

**CLIX UNLOCK  
TERMS AND CONDITIONS**

**1. GRANT OF LICENCE**

**1.1 Deployment Licence:** Subject to the terms and conditions set out herein, and conditioned on the users' compliance therewith, Clinithink Limited ("**Clinithink**") grants a non-exclusive, non-transferable licence ("**Deployment Licence**") during the Term to use the Software and the Documentation solely for internal business use by the user. The user must destroy all copies of the Software and Documentation upon termination or expiry of the Term. The user must also ensure that where any employee ceases to be employed by the user, any copies of the Software made by or on behalf of that employee are retained by the user or destroyed.

**1.2 Restrictions:** Licensee acknowledges that the Software's source code contains valuable trade secrets of the Clinithink Group and thus Licensee shall not at any time have access to the source code of the Software. Licensee shall not at any time: (a) circumvent controls, reverse assemble, reverse compile, or otherwise reverse engineer or attempt to derive the source code of the Software; (b) copy (except as expressly authorised by this Agreement), modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the Software or the Documentation; (c) install or configure the Software other in accordance with the terms of this Agreement; (d) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or Documentation to any person or entity, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (e) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or intellectual property or other proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Software or Documentation; (f) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party or that violates any applicable Law; (g) use the Software for purposes of (i) benchmarking or competitive analysis of the Licenced Software, (ii) developing, using, or providing a competing software product or service, or (iii) any other purpose that is to Clinithink's detriment or commercial disadvantage; (h) use the Software or Documentation other than for the Deployment Licence Purpose; or (i) directly or indirectly assist or facilitate the performance by any third party of any of the foregoing.

**1.3 Withdrawal of Software:** Clinithink may by written notice to the Licensee: (a) withdraw any Software that Clinithink or a Group Company ceases to manufacture; or (b) any Software that infringes the rights of third parties in the Territory.

**1.4 Notice of Withdrawal:** Notice pursuant to clause 1.3 (a) above must be at least six (6) months, and Clinithink must continue to provide Support Services for such Software for a further six (6) months following any such Software withdrawal.

**2. OBLIGATIONS AND WARRANTIES**

**2.1 Marketing and Referencability:** The Parties agree that either Party may make reference to the other Party as a partner on its website and in marketing materials with the prior consent of the other in writing. Licensee also agrees to participate in ongoing marketing activities including, but not limited to: (a) interviews with Clinithink's marketing firm and/or trade media outlets regarding Licensee's use of the Software; (b) a press release; (c) permission to use, and input on the development of a case study regarding Licensee's use of the Software; and (d) supply, edit and/or approve testimonials from Licensee.

**2.2 Clinithink Exchange:** Clinithink Exchange is the repository for anonymised statistical project reports on a project by project basis. Such statistical data and organisational information will remain the property of the Licensee. Clinithink Exchange manages user and access control to the Software and Content as well as licencing of the Software.

**2.3 Power and authority:** Each Party warrants to the other that it has full power and authority to enter into this Agreement and to perform its obligations set out in this Agreement.

**2.4 Compliance with laws:** Each Party warrants to the other that it will observe and comply with all Laws and directions of any authority having jurisdiction in relation to the Software and the performance of any of its obligations and exercise of its rights under this Agreement.

**2.5 Export Control:** Licensee shall not itself, or permit any other person or entity to, export, re-export, or release, directly or indirectly, any Controlled Technology to any country, jurisdiction, person, or entity to which the export, re-export, or release of Controlled Technology is restricted or prohibited by applicable Law without first completing all required undertakings (including obtaining any necessary export license or other governmental approval). **“Controlled Technology”** means any software, documentation, technology, or other technical data, or any products that include or use any of the foregoing, the export, re-export, or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval, under any Law.

**2.6 Personal Data:** In order for Licensee to access the Software and Support Services, Clinithink will collect Personal Data of Licensee’s authorised users and relevant Licensee personnel. Clinithink and Licensee will adhere to the provisions of applicable Data Protection Laws.

### **3. SOFTWARE MANAGEMENT AND DEPLOYMENT**

**3.1 Downloading the Software:** Clinithink will provide Licensee with access to a secure file download area from which the Software releases may be obtained. Clinithink reserve the right to replace or amend the download environment and procedures from time to time.

**3.2 Infrastructure:** Licensee agrees to commission and operate infrastructure to support the deployment and use of the Software in line with the Minimum Specification to allow the Software to operate effectively for the intended use under this Agreement.

**3.3 Data:** Licensee agrees to refresh the data loaded into the Software and ensure that it is routinely refreshed at an interval to be agreed by the Parties.

### **4. SUPPORT AND MAINTENANCE**

**4.1 License Support:** For so long as Licensee remains a current subscriber to Clinithink’s Support Services (the **“Support Period”**), Clinithink will provide Licensee with Support Services regarding the latest two Major Releases of the Software in accordance with clause 4.4 and this Agreement. The Annual Support Fee will be invoiced and paid annually in advance and may be updated in accordance with clause 5.1.

**4.2 Support Services:** During the Support Period, Clinithink will provide Support Services in accordance with this Agreement, the Service Levels, and the Support Procedures. Support Services shall consist of Clinithink using reasonable efforts to correct Errors by way of a modification or addition to the Software’s source code that corrects the Error, or a procedure or routine that, when observed in regular operation of the Software, eliminates the practical adverse effect of the Error. Licensee’s support staff will be responsible for initially diagnosing any operational or functional problems with the Software, shall report all Errors to Clinithink in a timely manner and shall enter details of such Error and any resolution activities and results into Clinithink’s online knowledge base, where provided. If either Party receives repeated reports of inadequate support services being provided by the other, that Party may give written notice to the other Party requiring a remedial plan to be developed. Such remedial plan must be successfully implemented within 20 business days of its mutual acceptance.

**4.3 Software Fixes:** In the event that Clinithink issues a Software Fix or Update to resolve an Error, Licensee will be responsible for implementing such change to all Licensee environments where required.

**4.4 Provision of Support Services:** All Support Services are remotely provided by Clinithink and will be provided during the Support Period in accordance with Licensee’s reasonable security and accreditation standards, as provided in writing to Clinithink by Licensee within 30 days of the Effective Date. Licensee will maintain at its own expense throughout the Support Period, and make the information available to Clinithink a minimum of ten days prior to the commencement of the Support Services, a VPN connection, secured using multi-factor authentication and in accordance with Licensee specific security requirements, or other mutually agreeable communication link, to enable remote access to Licensee’s systems by Clinithink for the purpose of providing Support Services.

**4.5 Support to be provided only by Clinithink:** In no circumstances shall Licensee request, permit, or authorize a third party, other than members of the Clinithink Group, to provide any Support Services in respect of the Software.

**4.6 Updates:** During the Support Period, Clinithink shall make available to Licensee any Updates which Clinithink makes generally available to paid subscribers to Clinithink support services, subject to the terms and

conditions set out in this Agreement. Unless otherwise agreed in writing between the Parties prior to the time of delivery, Updates are licensed in accordance with the terms and conditions of this Agreement.

**4.7 Changes to technical environment:** Licensee acknowledges that changes to the configuration of its systems and technical environment may impact the Support Services and/or Service Levels, and agrees to advise Clinithink in writing of any such changes. Clinithink will use reasonable efforts to notify Licensee of any impact that the change may have on the operation of the Software, provided that any such notification (or failure to provide such notification) shall not be construed as authorisation by Clinithink of the change.

**4.8 Exclusions:** Clinithink shall have no obligation to provide Support Services hereunder in connection with Errors or issues: (a) resulting from the misuse or improper use of the Software or use other than in accordance with the Documentation or otherwise approved by Clinithink in writing, (b) caused by modifications or alterations to the technical environment not approved in writing by Clinithink, (c) resulting from Licensee's installation of a new Update in a manner that is not in accordance with the Documentation, (d) resulting from a combination of the Software with software not supplied by Clinithink, (e) that could be corrected by the installation of a more current Update, (f) caused by a malfunction of the equipment, or (g) caused by any act or omission in breach of the terms of this Agreement. Licensee shall be responsible for paying Clinithink, on a time and materials basis plus all cost associated with services rendered in connection with any attempt to diagnose or correct an Error that falls within the foregoing Exclusions, including travel, accommodation and other disbursements. To the extent that an Error is caused by Third Party Software or Third Party Content, Clinithink will use reasonable efforts to resolve such Error through recourse to the Third Party Licensor, but such Error shall not be subject to the Service Levels. If an Error has been fixed in a current Update, Licensee's exclusive remedy for such Error shall be to install the most current Update to remedy the Error and Clinithink shall have no other obligation or liability to Licensee in such instance.

## **5. PRICE AND PAYMENT**

**5.1 Pricing changes:** Clinithink's Fees (including the Annual Support Fee and Professional Services Fees) will be reviewed annually. Clinithink will provide Licensee with its updated pricing information not later than December 31<sup>st</sup> each year. Such pricing will become effective as of April 1<sup>st</sup> in the following year and notwithstanding anything to the contrary in no event will such list price increase exceed the consumer price index, or similar index, applicable in the Territory, unless otherwise agreed in writing.

**5.2 Invoicing:** Without prejudice to Licensee's reporting obligations under this Agreement, Clinithink will invoice Licensee for any Fees payable in accordance with this Agreement.

**5.3 Payment:** All payments shall be due within 30 days following Licensee's receipt of an invoice rendered by Clinithink. All payments to Clinithink pursuant to this Agreement shall be made in pounds sterling ("GBP"). Where any Fees are stated in another currency, Clinithink will invoice the equivalent amount in GBP using its bank's exchange rate on the day that the invoice is raised. Clinithink reserves the right, upon written notice to Licensee following a 30 day right for Licensee to cure, to declare all sums immediately due and payable in the event that Licensee breaches any of its obligations to Clinithink, including its failure to comply with payment terms.

**5.4 Taxes:** All amounts payable under this Agreement are stated exclusive of Taxes. The appropriate amount required for Taxes shall be added to Licensee's invoice and paid by Licensee unless Licensee provides Clinithink with a valid exemption certificate authorised by the appropriate authority. If Clinithink receives an assessment or other notice from any taxing authority providing that any Tax, interest or penalty is due from Clinithink with respect to any transaction described in this Agreement, Licensee shall remit the amount of any such Tax, interest or penalty to Clinithink within 30 days after written demand by Clinithink.

**5.5 No Deductions:** All payments to be made by Licensee will be free of any deduction, set-off, counter-claim or withholding whatsoever, except where such amount is under bona fide Dispute. If Licensee is required by or under any Laws to make any withholding or deduction, it will gross up its payment to Clinithink as is necessary to ensure that Clinithink receives the full amount payable under this Agreement as if no such withholding or deduction had been made.

**5.6 Overdue Payments:** Overdue undisputed payments (other than amounts that are the subject of a legitimate and bona fide Dispute) shall accrue interest at the then current business rate of HSBC Bank plc plus 2%, calculated monthly from the due date until paid. Without limitation of any other remedy under this Agreement, at law, or in equity, Clinithink may suspend the performance of its obligations under this Agreement (including, for clarity, the Support Services) and disable activation licences to the Software if any amount that is not the subject of a good faith Dispute is not paid when due.

## 6. CLINITHINK'S WARRANTIES

**6.1 Limited Warranty:** For a period of 90 days from the date of delivery of the Software to Licensee ("**Warranty Period**"), Clinithink warrants that the Software will perform in all material respects in conformance with the then current Documentation for such Software. This warranty does not apply to errors or defects arising due to the act or omission of Licensee or the technical environment in which the Software is used.

**6.2 Remedy:** If Clinithink breaches, or is alleged to have breached, the warranty set forth in clause 6.1, Clinithink may, at its sole option and expense, take any of the following steps to remedy such breach: (a) repair the Software; (b) replace the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder); or (c) terminate this Agreement and, provided that Licensee fully complies with its post-termination obligations as set forth in clause 12.6, promptly refund to Licensee, on a *pro rata* basis, the share of any Fees prepaid by Licensee for the remaining Term of this Agreement following the date of such termination.

**6.3 Exclusive Remedy:** If Clinithink does not cure a warranty breach or terminate this Agreement as provided in clause 6.2 within a reasonable period of time after Clinithink's receipt of written notice of such breach, Licensee shall have the right to terminate this Agreement as provided in clause 12.3. Provided that Licensee fully complies with its post-termination obligations as set forth in clause 12.6, Clinithink shall promptly refund to Licensee, on a *pro rata* basis, the share of any Fees prepaid by Licensee for the remaining Term following the date of such termination. This clause 6.3 sets forth Licensee's sole remedy and Clinithink's entire obligation and liability for any breach of warranty or condition regarding the Software or Documentation.

**6.4 Disclaimer of Warranty:** Subject to this Agreement and to the extent permitted by Law, Clinithink grants no other warranties or conditions, express or implied, by statute or otherwise, regarding the Software, Documentation and Support Services. No agreements varying or extending the provisions of this clause or the limitations of liability contained in this Agreement shall be binding on Clinithink unless in writing and signed by an authorized representative of Clinithink.

## 7. OWNERSHIP AND INTELLECTUAL PROPERTY

**7.1 Trade Marks:** During the Term, Licensee must not use Trade Marks or trade names in association with the Software except to the extent expressly authorised by Clinithink in writing. Licensee will not in any case remove or alter any proprietary notices on or in the Software or Documentation. For the purposes of this clause 7, "**Trade Marks**" means all names, marks, logos, designs, trade dress and other brand designations used by any member of the Clinithink Group in connection with the Software or services from time to time.

**7.2 Ownership of Licensee IP:** Clinithink acknowledges and agrees and Licensee warrants that all right, title and interest in and to Licensee Intellectual Property, including any enhancements, modifications and derivative works made to Licensee Intellectual Property pursuant to this Agreement or otherwise, belongs to and remains with Licensee and its licensors.

**7.3 Ownership of Clinithink Group IP:** Licensee acknowledges and agrees and Clinithink warrants that all right, title and interest in and to the Software, any patents, Trade Marks, Confidential Information, trade secrets, get-up and other intellectual property relating to the Software, including any Updates, belongs to and remains with Clinithink or a Group Company and its licensors as their absolute property. Licensee will not at any time challenge the validity of any of, or assert any rights inconsistent with, any Clinithink Group member's intellectual property rights.

**7.4 Infringement:** Licensee will promptly bring to Clinithink's attention any infringement or threatened infringement of any of Clinithink or its Group Companies intellectual property in the Software of which Licensee becomes aware. Licensee will, if requested to do so by Clinithink, co-operate with Clinithink or its Group Company in the conduct of any infringement proceedings including, without limitation, making available to Clinithink all information in the possession of Licensee relating to such infringement.

## 8. INTELLECTUAL PROPERTY INDEMNITY

**8.1 Defence:** Clinithink will defend Licensee, at Clinithink's own expense, against any action brought by a third party to the extent that the action is based upon a claim that the Software infringes any intellectual property rights of any third party, including copyright, patents, or misappropriates any trade secrets (each subject to the exclusions in clause 8.6, an "**Infringement Claim**").

**8.2 Indemnity:** Clinithink will pay those costs and damages finally awarded against Licensee in any Infringement Claim that are specifically attributable to such Infringement Claim or those costs and damages

agreed to by Clinithink in a monetary settlement of such Infringement Claim, including without limitation reasonable costs and lawyers' fees incurred in the investigation, preparation, and defense of such claim.

**8.3 Procedures:** The obligations in clauses 8.1 and 8.2 are conditioned on (i) Licensee notifying Clinithink promptly in writing of the Infringement Claim, (ii) Licensee giving Clinithink sole control of the defence pertaining to alleged Clinithink infringement, and any related settlement negotiations, (iii) Licensee cooperating in such defence at Clinithink's request and expense, and (iv) Licensee not entering into any settlement of an Infringement Claim that is not authorised in advance and in writing by Clinithink.

**8.4 Infringing Software:** If the Software becomes, or in Clinithink's opinion is likely to become, the subject of an Infringement Claim, Clinithink may, at its option and expense, either: (a) procure for Licensee the right to continue using the Software in accordance with this Agreement; or (b) replace or modify the Software so that it becomes non-infringing within reasonable timeframes.

**8.5 Termination:** If neither of the options set out in clause 8.4 (a) or (b) is commercially practicable or the use of the Software is enjoined, Clinithink may withdraw the Software and require Licensee to return the affected Software whereupon Clinithink shall refund to Licensee the unamortised portion of the unused License Fees paid under this Agreement.

**8.6 Limited Indemnity:** Notwithstanding anything to the contrary in clause 8.1 or 8.2, "Infringement Claims" will not include claims, and Clinithink will have no obligation to indemnify Licensee with respect to any infringement claim, arising from: (a) any use of the Software not in accordance with this Agreement; (b) any use of the Software in combination with any products, equipment, software, data or technical environment not provided by Clinithink or implemented according to parameters set out by Clinithink for use of the Software; (c) any act or omission of Licensee in carrying out its obligations under this Agreement; (d) use of an outdated Major Release of the Software after Clinithink has made available an Update which is non-infringing; or (e) any modification of the Software not authorized or carried out by Clinithink.

## **9. LIMITATION OF LIABILITY; INDEMNITY**

**9.1 Indirect and Consequential Damages:** In no event shall either Party be liable to the other Party for any indirect, special, incidental, exemplary, punitive, or consequential loss or damages, or any loss or damages comprising, or resulting from, loss of goodwill, prospective profits, anticipated orders, loss of business, loss of profit, loss of data or loss of information, however caused and on any theory of liability, including without limitation contract or tort (including products liability, strict liability, negligence and misrepresentation), arising out of this Agreement, whether or not the Party has been advised of the possibility of such damages.

**9.2 Cap on Damages:** Subject to clause 9.3, in no event, including without limitation any breach of a fundamental term of this Agreement, shall either Party's aggregate liability arising out of this Agreement exceed the total amounts paid during the 12 month period prior to the claim by Licensee to Clinithink hereunder in respect of the Software or Support Services giving rise to the liability. This provision applies regardless of how the liability arose or the theory of liability, including without limitation contract or tort (including products liability, strict liability, negligence and misrepresentation).

**9.3 Application:** The limitations contained in this clause shall apply notwithstanding any failure of essential purpose of any limited remedy. The Parties acknowledge that these limitations of liability are an essential basis of the bargain between the companies and in their absence the economic terms of this Agreement would be substantially different. The limitation of liability set out in clause 9.2 above shall not apply to indemnification obligations under this clause.

**9.4 Clinical Care:** Licensee understands and agrees that Clinithink are not engaged in the practice of medicine and that the Software is an information tool only and is not a substitute for competent medical advisors. All medical practice management and patient care decisions made in which the Software may be utilised, and the consequences thereof, will be exclusively the responsibility of Licensee. Licensee agrees to indemnify and hold the Clinithink Group and their respective officers and employees harmless from any and all claims that any improper medical treatment resulted from use of or reliance upon the Software. Licensee is solely responsible for the accuracy and adequacy of the information and data furnished for processing by the Software. The successful operation of the Software is dependent on Licensee's use of proper procedures and systems and input of correct data.

## 10. CONFIDENTIALITY

**10.1 Access to Information:** Each Party acknowledges that in the course of performing its obligations under this Agreement, it may disclose, receive or obtain access to Confidential Information of the other Party. Each Party agrees to use such Confidential Information solely for the purposes of performing its obligations hereunder and not to disclose, directly or indirectly, the Confidential Information to any third party other than its duly authorised representatives, Affiliate, Group Company, employees or agents who have a need to know for the purposes of this Agreement. Each Party agrees to maintain the Confidential Information in confidence and shall take at least the same precautions to avoid disclosure of the Confidential Information that it would take with its own Confidential Information.

**10.2 Ownership:** All Confidential Information shall remain the sole and exclusive property of the Party which has disclosed it.

**10.3 Remedies:** The Parties acknowledge and agree that a breach of this clause 10 may cause immediate, irreparable harm for which monetary damages would be an inadequate remedy, and that the non-breaching Party may seek injunctive or other equitable relief for such breach.

**10.4 Meaning of Confidential Information:** “Confidential Information” means any oral or written information disclosed by one Party to the other that is not generally known to the public and is clearly identified as confidential or, by its nature or in light of the circumstances in which it is disclosed, should be reasonably considered confidential, including without limitation, the terms of this Agreement, information about either Party’s products, marketing strategies, finances, operations, suppliers, any computer software or databases, source code, specifications, data, reports, formulae, data models, data formats, field or record layouts, or improvements related thereto and any personal information regarding a person that would personally identify a person, but excluding information that: (a) was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no fault of the recipient; (b) was lawfully received by the recipient from a third party free of any obligation of confidence; or (c) was already in the lawful possession of the recipient prior to receipt from the other Party, or was subsequently and independently developed by the recipient’s employees, consultants or agents without reference to the Confidential Information of the other Party, as evidenced by written records.

**10.5 Compelled Disclosure:** If either Party is requested by a court or governmental authority of competent jurisdiction to disclose any Confidential Information of the other Party, the Party bound by such request will promptly notify the other Party to permit such other Party to seek a protective order or take other appropriate action and will reasonably assist in such activities. The Party bound by such request will only disclose that part of the Confidential Information as is required by Law to be disclosed and will use commercially reasonable efforts to obtain confidential treatment therefor.

## 11. THIRD PARTY SOFTWARE AND CONTENT

**11.1 Third Party Software:** The Software contains Third Party Software which may be subject to licence or other terms and conditions imposed by the owners of such Third Party Software. Licensee will comply with the terms and conditions applicable to Third Party Software notified in writing to it by Clinithink from time to time.

**11.2 Third Party Content:** The Software contains Third Party Content which may be subject to licence or other terms and conditions imposed by the owners of such Third Party Content. Licensee will comply with the terms and conditions applicable to Third Party Content notified in writing to it by Clinithink from time to time.

**11.3 Responsibility for Third Party Software and Third Party Content:** Clinithink will have no liability to Licensee with respect to any Third Party Software or Third Party Content, including in connection with Licensee’s any user’s use of the Third Party Software or Third Party Content or any defect or error in, or the content of, any Third Party Software or Third Party Content. Licensee’s remedies with respect to Third Party Software and Third Party Content will be limited to those obligations of the relevant third parties under the terms and conditions described in clauses 11.1 and 11.2.

## 12. TERM AND TERMINATION

**12.1 Term:** This Agreement shall continue for the Term, unless earlier terminated pursuant to this clause.

**12.2 Renewal:** Following expiry of the Term, the Agreement will automatically extend for additional one (1) year terms unless either Party has provided notice of its intent not to renew at least ninety (90) days prior to the expiration of the initial term or the then-current renewal term.

**12.3 Termination for cause:** Either Party shall have the right to terminate this Agreement effective immediately upon written notice to the other upon the occurrence of the following events: (a) 90 days after a filing by or against the other Party of a petition for relief under any insolvency Law of any jurisdiction which is not dismissed within 30 days, any other arrangement for the benefit of creditors or discontinuance of the business operations relevant to this Agreement; or (b) if the other Party materially breaches this Agreement and such breach is incurable or the other Party fails to cure such breach within 30 days after written notice of such breach; or (c) in the case of Clinithink as the terminating Party, if Licensee (i) fails to pay any Fees when due hereunder and fails to remedy such failure within five business days after written notice thereof (ii) breaches any terms or conditions applicable to Third Party Content or Third Party Software.

**12.4 Other rights of termination:** Either Party shall have the right to terminate this Agreement effective immediately upon written notice to the other if: (a) the other Party is acquired by or otherwise becomes affiliated to any competitor (b) the other Party or any executive officer of it is convicted of any criminal or quasi-criminal offence relating to its business; or (c) governmental restrictions or regulations preclude the sale or distribution of the Software in the Territory.

**12.5 Survive termination:** The provisions of clauses 1.2, 2.6, 5.3, 5.4, 5.5, 5.6, 6.2, 6.3, 6.4, 7, 8, 9, 10, 11, 12.5, 12.6, 12.7, 13 and 14 shall survive termination or expiry of this Agreement. Termination of this Agreement shall not relieve either Party of any amounts due and owing or for liability for any breach of this Agreement prior to termination.

**12.6 Consequences Arising:** Upon the expiry or termination for any reason of this Agreement: (i) all the rights and obligations of the Parties under this Agreement and all licences granted hereunder will cease immediately, and Licensee will immediately cease all use of the Software, the Documentation, and the Trade Marks; and (ii) Licensee will promptly deliver to Clinithink, or at Clinithink's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Software, the Documentation and Clinithink's Confidential Information, including all documents, files and tangible materials (and any partial and complete copies) containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials.

**12.7 No compensation:** Licensee acknowledges that Clinithink has not given it any expectation or assurance that this business relationship will continue for any specified period other than as specified above. The Parties agree that the termination provisions herein, in terms of both notice and default events are reasonable. No Party shall be liable to the other, by reasons of any termination of this Agreement, for compensation, reimbursement or damages on account of the loss of prospective profits on anticipated orders or on account of expenditures, investments or other commitments whatsoever in connection with the business or goodwill of the other Party. To the extent permitted by Law, the Parties hereby waive any rights which may be granted to it by statute or otherwise which are not granted to it by this Agreement.

## **13. GENERAL**

**13.1 Subcontracting and assignment.** Except by Clinithink to an Affiliate, neither Party may assign, subcontract or delegate any of its rights or obligations under this Agreement without prior written consent of the other Party, such consent not to be unreasonably withheld.

**13.2 Relationship.** The Parties are independent organisations, and nothing in this Agreement shall be deemed to place the Parties in the relationship of employer-employee, principal-agent, partners, or joint venturers.

**13.3 Entire Agreement.** This Agreement, including the schedules, states the entire agreement between the Parties and supersedes all prior negotiations, understandings and agreements between the Parties concerning the subject matter. No amendment or modification of this Agreement shall be made except in writing signed by both Parties.

**13.4 Counterparts.** This Agreement may be executed by the Parties in one or more counterparts exchanged by facsimile, e-mail or post.

**13.5 No Waiver.** The failure of either Party to exercise any right or the waiver by either Party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same of any other term of the Agreement.

**13.6 Notice.** Any notice required or permitted to be sent hereunder shall be in writing and shall be sent in a manner permitting evidence of receipt, such as certified mail, e-mail, overnight delivery, or hand delivery. Notice is effective upon receipt. Notices shall be addressed to the addresses set out on the signature page, or such other addresses as may be notified by either Party from time to time.

**13.7 Partial Invalidity.** Should any provision of this Agreement be held to be void, invalid, or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect as though such provisions were deleted.

**13.8 No misrepresentation:** Licensee warrants that it will not knowingly publish or make any deceptive or misleading representations regarding the Software or Clinithink.

**13.9 Force Majeure:** Neither Party shall be liable for any failure or delay in complying with this obligation under this Agreement (other than an obligation to pay money) if the failure or delay arises directly or indirectly from a cause reasonably beyond that Party's control and that Party, on becoming aware of the cause, promptly notifies the other Party in writing of the nature and expected duration of the force majeure event and uses all reasonable endeavors to mitigate the effects of the cause on that Party's obligations under this Agreement. In the event that a force majeure event continues for more than 60 days, the Party not suffering such event may terminate this Agreement by written notice.

**13.10 Insurance:** Each Party shall, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Agreement, including without limitation its indemnity obligations. Upon request from that other Party, a Party shall provide a certificate of currency evidencing such insurance and that it continues to be in full force and effect.

**13.11 Mutual Negotiation and Drafting.** The Parties acknowledge that they have mutually negotiated all provisions of this Agreement.

## **14. DISPUTES AND REMEDIES**

**14.1 Disputes:** This clause applies to any dispute or disagreement arising out of or relating to this Agreement, including any dispute arising out of or relating to the existence, formation, breach or termination of this Agreement or any claim in tort, in equity or pursuant to any statute ("**Dispute**"). A Party must not commence any arbitration or court proceedings relating to a Dispute unless it has complied with the provisions of this clause, except where: (a) a Party seeks urgent injunctive relief; or (b) the Dispute relates to compliance with this clause. A Party claiming that a Dispute has arisen must give written notice to the other Party setting out the nature of the Dispute ("**Dispute Notice**"). Within 5 business days of receipt of a Dispute Notice, the Parties must each nominate a representative who has express authority to resolve the Dispute or to initiate proceedings for resolving the Dispute, and give written notice to each other Party of the identity of that representative. Within 10 business days of the date of a Dispute Notice, the representatives nominated under this clause must meet at Licensee's premises to seek to resolve the Dispute by negotiation. All aspects of the meeting, including the fact of its occurrence, must be kept confidential and all communications between representatives at the meeting are made on a without prejudice basis. If the Parties are unable to resolve the Dispute by negotiation within 20 business days of the date of a Dispute Notice, either Party may refer the Dispute in accordance with the courts of England and Wales.

**14.2 Continued Performance:** The Parties shall continue to perform their obligations under the Agreement as far as possible pending the final settlement of any Dispute.

**14.3 Equitable Relief:** Nothing in this Agreement shall preclude either Party from taking immediate steps to seek urgent equitable relief before a court of competent jurisdiction.

**14.4 Governing law and jurisdiction.** This Agreement shall be governed in all respects by the laws of England and Wales without giving effect to its principles of conflict of laws.

## **15. DEFINITIONS**

**15.1. Definitions:** In this Agreement, capitalised words have the following meaning:

**"Affiliate"** of an entity means any other entity or person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

**“Annual Support Fee”** means the annual amount payable to Clinithink by Licensee for the provision of Support Services.

**“Business Day”** means a day that is not a Saturday, Sunday or public holiday in the Territory.

**“Clinithink Exchange”** means an online service that manages user and access control to the Software and Content as well as licensing of the Software.

**“Clinithink Group”** means Clinithink and its Affiliates, collectively.

**“Clinithink Service Desk”** means the service provided by Clinithink to allow Licensee to report issues so that they are properly recorded and notified to Clinithink.

**“Content”** means the metadata and any related data used by the Software that is developed and maintained by Clinithink

**“Data Protection Laws”** means all effective data protection and privacy laws applicable to the Processing of Personal Data under the Agreement.

**“Data Volume”** means the number and type of documents that constitute the Narrative Content loaded into the Software and which may change from time to time.

**“Documentation”** means product manuals, implementation manuals and operating guides relating to the Software, whether in print or electronic form, provided by Clinithink to Licensee from time to time.

**“Error”** means an error in the Software that causes a failure of the Software to conform substantially to the Documentation.

**“Escalation Personnel”** means the personnel specified in Schedule A to whom any issue may be escalated where a dispute regarding the issue cannot be resolved by the Parties.

**“Expenses”** means all Clinithink expenses for flights, accommodation and living expenses, incurred pursuant to the performance of its obligations under this Agreement.

**“Fees”** means the amounts due and payable under this Agreement.

**“Initial Response Time”** means the elapsed time, during the applicable Support Cover Time, between when Clinithink is formally notified of a Support Request by Licensee and the time that Clinithink acknowledges receipt of the Support Request and advises Licensee of the next action to be taken.

**“Law”** means all applicable laws (including those arising under common law), statutes, codes, rules, regulations, reporting or licensing requirements, ordinances and other pronouncements having the effect of laws of England and Wales, any foreign country or any domestic or foreign state, county, city or other political subdivision, including those promulgated, interpreted or enforced by any governmental authority.

**“Licensee Intellectual Property”** means any and all present and future intellectual property owned by Licensee, including rights conferred by Law or equity in or in relation to copyright, trademarks, service marks, trade names, domain names, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registerable, registered or patentable and Intellectual Property Rights shall be construed accordingly.

**“Major Release”** means a new version of the Software that provides substantial performance improvements, architectural changes, new features or additional functionality, and which is made generally commercially available by Clinithink.

**“Minor Release”** means any release of the Software that is for the purpose of correcting errors, creating minor improvements or minor enhancements of existing features.

**“Minimum Specification”** means the minimum infrastructure that must be commissioned and operated by Licensee to allow the Software to operate normally against a given Data Volume as set out in Schedule B.

**“Narrative Content”** means electronic machine-readable free text about one or more patients authored by physicians, nurses and other clinical professionals during the routine delivery of healthcare and is usually contained in documents including but not limited to discharge summaries, outpatient clinic letters, referral letters, diagnostic reports, progress notes and assessments, which documents are usually

but not always held in healthcare information systems operated by the Licensee or third parties acting on its behalf.

**“Personal Data”** means information relating to an identified or identifiable natural person, like name, postal address, e-mail address, IP address or telephone number.

**“Services”** means the Support Services to be provided to the user by Clinithink as specified in these terms and conditions.

**“Service Levels”** means the service level response times specified in Schedule A to this Agreement.

**“Severity Level”** means the severity level for each Support Request received from Licensee, which shall be mutually agreed upon by Clinithink and Licensee. In the event that the Parties are unable to agree the severity level of an Error, resolution would be achieved using the Support Escalation Procedure specified on Schedule A.

**“Software”** means CLiX unlock together with all Updates provided by Clinithink under this Agreement.

**“Software Fix”** means a modification or addition to the Software source code that corrects an Error.

**“Support Escalation Procedure”** means the mechanism specified in Schedule A to enable Support Service issues to be escalated to Licensee Escalation Personnel and Clinithink Escalation Personnel where appropriate.

**“Support Procedures”** means the reporting process specified in Schedule A.

**“Support Request”** means the logging of a request for Support Services by Licensee Help Desk.

**“Support Services”** means technical support services to be provided by Clinithink to Licensee pursuant to clause 4 and as set out in greater detail in Schedule A.

**“Support Service Cover Times”** means the period during which Clinithink will provide the User Support Service to Licensee.

**“Target Resolution Time”** means the target elapsed time, during the applicable Support Service Cover Time, between when Clinithink is notified of a Support Request by Licensee in accordance with this Agreement and the time a final position is agreed between Clinithink and Licensee, where a solution (which may be remedying the fault or providing a work-around) has been reached or no further action can be taken under the terms of this Agreement. This time is a target only, and Clinithink does not guarantee that any particular Support Request will be resolved within the specified time period.

**“Tax”** means any national, state, local or federal taxes, levies, duties or fees that may be applicable to the Software or the performance, receipt, or use of Services.

**“Term”** means the term of a contractual agreement executed by the Parties.

**“Third Party Content”** means third party content that is bundled with, embedded in or required for the operation of the Software.

**“Third Party Software”** means any third party software, including open source software, which is bundled with, embedded in or required for the operation of the Software.

**“Update”** means a Major Release and/or a Minor Release made available to Licensee under this Agreement.

**“Update Frequency”** means the intervals, unless otherwise agreed by the Parties, at which Clinithink will provide Licensee with information regarding the resolution of a reported Error during the Support Service Cover Time.

**15.2 Interpretation:** In this Agreement, unless the contrary intention appears: (a) headings are for ease of reference only and do not affect the meaning of this Agreement; (b) the singular includes the plural and vice versa and words importing a gender include other genders; (c) a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed; and (d) a reference to a Party includes its executors, administrators, successors and permitted assigns.

## SCHEDULE A

### SUPPORT

#### A1. SUPPORT SERVICE COVER TIMES

A1.1 Clinithink will provide the Support Service to the Licensee during the following periods.

A1.1.1 Support Services will be provided Monday to Friday, 9am to 5:30pm GMT, excluding public holidays in the Territory.

#### A2. SUPPORT PROCEDURES

A2.1 At an appropriate point in time, typically at the end of the Customer Enablement Package, Clinithink will provide the Licensee with access to its customer portal for incident logging and tracking. In the event that the Licensee requires support from Clinithink, the Licensee will notify the Clinithink Service Desk of an identified Error and such notification is:

- by telephone if the matter is considered a Severity Level 1 Error; and
- by use of the customer portal if the matter is a severity level 2, 3, 4 or 5 Error.

A2.2 Licensee must provide Clinithink, at the time of raising each Support Request, with the information that Clinithink reasonably requires in order to reproduce the operating conditions similar to those present when the Error was discovered. The list of required information is documented in the Clinithink Support Engagement Process document and includes, for example:

- Defined minimum dataset including details of the system affected by the Error.
- Replication steps and/or a documented example of the Error where reasonably practicable.
- a listing of configuration settings, logs and other output data from the CLIX ENRICH installation.

A2.3 Clinithink will manage Support Requests by:

- logging, where access to the customer portal is unavailable, and routing of Support Requests.
- providing the Licensee with a unique reference number for each Support Request.
- monitoring the Severity Level status.
- progressing the issue from initiation to resolution.

#### A3. SERVICE LEVELS

A3.1 Clinithink will provide Support Services in respect of the Software in accordance with the following Service Levels:

A3.1.1 Service Levels

| Severity Level | Initial Response Time | Target Resolution Time            | Update Frequency |
|----------------|-----------------------|-----------------------------------|------------------|
| 1              | 1 hour                | 1 Business Day                    | 4 hours          |
| 2              | 4 hours               | 2 Business Days                   | Daily            |
| 3              | 1 Business Day        | As part of the next Minor Release | N/A              |
| 4              | 2 Business Days       | Future Update                     | N/A              |
| 5              | 2 Business Days       | By Agreement                      | N/A              |

| Severity Level | Definition                                                                                         |
|----------------|----------------------------------------------------------------------------------------------------|
| 1              | Total Software failure.                                                                            |
| 2              | Substantial portion of the Software inoperable, significantly affecting workflow in critical areas |
| 3              | Part of the Software fails but impact is minor or workaround available.                            |
| 4              | A minor Error with minimal business impact.                                                        |
| 5              | Requests for advice, enquiry, change request or enhancement to the Software.                       |

#### **A4. SUPPORT ESCALATION PROCEDURE**

A4.1 In the event of an issue arising during the provision of the Support Services both parties will use reasonable endeavours to resolve the problem at that level.

A4.2 At any point, at the discretion of the Licensee or Clinithink personnel, the issue may be escalated to the attention of more senior personnel in either organization, in accordance with the following order if;

- either party feels it is failing to receive a satisfactory response.
- either party feels the issue requires more senior attention, because of the nature of the issue.

| Escalation Level | Licensee Escalation Personnel | Clinithink Escalation Personnel |
|------------------|-------------------------------|---------------------------------|
| Level One        | XXXXX                         | Support Team Lead               |
| Level Two        | XXXXX                         | Program Director                |
| Level Three      | XXXXX                         | COO                             |

## SCHEDULE B

### RECOMMENDED TECHNICAL ENVIRONMENT

#### B1. HARDWARE

As a minimum, two separate environments will need to be setup and installed:

- Test/Training
- Production

The quantity and size of each of these servers will be determined and recommended based on the Licensee's specific data size, volume and use case. These servers may be either virtual or physical. Additional worker servers can be added to the infrastructure to support increased job processing if required. These need to meet the Minimum Spec but only require minimal storage capacity.

##### B1.1 Minimum Specs:

- 8 CPU/Core
- 16 GB RAM

##### B1.2 Storage Requirements

An SSD drive is required for optimum performance. The storage approximations below assume an average document size of 3kb. Expandable storage is preferred to accommodate any future growth.

| Number of Documents | Approximate Storage |
|---------------------|---------------------|
| 1M                  | 1 TB                |
| 5M                  | 2 TB                |
| 10M                 | 3 TB                |

#### B2. EXTERNAL SOFTWARE

There are no external software dependencies other than the operating system.

A signed SSL certificate from a trusted certificate provider is required for secure internal Web access.

Microsoft Excel should be loaded on the same server as the Software if Clinithink runs the project for the Licensee. OpenOffice with *Calc* can also be used.

#### B3. FIREWALL

The Software has several ports that are required to be opened on the Licensee's enterprise firewall to support an instance of the Software. These ports facilitate connectivity to Clinithink Exchange (required to login and use the Software) and a method for uploading to and downloading from Clinithink's SFTP site. Depending on the network configuration within Licensee's organization other ports are necessary for database access as part of standard operation of the Software.

Ports for connecting to Clinithink Exchange: 443 (standard SSL)

For connecting to the Clinithink SFTP server use either:

Port 2222 with FileZilla and SFTP

Or

Port 9443 with HTTPS in your web browser, e.g., <https://ftp.clinithink.com:9443>