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 organisation. 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
TERMS OF USE LICENSE AGREEMENT

1) DEFINITIONS

(a) "Affiliated" means affiliated in the manner indicated in the Order Form.
(b) "Authorised Users" shall consist of the individuals Client permits to either access or use the Licensed Materials, and includes any individuals included in Client’s FTE number. Authorised Users must be associated with either a Listed Licensed Location or an Unlisted Licensed Location.
(c) "Documentation" means the published user manuals and other written materials concerning the Software, and all supplements and ancillary data.
(d) "Upgrades" means any updates, upgrades, improvements or new versions of the Software or Documentation that RLDatix may release or make generally available to its clients from time to time, which items are also subject to license.
(e) “FTE” means full time equivalents, and is a tool used for pricing to measure the size of Client’s organisation and 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.) including support and ancillary staff, 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).
(f) "Licensed Materials" means (i) the Software, (ii) the Documentation, (iii) any Enhancements; (iv) any Modifications; and (v) any copy of the Software, Documentation, Enhancements or Modifications and Third Party Software.

2) RIGHTS/CLiENT RESPONSIBILITIES

(a) "License Grant". RLDatix hereby grants to Client a non-transferable, non-exclusive perpetual or subscription license (as so identified on the Order Form) ("License") and "Subscription License", respectively for its Authorised 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 install, use and access the Licensed Materials, 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, and subject to the listed Licensed Location(s) and Unlisted Licensed Locations as specified and defined 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"). Client shall ensure that the Licensed Materials are not used at Non-Licensed Locations.
(b) "Licensee" means the executable object code form of the Software or Documentation that RLDatix owns, or otherwise controls, and the right to Licensee is granted to Client subject to the rights and obligations set forth in this Agreement and the associated Order Form (including the duration of any Subscription License or renewal thereof) for which the 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 diminish or minimise 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 in the folder named "Third Party Software" and on the RLDatix web site at https://www.rldatix.com.au/Company/Terms-of-Use. RLDatix excludes all non mandatory rights under any applicable law which otherwise would give additional rights to Client in respect of the Licensed Materials. However, no provision in this Agreement will be interpreted as an attempt to exclude or limit, or having the effect of excluding or limiting, the operation of any mandatory applicable law which gives Client the right to copy, reproduce or adapt the Licensed Materials. Where mandatory applicable law gives Client the right to reproduce or adapt the Licensed Materials to correct any error or make the Licensed Materials interoperable with other software, Client agrees that it will prior to exercising any such rights ascertain whether RLDatix can (as applicable) make available to Client a fix for the error or provide the information required to enable the Licensed Materials to be made interoperable with other software.
(c) "Authorised Users". Only Authorised Users are entitled to make use of 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)); (ii) using a secure connection to the server hosting the Software for Client and (iii) exclusively to operate the Software in the course of Client’s business. As such, Client will ensure that only Authorised Users remotely access and use the Licensed Materials. Client’s patients and users are not, and need not be, Authorised 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 without penalty, provided that such change is made in writing 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 within thirty (30) days of making the substitution (and Client must include in such notice 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 per this paragraph. In the event this section 2(e) are not applicable.

(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 parties agree that all services will be supplied in three (3) months after the Licensed Materials is made available to Client for use. Support and maintenance services ("Support") shall be supplied in accordance with the terms of the Support Guide, and (a) Client is responsible for installing, maintaining, and using the Licensed Materials, (b) if Client fails to cooperate with RLDatix (either through the provision of an updated and/or maintained Hardware, or through its failure to install, operate, maintain, use, or otherwise make the Licensed Materials available), (c) RLDatix may, at its discretion, offer to continue providing services for an additional charge, (d) if Client is materially non-conformant in the operation of the Software or a material defect in the Licensed Materials, (e) if Client uses the Licensed Materials for any other purpose, or for any other reason, Supplemental License Fees may be charged by RLDatix, (f) if Client exceeds the FTE number at the replaced location, and (iii) Client provides RLDatix with written notice of the change within thirty (30) days of making the substitution (and Client must include in such notice 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 per this paragraph. In the event this section 2(e) are not applicable.

(f) Other Responsibilities. 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 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 agreement. When RLDatix requests access to effectively support the Software, the event that Client fails to fulfill its responsibilities, RLDatix shall be relieved of the obligation to provide services to Client which are more made 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 for an additional charge. If Client is subject to more than one material non-conformance in the operation of the Software or a material defect in the Licensed Materials, RLDatix may, in its sole discretion, offer to continue providing services for an additional charge. If Client is material non-conformant 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 failure within the first thirty (30) days after Client places the Software into a production/live environment for go live, (iii) Client not presenting a notice of non-conformance or defect in accordance with the terms of the Support Guide. RLDatix shall then have fourteen (14) days to address the non-conformance or defect within the terms of the Support Guide and provide Client with a written Notice of Repair, thereafter starting a fourteen (14) day time period for Client to restet and re-evaluate the Licensed Materials. In the event the non-conformance or defect is not corrected within the 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 earlier of (i) Client providing written notice of acceptance, (ii) Client not presenting a notice of non-conformance or defect within the first thirty (30) days after Client places the Software into a production/live environment for go live, (iii) Client not presenting a notice of non-conformance or defect in accordance with the terms of the Support Guide, and (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 used only so long as permitted by law) on the Effective Date of the Agreement, the month and day of which shall become known as the “Effective Date”. The Effective Date shall constitute the commencement date of each 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 three (3) months after the Licensed Materials is made available to Client for use (or, as the case may be within three (3) months of making the Licensed Materials available for use or download), Client shall notify RLDatix of the renewal 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 other Licensed Materials, RLDatix may, in its sole discretion, offer to continue providing services for an additional charge, and (a) Client is responsible for installing, maintaining, and using the Licensed Materials, (b) if Client fails to cooperate with RLDatix (either through the provision of an updated and/or maintained Hardware, or through its failure to install, operate, maintain, use, or otherwise make the Licensed Materials available), (c) RLDatix may, at its discretion, offer to continue providing services for an additional charge, (d) if Client is materially non-conformant in the operation of the Software or a material defect in the Licensed Materials, (e) if Client uses the Licensed Materials for any other purpose, or for any other reason, Supplemental License Fees may be charged by RLDatix, (f) if Client exceeds the FTE number at the replaced location, and (iii) Client provides RLDatix with written notice of the change within thirty (30) days of making the substitution (and Client must include in such notice 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 per this paragraph. In the event this section 2(e) are not applicable.

4. SUPPORT AND MAINTENANCE

(a) Maintenance. Support and maintenance services (“Maintenance”) will be provided in accordance with the then-current version of the Support Guide. 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.

(b) Maintenance Term. Maintenance is available for one (1) year term. 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 “Effective Date”. The Effective Date shall constitute the commencement date of each 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 three (3) months after the Licensed Materials is made available to Client for use (or, as the case may be within three (3) months of making the Licensed Materials 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”.

5. FEES

(a) Amount. The License Fee for Licensed Materials is based on the number of prospective users and the size of Client’s organisation. The Fee is identified on the Order Form. Depending on the growth of Client’s organisation, 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 FTE number at the replaced location, and (iii) Client provides RLDatix with written notice of the change within thirty (30) days of making the substitution (and Client must include in such notice 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 per this paragraph. In the event this section 2(e) are not applicable.

(c) Annual Fess. Where the Annual Fee is charged in the Order Form, the Initial Term Maintenance fees, hosting fees and/or Subscription Fees (as applicable) are due thirty (30) days of RLDatix invoicing for same; otherwise the Initial Term Annual Fees are due thirty (30) days prior to the start of each Renewal Term. RLDatix shall perform the Client’s Annual Fees within 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 in accordance with the relevent RLDatix Statements of Work, current versions of which are available at https://www.rldatix.com/en-gb-the-new-terms-of-use. In the event that Client does not materially adhere to the guidelines in these documents, RLDatix reserves the right to either (i) 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 dates and times which have been agreed to by both parties which are late cancelled or rescheduled at Client’s request will result in (i) Client shall reimburse RLDatix for 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 and time of the service delivery, then Client shall pay RLDatix in advance an original non-refundable portion of the fee 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 Order Form (“Minimum Commitment”), and if Client is responsible for installing, maintaining, and using the Licensed Materials.

(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) Maintenance. Support and maintenance services (“Maintenance”) will be provided in accordance with the then-current version of the Support Guide. 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.

(b) Maintenance Term. Maintenance is available for one (1) year term. 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 “Effective Date”. The Effective Date shall constitute the commencement date of each 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 three (3) months after the Licensed Materials is made available to Client for use (or, as the case may be within three (3) months of making the Licensed Materials 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”.

1. SUBSTITUTE AND FTE LIMIT. The parties agree that all services will be supplied in three (3) months after the Licensed Materials is made available to Client for use.
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 all intellectual property rights associated therewith, 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 were created at the request of Client or not. To the extent Client requests, RLDatix agrees to grant, assign and transfer, directly or through its Authorised Users, all right, title, and interest in and to any Modifications, Client hereby assigns to RLDatix 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 (i) identify any and all Protected Health Information (as defined under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, each as may be amended from time to time (collectively “HIPAA”)) obtained as a result of this Agreement in accordance with the de-identification requirements of 45 CFR 164.514(a)-(b), and use and disclose such de-identified data consistent with 45 CFR 164.520(d) for the proper management and administration of RLDatix or to carry out other activities necessary or appropriate to the performance of any legal or regulatory obligations. RLDatix shall maintain such Protected Health Information disclosed by Client to RLDatix with any de-identified or aggregated data maintained by RLDatix (provided that aggregated Protected Health Information is first de-identified by RLDatix in accordance with HIPAA), and provide such Protected Health Information to other Covered Entities (as defined under HIPAA) to enable such Covered Entities or RLDatix to perform comparative analyses of their healthcare operations with the benefit of such data.

10) WARRANTIES AND LIMITATIONS

(a) General Warranty. RLDatix warrants it has the right to (i) enter into this Agreement, (ii) grant the licenses and rights set forth in this Agreement and grant the right for Client and its Authorised 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 six (6) months 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 has altered the Software, as described in section 7(c), within six (6) months of said breach by RLDatix, the parties agree that Client’s right to terminate for that breach shall expire.

(c) 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 providing written 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) Client becomes subject to a Bankruptcy Event. In the event of Client’s bankruptcy or insolvency, the Software, the failure to promptly install an Enhancement or new release, if installation of such License materials not 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) RLDatix has not made general release updates to the Licensed Materials available to Client in a timeframe consistent with similar releases to other clients.

11) INDEMNIFICATION

(a) Intellectual Property Indemnification. If an action is brought against Client claiming that any part of the Licensed Materials infringes a patent, trade secret or copyright, RLDatix will defend, indemnify, 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) RLDatix has sole control over the defense of the claim or action; (iii) Client cooperates with RLDatix in the defense of the claim or action in the litigation; and (iv) in the face of litigation that undermines any defense available to Client or RLDatix in any such circumstances, Client shall act at all times to mitigate its losses.

(b) Alternative Remedy. If a claim described in the preceding paragraph may be or have been or is asserted against Client, and if such actions are not governed by the laws of any country other than the United States, then either (i) Client may pursue 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 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 11 if any intellectual property infringement claim results from (i) a correction or modification of the Licensed Materials not provided by RLDatix or approved by RLDatix in writing, (ii) if 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 or any element thereof used in combination with materials provided by others, if the 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.

(d) Liability of RLDatix. Client shall defend, indemnify, protect and hold harmless RLDatix for all claims and actions arising out of Client’s use or misuse of the Licensed Materials, without limitation.

12) LIMITATION OF LIABILITY

RLDATIX’S CHARGES TO CLIENT ARE DETERMINED ON THE BASIS OF THE EXCLUSIONS FROM 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 AWARDED TO CLIENT FOR A BREACH BY RLDATIX OF THIS AGREEMENT MAY BE SIGNIFICANTLY LESS THAN THE AMOUNT CHARGED TO CLIENT. RLDATIX IS NOT WILLING TO CONSIDER ARRANGING FOR ADDITIONAL INSURANCE COVERAGE TO

(a) Client shall have the right to terminate this Agreement at any time for convenience, provided that Client gives written notice of such termination at least ninety (90) days prior to the effective date of 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 before the expiry of 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 SL Service Breach (as defined in section 7(b) below) and thirty (30) days have elapsed since Client provided to RLDatix written notice of their breach, identifying in detail 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 chooses not to make use of a right to terminate pursuant to (c) within six (6) months of said breach by RLDatix, the parties agree that Client’s right to terminate for that breach shall expire.

(e) 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 providing written 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) Client becomes subject to a Bankruptcy Event. In the event of Client’s bankruptcy or insolvency, the Software, the failure to promptly install an Enhancement or new release, if installation of such License materials not 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) RLDatix has not made general release updates to the Licensed Materials available to Client in a timeframe consistent with similar releases to other clients.

(f) An “SL Service Breach” is defined as any of the following: (i) RLDatix repeatedly fails to provide Service, as defined in section 6 of this Agreement, which RLDatix will undertake all commercially reasonable efforts to correct the nonconformity or repair or replace any defective element of the Licensed Materials. If the breach cannot be so cured, RLDatix will (i) accept the return of the Licensed Materials, (ii) terminate the Agreement, 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 otherwise owed to Client in connection with the Licensed Materials.

(g) 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 OPERATION OF LAW, CUSTOM, COURSE OF DEALING OR WRITTEN STATEMENTS BY CLIENT, RLDATIX 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 ASSURANCE OF ERROR FREE OR UNINTERRUPTED USE OF THE LICENSED MATERIALS IS ALSO HEREBY DISCLAIMED.
ENABLE RLDatix TO TAKE ON THE BURDEN OF ADDITIONAL LIABILITY TO CLIENT FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES RESULTING FROM OR RELATED TO THE USE OF THE SERVICES OR PRODUCTS, INCLUDING BUT NOT LIMITED TO: LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER LOSS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT GOVERNING THE RELATIONSHIP OF, OR LIABILITY BETWEEN, RLDatix and Client, REGARDLESS OF THE FORM OF THE ACTION, 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 NOR LIABLE FOR ANY INACCURATE CLIENT DATA THAT IS INPUT AND/OR MIGRATED FOR USE WITHIN THE LICENSED MATERIALS, OR FOR ANY 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 INACCURATE CLIENT DATA, MEDICAL CARE OR DIRECT PATIENT CARE SERVICES.

SUBJECT TO ANY APPLICABLE LAW WHICH CANNOT BE EXCLUDED, RLDatix WILL NOT BE LIABLE TO CLIENT FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES RESULTING FROM OR RELATED TO THE USE OF THE SERVICES OR PRODUCTS, INCLUDING BUT NOT LIMITED TO: LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER LOSS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT GOVERNING THE RELATIONSHIP OF, OR LIABILITY BETWEEN, RLDatix and Client, REGARDLESS OF THE FORM OF THE ACTION, 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 NOR LIABLE FOR ANY INACCURATE CLIENT DATA THAT IS INPUT AND/OR MIGRATED FOR USE WITHIN THE LICENSED MATERIALS, OR FOR ANY 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 INACCURATE CLIENT DATA, MEDICAL CARE OR DIRECT PATIENT CARE SERVICES.

SUBJECT TO 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 (iii) IN THE CASE OF SERVICES OR PRODUCTS THAT ARE SUBJECT TO AN INDEMNITY CONTAINED IN SECTION 11(a), SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS ($750,000). IN THIS SECTION 12 ‘SPECIFIED MONIES’ MEANS THE TOTAL MONIES 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 PRE- ESSENTIAL TERM OF THIS AGREEMENT AND NO LIABILITY MAY INCUR IN RESPECT OF A BREACH OR OMISSION BY RLDatix.

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.

Any term, condition or warranty implied or imposed in this agreement or between client and RLDatix by law, is excluded from this agreement unless the law voids or prohibits provisions in a contract excluding or modifying the implied term, condition or warranty. The liability of RLDatix for any breach of such term (including as implied by the competition and consumer act 2010 (the “act”) is limited to (as RLDatix may decide).


B. IN THE CASE OF SERVICES THE PAYING OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

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, sub-routines, 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 the care of any individual, whether or not the information relates specifically to Client’s patient or Client’s business operations. Client shall retain in strict confidence, 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 with and in service to Client.

(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 any 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 other than the purposes of this Agreement. The parties agree that any information that is not necessary for the performance of its duties pursuant to this Agreement, may be disclosed to other persons as necessary to carry on business with and in service to Client.

(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 seek any other remedy relating to 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 rightfully obtained such Proprietary Information of such party in good faith from third parties without obligations of confidence.

14) COMPLIANCE WITH PRIVACY PROVISIONS

The Parties agree to comply with the mandatory laws relating to privacy of personal information to which the Licensed Materials and the information disclosed is subject, and shall protect the identity of a natural person in the location where Client is located and uses the Licensed Materials. 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), the Hosting Addendum (where applicable), the Service Level Agreement (where applicable), and any other document expressly referred to in the 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, understandings and representations as to the subject matter 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 an updated version of this Agreement being presented by RLDatix and accepted by Client. The headings in the Agreement are provided 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 Terms of Use Addendum (where applicable), the Hosting Addendum (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 Service Level Agreement, the Support Guide. In the case of any other document, unless the 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 future version of this Agreement is presented to and accepted by Client, that future version 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 or conditions contained in any other document, and the other document is to take precedence, it shall have no bearing. The parties agree that where a future version of this Agreement is presented to and accepted by Client, that future version 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 or conditions contained in any other document, and the other document is to take precedence, it shall have no bearing. The parties will endeavor to resolve such dispute by conducting a minimum of two (2) discussions between senior directors or their designates of the parties involved in the dispute. In the event of a 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, the parties may agree to refer the dispute to an arbitrator in accordance with the laws, rules and regulations of the state or country where the dispute arises. The arbitrator shall have the authority to award damages, costs, and fees (other than the parties’ own attorneys’ fees) as in the opinion of the arbitrator are appropriate. The parties agree that the arbitrator’s decision will be final, binding, and conclusive as to the rights and liabilities of the parties. The arbitrator may also award any other relief you seek or that is available as a matter of law or equity, and the parties hereby agree that no case is to be tried by a jury. In the event that satisfying the requirements of this section 15(e) would cause the
(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 (or ought reasonably to have become) 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 must 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) Applicable law. This Agreement is governed by the laws of South Australia. The courts of South Australia and the Federal Court of Australia (Adelaide Registry) have non-exclusive jurisdiction in connection with this Agreement. If Client is located in New Zealand then Client consents to RLDatix bringing legal proceedings in the courts of New Zealand if RLDatix considers the same the most effective way to enforce this Agreement.

(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 default in performing hereunder if such delay or default 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 invoices on the Order Form. Wherever possible, such books and records shall be in a form to permit remote access and review. RLDatix may, at its sole cost and expense, conduct an audit of Client’s books and records relating to the Licensed Materials 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 immediately tender the necessary Supplemental License Fees, and should the audit reveal that Client’s use was more than 5% in excess of any License Threshold 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 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 assign, by operation of law 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 authorised 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. Client must 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.

(t) Currency. All charges are in Australian dollars, unless indicated otherwise on the Order Form.

(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) Goods and Services Tax (“GST”). Unless specifically described in this Agreement as ‘GST inclusive’, the consideration to be paid or provided for a supply made under or in connection with this Agreement does not include any amount on account of GST.