



## SOFTWARE LICENSE AND HOSTING AGREEMENT

### Revision History:

5/6/2019: Added Azure Hosting Agreement content

11/21/2023: Revised Section 3(b), 5(a), 5(d)(v), and Exhibit A.

**ATTENTION:** Please read this Software License and Hosting Agreement (the “Agreement”) carefully which sets forth the legally binding terms of use of the CareTracker, Inc. software known as “Amazing Charts EHR Local” (the “Software”) and/or hosting services by CareTracker, Inc. known as “Amazing Charts EHR Hosted” (the “Service”) including limitations on representations, warranties, remedies and liabilities.

THIS IS A LEGAL AGREEMENT BETWEEN YOU, THE END USER, OR ON BEHALF OF ALL END USERS IN YOUR ORGANIZATION (COLLECTIVELY THE “CUSTOMER”, “YOU” OR “YOUR”) AND CARETRACKER, INC. (“LICENSOR”). YOUR ACCEPTANCE IS ON BEHALF OF ANY CORPORATE ENTITY THAT EMPLOYS YOU OR WHICH YOU REPRESENT. IF YOU ARE AN EMPLOYEE, CONTRACTOR, OR OTHERWISE USING THE SOFTWARE AND/OR SERVICE ON BEHALF OF AN ORGANIZATION OR ANY OTHER THIRD PARTY, YOU REPRESENT AND WARRANT TO LICENSOR THAT:

- A. YOU ARE THE AGE OF MAJORITY IN YOUR JURISDICTION;
- B. YOU HAVE ALL REQUISITE CAPACITY, RIGHT, POWER AND AUTHORITY TO ACCEPT THIS AGREEMENT ON BEHALF OF SUCH ENTITY; AND
- C. SUCH ENTITY SHALL BE IRREVOCABLY BOUND BY AND SHALL COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, PLEASE DO NOT SIGN ON, ACCESS OR IN ANY WAY USE THE SOFTWARE OR THE SERVICE. IF YOU OR ANY USERS ON YOUR BEHALF, SIGN ON, ACCESS OR USE THE SOFTWARE OR SERVICE IN ANY WAY, YOU WILL BE CONSIDERED TO HAVE ACCEPTED AND AGREED TO THESE TERMS AND CONDITIONS.

### 1. Definitions

- a. Add-On. “Add-On” means additional services or features related to the Software that may be purchased separately as an upgrade.
- b. Customer Client Portal. “Customer Client Portal” means <https://clientportal.amazingcharts.com/>
- c. Data. “Data” means all data that is provided by or on behalf of Customer to Licensor and all other content transmitted, posted, received, used or created through Customer’s licensed use of the Services. Data does not include Support Data.
- d. Documentation. “Documentation” means any online or printed user manuals or functional specifications that are provided to Customer by Licensor, and any derivative works of the foregoing, as they may be updated from time to time by Licensor in connection with the release of Updates or Add-ons.
- e. Error. “Error” means any reproducible material failure of the Software to function in accordance with its Documentation.
- f. Force Majeure Event. “Force Majeure Event” means any act or event that (a) prevents a party (the “Nonperforming Party”) from performing its obligations or satisfying a condition to the other party’s (the “Performing Party”) obligations under this agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. “Force Majeure Event” does not include economic hardship, changes in market conditions, and insufficiency of funds.
- g. Microsoft. “Microsoft” means Microsoft® Corporation. All references to Licensor’s service providers in this Agreement shall include Microsoft.
- h. On-Premise License. “On-Premise License” means subject to payment of applicable On-Premise License fees to Licensor, the license rights granted under Section 2(b) shall include the right to install and use the Software on Customer’s premise as further described in Section 2(d).
- i. On-Premise License Fees. “On Premise License Fees” shall have the meaning set out in Section 4(a).
- j. OST. “OST” shall have the meaning set out in Exhibit B.
- k. Personal Information. “Personal Information” means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- l. Services or ACitC. “Services” or “Amazing Charts in the Cloud” or “Amazing Charts EHR Hosted” means the web-based services to be provided by or behalf of Licensor under

this Agreement that includes hosting, monitoring, operating, and maintaining the Software at a site owned or controlled by Licensor or its service providers and the delivery of exclusive access via Customer's Client Portal to Customer to use the Software granted pursuant to Section 2 hereof. The Services shall also include storing all data entered and maintained by Users through use of the Software.

- m. Service Fees. "Service Fees" shall have the meaning set out in Section 4(a).
- n. Service Period. "Service Period" means the monthly or annual subscription term purchased by Customer for the Services.
- o. Software. "Software" means the Amazing Charts software and proprietary content, including any Add-Ons and Updates relating thereto that may be provided hereunder.
- p. Support Data. "Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by or on behalf of Customer (or that Customer authorizes Licensor or Microsoft to obtain from the Services) through the provision of any support services for the Services. Personal Information provided to Microsoft by, or on behalf of, Customer in connection with the provision of technical support is also Support Data.
- q. Support Fees. "Support Fees" shall have the meaning set out in Section 4(a).
- r. Support Services. "Support Services" means the support and maintenance services described in Section 3.
- s. Third Party Materials. "Third Party Materials" means materials and information, in any form or medium, that are not proprietary to Licensor, including any third party: (a) documents, data, content or specifications; (b) open source components or other software, hardware or other products, facilities, equipment or devices; (c) telecommunications, energy/utility transportation, managed facilities and services that Licensor or its service providers has licensed or purchased and provided access to or otherwise made available to Customer as part of the Services and (d) accessories, components, parts or features of any of the foregoing.
- t. Update. "Update" means any patch, bug fix, release, version, modification or successor to the Software that Licensor makes generally available to its customers that purchased Support Services.
- u. User. "User" means a named individual specified in a purchase order issued by the Customer who is an employee of Customer and (a) in the case of a Customer who has purchased the Services, to whom Customer has granted access to use the Services on Customer's behalf; or (b) in the case of a Customer who licensed the Software solely for use on its own premises, to whom Customer has authorized to use the Software on Customer's behalf; in either case regardless of whether or not the User actually accesses the Services or the Software, as applicable.

## 2. SaaS Services; Software

- a. This Agreement is updated from time to time and the most up-to-date version is posted at [www.amazingcharts.com/EULA](http://www.amazingcharts.com/EULA). Each time you use the Software and/or Services you are agreeing to abide by the latest version of this EULA as posted at the link above, until terminated by you or CareTracker, Inc. in accordance with the terms of this Agreement.
- b. License Grant. Subject to the terms and conditions of this Agreement, including without limitation, payment of the On-Premise License Fees or Services Fees, Licensor hereby grants to Customer a personal, non-exclusive, non-sublicensable and non-transferable, limited license, on a perpetual basis in the

case of an On-Premise License and solely during the Term in the case of the Services, to use the Software and Documentation solely for the benefit of Customer in the ordinary course of its internal business operations.

- c. Services. Subject to the Customer's compliance with the terms of this Agreement, including without limitation, payment by Customer of the Services Fees, during the Service Period Licensor shall provide the Services and authorizes Customer to allow up to the maximum number of Users purchased by Customer, to access and use the Services solely for Customer's internal business purposes. Customer remains solely liable for the actions of its Users. The following terms and conditions of this Agreement apply solely to those Customers who have purchased "Amazing Charts HER Hosted": Sections 1(i) (Definition of "OST"), 1(g) (Definition of "Microsoft"), the Microsoft security measures and practices as well as the Microsoft terms and conditions set out in Exhibit B, and the terms of Section 6(e) (Data Location).
- d. Scope of On-Premise Licensed Use. If Customer has obtained an On-Premise License, Customer may install, use and run the Software for up to the number of Users as applicable, for which Customer has paid. Customer may make one copy of the Software solely for testing, disaster recovery or archival purposes. Any copy of the Software made by Customer: (i) will remain the exclusive property of Licensor; (ii) be subject to the terms and conditions of this Agreement; and (iii) must include all copyright or other intellectual property rights notices contained in the original.
- e. Software and Services Use Restrictions. Except as this Agreement expressly permits, Customer shall not, and shall not permit any other person to
  - i. copy the Software or Services, in whole or in part;
  - ii. modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Software or Services;
  - iii. give away, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software or Services to any other person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service except as expressly permitted by this Agreement;
  - iv. reverse engineer, disassemble, decompile, translate, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code relating to all or any part of the Software or Services, or attempt to otherwise convert or alter the Software or Services into human readable code, except to the extent applicable law expressly prohibits the foregoing;
  - v. bypass or breach any security device or protection used for or contained in the Services, Software or Documentation;
  - vi. remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Software, the Services or Documentation;
  - vii. use the Software or Services in any manner that violates any applicable law or that is contrary to the Documentation;
  - viii. provide the results of using the Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis of the Software or Services;
  - ix. use the Software or Services for purposes of: (i)

developing, using or providing a competing software product or service; (ii) copying any ideas, features, functionality or graphics of the Software; or (iii) knowingly allowing access to any competitor of Licensor or any other purpose that is to Licensor's detriment or commercial disadvantage;

- x. Copy, frame or mirror any part of the Services, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes.
  - xi. Allow access to the Services to any third party, other than duly authorized employees of Customer authorized pursuant to Section 2 hereunder.
  - xii. transmit, upload, post, distribute, store or otherwise publish, through use of the Services, any data, material or information that: (i) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information; (ii) is threatening, defamatory, libelous, harassing, profane, is an invasion of privacy, offensive, obscene or harmful; (iii) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (iv) violates any law, statute, ordinance or regulation; or (v) includes unsolicited bulk e-mails, advertisements or solicitations;
  - xiii. interfere with, attempt to gain unauthorized access to, or disrupt any device, network, account, data, the Services, or networks connected to the system used to provide the Services or use the Services in any way that would provide harm to it or impair anyone else's use of it; or
  - xiv. use the Services in any situation where failure of the Services could lead to death or serious bodily harm of any person.
- f. Suspension of Access to Services. In addition to its termination rights under Section 5, Licensor may restrict or limit Customer's access to the Services if Licensor reasonably determines that Customer has engaged in or is likely to engage in (whether knowingly or unknowingly) any prohibited conduct described herein and such conduct, in Licensor's reasonable opinion poses any risk of any kind or nature to Licensor or its service providers' network, business or other customers. As promptly as practicable after becoming aware of Customer's engagement in any such prohibited conduct, Licensor will use reasonable efforts to notify Customer of the restriction or limitation to Customer's access to the Services and will promptly restore Customer's access after Licensor has had reasonable assurance that such conduct has been permanently discontinued. In addition to and without limiting the foregoing, Licensor reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Customer in connection with its use of the Services that Licensor determines, in its reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to Licensor or its service provider's network, business or other customers.
- g. Intended Use. Customer agrees that the Software and Services are intended to serve as a rapidly accessible, concise initial resource and not as complete reference resource. The Software and Services do not include information concerning every therapeutic agent, diagnosis, laboratory, or diagnostic test or procedure available. The Software and Services are clinically-oriented and intended to be used only by medically-licensed providers who are physicians and/or other competent and duly-licensed healthcare professionals who will rely on

their discretion and judgment in medical diagnosis and treatment. Neither Licensor nor related interfaced third party providers, directly or indirectly practice medicine or dispense medical services and, as such, assume no liability for data or functions contained in the Software or services, or their use. Customer assumes full responsibility for the appropriate use of medical information contained in the Software and Services and agrees to hold Licensor and its third party providers harmless from any and all third party claims or actions arising from your use of the Software or Services.

- h. Additional Acceptance Criteria for Services. Licensor reserves the right to have additional User acceptance criteria that may be applied to Users prior to their ability to have access to the Services. Licensor shall inform Customer of such criteria but Licensor shall be free to implement such criteria at any time without prior written warning to the Customer and/or to Users. Where Users do not accept such and/or agree to such criteria, Licensor reserves its rights not to grant to such Users access to the Services. Licensor reserves its rights to restrict access to the Services to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Services.
- i. Third Party Materials (Services). Customer acknowledges that in order to provide the Services Licensor may be required to purchase access to Third Party Materials. Customer further acknowledges that the availability of such Third Party Materials is based solely on the best information available to Licensor and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Materials are determined by Licensor to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of Licensor's control, then (a) Licensor shall not be in breach hereof or otherwise liable for any failure or inability to provide the Services as a result of such unavailability of any Third Party Materials; and (b) Licensor may in its sole discretion modify, change or replace the applicable Third Party Materials and otherwise attempt to mitigate the impact of the such unavailability of Third Party Materials, subject to the right to revise the Services Fees.
- j. Passwords. Customer is solely responsible for maintaining the secrecy and security of all usernames and passwords granted to it, for the security of its information systems used to access the Software and Services, and for its Users' compliance with the terms of this Agreement. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's, as well as any obligation that may result from such use. Customer agrees to notify Licensor promptly in writing if it believes that a password has been stolen or might otherwise be misused, of any unauthorized use of any password or user ID or any other breach of security suspected by Customer related to the Services.
- k. Services - Users. The Customer is responsible for: (i) the actions of Users using the Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Licensor from time to time for Users; and (iii) informing Licensor of any information about Users' actions that may affect either the Services or third party data contained in or used by the Services, or Licensor's ability to provide the Services as contemplated by this Agreement.

1. Compliance with Laws. Customer represents and warrants to Licensor that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including, but not limited to, those laws regarding restrictions on exports (including the U.S. Export Administration Regulations end-user, end use and destination restrictions by Canadian, U.S. and other governments related to the Licensor and its service provider's products, services and technologies), defamation, libel, harm to reputation, privacy, security, data protection, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability. Customer is responsible for determining whether the Services are appropriate for storage and processing of information subject to any specific law or regulation and for using the Service in a manner consistent with Customer's regulatory and legal obligations. Customer is responsible for responding to any request from a third party regarding Customer's use of the Service, such as a request to take down content under the U.S. Digital Millennium Copyright Act or other applicable laws.
- m. Services - Data Security. Customer acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Customer's and its Users' (as well as Licensor's and its service providers') computer systems, networks and any and all information stored therein. Customer is solely responsible for making an independent determination as to whether the technical and organizational measures for the Services meet Customer's requirements, including all of its security obligations under applicable data protection laws and regulations. Customer acknowledges and agrees that (taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of the processing of its Personal Information as well as the risks to individuals) the security practices and policies implemented by Licensor and its service providers provide a level of security appropriate to the risk with respect to its Personal Information. Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls, including without limitation, ensuring that (i) Customer's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to Licensor's servers; and (iii) Data is encrypted. Some content may be subject to governmental regulations or may require security measures beyond those specified by Licensor for an offering. Customer will not input or provide such content unless Licensor has first agreed in writing to implement additional required security measures. Details regarding Licensor's service provider's security measures and practices are available at the link set out in Exhibit B to this Agreement.
- n. Third Party Materials. Customer agrees to comply with and be bound by the additional terms and conditions applicable to the Third Party Materials set out in Exhibit B to this Agreement.
- o. CPT Codes. The CPT five-digit codes and descriptions are the copyrighted property of the American Medical Association ("AMA") and are also subject to the restrictions set forth in Section 2(e). The CPT codes are licensed to Licensor by the AMA and Customer's continued use and access to those codes within the Software is contingent upon Licensor's continued licensing arrangement with the AMA.
- p. HIPAA. The business associate addendum attached hereto as Exhibit A is incorporated herein by reference.
3. **Maintenance and Support**
- a. Generally. Provided that Customer is current with respect to payment of Support Fees, Licensor shall provide the Support Services set forth in this Section 3. The first year of support is included with the purchase of a license for the Software after which it must be purchased separately and it not included with the purchase of a license. Furthermore, Support Services are required for anyone who provides patient care. Failure to maintain Support Services for all providers may result in termination of the applicable Software license or Service.
- b. Updates and Add-ons. Licensor shall provide Customer any Updates of the Software at no charge unless the Update includes Add-Ons for which additional charges apply. In the event a new Update is released, Customer shall ensure that the Software version in use is not older than 12 months from the date of its release. Customer must be current on its payment of Support Fees to be eligible to purchase and maintain Add-Ons including but not limited to Amazing Charts in the Cloud (ACitC), Amazing Reminders, Practice Management, and HL7 interface connections. Customer acknowledges that Licensor's Support Services shall be limited to the current version of the Software and the immediately prior version (meaning the numerical designation before the decimal point, i.e., 11, 12, etc.) of the Software.
- c. Error Correction. Licensor shall use commercially reasonable efforts to correct all Errors or to provide a reasonable workaround. Customer shall provide such access, information, and support as Licensor may reasonably require in the process of resolving any Error. This paragraph provides Customer's sole and exclusive remedy for any Errors in the Software or Services.
- d. Other Support Generally. To the extent Licensor agrees to provide support services not specified herein, Customer shall pay Licensor its then current standard fees, plus expenses, for such services. Licensor is not obligated to provide services for (i) development of new features, or (ii) any scope change requested by Customer and not agreed by Licensor in writing.
- e. Support Center. Licensor shall make its client support center available for support requests during Licensor's normal business hours.
- f. Support Exclusions. Licensor is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support was created in whole or in part by:

- i. the acts, omissions, negligence or willful misconduct of Customer, including any unauthorized modifications of the Software or its operating environment;
- ii. any breach of Section 2(e);

LICENSOR DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. WE SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND LICENSOR SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION.

- iii. any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity;
- iv. Customer's use of the Software or Services other than in accordance with the Documentation; or
- v. any Error that would have been remedied if Customer had installed an Update in accordance with Section 3(a).

#### 4. Fees and Payment Terms

- a. Fees. Customer shall pay Licensor its then current On Premise License Fees, Services Fees, and Support Fees and other applicable fees as set forth at <http://amazingcharts.com/ehr-solutions/transparent-pricing/> or elsewhere on the Amazing Charts web site (collectively, the "Fees"). These Fees are subject to change, and any changes will be posted to the web site and take effect immediately.
- b. Payment Terms. Customer is required to keep a valid credit/debit card on file for the Term of this Agreement. All one-time and recurring charges must be paid via credit/debit card and any exceptions to this policy can be made at the sole discretion of the Licensor. Customer agrees that recurring fees (e.g. Support Fees, ACitC Services Fees) will be automatically billed to their credit card on file for these charges for the duration of the Service Period. If there is a pricing increase the Licensor will provide prior notice before charging a higher price automatically. Licensor shall charge Customer in advance for all recurring charges. In cases when the Licensor permits the Customer to use an alternative payment method, Customer must remit payment within 30 days of invoice date. If Customer is delinquent in payment of any portion of an invoice that it has not disputed in good faith, Licensor may, in addition to other remedies it may have, including termination, suspend access to the Software or Services. Customer agrees to pay late fees on delinquent amounts at the rate of 1½% per month (or, if lower, the maximum amount permitted by law) that a payment is overdue. If Licensor takes any legal action to collect on undisputed delinquent amounts, Customer shall reimburse Licensor for its costs incurred in pursuing such action, including but not limited to legal fees and court costs. Licensor reserves the right to charge a fee of no more than \$50 if Customer seeks remuneration indirectly through its bank unless Licensor fails to respond to contested billing inquiry within 5 business days.
- c. Taxes. Customer shall pay or shall reimburse Licensor for all sales taxes and other tax, however characterized by the taxing authority, based upon the Fees or other charges under this Agreement or otherwise incurred on account of Customer's use of the Software and/or Services, except for any taxes based upon Licensor's net income. If Customer is a tax-exempt organization, then, upon Licensor's receipt of proof of such status, then Licensor shall not charge Customer for any taxes from which Customer is exempt.

#### 5. Term and Termination

- a. Term. Unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year (the "Initial Term"). After the Initial Term, this Agreement shall be automatically renewed for successive one (1) year periods (each a "Renewal Term"), unless either party refuses such renewal by written notice at least ninety (90) days before the end of the current term. Termination will not obligate Licensor to issue any refunds.
- b. Cancellation of Specific Products or Services. Either party may also cancel individual products or services without terminating the Agreement by providing written notice to

the other party of the products or services to be cancelled at least thirty (30) days prior to the next billing date for that product or service.

- i. Cancelling Amazing Charts Backup gives Licensor permission to delete the Licensor maintained external database backup immediately. Should Customer require assistance retrieving its backup, the Licensor must be contacted prior to termination.
- ii. Cancelling the Services gives Licensor permission to disable all ACitC Users associated with Customer's account and delete all Data from the hosted database within 30 days of termination. Should Customer require a copy of its database, a written request must be submitted via email to [support@amazingcharts.com](mailto:support@amazingcharts.com) within 30 days of cancellation.
- c. Termination for Cause. Either party can terminate this Agreement for cause upon written notice to the other party:
  - i. if the other party has committed any material breach of its obligations under this Agreement and has failed to cure such breach within 20 days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 20 days, has failed to begin and continue to work diligently and in good faith to cure such breach);
  - ii. if Customer has breached its obligations of confidentiality or any intellectual property right or proprietary right of Licensor or its service providers, Licensor may terminate this Agreement effective immediately;
  - iii. upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement; or
  - iv. upon written notice to Licensor if the revised terms and conditions of the Software License and Hosting Agreement as posted by Licensor in accordance with Section 11(n) materially affects Customer's rights in connection with the use of the Software and/or Service, provided that any access or use of the Software or Services by Customer or its Users following the date of posting such changes shall be deemed a waiver by Customer of this right.
- d. Obligations on Termination. Upon termination or expiration of this Agreement for any reason:
  - i. All rights granted to Customer in this Agreement shall immediately terminate and Licensor will immediately cease to perform or provide the Services.
  - ii. Customer shall return to Licensor or at Licensor's option purge or destroy all copies of any Confidential Information of Licensor in its possession or under its control (except as required under any statute or legislation related to retention requirements), and provide a duly authorized certificate of an officer of Customer confirming same within thirty (30) days.
  - iii. Except as otherwise provided in this Agreement, termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
  - iv. Customer will pay all amounts due under this Agreement up to and through the date of termination and all costs reasonably incurred in collecting the amounts due to Licensor (including court costs, attorney fees, and repossession charges to the extent not prohibited by law).
  - v. Within 30 days of expiration or termination of this Agreement, Customer may request (via email to [support@amazingcharts.com](mailto:support@amazingcharts.com)) that Licensor provide to

Customer the Customer Data in standard industry format (XML or equivalent). Licensor will provide extracts of Customer's Data and assistance to export such data or information at Licensor's then-current rates for professional services. Licensor shall delete or destroy all Customer Data (including all PHI and personally identifiable information) in its possession or control after 30 days from the termination or expiration of this Agreement, except for any data required to be retained by Licensor under the law applicable to Licensor, or data contained in a backup storage for disaster recovery purposes which may be held for up to ninety (90) days pending routine erasure cycles, and log files held for security reasons which may be retained for up to twelve months.

- e. Reinstatement of Maintenance. If Customer elects to discontinue maintenance and support for the Software and subsequently elects to reinstate the maintenance and support services, then Customer shall pay Licensor all maintenance and support fees that Customer would have paid had Customer never discontinued receiving maintenance and support services.

## 6. Data

- a. Licensor will handle patient data that is Protected Health Information under HIPAA in accordance with the terms of the BAA attached to this Agreement as Exhibit A. However, provided that we implement appropriate de-identification criteria in accordance with the standards of de-identification of protected health information set forth in 45 C.F.R. §164.514(b) ("De-identified Information"), you acknowledge and agree that De-identified Information is not Protected Health Information (as defined in the applicable HIPAA regulations), and that Licensor may use such De-identified Information for any lawful purpose.
- b. You acknowledge and agree that CareTracker, Inc. is the owner of all De-identified Information and that CareTracker, Inc. may use it, and may authorize through sale, license or other means any third party to use it, for any lawful purpose. CareTracker, Inc. will make all reasonable efforts to exclude certain User's De-identified Information from such legally permissible disclosures if Customer submits a written request via email to [support@amazingcharts.com](mailto:support@amazingcharts.com).
- c. Ownership. As between Licensor and Customer, all Data will remain the sole and exclusive property of Customer. Customer is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness and right to view and use the Data. Subject to the terms and conditions of the Agreement, Customer grants to Licensor, its service providers and licensors a world-wide, non-exclusive, royalty-free license to access the Data and Support Data for the purpose of performing the Services. Except as specified in this Agreement, Licensor may not access the Data for any other purpose without the express written consent of Customer. Access to Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law.
- d. Data Representations and Warranties. The Customer represents and warrants to Licensor that:
  - i. Data, Support Data, and Personal Information, that is either provided to or acquired by Licensor and/or its service providers from Customer is owned exclusively by Customer and that the Customer has full right and title to provide the Data, Support Data and Personal Information to Licensor and its service providers;

- ii. Data, Support Data and Personal Information, that is either provided to or acquired by Licensor is subject to a privacy policy in effect as of the Effective Date and Customer's customers or other third party owners of the Data or Personal Information have provided to Customer their written consent for its collection, use and storage by Licensor and its third-party service providers in accordance with this Agreement and in any jurisdiction in North America;
- iii. Customer complies with all applicable privacy legislation as of the Effective Date in the performance of its obligations hereunder in respect of any Data, Support Data and Personal Information collected, used, transferred, created or disclosed pursuant to this Agreement; and
- iv. Customer will not provide Licensor or its service providers with data or Personal Information of any kind for which Licensor or its service providers either have no need or do not have the right to collect, use and store under the terms of this Agreement.

- e. AmazingCharts EHR Hosted Data Location. For the Amazing Charts EHR Hosted product, Licensor's third party service provider is Microsoft and Licensor uses Microsoft's Azure® online services. Except as described in the OST, Data and Personal Information collected under this Agreement as part of the Amazing Charts EHR Hosted offering may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. Support Data collected under this Agreement may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. Licensor shall use commercially reasonable efforts to work with Microsoft personnel to configure the Services to store Data on Virtual Machines using Locally-Redundant Storage (LRS).
- f. Access to Data; Subcontracting. Subject to Section 2(f), at all times during the Term, Customer will have the ability to access, extract and delete Data stored in the Services. Licensor's service provider may engage third parties to provide certain services on its behalf and Customer consents to the engagement of such third parties as subprocessors, which shall constitute Customer's prior written consent to the subcontracting by Licensor and its service provider of the processing of Data and Personal Information if such consent is required under applicable law.

## 7. Indemnity

- a. Customer is solely responsible for its Data, its use, and its Users' use, of the Services in any way, and all legal liability arising out of or relating thereto. Customer shall defend, indemnify and hold Licensor and its third party service providers, if applicable, and each of their respective officers, directors, employees and agents (the "Indemnities") harmless from and against any and all losses, costs, damages and expenses (including reasonable attorney's fees) that the Indemnities may suffer in connection with any demands, claims, actions, suits or proceedings arising out of or in connection with (i) the use of the Services including but not limited to any Third Party Components by Customer or its Users; (ii) any breach by Customer or its Users of this Agreement; or (iii) Customer's Data and Support Data, including but not limited to any third party claims that the inclusion, use, reference, incorporation of or linking to any third party materials or the Customer's Data and/or Support Data violates such third party's copyright and/or other intellectual property, privacy or other rights, or that such use



is illegal.

## 8. Confidentiality

- a. Definition of Confidential Information. “Confidential Information” means any and all tangible and intangible information (whether written or otherwise recorded or oral) of a party that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (B) the disclosing party designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation: (i) nonpublic information relating to a party’s technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (ii) third-party information that the disclosing party is obligated to keep confidential; (iii) the material terms and conditions of this agreement; and (iv) any nonpublic information relating to any activities conducted hereunder. Confidential Information of Licensor shall include, without limitation, the Software, any information regarding APIs for the Software, the Documentation, and any information with respect to the Services that Licensor or its service providers may disclose to Customer from time to time, including without limitation, all information relating to the security of its facilities, computer systems and products. Confidential Information excludes Data and Support Data.
- b. Exclusions. Notwithstanding the above, the term “Confidential Information” does not include any information that is either:
  - i. readily discernible from publicly-available products or literature;
  - ii. is rightfully received from a third party who is not under an obligation of confidentiality;
  - iii. was previously known to the receiving party as evidenced by its written records; or
  - iv. approved for disclosure by prior written permission of an executive officer of the disclosing party.
- c. Use of Confidential Information. Each party shall only use Confidential Information furnished to it hereunder in furtherance of the activities contemplated by this Agreement, and it shall not disclose the Confidential Information to any other persons, other than its employees, service providers and representatives who have a need to know such information for the purpose of performance under this Agreement and exercising the rights granted under this Agreement and who are bound by non-disclosure obligations at least as protective of the other party’s Confidential Information as this Agreement, without the disclosing party’s express written authorization. The parties agree to hold the other party’s Confidential Information in confidence and to take all reasonable steps to protect the Confidential Information of the other party, which shall be no less than those steps it takes to protect its own confidential and proprietary information.
- d. Required Disclosures. A receiving party may disclose Confidential Information of the disclosing party as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow it to seek a protective order or other appropriate remedy (except to the

extent compliance with the foregoing would cause the receiving party to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed.

- e. Return of Information. If a disclosing party so requests at any time, the receiving party shall return promptly all copies, extracts, or other reproductions in whole or in part of the Confidential Information in its possession.
- f. Survival. The parties hereto covenant and agree that this Section 7 will survive the expiration, termination, or cancellation of this Agreement for a period of two years, except for Confidential Information constituting a trade secret, with respect to which this Section will survive the expiration, termination, or cancellation of this Agreement for so long as such Confidential Information remains a trade secret.

## 9. Ownership; Feedback

- a. Licensor, its service providers and licensors are and shall at all times remain the owner of all copyright, trademarks, trade secrets, patents and any other intellectual property rights in and to the Services, Software, and related documentation, materials, logos, names and other support materials provided pursuant to the terms of this Agreement. Customer shall acquire no right whatsoever to all or any part of the Services, Software or underlying software except the limited right to access and use the Services (where applicable) in accordance with the terms of this Agreement and Licensor, its service providers and its licensors reserve all rights not expressly granted to Customer. Customer must fully reproduce any copyright or other notice marked on any part of the documentation or other materials on all authorized copies and must not alter or remove any such copyright or other notice. Customer hereby grants to Licensor a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services, Software, and underlying software any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Services or Software.

## 10. No Warranties; Limitation of Liability.

- a. Disclaimer of Warranties. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, THE SERVICES, THE SUPPORT SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER “AS-IS” AND THERE ARE NO OTHER REPRESENTATIONS, CONDITIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, THE SERVICES OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.

LICENSOR, ITS LICENSORS AND SERVICE PROVIDERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, THE SERVICES, THE SUPPORT SERVICES AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith INCLUDING, BUT NOT LIMITED TO THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE

OR RESULTS OF USE OF THE SOFTWARE OR THE SERVICES, THAT THE SOFTWARE OR THE OPERATION OF THE SOFTWARE OR THE SERVICES ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. LICENSOR HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, DURABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR THE SOFTWARE SHALL OPERATE ERROR FREE OR UNINTERRUPTED, SHALL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE SERVICES OR THE SOFTWARE CAN BE FOUND OR CORRECTED.

WITHOUT LIMITING THE FOREGOING, LICENSOR DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY MATERIALS, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF CUSTOMER'S DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.

- b. Limitation of Remedies and Liability. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER AGREES THAT IN NO EVENT SHALL LICENSOR, OR ITS SERVICE PROVIDERS BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, LOST OR DAMAGED DATA, LOSS OF GOODWILL, BUSINESS OPPORTUNITIES, REPUTATION, COSTS OF REPLACEMENT GOODS OR SERVICES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.

LICENSOR AND ITS SERVICE PROVIDER'S TOTAL LIABILITY TO CUSTOMER AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES, THE SOFTWARE, THE SUPPORT SERVICES AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY LICENSOR IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, OR STRICT LIABILITY, SHALL NOT EXCEED ALL FEES PAID TO LICENSOR BY THE CUSTOMER DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY.

## 11. General

- a. Equitable Remedies. Customer agrees that a breach or threatened breach by Customer of this Agreement would


cause Licensor irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, Licensor will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

- b. Promotional Materials. Either party may include statements, and may use the other party's name and logos, in its website, commercial advertisements and promotional materials for the sole purpose of indicating that Customer is a user of the Software.
- c. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, then such provision shall be deemed modified to the extent necessary in order to render such provision valid and enforceable. If such provision may not be so saved, it shall be severed and the remaining provisions of this Agreement will remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
- d. Export Regulation. The Software, the Service the Data and all technical information relating to the Software and the Service may be subject to import or export controls under the laws of any country with jurisdiction over this Agreement. Therefore, Customer shall not, and shall not permit any other person to, in any manner whatsoever, either remove, convey, export, import or transmit the Software, the Service, the Data, Documentation, any technical information or any portions thereof unless Customer has obtained all required authorization from the appropriate governmental authorities of any country with jurisdiction over the transaction and Customer shall otherwise fully comply with all applicable import and export controls, laws and regulations, including those referred to in Section 2(f).
- e. Force Majeure Events. No default, delay or failure to perform on the part of Licensor shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, floods, acts of any governmental body, acts of God or the public enemy or default of a common carrier, unavailability of Third Party Materials or other disasters or events.
- f. Assignment. Customer shall not assign any of its rights under this agreement, except with the prior written consent of Licensor. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.



- g. Governing Law; Venue. The laws of the State of Delaware (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid). Any party giving a Notice must address the Notice to the appropriate person at the receiving party (the "Addressee") at the address listed on this Agreement or to another Addressee or another address as designated by a party in a Notice pursuant to this Section. Except as provided elsewhere in this agreement, a Notice is effective only if the party giving the Notice has complied with this paragraph.
- h. Mediation. Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is also mutually agreeable; provided, however, in no event shall the mediation occur later than ninety (90) days after either party notified the other of its desire to have a dispute be placed before a mediator. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.
- i. Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this agreement or the transactions contemplated hereby.
- j. Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this agreement, the unsuccessful party shall pay to the successful party its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.
- k. Notices. Except as provided elsewhere in this Agreement, each party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this Agreement must give the Notice in writing and use one of the following methods of delivery: personal delivery, certified U.S. Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid). Any party giving a Notice must address the Notice to the appropriate person at the receiving party (the "Addressee") at the following address: in the case of Licensor, to the address posted on the following website [www.amazingcharts.com](http://www.amazingcharts.com), and in the case of Customer, to the address submitted to Licensor on the foregoing website, or to another address as designated by a party in a Notice pursuant to this Section. Any such Notice shall be conclusively deemed to have been given and received on the day on which it is delivered (or on the next succeeding business day if delivered after 5:00 p.m. local time on the date of delivery or receipt, or if delivered or received on a day other than a business day), if personally delivered or, if mailed, on the third business day following the date of mailing.
- l. Allocation of Risk. Customer acknowledges and agrees that the warranty disclaimer and limitation of liability contained in this Agreement are fundamental elements of the basis of bargain between Licensor and Customer and set forth an allocation of risk reflected in the fees and payments due hereunder.
- m. Entire Agreement. This constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this agreement are expressly merged into and superseded by this agreement. The provisions of this agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this agreement.
- n. Waivers. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- o. Amendment. This Agreement may be amended from time to time by Licensor upon posting the amended version at [www.amazingcharts.com/EULA](http://www.amazingcharts.com/EULA) and Customer's continued use of the Software or Services following such posting signifies its acceptance. Customer is therefore encouraged to review this Agreement periodically.
- p. Survival. Sections 2(e)-(p), 4, 5(d), 6-11 and any other provision of this Agreement which is required to ensure that the parties fully exercise their rights and obligations hereunder shall survive any termination or expiration of this Agreement.

**COMPANY:**

By:  \_\_\_\_\_

Name: Derek Smith

Title: Senior Vice President

Date: 11/21/2023

LIST OF EXHIBITS

**Exhibit A:** Business Associate Addendum

**Exhibit B:** Third Party Materials

## EXHIBIT A

### **BUSINESS ASSOCIATE ADDENDUM**

**THIS BUSINESS ASSOCIATE ADDENDUM** (the “Addendum”) is made and entered into between CareTracker Inc. (“**Company**”), and the Licensee who has agreed to the Master Software License Agreement (“**Customer**”).

Customer is a Covered Entity (or is a Business Associate to one or more Covered Entities) pursuant to the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (commonly referred to as the “HITECH Act”), and the regulations promulgated under the foregoing from time to time by the United States Department of Health and Human Services (collectively, as amended from time to time, “**HIPAA**”).

Customer and Company have entered into one or more agreements (collectively, the “**Services Agreement**”) pursuant to which Company will provide certain services to Customer (the “**Services**”), and in the course of providing the Services, Customer may make available to Company or have Company obtain or create on its behalf information that may be deemed Protected Health Information subject to the provisions of HIPAA and information subject to protection under other federal or state laws.

In order to comply with the applicable provisions of HIPAA and other federal or state laws as applicable, the parties agree as follows:

#### **1. Definitions.**

- 1.1. Capitalized terms used but not otherwise defined in this Addendum shall have the meanings ascribed in HIPAA (whether or not such terms are capitalized therein).
- 1.2. “**Effective Date**” means the date on which this Addendum is executed by the parties.
- 1.3. “**Electronic PHI**” means PHI that is Electronic Protected Health Information.
- 1.4. “**PHI**” means Protected Health Information received or accessed by Company from or on behalf of Customer or created, transmitted, or maintained by Company for or on behalf of Customer.

**2. Permitted Uses.** Company may use PHI only as permitted or required by this Addendum and only for the following purposes:

- (i) as necessary to perform the Services, including the provision of certain Data Aggregation services relating to the Health Care Operations of Customer;
- (ii) to carry out its legal responsibilities;
- (iii) for the proper business management and administration of Company;
- (iv) to de-identify PHI obtained by Company under this Addendum in accordance with the standards set forth under HIPAA at 45 CFR § 164.514 and use such de-identified data in accordance with the de-identification requirements of the Privacy Rule; and
- (v) as Required By Law.

**3. Permitted Disclosures.** Company may disclose PHI only as permitted or required by this Addendum for the following purposes:

- (i) as necessary to perform the Services;
- (ii) for the proper business management and administration of Company or to carry out its legal responsibilities, if Required By Law, or if Company has obtained reasonable assurances that the recipient will (A) hold such PHI in confidence, (B) use or further disclose it only for the purpose for which it was received or as Required By Law, and (C) notify Company of any instance of which the recipient becomes aware in which the confidentiality of such PHI has been breached; and
- (iii) as otherwise Required By Law.

#### **4. Prohibited Uses and Disclosures.**

4.1. Subject to Customer's compliance with its obligations set forth in Section 17 as applicable, Company shall not use or further disclose PHI in a manner that would violate HIPAA if done by Customer.

4.2. If Customer notifies Company that Customer has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to Section 17, Company shall be bound by such additional restrictions and shall not use or disclose PHI in violation of such additional restrictions.

4.3. Company shall not sell PHI or otherwise receive remuneration, directly or indirectly, in exchange for PHI; provided, however, that this prohibition shall not affect payment to Company by Customer for performance of the Services.

4.4. Company shall not use or disclose PHI for purposes of marketing or fundraising, unless the Services include such marketing or fundraising.

**5. Subcontractors and Agents.** Any disclosure to a Subcontractor or agent of Company shall be pursuant to a written agreement between Company and such Subcontractor or agent containing substantially the same restrictions and conditions on the use and disclosure of PHI as are set forth in this Addendum.

**6. Minimum Necessary.** Customer shall only provide and Company shall only request, access, use, and disclose only the minimum amount of PHI necessary, in accordance with HIPAA, to perform the Services.

**7. Certain Privacy Rule Compliance.** To the extent that Company is to carry out one or more of Customer's obligations under Subpart E of Part 164 of HIPAA (generally known as the HIPAA Privacy Rule), Company shall comply with such requirements that apply to Customer in the performance of such obligations.

**8. Safeguards.** Company at all times shall maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, availability, and integrity of Electronic PHI that it creates, receives, maintains, or transmits in accordance with the regulations set forth at 45 CFR § 164.308, 45 CFR § 164.310, and 45 CFR § 164.312.

#### **9. Breach Investigation and Reporting.**

9.1. As soon as practicable following any actual or reasonably suspected use or disclosure of PHI in a manner not permitted under HIPAA, Company shall assess whether such actual or suspected impermissible use or disclosure was of PHI that is Unsecured Protected Health Information.

9.2. If pursuant to the evaluation described in Section 9.1, Company reasonably determines that such impermissible use or disclosure constitutes a Breach of PHI that is Unsecured Protected Health Information, Company shall provide Customer, without unreasonable delay but in no case later than 15 business days following such determination, with such information, to the extent available, as is required pursuant to HIPAA or as reasonably requested by Customer, including the date of discovery thereof, the identities of affected individuals (or, if such identities are unknown at that time, the classes of such individuals), and a general description of the nature of the incident. Company shall supplement such notice with information not available at the time of the initial notification as promptly thereafter as the information becomes available to Company.

9.3. If pursuant to the evaluation described in Section 9.1 Company determines that such impermissible use or disclosure does not constitute a Breach of PHI that is Unsecured Protected Health Information, Company shall notify Customer in writing of such impermissible use or disclosure of PHI and of such determination promptly following such determination.

9.4. For purposes hereof, an impermissible use or disclosure shall be deemed discovered by Company as of the first day on which such impermissible use or disclosure is known to Company or, by exercising reasonable diligence, would have been known to Company, and Company shall be deemed to have knowledge of an impermissible use or disclosure if such impermissible use or disclosure is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the impermissible use or disclosure, who is a Workforce member of Company or an agent of Company (determined in accordance with the federal common law of agency).

**10. Security Incident Reporting.** Company shall report to Customer in writing any Security Incident involving Electronic PHI, other than a Security Incident that involves an actual or suspected impermissible use or disclosure of PHI reported pursuant to Section 9, within 30 days of Company's discovery thereof. Notwithstanding the foregoing, the parties

acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI

**11. Mitigation.** To the extent possible, Company shall establish reasonable procedures to mitigate, to the extent practicable, any harmful effect of any Breach or impermissible use or disclosure of PHI in violation of the terms and conditions of this Addendum or applicable law.

**12. Access and Amendment.** With respect to an Individual as to whom Company maintains PHI, Company shall notify Customer promptly upon receipt of a request from such an Individual for access to or a copy of such Individual's PHI or to amend such Individual's PHI. To the extent permitted under HIPAA, and except as otherwise required upon the order of a court of competent jurisdiction, (i) Company shall direct such Individual to make such request of Customer and (ii) Company shall not consent to such access, deliver such copy, or comply with such request except as directed by Customer. To the extent that Business Associate possess or maintains PHI in a Designated Record Set, Business Associate will make such PHI accessible to Covered Entity as necessary for Covered Entity to satisfy its obligations under 45 CFR 164.524 with respect to Individuals' rights of access and amendment but will have no other obligations to Covered Entity or any Individual regarding Designated Record Sets.

**13. Accounting for Disclosures.** Company shall document all disclosures of PHI by Company and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA. Company shall maintain such information for the applicable period set forth in HIPAA. Company shall deliver such information to Customer or, upon Customer's request, to the Individual, in the time and manner reasonably designated by Customer, in order for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA.

**14. Audit.** If Company receives a request, made on behalf of the Secretary of the Department of Health and Human Services, that Company make its internal practices, books, and records relating to the use or disclosure of PHI available to the Secretary of the Department of Health and Human Services for the purposes of determining Customer's or Company's compliance with HIPAA, Company promptly shall notify Customer of such request and, unless enjoined from doing so by order of a court of competent jurisdiction in response to a challenge raised by Customer or Company (which challenge Company shall not be obligated to raise), Company shall comply with such request to the extent required of it by applicable law. Nothing in this Addendum shall waive any attorney-client privilege or other privilege applicable to either party.

**15. Compliance with Law.** Company shall comply with all applicable federal and state laws regarding individually identifiable information contained in or associated with PHI, including without limitation any state data breach laws or other state laws regarding the protection of such information. Nothing in this Addendum shall be construed to require Company to use or disclose PHI without a written authorization from an Individual who is the subject thereof, or written authorization from any other person, where such authorization would be required under federal or state law for such use or disclosure.

**16. Judicial and Administrative Proceedings.** In the event Company receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, if not prohibited by law, Company shall notify Customer in writing prior to responding to such request to enable Customer to object, move to quash or seek a protective order as it deems appropriate. Company shall notify Customer of the request as soon as reasonably practicable, but in any event within five (5) business days of receipt of such request. If Company is required to produce records pursuant to such a subpoena, order or discovery demand, related to a matter not caused by Company's acts or omissions in violation of this BAA the Customer shall reimburse Company for all costs associated with the production.

**17. Obligations of Customer.** Customer shall (i) notify Company of any limitation in Customer's Notice of Privacy Practices to the extent that such limitation may affect Company's use or disclosure of PHI, (ii) notify Company of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change may affect Company's use or disclosure of PHI, (iii) notify Company of any restriction on the use or disclosure of PHI to which Customer has agreed in accordance with HIPAA, to the extent that such restriction may affect Company's use or disclosure of PHI, and (iv) obtain any authorization or consents as may be Required By Law for any of the uses or disclosures of PHI.

**18. Term and Termination.** This Addendum shall become effective on the Effective Date and shall continue in effect until the earlier to occur of (i) the expiration or termination of the Services Agreement or (ii) termination pursuant to this Section. Either party may terminate this Addendum and the Services Agreement effective immediately if it determines that

the other party has breached a material provision of this Addendum and failed to cure such breach within 30 days of being notified by the other party of the breach. If the non-breaching party reasonably determines that cure is not possible, such party may terminate this Addendum and the Services Agreement effective immediately upon written notice to other party.

## **19. Effect of Termination.**

19.1. Upon termination of the Services Agreement, subject to any applicable provisions of the Services Agreement, Company shall return to Customer or destroy all PHI that Company maintains in any form and retain no copies of such PHI or, if return or destruction is not feasible, notify Customer thereof and extend the protections of this Addendum to the PHI and limit its further use or disclosure to those purposes that make the return or destruction of the PHI infeasible. The requirements of this Section shall survive termination or expiration of this Addendum and shall be in force as long as any PHI remains in the custody or control of Company.

19.2. As specified in this Addendum, Company will produce records in an industry standard format, any specific format requests may result in additional charges to Customer.

## **20. Miscellaneous.**

20.1. **Liability.** Neither party shall not be liable to the other party for any incidental, consequential, special, or punitive damages of any kind or nature, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability), or otherwise, even if the other party has been advised of the possibility of such loss or damages.

20.2. **Notices.** Except as otherwise provided in this Addendum, any notices and reports required or permitted hereunder shall be directed to the Company and Customer pursuant to the notice provisions in the Services Agreement. Such notices shall be deemed delivered (i) when personally delivered, (ii) on the third business day after deposit, properly addressed and postage pre-paid, when sent by certified or registered U.S. mail to the address provided therein, or (iii) on the next business day when sent with next-business-day instruction by recognized overnight document delivery service to the address provided therein.

20.3. **Nature of Relationship.** Company shall perform all services hereunder as an independent contractor to Customer, and nothing contained herein shall be deemed to create any agency or other relationship between the parties or any of their affiliates. Neither party shall have the right, power, or authority under this Addendum to create any duty or obligation on behalf of the other party.

20.4. **Waiver.** A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of, any right or remedy as to subsequent events.

20.5. **Severability.** If any one or more of the provisions of this Addendum should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Addendum not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable would be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling, and/or the controlling principle of law or equity leading to the ruling, subsequently is overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Addendum will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

20.6. **Entire Addendum.** This Addendum, together with the Services Agreement, constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Addendum, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein.

20.7. **Amendments.** This Addendum may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties; provided, however, that upon the enactment of any law or regulation affecting the use or disclosure of PHI, or on the publication of any decision of a court of competent jurisdiction relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency



charged with the enforcement of any such law or regulation. Customer may, by written notice to Company, propose to amend this Addendum in such a manner as Customer reasonably determines necessary to comply therewith, and such proposed amendment shall become operative unless Company rejects such amendment by written notice to Customer within 30 days thereafter, in which case, unless the parties agree on an amendment within 30 days after Company's notice, either party may terminate this Addendum by written notice to the other.

20.8. No Third Party Beneficiaries. No provision of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever, and any implication to the contrary is expressly disclaimed by each party.

20.9. Headings; Interpretation. The headings of the sections used in this Addendum are included for convenience only and are not to be used in construing or interpreting this Addendum. In the event of a conflict between the provisions of this Addendum and any provisions of the Services Agreement, the provisions of this Addendum shall control. In the event of an inconsistency between the provisions of this Addendum and mandatory provisions of HIPAA, as amended, or its interpretation by any court or regulatory agency with authority over either party hereto, HIPAA (interpreted by such court or agency, if applicable) shall control. Where provisions of this Addendum are different from those mandated under HIPAA but are nonetheless permitted by such rules as interpreted by relevant courts or agencies, the provisions of this Addendum shall control.

**IN WITNESS WHEREOF,** Company and Customer have caused this Addendum to be executed and delivered by their duly authorized representatives as of the Effective Date.

**COMPANY:**

**CUSTOMER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT B

### **Third Party Materials**

#### **Microsoft Azure**

Customer agrees that the additional terms set out in Microsoft's Online Service Terms, available at <https://www.microsoft.com/en-us/licensing/product-licensing/products> (the "OST"), apply to Customer's use of the Services and sets out the parties obligations with respect to processing and security of Data and Personal Information in connection with Customer's use of the Services and to the processing and security of Support Data and Personal Information in connection with the provision of any support services related to the Services. The OST may be changed from time to time. Customer should review such document carefully, both at time of acceptance of this Agreement and periodically thereafter, and fully understand all terms and conditions applicable to the Services.

Information regarding Microsoft Azure's data residency and transfer policies is available at the following link: [www.microsoft.com/en-us/trustcenter/privacy/where-your-data-is-located](https://www.microsoft.com/en-us/trustcenter/privacy/where-your-data-is-located).

Details regarding the security measures and practices are available at the following link: <https://azure.microsoft.com/en-us/overview/security/>.

An overview of how encryption is used in Microsoft Azure (for data at rest and data in transit) is available at the following link: <https://docs.microsoft.com/en-us/azure/security/security-azure-encryption-overview>.

The foregoing information, including the links to such information, may be changed from time to time therefore Customer is encouraged to review such information periodically.