Dear Client,

We’ve provided the following background information to help with your review of our agreements.

There are two key legal documents that govern the sale of RLDatix’s software and services:

**The Order Form** specifies what products and services are being purchased and defines the scope of software licensing.

**The Terms of Use (“TofU”)** is our contract governing software licensing, service delivery, and support and maintenance. RLDatix’s software is licensed per user or on an enterprise basis and may be limited to specific client locations, as indicated on the Order Form.

To put the documents in context, here are some items of note:

**Our software isn’t used in the delivery of patient care**, nor is it mission critical. As a result, we assume a lower legal risk and in turn provide the software at a lower price.

**RLDatix provides commercial off-the-shelf software** and doesn’t do custom development.

**We see price and terms as being linked.** We want to make it easy for our clients to purchase from us, so we often provide a discount for accepting our standard terms as is. Most of our clients accept this offer because it makes for a simpler purchase process and a lower price.

**We are willing to consider modest edits to our agreement**, however it may result in a different price and slow down the purchase process. We don’t make inline changes to our TofU because we’ve noticed that it tends to blur the line between important issues and immaterial or stylistic changes. If you wish to make changes, please propose alternate legal language in the TofU Addendum document provided by your sales representative.

With respect to the TofU, here are a few specifics worth knowing:

**The Incompatibility with Law provision (15(b))** is intended to eliminate the need for contract edits dealing with unique jurisdictional laws. (This approach avoids RL having to consult with experts in each jurisdiction to validate edit requests.)

**The Support & Maintenance Guide (4(a) & 4(f)) is not editable.** With thousands of hospitals as clients it would be impractical to have different service levels and guides for each client.

**Our software includes third party components (2(b)).** In every case, RL is permitted to provide this third-party software to you (and you are permitted to use it), at no additional charge (10(a)). Some of the publishers of those software elements require that we provide you with a copy of their license agreement. And none of the terms of those agreements diminish the rights RL is otherwise offering to you in the agreement. We refer to these as “Third Party Software License Agreements”, and for your reference we provide a complete set of them, constantly updated, via our web site and for download. The Third Party Software Licensing Agreements are not editable.

**You own all rights to your data (9(b)).** Although RLDatix retains ownership and full title in all intellectual property associated with the software (9), you own your data.

**Minimum Commitment (4(c)) is only applicable if the Order Form lists one.** Otherwise you can stop paying your annual fee at the end of the current term (4(b)). And with a perpetual license, you can continue to use the software without paying an annual fee (although this is not recommended). You do not need to terminate the agreement (7 & 8) in order to stop paying annual fees. Terminating the agreement terminates the license and your right to use the software.

**The Hosting Addendum** is only applicable if RL is providing hosting or cloud services.

**The TofU is a boilerplate document** designed to handle different situations (e.g. Perpetual and Subscription licensing; Minimum Commitment or no Minimum Commitment). The Order Form dictates the details of what applies or doesn’t apply in your specific situation. Editing out clauses which don’t apply with this purchase is unnecessary and can hamper future purchases.

We thank you for selecting RLDatix as your technology partner to support quality improvement in your healthcare organization. Our goal is to be balanced and fair throughout that process of reviewing the purchase agreement and, at any time, if you have questions or items of clarification, please feel free to give us a call.

Sincerely,

Cary Lavine

Chief Financial Officer, RLDatix
YOU (ALSO KNOWN AS “CLIENT”) AGREE TO BE BOUND BY THIS TERMS OF USE LICENSE AGREEMENT (“AGREEMENT”) IN ANY OF THE FOLLOWING WAYS (A) BY ACCEPTING AN ORDER FORM, (B) BY OPENING THE PACKAGING CONTAINING THE SOFTWARE, (C) BY INDICATING YOUR ACCEPTANCE OF THE FOLLOWING TERMS (BY SELECTING “AGREED” “YES” OR ANOTHER WORD OR PHRASE OF AFFIRMATION), OR (D) BY INSTALLING, COPYING OR IN ANY WAY USING THE LICENSED MATERIALS (as defined in section 1(f), below) PROVIDED TO YOU BY RLDATIX NORTH AMERICA INC. (HEREAFTER, “RLDATIX”) AND/OR THAT OF ITS AFFILIATES AS PROVIDED HEREREUNDER, TOGETHER WITH ANY UPDATES THERETO.

WHERE YOU HAVE NOT PREVIOUSLY AND UNAMBIGUOUSLY AGREED TO THE TERMS OF THIS AGREEMENT (SAVE WHERE EXPRESSLY AMENDED BY WRITTEN AGREEMENT SIGNED BY BOTH RLDATIX AND CLIENT) THEN BY INSTALLING OR USING THIS SOFTWARE YOU ARE AGREING TO BE BOUND BY THESE TERMS. ACCORDINGLY, IF YOU DO NOT AGREE TO THESE TERMS, DO NOT INSTALL OR USE THE SOFTWARE AND RETURN IT TO RLDATIX TOGETHER WITH ALL MATCHING LICENSED MATERIALS WITHIN TEN (10) DAYS FOR A FULL REFUND.

THE FUNCTIONALITY OF THE SOFTWARE AVAILABLE TO CLIENT IS CONTROLLED BY THE SOFTWARE KEY SUPPLIED BY RLDATIX TO CLIENT. FOR THE AVOIDANCE OF DOUBT, WHERE CLIENT WISHES ADDITIONAL FUNCTIONALITY TO BE RELEASED IN THE SOFTWARE, CLIENT SHALL APPROACH RLDATIX WHO MAY MAKE AVAILABLE SUCH ADDITIONAL FUNCTIONALITY IN RETURN FOR AN ADDITIONAL LICENSE FEE PAID TO RLDATIX. THIS AGREEMENT SHALL GOVERN CLIENT’S USE OF ANY SUCH ADDITIONAL FUNCTIONALITY.

WHERE RLDATIX IS HOSTING THE SOFTWARE FOR CLIENT OR MAKING IT AVAILABLE VIA A CLOUD BASED SUBSCRIPTION SERVICE, THE TERMS OF THE ATTACHED HOSTING ADDENDUM SHALL APPLY IN ADDITION TO THIS AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROVISIONS OF THIS AGREEMENT AND THAT HOSTING ADDENDUM, THE PROVISIONS OF THE HOSTING ADDENDUM SHALL PREVAIL.

WHERE THE SOFTWARE IS SUPPLIED TO CLIENT AS A DEMONSTRATION VERSIONS THEN (A) THE PROVISIONS OF THE PREVIOUS PARAGRAPH REGARDING A CLOUD BASED SERVICE SHALL APPLY AND (B) CLIENT SHALL HAVE NO RIGHT TO USE THE SOFTWARE OR TO ACCESS THE DATA USED DURING THE DEMONSTRATION PERIOD AFTER THE EXPIRY OF THE DEMONSTRATION PERIOD PERMITTED BY RLDATIX.

IF YOU WOULD LIKE A HARD COPY OF THIS AGREEMENT, PLEASE CONTACT US AT (416) 410-8456

1) DEFINITIONS

(a) “Affiliated” means affiliated in the manner indicated in the Order Form.
(b) “Authorized Users” shall consist of the individuals Client permits to either access or use the Licensed Materials, for example as outsourced information technology resources. The Licensed Materials are to be used in the live / production environment if and only to the extent that the Order Form lists more than one (1) live Licensed Locations and Unlisted Licensed Locations being specified by name and address. All authorized locations must be listed and may be excluded from the list only in accordance with terms for locations on the Order Form.
(c) “Change of Control” means a modification or addition to the Licensed Materials made at Client’s request.
(d) “Customer” means an individual or group of individuals not employed by Client but who are engaged in work that supports Client’s use of the Licensed Materials, for example as outsourced information technology resources. To qualify as a Customer, employees must be associated with either a Listed Licensed Location or an Unlisted Licensed Location.
(e) “Documentation” means the published user manuals and other written materials concerning the Software and the Documentation that RLDatix generally makes available to its clients from time to time.
(f) “FTE” means full time equivalent, and is a tool used for pricing to measure the size of Client’s organization and thus the scope of its use of the Licensed Materials. FTEs are expressed in numerical units, with full time workers expressed as 1.0 FTE, someone who works half time expressed as .5 FTE, and so on. As used in connection with this Agreement, Client’s FTEs include: (i) all of Client’s employees, (ii) Client’s agents and affiliates, (iii) Permitted Independent IT Contractors, (iv) independent or contract medical personnel (physicians, nurses, pharmacists, etc.) required or supported by Client, and (v) any other groups of health care providers, medical workers and volunteers having privileges or working with Client. Client’s FTEs are deemed to exclude: (A) FTEs associated with Non-Licensed Locations as recorded on the Order Form (only to the extent that there is no overlap with Listed Licensed Locations or Unlisted Licensed Locations), and (B) Client’s patients and customers (to the extent that they do not fall into one of the other groups of individuals listed in the preceding sentence.
(g) “FTE Limit” means the number of FTEs to which the Software is licensed, and only then (i) from Listed Licensed Locations and/or Unlisted Licensed Locations; and the FTE limit.
(h) “Listed Licensed Locations”, “Unlisted Licensed Locations” and “Non-Licensed Locations” are as indicated on the Order Form. Listed Licensed Locations being specified by name and address. All authorized locations must be listed and may be excluded from the list only in accordance with terms for locations on the Order Form.
(i) “Modifications” means any alteration, change or modification to any Licensed Materials made at Client’s request.
(j) “Order Form” or “Order” refers to the order form or quotation provided by RLDatix to Client that specifies the fees and certain parameters for the Licensed Materials, such as, without limitation, License Thresholds.
(k) “Permitted Independent IT Contractor” means an individual or group of individuals not employed by Client but who are engaged in work that supports Client’s use of the Licensed Materials, for example as outsourced information technology resources. To qualify as a Permitted Independent IT Contractors, such individuals or group of individuals must be identified on the Order Form, must be included in the FTE count, and must not provide services to, or on behalf of, any business which is competitive with RLDatix.
(l) “Software” means the executable object code form of the RLDatix-owned Software identified on the Order Form, together with any Enhancements or Modifications. The term “Software” excludes any software licensed by third parties.
(m) “Support Guide” means the RLDatix Software Support & Maintenance Guide, the most current copy of which is always available at http://www.rldatix.com/us/company/terms. A copy of the Support Guide which is current as of the Effective Date of this Agreement is attached as Exhibit A.
(n) “Third Party Software” means any computer programs not owned by RLDatix that are licensed to Client and provided along with the Licensed Materials.

2) GRANT OF RIGHTS/CLIENT RESPONSIBILITIES

RLDatix Terms of Use License Agreement
V8.0 Nov 2019 NA

(a) License Grant. RLDatix hereby grants to Client a non-transferable, non-exclusive perpetual or subscription license (as so identified on the Order Form) (“Perpetual License” or “Subscription License”), respectively for its Authorized Users to (i) under a Perpetual License, install and use the Licensed Materials in accordance with this Agreement, or (ii) under a Subscription License, to remotely access and use the Licensed Material, in each case, subject to the License Threshold limitations set forth in this Agreement and the associated Order Form (including the duration of any Subscription License or renewal thereof) up to the FTE threshold for which the Fee has been paid, counted at the date the Order Form lists more than one (1) live Licensed Locations and Unlisted Licensed Locations being specified by name and address as provided on the Order Form (as modified by the process in section 2(d)), and provided always that the FTE and live database limits specified and defined on the Order Form are not exceeded (the “License”).
(b) Limitations. Any right not specifically granted herein is reserved. Client shall have no right to assign, sublicense, transfer, rent, lease, or distribute the Licensed Materials. No right of ownership or any other exclusive right in any particular manner of configuration, customization or setup of the Software performed by RLDatix is granted to Client. Right is granted to use the Licensed Materials other than in support of Client’s own business processes and activities. No right is granted herein to operate the Software in a service bureau, outsourcing business or other manner in which the Software is used to process or manage information other than that generated by Client in the course of Client’s own operations. Subject to this section, Client specifically agrees to refrain from any direct or indirect efforts or attempts to reverse engineer the Software or to develop any derivative work thereof of any kind. Subject to this section, except as is necessary to install and operate the Software in a single live / production environment, and a single backup thereof, and one testing / test environment, Client shall enjoy no right of duplication of the Software. Notwithstanding the previous sentence, under a Perpetual License, Client may install and operate the Software in more than one live / production environment and, if only to the extent that the Order Form lists more than one (1) live database. Client shall permit only Authorized Users to access the Software and only for the exclusive purpose of operating the Software in the course of Client’s business. Client shall ensure that each Authorized User is covered by a Subscription License up to the FTE threshold for which the Subscription License fee has been paid. Some elements of Third Party Software require the distribution of separate notices, license terms and/or source code, and all Third Party Software is subject to the license terms of such Third Party Software. None of the terms of the Third Party Software licenses will diminish or minimize the rights RLDatix is otherwise offering to Client in this Agreement. For each such element of Third Party Software, the applicable licenses, notices or other elements can be found on the distribution media for the Software licensed by this Agreement or the folder named “Third Party Software” and on the RLDatix web site at http://www.rldatix.com/en-us/company/terms.
(c) Authorized Users. Only Authorized Users are entitled to use and access the Licensed Materials, and only then (i) from Listed Licensed Locations and/or Unlisted Licensed Locations as specified and defined on the Order Form (as modified by the process in section 2(d)), using a secure connection to the hosting Software for Client and (ii) exclusively to operate the Software in the course of Client’s business. As such, Client will ensure that only Authorized Users have access to the Licensed Materials. Client’s patients and customers are not, and need not be, Authorized Users to the extent that they submit feedback that ends up in the Software.
(d) Location Substitution and FTE Limit. Client may substitute one permitted location for another location, provided that (i) the new location replaces either an original location on the Order Form or one added via this process, and (ii) the FTE number of the new location is the same or smaller than the FTE number at the replaced location, and (iii) Client provides RLDatix with written notice of the change in 90 days. In taking the substitution (and any additions or deletions), each notice includes the address and FTE total of both the new and replaced location(s), and (iv) the Licensed Materials are no longer used at the replaced location. Supplemental License Fees will be applicable where FTE growth and/or new locations (in relation to the Order Form), cannot be accommodated through the process of Location Substitution in this paragraph.
(e) Hardware and Other Software. Client shall be solely responsible to obtain and ensure the proper operation of the hardware and software necessary to operate and use the Licensed Materials.
The minimum software and software renewal payments are set forth in the proportion and background information on the Software, which may be updated from time to time in conjunction with operating system transitions. Any costs associated with acquiring, maintaining or using the hardware or any supporting software (such as without limitation operating systems) and/or any connectivity necessary to use or support the Licensed Materials shall be entirely those of Client. In the event that RLDatix is hosting the Software for Client or making it available via a cloud based subscription service, the terms of this section 2(e) are not applicable.

(f) Termination. If Client terminates the Software subscription, Client shall cooperate with RLDatix to permit RLDatix to install, support, troubleshoot or otherwise provide services, as needed to Client. Such cooperation may include but not be limited to the provision of reasonable facilities and access to systems and equipment and the assignment of appropriately skilled and trained personnel to interact with RLDatix and representatives, whether through telephone support, in-person service calls or otherwise. Where Client hosts the Software, Client will assist RLDatix in establishing remote access through an Internet-based third-party remote access solution when RLDatix requires access to effectively support the Software. In the event that Client fails to fulfill its responsibilities, RLDatix shall be relieved of the obligation to provide services to Client which are made more difficult or expensive by reason of Client’s failure to fulfill Client’s responsibilities. RLDatix may, in its sole discretion, offer to continue providing services to Client subject to an increase in fees or other conditions.

(g) Acceptance. Within three (3) months of delivery of the Licensed Materials (or, as the case may be, within three (3) months of making the Licensed Materials available for use or download), Client shall commence testing and evaluation of the Licensed Materials. In the event that there is a material non-conformance in the operation of the Software or a material defect in the Licensed Materials during this period, Client shall provide written notice thereof to RLDatix. A material non-conformance in the operation of the Software is defined as a Severity Level 1 or Severity Level 2 issue as per the Support Guide. RLDatix shall then have fourteen (14) days to address the non-conformance or defect in accordance with the terms of the Support Guide and to provide Client with a written Notice of Repair, thereafter starting a fourteen (14) day time period for Client to retest and re-evaluate the Licensed Materials. If the non-conformance or defect is not cured within this time period, Client, at its sole discretion, can extend the cure period for such non-conformances or terminate the applicable Order Form. The Licensed Materials shall be deemed accepted by Client upon the earliest of: (i) Client providing written notice of acceptance, (ii) Client not presenting a notice of non-conformance or defect within the first three (3) months after the Licensed Materials was made available to Client for use or download, (iii) Client not presenting a notice of non-conformance or defect within the first three (3) months after the Licensed Materials was made available for download, or (iv) more than fourteen (14) days passing since RLDatix’s last Notice of Repair being provided to Client without a written notice of material non-conformity being issued by Client, such date being the “Acceptance Date”.

3) EFFECTIVE DATE

The license granted herein commences (and the terms and conditions and software license making up this Agreement are adopted by Client) on the Effective Date, which shall be the earlier of (i) the date Client signs the Order Form and makes a purchase order consistent with the applicable Order Form, pricing and other terms and conditions and (ii) the Effective Date of the applicable period.  Client’s renewal of its annual Maintenance, hosting services and/or Subscription License shall constitute a waiver of any claim of breach that predate the renewal.

4) SUPPORT AND MAINTENANCE

(a) Maintenance Services. Maintenance for the Software (“Maintenance”) may be provided in accordance with the terms of the Order Form. If Client has elected for a Subscription License, Client’s Subscription License Fee includes a non-cancellable subscription to Maintenance for the term of the Subscription License or any renewal thereof. Unless otherwise indicated on the Order Form, the “Initial Term”, being the first year of Maintenance, shall commence on the Effective Date of the Agreement, the month and day of which shall become known as the “Anniversary Date”. The renewal of Maintenance for the first successive one year maintenance term (each a “Renewal Term”). Following the Initial Term (and completion of the Minimum Commitment period if applicable), Maintenance may be renewed for successive one year terms on the Anniversary Date upon payment of the invoice received from RLDatix for such Renewal Term, provided, however, that either party may, by written notice to the other party at least three (3) months prior to the expiration of the Initial Term or any Renewal Term elect to discontinue Maintenance as of the end of the latter of (i) the then-current maintenance term and (ii) the Minimum Commitment. In the absence of a Minimum Commitment, Client may also cause the termination of Maintenance by electing not to pay the applicable renewal invoice received from RLDatix by its due date. In the event that Client does not renew its term of Maintenance with RLDatix and later elects to receive Maintenance, Maintenance may be renewed by RLDatix, at its option, provided that RLDatix is still providing Maintenance on the Software, for a maintenance fee equal to (i) the fee that Client would have paid had Client retained the Maintenance since termination of Maintenance, prorated for any partial periods, plus (ii) prepayment of Maintenance fees for the following full term, plus (iii) a reactivation fee equal to 10% of the total of (i) and (ii) above. If Client and RLDatix elect to reinstate Maintenance as set forth above, RLDatix shall provide Client with the most recent version of the Software and provide Maintenance as described herein. Maintenance cannot be continued or terminated in accordance with this section 4(b) during the term of a Minimum Commitment.

(b) Minimum Commitment. The payment obligations per this section are only applicable if a Minimum Commitment has been elected. If Client elects to make an extended commitment to receive Maintenance, hosting services and/or continue with its Subscription License as a part of their order, the duration of that commitment is specified on the Order Form (“Minimum Commitment”), and that commitment will commence concurrent with the Initial Term. If Client cancels its order, fails to pay the Minimum Commitment is specified on the Order Form. In the event Client elects to make a renewal of a Minimum Commitment.

(c) Termination & Renewal. The parties agree that all services will be provided in accordance with the relevant RLDatix Statements of Work, current versions of which are available at http://www.RLDatix.com/en-us/company/terms. In the event that Client does not materially adhere to the guidelines in these documents, RLDatix reserves the right to perform the services on a time and materials basis, or (ii) not perform the services, in which case the fee will be adjusted accordingly. Services and dates and times which have been agreed to by both parties which are later modified or rescheduled at Client’s request will result in: (i) Client shall reimburse RLDatix for all expenses incurred prior to the cancellation or rescheduling notice being received, and (ii) if RLDatix is notified less than twenty (20) business days before the scheduled date, forfeiture by Client of the service hours which RLDatix is unable to re-book with another client for the same date and time (Client will pay RLDatix for said hours if they haven’t already done so). Any Services listed on the associated Order Form must be used by Client prior to the one year anniversary of the Effective Date. Any Services unused by Client as of that time shall expire. Unused services cannot be transferred to other engagements.

(c) Out-of-pocket expenses. Reasonable out-of-pocket expenses incurred by RLDatix in providing training or other services shall be reimbursed by Client. Costs are passed directly to Client in accordance with the relevant RLDatix Terms of Use License Agreement.

5) FEES

(a) Amount. The License Fee for Licensed Materials is based on the number of prospective users and the size of Client’s organization. The Fee is identified on the Order Form. Depending on the growth of Client’s organization, supplemental license fees ("Supplemental License Fees") may be due in the future to permit Client’s expanded use of the Licensed Materials.

(b) When Due. The Initial Fees are due within thirty (30) days of the invoice date. If Client exceeds the Licensed Thresholds for the Licensed Materials set forth on the Order Form as a result of growth of Client’s operations, or for any other reason, Supplemental License Fees may be charged by RLDatix. If applicable, they are due within thirty (30) days of RLDatix invoicing for same.

(c) Annual Fees. Where the Anniversary Date coincides with the Effective Date of the Agreement, the Initial Term Maintenance Fees, hosting fees, and/or Subscription Fees (as applicable) are due within thirty (30) days of RLDatix invoicing for same; otherwise the Initial Term Annual Fees are due prior to commencement of the Initial Term. RLDatix shall inform Client of the Annual Fees not later than forty-five (45) days prior to the start of each Renewal Term, and Client shall pay said fees prior to commencement of each Renewal Term.

6) TRAINING & OTHER SERVICES

(a) Services. Training, implementation, integration and other services shall be supplied by RLDatix as indicated on the Order Form.

(b) Service Terms and Conditions. The parties agree that all services will be supplied in accordance with the relevant RLDatix Statements of Work, current versions of which are available at http://www.RLDatix.com/en-us/company/terms. In the event that Client does not materially adhere to the guidelines in these documents, RLDatix reserves the right to perform the services on a time and materials basis, or (ii) not perform the services, in which case the fee will be adjusted accordingly. Services and dates and times which have been agreed to by both parties which are later modified or rescheduled at Client’s request will result in: (i) Client shall reimburse RLDatix for all expenses incurred prior to the cancellation or rescheduling notice being received, and (ii) if RLDatix is notified less than twenty (20) business days before the scheduled date, forfeiture by Client of the service hours which RLDatix is unable to re-book with another client for the same date and time (Client will pay RLDatix for said hours if they haven’t already done so). Any Services listed on the associated Order Form must be used by Client prior to the one year anniversary of the Effective Date. Any Services unused by Client as of that time shall expire. Unused services cannot be transferred to other engagements.

(c) Out-of-pocket expenses. Reasonable out-of-pocket expenses incurred by RLDatix in providing training or other services shall be reimbursed by Client. Costs are passed directly to Client without mark-up. RLDatix does not charge for time spent in transit for onsite services.

7) TERMINATION & BREACH

(a) Client shall have the right to terminate this Agreement at any time for convenience, provided the Agreement is not then the current subject of a Minimum Commitment and provided that Client shall not be entitled to recover any payments to RLDatix of applicable fees prior to termination.

(b) If the license is a Subscription License, this Agreement shall terminate in the event that Client does not timely renew the Subscription License by paying the invoice for same during the term of the Subscription License.

(c) Client shall have the right to terminate the whole of this Agreement (including any then prevailing Schedule or Addendum) if RLDatix is in an RL Service Breach (as defined in section 7(f) below) and that (30) days have elapsed since Client provided RLDatix written notice of that breach, identifying all the nature and particulars of the breach, and such breach has not been cured.

(d) The parties agree that the purpose of the right set forth in (c) is to permit Client to escape from an unworkable situation. Thus, if Client exercises its right to terminate pursuant to...
7(c) within six (6) months of said breach by RLDatix, the parties agree that Client’s right to terminate for breach shall be stated in writing by RLDatix.

(8) RLDatix shall have the right to immediately terminate this License upon written notice if (i) Client is in material breach of this Agreement and fails to cure such breach within thirty (30) days of RLDatix proving such breach and then notice thereof identifying in detail the nature and particulars of the breach, (ii) Client is in material breach of the limitations on distribution of the Licensed Materials to third parties, in which case there shall be no right of cure; or (iii) Na - Client becomes bankrupt or insolvent.

(f) An “RL Service Breach” is defined as any of the following breaches by RLDatix: (i) RL Datix’s failure to provide any Maintenance services which are materially in accordance with the Support Guide, or (ii) there has been a material non-conformance in the operation of the Software, defined as a Severity Level 1 or Severity Level 2 issue as per the Support Guide, which lasts for a minimum of 30 consecutive days (without a workaround being provided by RLDatix) subsequent to RLDatix being properly notified of the issue(s), or (iii) the Software has repeatedly and materially not performed in accordance with the applicable Documentation and the identified issue(s) have not been resolved in accordance with the Support Guide, or (iv) RL Datix has not made general release updates to the Licensed Materials available to Client in a timeframe consistent with similar releases to other clients.

8) RETURN OR DESTRUCTION OF LICENSED MATERIALS UPON TERMINATION, CONSEQUENCES OF TERMINATION

(a) Upon the termination of this Agreement, Client shall immediately cease to be entitled to use the Licensed Materials and Client shall inform RLDatix of any whereabouts of its Licensed Materials.

(b) If Client is hosting the Software, then upon termination of this Agreement, Client shall either (i) uninstall and return to RL Datix the original and all copies of the Licensed Materials including partial copies and/or modifications or (ii) destroy all of the foregoing and provide a notarized certificate executed by one of Client’s directors or officers certifying that such destruction has occurred. Upon termination of this Agreement by Client for cause, Client will be entitled to a refund of any prepaid fees for Maintenance only; no license, access or hosting fees are refundable. No fees are refundable to Client in the case of a termination for convenience.

9) TITLE

(a) RLDatix shall, at all times, retain full and exclusive right, title, and ownership in and to the Licensed Materials. Client hereby grants to RLDatix an irrevocable, non-exclusive, royalty-free, worldwide, perpetual license to (i) deidentify all personal health information that is input and/or migrated for use within the Software, (ii) use the deidentified data in and to such Modifications, including all derivative works, regardless of their origin, excluding all Third Party Software, which shall remain the property of its provider. Any Modifications to any part of the Licensed Materials, excluding the Third Party Software, will be owned by RLDatix immediately on creation regardless of whether the Modifications are created on behalf of the Client or solely by RLDatix. This section applies to all rights, title, and interest in and to any Modifications, Client hereby assigns to RL Datix all such right, title, and interest in and to such Modifications, including all intellectual property rights therein. RLDatix will own all intellectual property rights in any works created in performing this Agreement or in providing any services.

(b) Client data. Client, at all times, shall be and remain the exclusive owner of all data entered into the Software licensed to Client. Notwithstanding the foregoing, Client hereby grants to RLDatix an irrevocable, non-exclusive, royalty-free, worldwide, perpetual license to use Client data.

10) WARRANTIES AND LIMITATIONS

(a) General Warranty. RLDatix warrants it has the right to (i) enter into this Agreement, (ii) grant the licenses offered pursuant this Agreement and grant the right for Client and its Authorized Users to make use of the Third Party Software.

(b) Limited Warranty. RLDatix also warrants that the Software and any Enhancements will, for a period of (90) days from the Effective Date, perform materially as described in the then-current Documentation. No warranty or assurance is made (i) as to the ability of the Software to satisfy any or all of Client’s particular requirements or (ii) that use of the Software will be uninterrupted or error free. The Limited Warranties shall not apply to the extent that (i) Client does not report a nonconformity or defective element of the Software within the Limited Warranty period set forth above, (ii) the Software is not used in accordance with the then-current Documentation, (iii) Client makes any changes to the underlying Software that have not been approved in writing by RL Datix, and/or (iv) RLDatix is not given notice of the nonconformity or defective element by the end of the period specified above. In the event of written notice of a breach of the Limited Warranty set forth in section 10(b), RLDatix or its representative will undertake all commercially reasonable efforts to correct the nonconformity or defective element of the Licensed Materials (which cannot be so cured), RLDatix will (i) accept the return of the Licensed Materials, (ii) terminate the license granted herein, and (iii) refund the Initial Fees and Maintenance fees paid by Client as of the date such written notice was provided to RLDatix. The foregoing sentence represents Client’s sole and exclusive remedy for any breach of the Limited Warranties, or any duty or obligation related to the operation or quality of the Licensed Materials.

(d) DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR TO THE EXTENT REQUIRED BY APPLICABLE LAW, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE LICENSED MATERIALS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR OR WRITTEN STATEMENTS BY CLIENT, RL Datix OR ITS REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY ASSURANCE OF SATISFACTION) ARE HEREBY DISCLAIMED, OVERRIDDEN, AND EXCLUDED. ANY PROMISE, COMMITMENT OR OBLIGATION OF RLDatix OR ANY OTHER PERSON OR ENTITY TO LIMIT OR RESTRICT USE OF THE LICENSED MATERIALS IS ALSO HEREBY DISCLAIMED.

11) INDEMNIFICATION

(a) Intellectual Property indemnification. If an action is brought against Client claiming that any infringement of the Licensed Materials infringes a patent, trade secret or copyright, RLDatix will defend, indemnify, and protect and hold harmless Client (along with its shareholders, directors, officers and employees), from such claim or action, but only if (i) Client notifies RLDatix promptly upon learning that the claim has been or might be asserted, (ii) RL Datix has sole control over the defense of the claim and any negotiation for its settlement or compromise, (iii) Client takes no action in the litigation or in the face of litigation that undermines any defense available to Client or RL Datix and (iv) in any circumstance, Client shall act at all times to mitigate its losses.

(b) Alternative Remedy. If a claim described in the preceding paragraph may be or has been asserted, Client will permit RL Datix, at RLDatix’s sole option and expense, to (i) procure the right to continue using the Licensed Materials, (ii) replace or modify the Licensed Materials to eliminate the infringement while providing functionally equivalent performance, or (iii) cancel this Agreement and call for the return of the Licensed Materials, and (iv) in the case of a Perpetual License (contingent on the return of the Licensed Materials), refund a prorated portion of the Initial Fees based on a five year, straight line depreciation for the period thereof during which Client was or is unable to use the Licensed Materials.

(c) Limitation. RLDatix shall have no indemnity or liability obligation to Client under this section if the claim or claims asserted in an infringement claim results from a contribution by the Client of Licensed Materials not provided by RLDatix or approved by RL Datix in writing, if (i) Client hosts the Software, the failure to promptly install an Enhancement or new release, if installation of such Enhancement or new release would have avoided the infringement, or (iii) the combination of the Licensed Materials and the contribution by Client was not a normal use of such Licensed Materials. If the resulting combination creates the claim of infringement, whereas the separate use of the Licensed Materials or any element thereof would not give rise to such a claim.

12) LIMITATION OF LIABILITY

RLDatix’s CHARGES TO CLIENT ARE DETERMINED ON THE BASIS OF THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT. CLIENT EXPRESSLY AGREES THAT THESE EXCLUSIONS AND LIMITATIONS ARE REASONABLE BECAUSE OF (AMONG OTHER THINGS) THE POSSIBILITY THAT THE AMOUNT OF DAMAGES AWARDEABLE TO CLIENT FOR A BREACH BY RLDATIX OF THIS AGREEMENT MAY BE DISPROPORTIONATELY GREATER THAN THE PRICE OF THE SOFTWARE. RL Datix IS WILLING TO CONSIDER ARRANGING FOR ADDITIONAL INSURANCE COVERAGE TO ENABLE RLDatix TO TAKE ON THE BURDEN OF ADDITIONAL LIABILITY TO CLIENT PROVIDED THAT CLIENT PAYS RLDatix A COMMENSURATELY HIGHER PRICE. IF CLIENT WISHES RLDatix TO OBTAIN A QUOTATION FOR SUCH ADDITIONAL INSURANCE COVERAGE CLIENT SHALL NOTIFY RLDatix ACCORDINGLY PRIOR TO THIS AGREEMENT BEING ENTERED.

SUBJECT TO ANY APPLICABLE LAW WHICH CANNOT BE EXCLUDED, RLDatix WILL NOT BE LIABLE TO CLIENT FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OR LIA BILITIES OF ANY KIND OR NATURE FOR LOSS OF DATA, LOSSES OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER LOSS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ITS TERMINATION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, EVEN IF RLDatix HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RLDatix SHALL ALSO HAVE NO LIABILITY TO CLIENT FOR ANY CLAIM BY OR ARISING OUT OF A CLAIM BY ANY THIRD PARTY. CLIENT ACKNOWLEDGES AND AGREES THAT RLDatix IS NOT RESPONSIBLE FOR LIABILITIES ARISING OUT OF OR RELATING TO ANY SUCH INCORRECT CLIENT DATA, MEDICAL CARE OR DIRECT PATIENT CARE SERVICES PROVIDED BY CLIENT OR ANY THIRD PARTY, AND AGREES TO INDEMNIFY AND HOLD HARMLESS RLDatix WITH RESPECT TO ALL LIABILITIES ARISING OUT OF OR RELATING TO ANY SUCH INCORRECT CLIENT DATA, MEDICAL CARE OR DIRECT PATIENT CARE SERVICES.

SUBJECT TO THIS AGREEMENT AND ANY APPLICABLE LAW WHICH CANNOT BE EXCLUDED, RLDatix’s LIABILITY TO CLIENT IN RESPECT OF THIS AGREEMENT OR IN CONNECTION TO THIS AGREEMENT WILL NOT EXCEED THE HIGHER OF (i) THE SPECIFIED MONIES, (ii) THE SUM OF TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000) AND THE LOSS OF OR DAMAGE TO ANY PROPERTY DUE TO A CLAIM BY ANY THIRD PARTY AND (iii) THE SPECIFIED MONIES AS CONTAINED IN SECTION 11(a), SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS ($750,000). IN THIS SECTION 12 SPECIFIED MONIES MEANS THE TOTAL AMOUNTS PAYABLE BY CLIENT PURSUANT TO THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD COMMENCING ON THE DATE ON WHICH THIS AGREEMENT IS ENTERED INTO. THE PARTIES AGREE THAT THIS LIMITATION OF LIABILITY IS A GENUINE PRECEDENT FOR THE SPECIFIED MONIES AND THE SPECIFIED MONIES MAY INCUR IN RESPECT OF A BREACH OR OMISSION BY RL Datix.

THE ABOVE LIMITATION OF LIABILITY SHALL NOT APPLY TO INSTANCES OF GROSS NEGLIGENCE OR WILFUL ACTS THAT (i) CAUSE BODILY HARM TO CLIENT’S EMPLOYEES OR AGENTS, OR (ii) DAMAGE TO CLIENT’S TANGIBLE PROPERTY.
RLDatix Terms of Use License Agreement

V8.0 Nov 2019 NA

ANY TERM, CONDITION OR WARRANTY IMPLIED OR IMPOSED IN THIS AGREEMENT OR BETWEEN CLIENT AND RLDatix BY LAW, IS EXCLUDED FROM THIS AGREEMENT UNLESS AND UNTIL THE PARTIES HAVE EXPRESSED WRITTEN AGREEMENT OR OR EXERCISE OF, OR LIABILITY UNDER SUCH TERM, CONDITION OR WARRANTY.

13) CONFIDENTIALITY

(a) RLDatix Proprietary Information. RLDatix retains for itself ownership and all rights to all information and data related in any manner to the Licensed Materials and their various elements (including, but not limited to, routines, subroutines, formulae, source code, algorithms and know-how) together with this Agreement and its terms, RLDatix's Order Form, proposal and RFP/RFQ response to Client, along with any RLDatix financial matters, technical, security and accounting data or other proprietary or confidential information provided by RLDatix to Client (the "RLDatix Proprietary Information"), and Client, its agents, servants, employees, representatives and independent contractors shall retain in strict confidence, the RLDatix Proprietary Information and shall not make use of, disclose or allow to be disclosed the RLDatix Proprietary Information, except in accordance with the terms of this Agreement. In the event Client is called upon to turn over RLDatix Proprietary Information in response to a request for public records, Client shall immediately notify RLDatix of the request and work with RLDatix to exercise all defenses available to protect RLDatix. Client will ensure that all outside consultants who access or make use of any part of RLDatix Proprietary Information execute a confidentiality agreement protecting the RLDatix Proprietary Information and shall inform such outside consultants that all such information is confidential and shall not be disclosed or used except as is necessary to assist Client in using the Licensed Materials.

(b) Client Proprietary Information. Client retains for itself ownership and, subject to the license granted to RLDatix in section 9(b) of this Agreement, all rights to all information and data related in any manner to financial matters, technical or accounting data or confidential information, patients’ or clients’ names, addresses or health records or any other information in any manner related to Client (the "Client Proprietary Information", together with any programs or documentation in any form or format not part of the RLDatix Proprietary Information (collectively the "Client Proprietary Information"), and RLDatix, It agents, servants, employees, representatives and independent contractors shall retain in strict confidence the Client Proprietary Information and shall not make use of, disclose or allow to be disclosed Client Proprietary Information, except in accordance with the terms of, or in connection with the performance of RLDatix under, this Agreement. RLDatix will ensure that all outside consultants who access or make use of any part of Client Proprietary Information execute a confidentiality agreement (and, where appropriate a HIPAA Business Associate Agreement) protecting Client Proprietary Information and shall inform such outside consultants that all such information is confidential and shall not be disclosed or used except as is necessary to carry on business on behalf of RLDatix.

(c) Precautions. Both RLDatix and Client shall take reasonable precautions, at least to the same extent that they each protect their own similar confidential information, to ensure the security and confidentiality of the other party’s Proprietary Information or materials related to the performance of their respective obligations under this Agreement both during and after the termination of this Agreement. Neither party will use or disclose Proprietary Information of the other party for any purpose without the other party’s express written consent, other than (i) as may be reasonably necessary for the performance of its duties pursuant to this Agreement, (ii) as required to satisfy a court order (with reasonable notice to the other party whenever possible) and (iii) to its employees, authorized agents, subcontractors, legal counsel, accountants, banks and other financing sources that are necessary for the purpose of making such funds available to the party receiving such funds; or (iv) as required to comply with applicable laws, rules, regulations, orders or judgments; or (v) to or in connection with the performance of RLDatix under this Agreement, RLDatix will ensure that all outside consultants who access or make use of any part of Client Proprietary Information execute a confidentiality agreement (and, where appropriate a HIPAA Business Associate Agreement) protecting Client Proprietary Information and shall inform such outside consultants that all such information is confidential and shall not be disclosed or used except as is necessary to carry on business on behalf of RLDatix.

(d) Exclusions from Confidentiality. The provisions of this section 13 shall not apply to Proprietary Information of a disclosing party: (i) if the receiving party can prove that it was in its possession or knowledge prior to the execution of this Agreement, (ii) to the extent the disclosure is required by the receiving party to either defend any action or claim made against it or to compel performance or specific performance of its obligations under this Agreement, (iii) to the extent that the receiving party can prove that such Proprietary Information of such party is in the public domain through no act or omission of the receiving party, or (iv) if the receiving party has lawfully obtained such Proprietary Information of such party in good faith from third parties without obligations of confidence.

14) COMPLIANCE WITH PRIVACY PROVISIONS

In the event that the Order Form associated with this Agreement is with an organization located in the United States, the Parties agree to abide by the terms of the Personal Information Protection and Electronic Documents Act and such other provincial privacy legislation as may be applicable. In the event that Client is located other than in Canada or the United States, RLDatix shall, at all times, honor and respect the privacy of all patient information to which it is exposed. At no time will RLDatix transfer or make available to others any patient information.

15) MISCELLANEOUS PROVISIONS

(a) Entire Agreement. This Agreement, the Order Form, the Terms of Use Addendum (where applicable) and any other document expressly referred to in this body of this Agreement or Order Form (for example but without limitation the Support Guide) constitutes the entire agreement between the parties relating to any and all software or services acquired by Client from RLDatix, and supersedes all prior agreements or understandings, whether oral or written, concerning the subject matter hereof and set forth in this Agreement. The terms of this Agreement can only be varied by a written agreement signed by both RLDatix and Client or for an updated version of this Agreement being presented by RLDatix and accepted by Client. The provisions in the Agreement are for convenience only and shall not be construed to infer intent or meaning. In the event of a conflict between the terms of this Agreement and any other document forming part of the Agreement (including, but not limited to, the Order Form, the License Template, the Service Level Agreement (where applicable) and the Service Level Agreement), the order of precedence shall be the Order Form, the Terms of Use Addendum (only if signed by both parties), the Hosting Addendum, this Agreement, the Order Form, the License Template, the Service Level Agreement (where applicable) or the Support Guide. In the event that any other document is signed by both parties and makes specific reference to this Agreement and identifies by section or paragraph number the specific elements of this Agreement in respect of which the other document is to take precedence, it shall have no bearing. The parties agree that where a clause of this Agreement is presented in the singular, that clause in the plurals as appropriate. If any provision of this Agreement shall be invalid or unenforceable, the provision shall automatically apply in substitution for this Agreement. No general statement that another document takes precedence shall apply. This Agreement shall always apply to the exclusion of any terms and conditions contained in or referenced in Client’s purchase order or any other document submitted by Client, and any terms on Client’s purchase order or other document submitted by Client are hereby expressly rejected. This Agreement also applies to any services or work RLDatix does for Client without any further agreement. The parties acknowledge that in entering into this Agreement they have not relied upon any representations other than those reduced to writing in this Agreement. The provisions of this section 15(a) shall not apply to any fraudulent misrepresentation.

(b) Incompatibility with Law; Severability. In the event that a law, regulation or ordinance prevents a party from entering into one or more terms of this Agreement or in the event that any of the provisions of this Agreement become or are declared to be invalid or unenforceable, then this Agreement will be deemed to be amended to reflect the limit of what is permitted by the law, regulation or ordinance.

(c) Notices. Any notice provided for or permitted under this Agreement will be treated as having been given (a) when delivered personally or sent by confirmed facsimile transmission, on the next business day after delivery, (b) when mailed by registered mail, return receipt requested, on the next business day after mailing, (c) when posted on a public website maintained by RLDatix, on the next business day after posting, (d) when transmitted by e-mail, on the next business day after receipt, (e) when transmitted by facsimile, on the next business day after receipt, (f) when transmitted by telephone, on the next business day after transmission, or (g) when mailed by certified mail, return receipt requested, on the fifth business day after its date of posting. Any notices required or permitted to be given under this Agreement shall be addressed to the address listed on the Order Form or such replacement address as may be supplied from time to time.

(d) Waiver. The failure by a party to exercise any right hereunder shall not operate as a waiver of any other right hereunder nor shall it affect its ability to exercise any right hereunder at a later time.

(e) Depute Resolution. In the event of any dispute relating to this Agreement, the parties will endeavor to resolve such dispute by conducting a minimum of two (2) discussions between senior executives of each party having authority to settle such dispute. If such discussions do not result in a resolution of the dispute, such dispute will be referred to mediation before a mediator agreed to by both parties. If the dispute remains unresolved thirty (30) or more days after the first request for mediation by either party, this provision may be deemed satisfied and either party may resort to the courts. The requirements of the section 15(c) above and the rules of the mediator shall govern the mediation process.

(f) Time Limitation on Claims. Any claim that one party to this Agreement wishes to assert against the other which arises out of this Agreement must be the subject of a demand letter calling for the process in section 15(e) above to commence within one year of the time the party became aware of its right to bring the claim.

(g) Liability and Costs. Client indemnifies RLDatix against any claim, action, damage, loss, liability or cost (including reasonable legal fees on a lawyer/client basis) which RLDatix may incur arising out of any breach by Client of the Agreement or any negligence or wrongful act or omission by Client. Client will pay RLDatix all its costs (on a lawyer/client basis) incurred in the recovery of monies owing by Client or in otherwise enforcing RLDatix’s rights against Client under the Agreement.

(h) Non-Applicability of State Laws. If Client is based in the United States this Agreement will be governed by the laws of the State in which Client is based. Otherwise, this Agreement will be governed by the laws of Ontario, Canada.

(i) No Agency. Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

(j) Migration. In the event of a termination by either party, or if RLDatix ceases to support the Software, or Client desires to transition its data to another system, RLDatix will work in good faith to assist Client to transfer the data out of the system(s) tables to an industry accepted format, at RLDatix’s then prevailing time and materials charge.

(k) Software Delivery. In cases where RLDatix is not hosting the Software, all Licensed Materials will be delivered electronically and/or shipped on memory device(s), FOB Origin, RLDatix or made available for downloading by RLDatix. Any Client shipping terms that indicate shipments are effective upon arrival at Client’s location are refused and superseded.

(l) Force Majeure. Neither party shall be liable to the other for any delay or failure in performing hereunder if such delay or failure is caused by conditions beyond that party’s reasonable control, including, but not limited to acts of God, governmental restrictions, wars, insurrection, terrorism, natural disasters and the failure of telecommunications links under the control of others. Both parties shall promptly resume performance once the force majeure event has passed.

(m) Audit Rights. Client shall maintain accurate books and records relating to the Licensed Materials, including but not limited to the use made thereof by Client in comparison to the License Thresholds and on the Order Form, and shall make available such books and records upon reasonable demand by RLDatix during normal business hours, with reasonable advanced notice and no more frequently than annually, and subject to any reasonable requirements of Client in respect of confidentiality. In the event that an audit reveals that Client’s use of the Licensed Materials is in excess of any License Thresholds at any time, Client shall reimburse RLDatix for the reasonable costs of the audit.

(n) Effect of Termination. Any provision of any document forming part of this Agreement, that by its nature must survive the termination of the Agreement to have its full effect, shall survive.
TERMS OF USE LICENSE AGREEMENT

termination, including, without limitation, confidentiality obligations, indemnification obligations, limitations of liability.

(o) Assignment. Client shall not assign this Agreement or the rights and benefits conferred herein without the express written consent of RLDatix, except that Client may assign the Agreement in its entirety in the event of the acquisition of all or a majority of the assets of Client by a similar business entity, in which case no written consent shall be required in the event of an assignment to the acquirer. RLDatix may acting reasonably assign this Agreement in whole or in part as it sees fit. RLDatix shall be free to sub-contract any of its rights and obligations under this Agreement as it in its discretion sees fit. Subject to the limitations of liability set out in section 12, RLDatix shall be liable to Client for the acts and omissions of its sub-contractors.

(p) Instructions. RLDatix will assume that Client's employees, directors and officers who give RLDatix operational and implementation instructions related to the Software are authorized to do so.

(q) Non-competition. This Agreement shall not preclude RLDatix from providing Software or services of a similar nature to any person, entity or enterprise which conducts a business competitive to Client's business.

(r) Costs. To the extent this Agreement does not specify, each party must pay its own costs and expenses in performing its obligations under the Agreement.

(s) Attorney Fees. If any legal action is necessary to enforce this Agreement or collect any sums due hereunder, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses, on a full indemnity basis, in addition to any other relief to which it may otherwise be entitled.

(t) Currency. If Client is based in the United States, all charges are in US Dollars. If Client is based in Canada, all charges are in Canadian Dollars.

(u) Payments. Payments will be made in full and Client may not deduct from the price any set off, counterclaim or other sum unless RLDatix agrees in writing. If Client selects a payment method that causes RLDatix to incur charges, fees or expenses, Client agrees to the enlargement of the payment or charge (as the case may be) in order to fully offset the expense incurred by RLDatix.

(v) Interest and Invoices. RLDatix shall be entitled to collect interest at the lesser of the maximum rate permitted by law or 1.5% per month on all undisputed sums past due and owing under this Agreement.

(w) International Conventions & Treaties. To the extent allowed by law RLDatix and Client agree that all international conventions and treaties which would apply to this Agreement and which are excludable by the contracting parties are excludable from applying to this Agreement and supplies under the same.

(x) Taxes. In addition to all charges specified in this Agreement, Client shall pay or reimburse RLDatix for all federal, state, local and other taxes, other than those on the income of RLDatix, including but not limited to, sales, use and privilege taxes, or any amount levied in lieu thereof. In the event that Client is tax exempt, Client must supply a copy of the tax-exempt certificate to RLDatix.

(y) United States Government. This provision shall only apply when Client is located in the United States and as further set forth herein. The Documentation and Software acquired under this Agreement are commercial computer software as that term is defined in 48 C.F.R. 227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations (“FAR”) and its successors. If acquired by or on behalf of any agency within the Department of Defense (“DOD”), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227-7202-3 of the DOD FAR Supplement (“DFAR”) and its successors.

(z) Access to Books and Records. To the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, RLDatix shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to seven (7) years after the rendering of such services. This section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395t(v)(1) and the regulations thereto. No attorney client, accountant-client, or other legal privilege will be deemed to have been waived by Client or RLDatix by virtue of this Agreement.