an independent source without any limitation on its use of disclosure.

**‘Cover Page’** means the cover page containing details of this Agreement to which these terms are attached.

**'CSIRO'** means the Commonwealth Scientific and Industrial Research Organisation ABN 41 687 119 230, having its principal office at CSIRO Black Mountain Science and Innovation Park, Clunies Ross Street, Acton ACT, Australia.

**'IP'** includes any rights in any existing or future copyright work (including computer programs, patentable invention, design, circuit layout, new plant variety, trademark, know-how or trade secret.

**‘Liability’** includes all liability, damages, expenses or costs.

**‘Licence’** means the licence to use the Software granted in clause 2.2.

**'Manual'** means any documentation or instruction, whether in print or electronic format, relating to the installation or use of the Software.

**‘Operating Environment’** means any hardware and software (including Third Party Software) required for use of the Software, as set out on the cover page.

**‘Personnel’** means any officers, employees and contractors.

**‘Services’** means the services set out in the cover page and Annexure 1.

‘**Software**’ means the computer programs described on the Cover Page.

**‘Third Party Software’** means any computer program developed by third parties, which CSIRO has incorporated into the Software. For clarity, this includes computer programs licensed under open-source software licences.

**‘Tier and Volume’** of the Licence means the package of software components and their configuration as set out in Client’s purchase order form as annexed to this Agreement.

**‘Update’** means revised or new version of the Software which provides for a technical improvement or error correction but does not necessarily provide additional functionality or performance, that CSIRO makes generally available to its clients.

**‘Upgrade(s)’** means any new version of the Software which provides additional functionality or performance above that of the Software originally provided.

**‘we’, ‘us’ or ‘our’** means the Client identified on the cover page and CSIRO severally.

**'you'** or **'your'** means the Client identified on the cover page.

Other capitalised expressions used in this Agreement have the meanings given to them in the cover page.

**2. Licence**

**2.1** CSIRO will provide you with Access to the Software (and Manual) by the Start Date.

**2.2** CSIRO grants you a non-exclusive, non-transferable licence for the term of the Agreement (including any period if extended under this Agreement) to use the Software (and Manual) for the Permitted Use only. You must comply with the terms of this Agreement.

**2.3** You may extend the term of this Agreement for the further period stated on the cover page, provided you give CSIRO written notice before the End Date and you pay CSIRO the additional Fee applicable for the extension period. If you do not give notice to extend before the End Date, your rights to extend the Licence Period ceases on the End Date.

**2.4** The Software is supplied in its binary (or object code) form only.

**2.5** The Licence is personal to you and must not be assigned or novated without CSIRO’s consent.

**2.6** You must not sub-license, sell, on-license, re-supply, loan or otherwise transfer the Software or the Manual to anyone with the intent or effect of commercial exploitation.

**2.7** You must not charge, encumber, grant a security interest over, or otherwise deal with any of its rights or obligations under this Agreement.

**2.8** You may only allow the Permitted Users to have access to the Software (and Manual) and you are responsible for ensuring that any users of the Software (and Manual) comply with all of the terms of this Agreement.

**2.9** You must have reasonable measures in place to manage the risk of unauthorised access and where unauthorised use of the Software (being any use that is outside the Permitted Use) is detected, to promptly notify CSIRO and provide reasonable assistance to investigate and resolve such incident.

**2.10** CSIRO provides the Third Party Software on the same terms on which it has been licensed to CSIRO, as far as CSIRO is allowed to do so.

**2.11** You must comply with all applicable laws in connection with your use of the Software and Third Party Software and Services provided to you under this Agreement, including without limitation, laws regarding the use and collection of any personal, sensitive or health information relating to individuals.

**3. Access, Installation and Services**

**3.1** You are responsible for installing and using the Software in accordance with the Manual or any directions given by CSIRO (including any instructions or directions embedded in the Software).

**3.2** The Software is for use in the Operating Environment and may not operateoutside of the Operating Environment.

**3.3** You are responsible for obtaining the hardware and software set out in the Operating Environment. CSIRO has no obligation to provide you with the Operating Environment.

**3.4** Software support and maintenance and other professional services (that is, Services) will be provided in accordance with Annexure 1. Other than as expressly agreed between the parties, CSIRO has no obligation to provide you with any other services for the Software.

**3.5** It is acknowledged that the Services may be provided by third party providers engaged by CSIRO. Additional terms (if any) required by third party providers will be included in the Attachment and therefore forms part of this Agreement.

**3.6** Notwithstanding certain Services may be provided by third party providers, any issues regarding such Services will be managed under this Agreement and CSIRO will be the first point of contact for any enquiry regarding any aspect of this Agreement, Licence or Services.

**4. Updates and Improvements**

**4.1** If CSIRO develops an Update to the Software (or Manual) it may make such Update available to you on the same terms as this Agreement.

**4.2** You must not adapt, extend, enhance or make any other improvements or changes to the Software (and the Manual) without CSIRO's written approval.

**5. Back-up and Copying**

**5.1** Except for those back-up copies of the Software (and Manual) you are permitted to make by law, you must not copy the Software (and Manual). All such back-up copies made must display any copyright notices, confidentiality or other proprietary legends incorporated into the original copy.

**5.2** You must notify CSIRO immediately on becoming aware of any unauthorised use or copying of the whole or any part of the Software (or Manual).

**5.3** You must not remove or tamper with any notices or proprietary legends incorporated by CSIRO into the original version of the Software (or Manual) supplied to you.

**6. IP Rights**

**6.1** CSIRO retains full ownership of the IP in the Software (and Manual). You do not have the right to sub-license, sell, rent, or distribute the Software (or the Manual) or the right to release the Software on the internet or any other public communication network. If you wish to obtain any further rights to make use of the Software, you must negotiate with CSIRO for a separate agreement.

**6.2** You must not: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted to decompile under applicable law; (b) use the Software to develop copycat or functionally equivalent software or derivative software based on the IP embodied in the Software (and Manual); (c) allow the Software to be combined with or incorporated into other software; or (d) make the Software (and Manual) available to a third party for such unauthorised purposes.

**6.3** You acknowledge that the Software requires the use of the Third Party Software listed on the Cover Page. You must comply with all terms and conditions relating to the Third Party Software.

**6.4** Your use of any FHIR resources (including code systems such as SNOMED CT) with the Software will be subject to your right to use such third party content and CSIRO excludes any and all Liability with respect to your (and your Permitted Users) use of same.

**7. Payment**

**7.1** You must pay CSIRO the Fee (and any Additional Expenses) in accordance with the Payment Terms. All invoices issued by CSIRO are to be paid within thirty (30) days after the date of the invoice. For GST purposes all invoices or receipts issued by CSIRO are tax invoices.

**7.2** Unless stated otherwise on the cover page, you are responsible for the costs of freight, packaging and transit insurance and any specialised packaging.

7.3 The Fee does not include freight, packing and transit insurance charges. If CSIRO has to pay any such charges, then you will be consulted about the fees and invoiced separately and must reimburse CSIRO for these charges.

**7.4** All international conventions that might import contractual terms into this Agreement are excluded, including the United Nations Convention on Contracts for the International Sale of Goods.

**7.5** You are responsible for obtaining any necessary import licences or permits and for paying any customs or import duties or taxes on such importation.

**7.6** Goods and services supplied to Australian residents or for use in Australia are subject to tax under the GST law. Goods or services supplied to you under this Agreement will be treated as GST-free supplies under the GST law in reliance on your assurances that:

a) you are a non-resident for Australian income tax purposes;

b) you are not registered or required to be registered for GST purposes in Australia; and

c) you require the goods and services solely for use in your business or operations outside of Australia.

**7.7** If goods or services supplied to you are subsequently classified as taxable because any of your assurances are incorrect, you must reimburse CSIRO on demand for the GST payable (including any interest, fine, penalty or other amount imposed upon CSIRO for failing to collect the GST).

**7.8** The Fee must be paid to CSIRO in full, without any deduction, withholding, set-off or counterclaim for taxes, excises or duties. If any taxes, excises or duties are imposed then: (i) you will bear and pay all deductions and withholdings of any taxes, excises or duties directly to the relevant authorities; and (ii) separately pay CSIRO enough to ensure that CSIRO receives the full amount of the Fee on the due date.

**8. Confidential Information**

**8.1** Confidential Information is to be kept confidential for a period of 5 years commencing on the date you sign this Agreement.

**8.2** We must promptly notify the other if either of us: (a) become aware of any unauthorised disclosure of Confidential Information of the other; or (b) are required by law to disclose any Confidential Information belonging to the other.

8.3 CSIRO may disclose such information (on a confidential basis): (a) to the extent necessary to comply with a requirement or request of its responsible government Minister or a House of Parliament or Committee of Parliament; or (b) to a responsible authority if CSIRO, acting reasonably, deems the information to expose or relate to a potential risk to public or environmental health and safety.

**8.4** We each undertake to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the other’s Confidential Information.

**8.5** Each of us may disclose the other’s Confidential Information if required by law, or to a Parliamentary committee or to a party’s responsible Minister, but only to the extent of the requirement and after appropriate action is taken to protect the form and content of the disclosure.

**9. Limitation of Liability**

**9.1** The Software is being provided to you for the Permitted Use.  The outcomes of your use of the Software or the ability of the Software to produce useful results or any particular outcome is not guaranteed.  You must use your own judgement as to the applicability and fitness for purpose of the Software for your intended use.

**9.2** CSIRO provides the Software 'as is'. CSIRO gives no express warranty that: a) the Software is bug free or operates without causing interruptions or downtime; or b) your use will not infringe the IP of any third party.

**9.3** This Agreement does not exclude or limit any guarantee, condition, warranty, right or Liability implied into it by law (including the *Competition and Consumer Act 2010*), the exclusion of which would contravene the law or cause this Agreement to be void (‘non-excludable consumer warranties’).  This Agreement is at all times to be read subject to such non-excludable consumer warranties.

**9.4** CSIRO's Liability to you for breach of any non-excludable consumer warranties is limited, at CSIRO's option, to repairing or replacing the Software, to re-performing the Services or refunding the relevant portion of the Fee.

**9.5** You are responsible for ensuring you have backed-up all data or information used in conjunction with the Software, so that if there are any interruptions to or loss of data or information, you are able to access your data and information as it was at the time of back-up.

 9.6 CSIRO will not be liable to you for any loss of data, information, revenue, profit or business opportunity or for any damage to goodwill or reputation which is suffered by you in any way arising from your use of or inability to use the Software, Manual and/orThird Party Software.

**10. Dispute Resolution**

**10.1** Any dispute, controversy or claim arising out of or in connection with this Agreement, including its existence, breach, validity or termination (Dispute) must be dealt with in accordance with this clause. This clause does not prevent any of us from seeking urgent injunctive or similar interim relief from a Court.

**10.2** Any of us claiming that there is a Dispute must notify each other in writing and give details of that Dispute to each other’s contact person specified in the cover page.

**10.3** Any Dispute may be submitted to mediation in accordance with, and subject to, the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules. The mediation must take place in Sydney, Australia and be administered by ACICA.

**10.4** If the Dispute cannot be resolved within 90 days (unless this period is extended by our mutual agreement in writing) from: (a) the date it is submitted for mediation; or (b) the date written notice of the Dispute is received; then the Dispute must be resolved by arbitration in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Arbitration Rules.

**10.5** This arbitration is governed by, and all Disputes must be resolved according to, the laws of New South Wales, Australia. The number of arbitrators must be one. The place of arbitration is Sydney, New South Wales, Australia. The language of the arbitration must be English. The decision of the arbitrator (including any award as to costs) will be final and binding. CSIRO may, if required, disclose any information regarding the arbitration to its responsible government Minister, House of Parliament or a Committee of Parliament

**11. Term and Termination**

11.1 The Agreement will end on the End Date or on the date on which this Agreement is terminated (if earlier) unless CSIRO has agreed to extend the Agreement for a further period as set out on the cover page.

11.2 If you wish to extend the Agreement for the further period then you must give CSIRO written notice of such desire no less than 30 days before the End Date. Unless otherwise stated on the cover page, any extension to the Agreement will be on the same terms save the Fee, which may be increased to reflect increases to CSIRO’s costs in providing its Services.

11.3 CSIRO is not obliged to agree to extend the Agreement beyond the further period referenced in clause 11.2.

11.4 If either you or CSIRO breach this Agreement and that breach is not remedied within 30 days after receipt of notice to remedy, then the other may terminate this Agreement by written notice.

11.5 On termination of this Agreement the licence to use the Software (and the Manual) ceases and you must:

a) stop using the Software (and the Manual);

b) return to CSIRO or destroy (if requested by CSIRO) all copies of the Software (and the Manual) in your possession; and

c) ensure that the Software (and the Manual) has been permanently removed from any equipment on which it has been downloaded or stored.

**12. Use of CSIRO Name**

You must not use CSIRO's name (that is, "CSIRO" or "Commonwealth Scientific and Industrial Research Organisation") in a manner that suggests that CSIRO endorses or is associated with your business, products or services. In no case may you use CSIRO's logo without first receiving CSIRO's prior written consent.

**13. Force Majeure**

**13.1** Neither party is liable for any delay or failure to perform its obligations pursuant to this Agreement if such a delay is due to Force Majeure. For the purpose of this clause 13, “Force Majeure” means a circumstance beyond reasonable control of that party which results in the Party being unable to observe or perform on time an obligation under this Agreement. Such circumstance may include but is not limited to acts of God, natural disasters, war, cyber and physical terrorism, riots, civil commotion, malicious damage, acts or requirements of government, pandemic and public health emergency.

**13.2** If a delay or failure of the affected party to perform its obligations is caused or anticipated due to Force Majeure, the performance of the affected party's obligations will be suspended until the Force Majeure has ended.

**13.3** If a delay or failure of an affected party's obligations due to a Force Majeure exceeds sixty (60) days (or other period as agreed between the parties), then the other party may terminate the Agreement on providing notice in writing to the affected party.

**14. General**

**14.1** This Agreement records our entire agreement and supersedes all earlier agreements and representations that may have been made by either of us in relation to this Agreement.

**14.2** The terms in this Agreement override any contrary terms contained in any invoice, purchase order or other documentation issued by you to CSIRO for the Services.

**14.3** This Agreement is governed by the law applicable to the State or Territory given in the CSIRO address specified at the top left corner of the cover page.

**14.4** If any term of this Agreement is prohibited, void or unenforceable under any applicable law, it will be severed to the extent necessary to make this Agreement valid and enforceable. The severance of a term will not affect the validity or enforceability of the remaining terms of this Agreement.

**14.5** All notices under this Agreement must be in written form and may be delivered by hand, by email or by mail to the address specified in the cover page.

**14.3** Nothing in this Agreement is to be treated as creating a partnership, agency, trust, joint-venture or otherwise.

**ANNEXURE 1 – SERVICES**

CSIRO will provide general Tier 3 support and maintenance services for the Software used by the Client as set out below. A Problem requiring Tier 3 support and maintenance services is a Problem with the Software that the Client is not able to resolve.

Tier 3 support and maintenance includes the following services:

* operation of a Tier 3 support and maintenance help desk on CSIRO premises (Ontoserver Support team).
* CSIRO acknowledgement of Software Problems reported to CSIRO by Client
* CSIRO allocation responsibility for resolution of each Problem reported to the appropriate CSIRO internal support and maintenance area.
* CSIRO reporting to Client the nature of resolution required for each Problem reported and provision of the estimated time frame for resolution; and
* CSIRO resolution of the Software Problem reported.

(a) Hours and Availability

(i) CSIRO will provide Tier 3 support and maintenance services for the Software during 9am to 5pm Business Hours on Business Days (per Queensland, Australia),

(ii) Where Tier 3 support and maintenance cannot be provided outside Business Hours on Business Days, despite the use of CSIRO’s best efforts, the Problem will be handled within 1 hour of commencement of Business Hours on the next Business Day.

(b) Tier 3 support and maintenance services

(i) If  Client assesses a Problem to require Tier 3 support, Client will report the Problem to the CSIRO Ontoserver Support team (a “support ticket”) contactable as follows:

Email: Ontoserver-support@csiro.au

CSIRO will notify  Client immediately if the contact details for the Ontoserver Support team change.

(ii) CSIRO will refer all Tier 3 support tickets to the appropriate CSIRO internal support and maintenance area for resolution based on the assigned priority assessed as per the table below.

(c) Tier 3 support services Response Times

(i) Client will report Tier 3 Problem to the CSIRO Ontoserver Support team (support ticket) and the required CSIRO support response time for each support ticket commences upon the support ticket being first reported to CSIRO.

(ii)  CSIRO will respond to support tickets according to the severity assigned to the reported support ticket as follows:

Low or Moderate Severity: CSRIO acknowledges receipt of the support ticket on the same Business Day if receipt is within Business Hours or otherwise in accordance with paragraph (a) above.

High or Critical Severity: CSIRO acknowledges receipt of the support ticket within 2 hours of receipt within Business Hours on Business Days or otherwise in accordance with paragraph a) above).   CSIRO will identify the resolution required for the support ticket and provide an estimate of the time frame required to resolve the support ticket within 2 Business Days from the day Client first reported the support ticket to the CSIRO Ontoserver Support team.

Support Ticket Severity Levels

|  |  |
| --- | --- |
| 1 – Critical  | The Problem affects critical functionality or critical data. It does not have a workaround. Example includes, without limitation, an unsuccessful Software installation in a supported environment or complete failure of a feature.  |
| 2 – High  | The Problem affects major functionality or major data. It has a workaround but is not obvious and is difficult. Example includes, without limitation, a feature set is not functional from one Software module, but the task is doable if multiple complicated indirect steps are followed in another feature set.  |
| 3 – Moderate  | The Problem affects minor functionality or non-critical data. It has an easy workaround. Example includes, without limitation, a minor Software feature that is not functional in one feature set, but the same task is easily doable from another feature set.  |
| 4 -Low  | The Problem does not affect functionality or data. It does not even need a workaround. It does not impact productivity or efficiency. It is merely an inconvenience. Example includes, without limitation, petty layout discrepancies, spelling/grammatical errors.  |

**ANNEXURE 2 – FEES**

**Terminology Solution Bundle Rate Card and Order Form**

**Base rates All in EUR /per region/ per annum**

**Price : EUR 47,3333.33 per year for 3 years : EUR 141,999.99**

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| --- | --- | --- | --- | --- |
| **Software** |  | **Discounted Unit Price EUR** | **Volume** | **Total** |
| Terminology Server ( Read / Write)  | Per end point/instance  | 25,000.00  | **1** | **25,000.00** |
| Snapper Map/Author\* | Per Solution | n/a  | **1** | **n/a** |
| OntoCommand | Per Solution | n/a | **1** | **n/a** |
| Staging Terminology Server\*\*  | Per R/W Server | n/a  | **1** | **n/a** |
| Terminology Server High Performance Single ( Read Only)\*\*\* | Licence per InstanceMust have R/W | 7,444.44 | **3** | **22,333.33** |
| **Services** |  |  |  |  |
| CSIRO Professional Services\*  | FTE hourly Rate | 165.00 | **0** | **0.00** |

\* Hourly rate applicable for any unexpected work is provided but no additional time will be charged if the current contract is renewed on the terms and conditions of this Software Licence and Services Agreement.

**PROCUREMENT CONTRACT no 3-9/4246-1**

**Acquisition of a terminology server license and maintenance works**

 **The Health and Welfare Information Systems Centre** (hereinafter referred to as the ***purchaser***), registration code 70009770, address Pärnu mnt 132, 11317 Tallinn, represented by the Director Margus Arm based on the Statutes, and

**Commonwealth Scientific and Industrial Research Organisation**, (hereinafter ***seller***), registry code 41687119230, address Herston QLD 4029 Australia, represented by David Hansen

hereinafter jointly or separately referred to as ***party*** or ***parties***, have signed this procurement contract (hereinafter ***contract***) as follows:

# Purpose and subject matter of the contract

* 1. The purpose of the contract to be signed based on the public procurement "Acquisition of a terminology server license and maintenance works" (public procurement reference number 279083) organised by the contracting entity, is to purchase a terminology server license and maintenance works along with everything associated with these (hereinafter ***item***).
	2. The subject matter of the contract are the terminology server license and maintenance works. A more specific description of the subject matter of contract is included in the technical specification.
	3. The subject matter of the contract also includes services associated with the software usage licenses, which are included in the price of the subject matter of the procurement.
	4. The contract enters into effect at the time of signing, and will remain in effect for 36 months or until the parties fulfil their obligations.

# General conditions

* 1. All annexes and basic procurement documents, as well as the tender submitted by the vendor in the procurement procedure and written notices between the parties, which are not separately signed as annexes to the contract, shall be deemed to be integral parts thereof.
	2. Contract performance is based on the call for tenders included in the procurement, and the tender.
	3. The parties shall cooperate in the performance of the contract and in achieving its objectives. The parties undertake to make all necessary efforts to perform the contract in due time and as agreed.
	4. The vendor confirms that it is the reseller of the subject matter of the contract and that the performance of the contract will not prejudice the rights and interests of third parties and that there are no circumstances precluding the vendor's rights to conclude the contract.
	5. By signing the contract, the vendor confirms its ability to deliver the quantities of items on time according to the agreement.
	6. From the moment of delivery of the item, the right of use of the item shall vest in the purchaser under the conditions set out in the contract. The purchaser may use the item on the territory of the Republic of Estonia for an unspecified term.
	7. The moment of transfer of ownership of the subject matter of the contract is the moment the item is made available for use to the purchaser.
	8. The contract performance language is Estonian and/or English, and it is also the language in which all working meetings, communications and documentations will take place.

# Rights and obligations of the parties

* 1. The vendor undertakes to:
		1. sell the items on the terms agreed in the contract;
		2. provide product support in accordance with the technical specifications;
		3. cooperate with third parties in view of the purchaser's needs (e.g., business customer, etc.);
		4. communicate without delay any circumstance preventing the proper performance of the contract;
		5. deliver the items free of charge within the Republic of Estonia in accordance with the provisions of the contract;
		6. install the items according to the contract;
		7. declare, in a form which can be reproduced in writing, any interests which may give rise to a conflict of interest in the course of performance of the contract.
	2. The vendor is entitled to:
		1. receive remuneration for the performance of the contract to the extent and in the manner agreed in the contract;
		2. to use subcontractors in the performance of the contract. The vendor shall be liable to the purchaser for the acts and omissions of subcontractors;
		3. assign the right to invoice to a third party without entering into any amendment to the contract, provided that it has given notice to that effect to the purchaser.
	3. The purchaser undertakes to:
		1. take delivery of the item at the agreed time;
		2. notify the vendor immediately of any circumstances preventing acceptance of the item;
		3. pay for the goods received to the extent and in the manner agreed.
	4. The purchaser is entitled to:
		1. check at any time the performance of the contract and to give the vendor any instructions which are mandatory for that purpose;
		2. refuse to pay, in whole or in part, if the vendor fails to perform properly under the terms of the contract and the vendor's breach is not objectively justified;
		3. involve other public authorities in the performance of the contract, in the provision of information, in the role of payer and/or in the role of quality control. Involvement of a third party by the purchaser shall not be considered as a modification of the contract within the meaning of the Public Procurement Act..

# Contract performance

* 1. Provision of product support service related to usage licenses
		1. Product support issues may be addressed directly to the manufacturer's customer support via the user enquiries portal or by telephone listed in the contacts the regional helpline.
		2. The vendor will deliver to the purchaser an item of quality, quantity and other attributes according to the contract. The item's attributes not set out in the contract must be of at least average quality and according to expectations normal for similar items.
		3. The vendor undertakes to deliver the item in full within **the 30 days** after signing the contract, in the location and in the manner specified in the purchaser's technical description.
		4. The item shall be delivered means of an act of delivery and acceptance (hereinafter referred to as the ***act***) signed by the vendor; the purchaser shall sign the act in order to accept the item if the purchaser has no objections to the item handed over. The act must be signed within a reasonable time.
		5. If the item delivered does not comply with the contract, the purchaser has the right to refuse to accept the item and to grant the vendor an additional period for the proper performance of the contract.
		6. By signing the act, the vendor submits to the purchaser all ownership rights of the item according to the contract.
		7. Ownership of the item and the risk of accidental destruction or damage shall pass from the vendor to the purchaser upon signing of the act of delivery and acceptance by both parties.

# Contract value

* 1. The maximum amount of the contract is 142,900 euros (hereinafter referred to as the **contract value**).
	2. Based on the monthly cost provided in the tender, the purchaser will pay the vendor for the item 3 944,44 euros excluding VAT. It is paid in advance in 12-month periods in the volume of 47 333,33 euros excluding VAT. The price of one working hour of installation, configuration and use consultation without VAT is 165 euros.
	3. The contract value includes the contract item, delivery within the Republic of Estonia, licenses, product support and maintenance services as provided in the technical description.
	4. The purchaser shall pay for the item after signing the act of delivery and acceptance and receiving an invoice based on the act.
	5. The invoice shall be submitted to the purchaser as an e-invoice. The invoice shall indicate the title of the procurement, the number of the contract and the details of the contact person.[[3]](#footnote-4)
	6. The vendor shall provide an invoice payment deadline of no less than 21 calendar days from invoice receipt.

# Intellectual property

* 1. By signing the contract, the vendor confirms that it owns the intellectual property rights to the item necessary for the performance of the contract and for the assignment of the rights to the Buyer, and that no third party has any rights or claims to them.
	2. The fee for the assignment of the economic usage rights to the intellectual property shall be included in the price of the contract.
	3. The vendor assigns to the purchaser all economic rights in the works created in the course of the performance of the contract (e.g. training materials) which are relevant to the performance of the contract, and grants a non-exclusive licence for the moral rights of the author with the right to sub-licence for the entire duration of the copyright without any geographical limitation from the moment of delivery of the item, thereby waiving the exercise of the rights in respect of the original works transferred under the contract.
	4. The vendor warrants that the moral rights of the author are exercisable without consent of the vendor, *inter alia* to the following extent:
		1. the purchaser is entitled to use the item for any purpose and in any way;
		2. the purchaser, or third parties commissioned by the purchaser, shall be entitled to make modifications to and additions to the items transferred;
		3. the purchaser or third parties commissioned by the purchaser shall be entitled to modify the item or to add to the item things created by the purchaser or third parties;
		4. by transferring the item to the purchaser, the vendor confirms that the item is ready for general publication.
	5. The vendor is obliged to ensure the existence and validity of intellectual property rights (in particular copyright) and their transfer to the purchaser in such a way as to enable the purchaser to continue to use the item after the term of the contract.
	6. The vendor undertakes to settle any disputes arising from intellectual property rights in connection with the contractual services with third parties or with its employees or collaborators, except where liability lies with another party. In the event that the foregoing gives rise to a financial or other obligation on the part of the purchaser, or in the event that the purchaser is obliged to discontinue the use of the goods purchased under the contract, the purchaser shall be entitled to require the vendor to fulfil the resulting financial or other obligation and/or to sell an equivalent item without further payment within the shortest possible period, refraining from any delays in the purchaser's work, commissioning and use of the item by the purchaser.
	7. Any direct or indirect loss or damage suffered by the purchaser as a result of any third party having or claiming to have any proprietary or non-proprietary intellectual property rights in the IPRs transferred under the contract shall be borne by the vendor.
	8. The rights and licences described in this sub-chapter shall be deemed to have been finally transferred to the purchaser upon acceptance of the item as certified by the act.

# Confidentiality

* 1. The parties undertake mutually to keep secret and not to disclose to third parties any information considered confidential, which has been obtained from the other party in the course of the performance of the contract or otherwise or accidentally.
	2. The vendor must take organisational, physical and IT security measures to protect personal data and the purchaser's information systems in accordance, *inter alia*, with applicable legislation.
	3. In the event that the processing of personal data becomes necessary within the framework of the performance of the contract, the parties shall agree on the terms and conditions of the processing of personal data in a personal data processing contract[[4]](#footnote-5), guided by article 28 of the GDPR.
	4. Confidential information is any information (including trade secrets, personal data, contract data, information systems, security system specifications, hardware and software specifications, tenders, technologies used, specifications, etc.) obtained in connection with the performance of the contract, the disclosure of which to third parties could expose the parties to security risks or economic damage or breach the privacy of third parties (in particular the purchaser's customers). In the event of doubt, the information shall be presumed to be confidential.
	5. Confidential information is not information the disclosure of which is required by law or which the parties have agreed to disclose.
	6. The vendor shall not engage in public relations in relation to the contract and shall not make any announcements to the press, electronic media, the general public or other audiences, except with the prior written consent of the purchaser.
	7. The parties may communicate confidential information only to those persons who are involved in the performance of the contract and shall ensure that these persons are aware of the obligation of confidentiality. The parties shall require such persons to comply with this obligation unconditionally and without time limit.
	8. The parties shall not use any confidential information, which has come to their knowledge in the course of the performance of the contract, for their own benefit or for any other purpose than the performance of the contract.
	9. The vendor is aware that the contracts and agreements are public, except for those parts which have been designated for internal use under the Public Information Act or marked by the vendor as trade secrets.
	10. In the event of a breach of confidentiality, the vendor undertakes to compensate the purchaser or any third party for any loss or damage suffered by the purchaser or the third party as a result of such breach, irrespective of whether the breach occurred during the term of the contract or after the termination of the contractual obligations.
	11. The obligation of confidentiality shall apply indefinitely.

# Liability

* 1. Each party is liable for breach of its contractual obligation, unless the breach is excusable due to *force majeure* or other objective circumstances. The burden of proof of existence of such circumstances lies on the party wishing to rely on them.
	2. Each party shall be liable for any breach of its contractual obligations resulting from the actions of persons the party has involved in the performance of the contract.
	3. Parties shall not be liable for any breach of their contractual obligations resulting from the breach of obligations of the other party or from the acts or omissions of third parties. If the purchaser delays the performance of its obligations and the vendor is unable to perform its obligations in due time, the time for delivery of the goods shall be extended by the corresponding period. The burden of proof of existence of such circumstances lies on the party wishing to rely on them.
	4. In the event of a breach of obligation, the other party shall be entitled to exercise all legal remedies available under the law or the contract in accordance with the Law of Obligations Act.
	5. The total financial liability of the parties shall be limited to the total amount of the contract, but this limitation shall not apply in the event of a culpable breach, including a culpable breach of intellectual property or data protection obligations.
	6. In the event of late payment of the fee, the vendor is entitled to claim late fees for the amount due for the specific item at the rate provided for in the Law of Obligations Act for each calendar day of late payment. The maximum rate of late fees shall be 25% of the total amount due for the specific item. The claim for late fees must be signed.
	7. A breach of contract on the part of the vendor shall be deemed to be a breach of contract, in particular where the goods delivered do not comply in whole or in part with the terms of the contract or where there are other breaches of contract on the part of the vendor.
	8. In the event of a breach of contract by the vendor, the purchaser is entitled to a contractual penalty of 200 euros per calendar day of breach, but not exceeding 25% of the total value of the contract. If the purchase of the item is agreed in stages, no more than 25% of the total value of the stage.
	9. If, due to delays on the part of the vendor, it is no longer feasible or necessary for the item to be put into service, the purchaser shall be entitled to withdraw from the contract in accordance with § 116(1) of the Law of Obligations Act and the vendor shall be obliged to reimburse the purchaser for the part already paid.
	10. In the event of a fundamental breach of contract, the purchaser shall be entitled to claim from the vendor a contractual penalty of 10,000 euros for each breach. In the event of a material breach of the contract by the vendor, the purchaser is not required to set an additional term for performance of the contract by the vendor as referred to in § 114 of the Law of Obligations Act and the purchaser is entitled, *inter alia*, to terminate the contract or to withdraw from the contract.
	11. In addition to the provisions of the Law of Obligations Act, a fundamental breach is, *inter alia*, the following:
		1. not starting performance, unless there is a valid reason;
		2. providing false information;
		3. absence of the rights necessary for the performance of the contract (including authorisations, licences, intellectual property rights);
		4. infringement of intellectual property rights and of the conditions for their use;
		5. repeated replacement (at least twice) of a member of the team with a person who does not comply with the agreed requirements, or replacement of a member of the team without the prior consent of the purchaser, given at least in a format which can be reproduced in writing;
		6. breach of confidentiality;
		7. repeated failure (at least twice) to comply with contractual obligations;
		8. failing to deliver the item on time, in such a way that the performance of the purpose of the contract can no longer be realistically achieved within the time limit and/or the funds earmarked for the financing of the contract can no longer be used as a result of an act or omission on the part of the vendor;
		9. transferring the obligations under the contract to a third party without a corresponding amendment to the contract.
	12. Acceptance of the item by the purchaser does not relieve or reduce the vendor's liability for breach of contract.
	13. If the vendor fails to perform the contract correctly and based on this the implementing agency decides to reduce or recover the grant, the purchaser shall be entitled to recover from the vendor the ineligible costs up to the amount of the claim for reimbursement.
	14. The purchaser undertakes to submit a claim for contractual penalty within a reasonable period, but not later than 3 months from the date on which the purchaser became aware of the circumstances giving rise to the claim for contractual penalty. Disputing a claim for contractual penalty does not release the vendor from the obligation to pay the penalty, unless a relevant judgment has entered into force.
	15. The vendor is obliged to pay the contractual penalty within 14 calendar days from the date of the purchaser's claim, unless otherwise specified in the contractual penalty claim.
	16. The purchaser shall be entitled to net the amount of contractual penalty against the payments due to the vendor for the item. In the event of netting, the obligation to pay the contractual penalty shall not apply.

# Validity, amendment and termination

* 1. The contract enters into force upon conclusion. Product support shall be provided for 12 months after acceptance of the item, according to the technical description.
	2. The contract can only be amended by written agreement between the parties in the same format as the contract, subject to the provisions of the Public Procurement Act.
	3. If any term of the contract should prove to be partially or totally invalid or unenforceable, the validity of the other terms of the contract shall not be affected and the remaining terms of the contract shall remain valid and enforceable. In such a case, the invalid or unenforceable term shall, where possible, be replaced by a legally enforceable term that is as close as possible in substance to the intentions of the parties and to the economic effect of the invalid term.
	4. The purchaser may terminate the contract at any time and for any reason by giving 30 days advance notice in a format reproducible in writing. Termination relieves the parties of performing the obligations set out in this contract.
	5. The purchaser has the right to unilaterally terminate the contract without notice if the vendor is in material breach of the contract or if the vendor has
		1. bankruptcy proceedings initiated against them;
		2. bankruptcy declared against them;
		3. had their assets seized; or if
		4. in the reasonable opinion of the purchaser, the financial situation of the vendor has deteriorated significantly, making proper performance of the contract unlikely.
	6. Upon termination of the contract for any reason whatsoever, the vendor shall be obliged to hand over to the purchaser all information and documentation relating to the contract (both digital and paper, as well as information not recorded on the above-mentioned media). The information and documentation handed over must be systematised. At the request of the purchaser, the vendor is obliged to provide in writing exhaustive explanations on the management and use of the information described above.

# Notices and contact persons

* 1. Notices will normally be sent by e-mail, subject to the provisions of the Rules of Procedure, where available. In the case of transmission by e-mail, including digitally signed documents, the notice shall be deemed to have been received at the time of receipt indicated in the notice of receipt or at the time of sending indicated in the e-mail.
	2. In cases where the transmission of a notice has important legal consequences, the notice must be transmitted in digital format by a person authorised to sign on behalf of the party. An informative notice may also be transmitted by telephone. Any notice which does not have legal effects shall be deemed to be informative.
	3. A written notice shall be deemed to have been received by a party if it has been delivered against a signature or if it has been sent by the postal authority as a registered letter to the address indicated by the party and 5 calendar days have elapsed since the date of sending.
	4. The purchaser's contact person(s) is/are: Ann-Claire Talts, e-mail: ann.talts@tehik.ee or his/her substitute;
	5. The vendor's contact person(s) is/are: Sandy Farnworth, Project Manager, +61 7 3833 5528, sandy.farnworth@csiro.au or his/her substitute;
	6. The contact person(s) is/are authorised to provide the other party with the necessary information and instructions within the scope of his/her competence, to authorise the replacement of a member of the team, to verify the quality of contract performance, to deliver the item of the contract and to accept it and sign the act.
	7. If a party changes their contact person, that party must inform the other party in writing without delay.

# Final provisions

* 1. Disputes related to the contract, which the parties have not been able to resolve through negotiations, shall be referred to the Harju County Court.
	2. The contract shall be governed by Estonian law.
	3. In matters not regulated by the contract or in a situation where a provision of the contract is in conflict with the law, the applicable legislation of the Republic of Estonia shall apply.

# Annexes (not signed)

* 1. Annex 1 – Technical description;
	2. Annex 2 – Tender.

# Signatures of the parties

**Purchaser: Vendor:**

/ signed digitally / / signed digitally /

1. HL7 is a trademark of Health Level Seven International and is registered with the United States Patent and Trademark Office. [↑](#footnote-ref-2)
2. FHIR is a registered trademark of Health Level Seven International. [↑](#footnote-ref-3)
3. Foreign tenderers may submit an invoice in pdf format at rmp@tehik.ee if e-invoicing is not possible. [↑](#footnote-ref-4)
4. Regulation (EU) 2016/679 of the European Parliament and of the Council. [↑](#footnote-ref-5)