



SOFTWARE LICENSE AGREEMENT

This software license agreement is made as of the Effective Date set forth above between CareTracker, Inc. ("Licensor"), with offices at 1600 Division Road, Suite 2000 West Warwick, RI 02893, and the Customer identified above.

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) 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.

(c) Error. "Error" means any reproducible material failure of the Software to function in accordance with its Documentation.

(d) 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.

(e) Software. "Software" means the Amazing Charts software and proprietary content, including any Add-Ons and Updates relating thereto that may be provided hereunder, and any derivative works of the foregoing.

(f) Termination. "Termination" means cancellation of the license and services initiated (a) directly by the Customer via written request to the Licensor or via the self-cancel option that can be accessed through Customer's Client Portal account; (b) indirectly by the Customer due to non-payment and failure to respond to subsequent written notifications by Licensor. Licensor reserves the right to terminate in cases when the Customer fails to remit payment for license fees or services rendered in prior billing periods or improper use of the Software.

(g) 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; and (c) accessories, components, parts or features of any of the foregoing.

(h) Update. "Update" means any patch, bug fix, release, version, modification or successor to the Software.

(i) User. "User" means a named individual who is an employee of Customer and to whom Customer has granted access to use the Software on Customer's behalf, regardless of whether or not the User actually accesses the Software.

2. Software

(a) This EULA is updated from time to time and the most up-to-date version is posted at www.amazingcharts.com/EULA. Each time you use the Software and 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 Customer's compliance with the terms of this agreement, Licensor hereby grants to Customer a perpetual, non-exclusive, non-sublicensable and non-transferable, limited license 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, Licensor shall provide cloud-based hosting or such other optional services as Customer may elect to purchase from time to time.

(d) Scope of Licensed Access and Use. Customer may install, use and run the Software for up to the number of providers 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: (a) will remain the exclusive property of Licensor; (b) be subject to the terms and conditions of this agreement; and (c) must include all copyright or other intellectual property rights notices contained in the original.

(e) Use Restrictions. Except as this agreement expressly permits, Customer shall not, and shall not permit any other person to:

i) copy the Software, in whole or in part;

ii) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Software;

iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software 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;

iv) reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;

v) bypass or breach any security device or protection used for or contained in the 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 or Documentation;

vii) use the Software in any manner that violates any applicable law or that is contrary to the Documentation; or

viii) use the Software for purposes of: (i) benchmarking or competitive analysis of the Software; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage.

(f) Intended Use. Customer agrees that the Software and related 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.

(g) Users and Security. Customer is solely responsible for maintaining the security of all usernames and passwords granted to it, for the security of its information systems used to access the Software, and for its Users' compliance with the terms of this agreement. Customer shall notify Licensor promptly in writing of any noncompliance with this agreement by its Users.

(h) 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.

(i) 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 maintenance and 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 is required for anyone who provides patient care. Failure to maintain Support for all providers may result in termination of the applicable Software license.

(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. 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.

(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.

(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);
- 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 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 license, service, and maintenance fees as set forth at <http://amazingcharts.com/ehr-solutions/transparent-pricing/> or elsewhere on the Amazing Charts web site. 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, ACitC) 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. 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 license fees or other charges under this agreement or otherwise incurred on account of Customer's use of the Software, except for any taxes based upon Licensor's net income or gross receipts or for any franchise or excise taxes owed by Licensor. 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. The term of this agreement commences on the Effective Date and will continue until such time as a party terminates the agreement by providing at least 30 days prior written notice to the other party. Termination will not obligate Licensor to issue any refunds.

(b) Termination of Specific Products or Services. Either party may also terminate individual products or services without terminating the remainder of the agreement by providing written notice to the other party of the products or services to be terminated at least two weeks prior to the next billing date for that product or service.

i) Terminating 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) Terminating Amazing Charts in the Cloud (ACitC) gives Licensor permission to disable all ACitC Users associated with Customer's account and delete 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 within 30 days of termination.

(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); or

ii) 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.

(d) Obligations on Termination. Upon termination or expiration of this agreement for any reason, Customer shall discontinue any and all use of the terminated Services Documentation, or services, as well as any Confidential Information of Licensor relating thereto. For clarification, unless Customer terminates one or more of its licenses to use the Software, Customer will retain those licenses.

(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 keep confidential the patient data that you enter into and store in the Software such as diagnostic information, clinical encounter notes and prescriptions (“Patient Data”) as required by applicable law. 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. However, Customer understands that De-identified Information accessed by certain third-parties may not be excluded even if opt-out request is duly made.

7. 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. Any information regarding APIs for the Software is Confidential Information of Licensor.

(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; or
- ii) 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 without the disclosing party’s express written authorization.

(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.

(g) Disclaimer of Warranties. LICENSOR MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SOFTWARE. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, LICENSOR DISCLAIMS ANY WARRANTY THAT THE SOFTWARE OR THE OPERATION OF THE SOFTWARE ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. LICENSOR MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

(h) Disclaimer of Consequential Damages. LICENSOR HAS NO LIABILITY WITH RESPECT TO THE SOFTWARE OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(i) Limitations of Remedies and Liability. LICENSOR’ TOTAL LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO ALL FEES PAID TO LICENSOR BY THE CUSTOMER DURING THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY.

8. General

(a) Equitable Remedies. Customer agrees that a breach or threatened breach by Customer of any of its obligations under Section 2(e) (Use Restrictions) 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 to be invalid, illegal or unenforceable, 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. Customer shall not itself, or permit any other person to, export, re-export or release, directly or indirectly the Software or Documentation to any country other than the United States without the prior written permission of Licensor.

(e) Force Majeure Events. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

(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.

(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 in a state or federal court of competent jurisdiction sitting in Delaware, and each party to this agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this agreement.

(h) 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.

(i) 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.

(j) Notices. 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, each of which for purposes of this agreement is a writing: personal delivery, registered or 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 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.

(k) 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.

(l) Waivers. The parties can waive a provision of this agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

(m) Amendments. The parties can amend this agreement only by a written agreement of the parties that identifies itself as an amendment to this agreement.

(n) Survival of Certain Provisions. Each party hereto covenants and agrees that the provisions in Sections 6 and 8 in addition to any other provision that, by its terms, is intended to survive the expiration or termination of this agreement, shall survive the expiration or termination of this agreement.

CARETRACKER, INC.

By: 

Print: Ben Scharfe

Title: Director of Customer Support



EXHIBIT A
BUSINESS ASSOCIATE ADDENDUM

THIS BUSINESS ASSOCIATE ADDENDUM (the "**BAA**") is made and entered into between CareTracker, Inc. ("**Company**"), and the Licensee who has agreed to the Master Software and Terms ("**Covered Entity**").

Covered Entity possesses information about individuals that is protected under 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**").

Company will provide certain services to Covered Entity (the "**Services**"), and in the course of providing the Services, Covered Entity 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.

In order to comply with the applicable provisions of HIPAA, the parties agree as follows:

1. Definitions.

1.1 Capitalized terms used but not otherwise defined in this BAA shall have the meanings ascribed in HIPAA (whether or not such terms are capitalized therein).

1.2 "**PHI**" means Protected Health Information received by Company from or on behalf of Covered Entity or created by Company for or on behalf of Covered Entity.

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

- (i) as necessary to provide the Services, including the provision of certain data aggregation services;
- (ii) to carry out its legal responsibilities;
- (iii) for the proper business management and administration of Company; and
- (iv) as Required By Law

As a part of the Services, certain information may be De-Identified. Business Associate shall be permitted to De-Identify PHI in accordance with the de-identification requirements of the Privacy Rule. The parties acknowledge and agree that once PHI is de-identified it is no longer subject to HIPAA.

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

- (i) as necessary to provide the Services;
- (ii) for the proper business management and administration of Company or to carry out its legal responsibilities, 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;
- (iii) for the proper business management and administration of Company or to carry out its legal responsibilities, if Required By Law; and
- (iv) as otherwise Required By Law;

provided, however, that any disclosure to an agent or subcontractor of Company shall be pursuant to a written agreement between Company and such agent or subcontractor containing substantially the same restrictions and conditions on the use and disclosure of PHI as are set forth in this BAA.

4. Prohibited Uses and Disclosures. Subject to Covered Entity's compliance with its obligations set forth in Section 14 as applicable, Company shall not use or further disclose PHI in a manner that would violate HIPAA if done by the Covered Entity. Company shall not sell PHI or use or disclose PHI for purposes of marketing or fundraising.

5. Safeguards. Company shall establish and maintain appropriate safeguards intended to prevent use or disclosure of PHI other than as provided in this BAA. Without limiting the foregoing, Company shall establish and maintain, in compliance with HIPAA and any applicable guidance issued pursuant thereto, administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that is Electronic Protected Health Information or any other Electronic Protected Health Information maintained or transmitted by Company for or on behalf of Covered Entity, and Company shall establish and maintain policies and procedures, and comply with the documentation requirements, set forth in HIPAA.

6. Reports to Covered Entity; Breach Notification.

6.1 Without unreasonable delay and in no case later than 10 days after discovering a Breach involving PHI that is Unsecured Protected Health Information, Company shall report such Breach to Covered Entity in writing, setting forth the date of discovery thereof, the identities of affected



individuals (or, if such identities are unknown at that time, the classes of such individuals), a general description of the nature of the incident, and such other information as is required pursuant to HIPAA.

6.2 Company shall report to Covered Entity in writing any use or disclosure of PHI that is not permitted by this BAA, other than a Breach involving PHI that is Unsecured Protected Health Information, within 30 days of Company's discovery thereof.

6.3 Company shall report to Covered Entity in writing any Security Incident involving PHI that is Electronic Protected Health Information within 30 days of Company's discovery thereof. The parties acknowledge and agree that this paragraph constitutes notice by Company to Covered Entity of the ongoing occurrence of incidents that may constitute Security Incidents but that are trivial and do not result in unauthorized access, use, or disclosure of PHI that is Electronic Protected Health Information, including without limitation pings and other broadcast attacks on Company's firewall, port scans, unsuccessful log-on attempts, and denials of service, for which no additional notice to Covered Entity shall be required.

7. **Mitigation.** Company shall take all actions reasonably necessary and cooperate with Covered Entity as reasonably requested to mitigate, to the extent practicable, any harmful effect of any Breach, impermissible use or disclosure of PHI, or Security Incident involving PHI that is Electronic Protected Health Information, as described in Section 6.

8. **Minimum Necessary.** Company does not control the information used or disclosed as a part of the Services. Covered Entity shall be responsible for ensuring that its own minimum necessary policies and procedures are adhered to at all times. Failure to de-identify information or utilize the minimum necessary principles shall be solely the responsibility of Covered Entity.

9. **Access and Amendment.** Company shall not maintain any information in a Designated Record Set, as such services are not provided by Company. Should such services be provided in the future, Company shall provide the following tasks, as appropriate. With respect to an Individual as to whom Company maintains PHI, Company shall notify Covered Entity 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 Covered Entity and (ii) Company shall not consent to such access, deliver such copy, or comply with such request except as directed by Covered Entity. With respect to PHI maintained by Company in a Designated Record Set, to the extent required by HIPAA of a Covered Entity, Company shall (i) make available PHI to Individuals or Covered Entity, as requested by Covered Entity and in accordance with HIPAA, and (ii) upon receipt of notice from Covered Entity, promptly amend any portion of the PHI so that Covered Entity may meet its amendment obligations under HIPAA.

10. **Accounting for Disclosures.** Company shall document all disclosures of PHI by Company and information related to such disclosures as would be required for Covered Entity 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 Covered Entity or, upon Covered Entity's request, to the Individual, in the time and manner reasonably designated by Covered Entity, in order for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA. The obligations set forth in this section shall survive the expiration or any termination of this BAA and shall continue, as to a given instance of a disclosure, until the earlier of (i) the passing of the time required for such information to be maintained pursuant to HIPAA or (ii) the delivery to Covered Entity of all such information in a form and medium reasonably satisfactory to Covered Entity and the return or destruction of all PHI as provided in this BAA.

11. **Additional Restrictions.** If Covered Entity notifies Company that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to HIPAA, Company shall be bound by such additional restrictions and shall not use or disclose PHI in violation of such additional restrictions.

12. **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 Covered Entity's or Company's compliance with HIPAA, Company promptly shall notify Covered Entity of such request and, unless enjoined from doing so by order of a court of competent jurisdiction in response to a challenge raised by Covered Entity 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 BAA shall waive any attorney-client privilege or other privilege applicable to either party.

13. **Remuneration.** Company shall not receive remuneration, directly or indirectly, in exchange for PHI; provided, however, that this prohibition shall not affect payment to Company by Covered Entity pursuant to the Services.

14. Obligations of Covered Entity.

14.1 Covered Entity acknowledges and understands that, in general, PHI is not necessary to share with Company as a part of the Services provided under the Agreement and therefore Covered Entity shall only provide Company with access to the minimum necessary PHI as noted in Section 8 herein. Covered Entity shall further (i) notify Company of any limitation in Covered Entity'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 Covered Entity 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 pursuant to the Services. To the extent that Covered Entity elects to opt out of, remove or disable any of the specific Services provided by Company, Company will no longer be liable for any Security Incident and/or Breach due to the opt out, removal or disabling of such Service. Covered Entity agrees to and will



be responsible for any Security Incident and/or Breach due to the opt out, removal or disabling of any such Service provided by Company. The obligations of Covered Entity under this Section 14.1 extend to any entities or persons who are authorized by Covered Entity or its affiliates to access any Covered Entity data or programs stored on Company systems.

14.2 Except for the permitted uses and disclosures set forth in Sections 2 and 3, Covered Entity will not request Company to use or disclose PHI in any manner that would violate HIPAA if done by Covered Entity.

15. **Term and Termination.** This BAA shall continue in effect until the earlier to occur of (i) the expiration or termination of the Agreement or (ii) termination pursuant to this section. Either party may terminate this BAA effective immediately if it determines that the other party has breached a material provision of this BAA 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 BAA effective immediately upon written notice to other party.

16. **Effect of Termination.** Where destruction of PHI pursuant to this section is feasible, Company shall destroy such PHI between thirty (30) to sixty (60) days after the termination of this BAA, should Covered Entity need the return of such PHI. or any information, Covered Entity shall be responsible for obtaining prior to destruction. Upon termination of this BAA, Company shall deliver to Covered Entity the disclosure accounting information as provided in this BAA and (i) if feasible, return to Covered Entity or destroy all PHI that Company maintains in any form and retain no copies of such PHI, or (ii) if return or destruction is not feasible, notify Covered Entity and extend the protections of this BAA 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 BAA and shall be in force as long as any PHI remains in the custody or control of Company.

17. **Miscellaneous.**

17.1 **Amendments.** This BAA 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, the parties agree that any modification now or hereafter required to be included in this BAA to comply therewith shall be binding upon and enforceable against the parties and be deemed incorporated herein irrespective of whether or not such provisions are expressly set forth in this BAA.

17.2 **Notices.** Notices and reports given under this BAA shall be in writing and sent to Company at **Attn: Privacy Officer**, 1600 Division Rd, Suite 2000, West Warwick, RI 02893 Such notices shall be deemed delivered (i) when personally delivered, (ii) on the second business day after deposit, properly addressed and postage pre-paid, when sent by certified or registered U.S. mail to the address provided herein, or (iii) on the next business day when sent with next-business-day instruction by recognized overnight document delivery service to the address provided herein.

17.3 **Governing Law.** This BAA shall be governed and construed under the laws of the state that governs the Agreement, other than its conflicts of laws principles.

17.4 **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.

17.5 **No Third Party Beneficiaries.** Nothing express or implied in this BAA 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.

17.6 **Interpretation.** In the event of an inconsistency between the provisions of this BAA 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 BAA 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 BAA shall control.

17.7 **Counterparts.** This BAA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Such counterparts may be delivered in faxed or scanned electronic form, and each shall be deemed an original.

CARETRACKER, INC.

By: Ben Scharfe

Print: Ben Scharfe

Title: Director of Customer Support