

# CHANL Software License Agreement

(Research and/or Educational Only)

Date of Agreement: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

This CHANL Software License Agreement (the “**Agreement**”) is effective as of the date given above (the “**Effective Date**”), and is by and between the following Parties:

BWH: The Brigham and Women’s Hospital, Inc.,  
a Massachusetts charitable corporation  
Having a principal place of business at:  
75 Francis Street  
Boston, Massachusetts 02115

Licensee: \_\_\_\_\_  
a \_\_\_\_\_  
Having an office at:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Agreement includes its Exhibits. The Parties agree as follow:

## TERMS

### Article 1 – Introduction, Definitions and the CHANL Software

- 1.1 **BWH.** BWH is a center for patient care, research and education that not only provides healthcare services but also performs scientific research and training.
- 1.2 **Licensee.** Licensee is a healthcare organization that engages in medical research. Licensee desires to use the CHANL Software (defined below) as licensed and provided by this Agreement.
- 1.3 **CHANL Software.** The Chart Review Tool Powered by NLP (“**CHANL**”) was developed by Tianrun Cai and Katherine P. Liao at Brigham and Women’s Hospital and Tianxi Cai at Harvard T.H. Chan School of Public Health. It is designed to facilitate chart review of narrative text notes from the electronic medical records. CHANL can be used to perform intelligent searches for multiple keywords simultaneously and can automatically identify other terms and concepts related to the keyword in the notes. For purposes of this Agreement, the “CHANL Software” means the Licensed Software, Methodology, Know-How, Documentation, and Services provided or delivered by BWH to Licensee in connection with this Agreement.
- 1.4 **Primary Intent of this Agreement.** The primary intent of this Agreement is for BWH to make the CHANL Software available to Licensee for Research and/or Educational Purposes only. The CHANL Software will be licensed to Licensee through a non-exclusive license as described in this Agreement. BWH will also provide to Licensee related Services, Documentation, Methodology, and Know-How (as those terms are defined or described below).

- 1.5 **Research and/or Educational Purposes.** “**Research and/or Educational Purposes**” means the specific research and/or educational project to be undertaken by Licensee’s Authorized Users at the Designated Site, and not on behalf of third parties, as described more fully in **Exhibit A**, attached here to.
- 1.6 **Designated Site.** The “**Designated Site**” means Licensee’s facilities located at \_\_\_\_\_
- 1.7 **Licensed Software.** The term “**Licensed Software**” means any computer programs, software products, applications, tools, and content that are identified in **Exhibit A** as “Licensed Software” and made available by BWH to Licensee for Licensee’s use through the On-Premises License of Section 2.1 below.
- 1.8 **Instance.** “**Instance**” means to load software into computer memory and execute one or more of its instructions. A single Instance may be run on any number of processors or connected processors.
- 1.9 **Documentation.** “**Documentation**” means any manual, documentation, instructions, or other works of authorship that BWH delivers or makes available to Licensee or any of Licensee’s Authorized Users in any form or medium for or in connection with any Licensed Software or Services. Documentation does not include any Licensed Software.
- 1.10 **Know-How and Methodology.** “**Know-How**” means any know-how, analysis, expertise, experiences, ideas, knowledge, advice, recommendations, methodologies, processes, practices, standards, plans, and information provided or disclosed by BWH (or any of BWH’s licensors or contractors) to Licensee or any of Licensee’s Authorized Users in connection with this Agreement, Services, Licensed Software, or Documentation. Any of the Know-How that is proprietary or confidential is referred to herein as “**Methodology**” and will be licensed to Licensee as “Methodology” or as part of the “Licensed Software” (as applicable) under the Licenses of this Agreement.
- 1.11 **Services.** The term “**Services**” means the services BWH provides to enable Licensee and Licensee’s Authorized Users to install or use the Licensed Software.
- 1.12 **Authorized Users.** “**Authorized Users**” are natural persons located at the Designated Site who are authorized or allowed by Licensee to access or use the Licensed Software for Research and/or Educational Purposes. Authorized Users include the primary investigator identified in **Exhibit A** and any individuals acting under the primary investigator’s direct supervision and control. Licensee is responsible for Licensee’s Authorized Users’ conduct and misconduct relating to this Agreement or the CHANL Software. Notwithstanding anything to the contrary, Licensee will access and use the Licensed Software and CHANL Software only by and through Licensee’s Authorized Users.
- 1.13 **Licensee’s Computers.** “**Licensee’s Computers**” means computers: (a) that are located at the Designated Site, (b) that are in the possession and control of Licensee, and (c) on which Licensed Software is installed and used as licensed by this Agreement. Licensee’s Computers also include

any storage devices, hardware, systems, and system software that are used in conjunction with those computers and also meet the criteria of (a), (b) and (c) in this Section.

## Article 2 - Licenses

- 2.1 **On-Premises License.** BWH grants to Licensee a non-exclusive, non-transferrable, non-sublicensable, limited-term license under the intellectual property BWH owns or controls for Licensee (through Licensee's Authorized Users) to install and use one Instance of the Licensed Software on Licensee's Computers, subject to the terms of this Agreement and Licensee's compliance with those terms (the "**On-Premises License**"). The Licensed Software will be installed on Licensee's Computers (defined below) and used by Authorized Users on those computers only. Licensee may use the Licensed Software only for the Research and/or Education Purposes at the Designated Site and only by and through Authorized Users.
- 2.2 **Methodology License.** BWH grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited term license under the intellectual property that BWH owns or controls for Licensee (through Licensee's Authorized Users) to use the Methodology, subject to the terms of this Agreement and Licensee's compliance with those terms (the "**Methodology License**"). Licensee may use the Methodology only for Research and/or Educational Purposes at the Designated Site and only by and through Authorized Users.
- 2.3 **The Licenses.** In this Agreement, the On-Premises License and the Methodology License, are collectively referred to as the "**Licenses**" and each as a "**License**." These Licenses are strictly limited to Research and/or Educational Purposes. Licensee may not use the Licensed Software, Documentation, Methodology, or Services for any medical or clinical purposes, including but not limited to diagnostics and provision of medical care or medical information. BWH reserve all rights not expressly granted to Licensee in this Agreement.
- 2.4 **Designated Site Limitation.** The Licenses, the Services, and Licensee's rights under this Agreement apply only to Licensee's Designated Site and the Licensed Software and Methodology may be used by Licensee and Licensee's Authorized Users only.
- 2.5 **Licensed Software – Restrictions and Obligations.**
- (a) Licensee is not entitled to receive any of the source code, development environment, compilation or build instructions, or programming documentation for the Licensed Software or other proprietary information that BWH elects to withhold.
  - (b) Licensee and Licensee's Authorized Users will not: (a) decompile, disassemble, or reverse engineer any of the Licensed Software or structure, sequence, organization or algorithms, or (b) distribute or publish any copy of any of it, or (c) modify it or create any derivative work based on it, or (d) in any way facilitate or enable any of the foregoing.
  - (c) Licensee must not disclose or distribute any of the Licensed Software to any third-party.
  - (d) Upon termination of this Agreement or the On-Premises License, Licensee must erase or

destroy all copies of the Licensed Software within Licensee's or Licensee's Authorized Users' possession or control.

## 2.6 **Other Restrictions and Obligations.**

(a) Licensee may not use any Licensed Software, Documentation, Methodology, Know-How or Services for any purpose or in any manner that is in violation of any law, regulation, ordinance, or government authority, or in violation or breach of any obligation Licensee or an Authorized User may have to a third-party, and the Licenses do not include any such use.

(b) The Licenses are not for the development, improvement, or design of any other software, product, solution or system. Licensee covenants that the Licensed Software, Methodology, Documentation, and Services and information learned by Licensee and Authorized Users therefrom will not be used for the development, improvement, or design of any other software, product, solution or system.

2.7 **Documentation.** Licensee and Licensee's Authorized Users may copy and use the Documentation internally, but only to facilitate the licensed use of the Licensed Software, Methodology, and Know-How or permitted use of the Services. Licensee and Authorized Users must treat all Documentation as BWH's (or BWH's licensor's, as applicable) confidential information and copyrighted works. Licensee must not disclose Documentation to any person other than to Licensee's Authorized Users on a confidential and "need-to-know" basis for the purpose of this Agreement. Those Authorized Users must be under confidentiality and restricted use obligations at least as protective of BWH and BWH's licensors and the CHANL Software as are the confidentiality and restricted use provisions of this Agreement.

2.8 **Licensed Software Updates and New Versions.** The On-Premises License will apply to any Licensed Software Updates (see Section 5.2) that BWH delivers or provides to Licensee for inclusion in the On-Premises License. All Licensed Software Updates will become part of the Licensed Software. Licensee's rights to Licensed Software will apply only to the then-most-current version of the Licensed Software made available by BWH to Licensee. BWH may discontinue prior or out-dated versions of the Licensed Software, remove or replace features and functionality of the Licensed Software and re-configure the Licensed Software, in BWH's reasonable discretion.

2.9 **Conditions of License.** The provisions of this Agreement are conditions of, and not merely covenants to, the License. Any access, use, copying, modification, or distribution of any Licensed Software in any manner by Licensee or its personnel that is inconsistent with or in breach of this Agreement will be unlicensed and will be an infringement of copyrights and other intellectual property, in addition to being a breach of contract. This does not limit any remedies or other causes of action that BWH may have.

## **Article 3 – Services**

3.1 **Services.** BWH will provide the Services described in this Agreement.

- 3.2 **Additional Services.** The Parties may agree to change the Services or add new Services in an amendment to this Agreement.
- 3.3 **Time Schedules.** BWH will use reasonable efforts to meet any time schedules in an SOW. These time schedules are good faith estimates only and are not guaranteed and are subject to delaying circumstances, including, but not limited to, delays caused by Licensee or a Force Majeure.
- 3.4 **Cooperation.** Licensee will perform Licensee's responsibilities as described in an SOW and will promptly make available to BWH the information, assistance, and cooperation that BWH may reasonably request to enable or facilitate the Services.

#### **Article 4 - Payments and Assumptions**

- 4.1 **Fees.** Licensee will pay BWH the fees and charges set forth in **Exhibit A**.
- 4.2 **Timing of Payments.** Payment shall be due within thirty (30) days of the date of the applicable invoice from BWH.
- 4.3 **BWH and Method of Payment.** Payments to BWH will be made in accordance with the instructions BWH reasonably gives to Licensee.
- 4.4 **Late Payment, Suspension and Termination.** If Licensee fails to pay to BWH, within ten (10) days after BWH makes written demand for any past-due amount payable under this Agreement (including interest thereon), in addition to all other rights and remedies which BWH may have at law or in equity, BWH may, in BWH's sole discretion and without further notice to Licensee, suspend performance of any or all of BWH's obligations and Licensee's rights under this Agreement until all past due amounts are paid in full. BWH will have no liability, during or for such suspension, with respect to Licensee's inability to access or use the Licensed Software or CHANL Software or any of the Services. If the failure to pay lasts for more than 30 days after such demand, BWH may terminate this Agreement.
- 4.5 **Expenses.** Licensee will reimburse BWH for travel and other out-of-pocket expenses, if any, reasonably incurred by BWH in connection with the performance of Services for Licensee.

#### **Article 5 – Support and Maintenance**

- 5.1 **Maintenance of Licensed Software.** Only BWH is authorized to maintain the Licensed Software. Maintenance of Licensed Software consists of implementing fixes, patches, and updates to the Licensed Software ("**Fixes**") and work-around solutions for the Licensed Software to address programming errors in the Licensed Software. BWH will make all decisions concerning Fixes, work-around solutions, and the correction of programming errors, including the timing and manner of those Fixes, solutions, and corrections. BWH does not guarantee or promise that all errors will be corrected or all Fixes or work-around solutions will be created or implemented.
- 5.2 **Licensed Software Updates.** "**Licensed Software Updates**" or "**Updates**" means future updates

to and new versions and releases of the Licensed Software that during the Term BWH delivers to Licensee. Licensed Software Updates may include “Fixes” (as defined above) and “New Releases” (i.e., updates, new versions and releases of the Licensed Software). Licensed Software Updates also include all other modifications, enhancements, or additions of or to the Licensed Software that BWH makes available to Licensee under the On-Premises License (for installation and use).

- 5.3 **Excluded Functionality and Features.** BWH has no obligation to include in any License or Licensed Software, or make available for Licensee’s access or use, any future functionality or features of any Licensed Software that represent a substantially new capability in BWH’s reasonable discretion. BWH may condition the inclusion and availability of future functionality and features on the payment of additional fees or on other conditions and terms, or both. If Licensee agrees to pay those additional fees and agree to those other conditions and terms, if any, then that future functionality or feature of the Licensed Software will be included in the applicable License and will be Licensed Software under and subject to this Agreement.
- 5.5 **Cooperation.** Licensee will make available to BWH such assistance and cooperation as BWH reasonably requests in connection with maintenance and support under this Article 6.

#### **Article 6 – Authorized Users and Consultants.**

- 6.1 **Obligations.** Licensee’s obligations under this Agreement will also be the obligations of Licensee’s Authorized Users as if they were parties to this Agreement, to the extent that the context of the obligations reasonably allows those obligations to also apply to them. For example, and without limiting the generality of the previous sentence, Licensee’s confidentiality obligations also apply to Licensee’s Authorized Users. Licensee is responsible for and will ensure that Licensee’s Authorized Users.

#### **Article 7 – Intellectual Property and Confidential Information**

- 7.1 **Intellectual Property Ownership.** BWH, or BWH’s licensors, own the Licensed Software, Documentation, Methodology, and the copyrights, trade secrets, patent rights and other intellectual property rights in and to the Licensed Software, Documentation, Services, and Methodology. Nothing in this Agreement assigns or conveys to Licensee any ownership or exclusivity of those items or any intellectual property in or to them. Licensee’s rights to the Licensed Software, Documentation, and Methodology are limited to the licenses and rights expressly granted to Licensee under this Agreement.
- 7.2 **BWH’s Confidential Information.** “BWH’s Confidential Information” means any information that BWH or any of BWH’s contractors or licensors discloses to Licensee or any of Licensee’s Authorized Users or that is in any of the CHANL Software, subject to Section 7.4. Licensee will keep BWH’s Confidential Information confidential and not use it for any purpose other than the exercise of the Licenses under this Agreement for Research and/or Educational Purposes.
- 7.3 **Protections.** In addition to Section 7.2, the following protections apply:

- (a) Licensee will not allow any person other than Licensee's Authorized Users to access or use any of the CHANL Software. Licensee will not facilitate or enable any other person or entity: (i) to do anything that if done by Licensee or Licensee's Authorized User, employee, personnel or Consultant would be a breach of this Agreement, or (ii) to infringe or misappropriate any of BWH's or any of BWH's licensors' intellectual property rights.
- (b) Licensee and Licensee's Authorized Users will not disclose or transfer any of the Documentation or Methodology or other confidential information learned about or from the Licensed Software or its screen displays or output to any other Person.
- (c) Licensee will not modify, obscure, change, or remove any Notice that BWH or any of BWH's licensors include on or with any of the CHANL Software or user interfaces, media, or the Documentation. In this Agreement, the term "Notice" includes any copyright notice, proprietary-rights notice, patent notice, confidentiality notice, or any other notice, marking, warning, or disclaimer. Every copy of the Documentation made by or for Licensee must include a true and complete copy of the applicable Notices, including positioning, placement, font size/style, and conspicuousness.
- (d) Licensee must not disclose to any third-party the results of any testing (e.g., comparison or benchmarking) concerning the CHANL Software or its performance.

Sections 7.2 or 7.3 will not be interpreted or applied in a manner that prohibits Licensee from disclosing reports or other output from the licensed use of the CHANL Software that are intended for disclosure to others given the nature of the reports or other output.

#### 7.4 **Confidentiality Exceptions.**

- (a) Licensee is not subject to the confidentiality obligations of this Agreement regarding BWH's Confidential Information that Licensee can prove meets any of the following criteria: (i) the information is or becomes publicly available without breach of this Agreement, but only from the date that it becomes publicly available; (ii) the information was rightfully in Licensee's possession without an obligation of confidentiality owed to BWH or BWH's licensors or any third-party before Licensee received it from BWH or BWH's licensor or contractor; or (iii) the information is lawfully disclosed to Licensee by a third-party (who did not acquire the information from BWH or any of BWH's licensors or contractors) without obligation of confidentiality and independent of this Agreement.
- (b) Any exception to confidentiality applies only to the information to which a provision in Subsection 7.4 (a), above, applies, but not to other information.
- (c) Subsection 7.4 (a) above does not excuse any infringement of, or grant any rights or license to Licensee under, any of BWH's, or any of BWH's licensors' or contractors', copyrights, patent rights, or other intellectual property rights.

#### 7.5 **Modifications, Feedback, and Work Product.**

- (a) **Modifications.** If Licensee (or any of Licensee's Authorized Users, employees, or

personnel) modify or change any of the Licensed Software, Documentation or other work of authorship in the CHANL Software (e.g., creates a derivative work based on Licensed Software), then the modifications and changes are referred to herein as “**Modifications**” and Licensee (and Licensee’s Authorized Users, employees, and personnel) are in breach of this Agreement because Licensee (and they) are prohibited from creating Modifications, and Licensee (and they) agree to assign, and hereby assign, the Modifications and all rights and intellectual property in and to the Modifications to BWH. Licensee will help BWH, as BWH reasonably requests, to secure, protect, and enforce rights in the Modifications, including the signing by Licensee (and any of Licensee’s Authorized Users, employees, or personnel) of any assignment, application, oath, affidavit, declaration, petition, or other instrument that BWH reasonably request.

- (b) **Feedback.** If Licensee (or any of Licensee’s Authorized Users, employees, or personnel) disclose or provide any Feedback to BWH, then Licensee (and they) agree to license, and hereby license, that Feedback (and any copyrights, patent rights and other intellectual property rights in or to the Feedback) to BWH on a non-exclusive, world-wide basis to copy, use, sell, distribute, publish, make, have made, modify, commercialize and exploit the Feedback without any obligation to account to Licensee (or them). This license is fully paid-up and includes the right to create derivative works and grant sublicenses to others. This license is irrevocable and not subject to termination. The term “**Feedback**” means any improvements, additions to, updates, suggestions, ideas, recommendations or enhancements of, for, or to any of the CHANL Software that Licensee (or any of the Authorized Users or its personnel) disclose or provide to BWH, but does not include any Modifications (i.e., Modifications are governed by Subsection 7.5 (a) above).
- (c) **Disclaimers.** Licensee makes no guaranty or warranty that any Modification or Feedback is free of error or defect or that it is suitable for use by BWH or others.
- (d) **Work Product.** All Work Product is BWH’s exclusive property or the exclusive property of BWH’s contractor or licensor. BWH may use Work Product for any purposes as well as for others. BWH grants to Licensee a non-exclusive, non-transferable license to use Work Product solely in conjunction with Licensee’s licensed use of the CHANL Software, and for no other purpose whatsoever. “**Work Product**” means any documentation, techniques, methodologies, inventions, analysis, frameworks, software, or procedures developed, conceived or introduced by BWH (or BWH’s contractor or licensor) in the course of performing Services under this Agreement. Work Product does not include anything created by Licensee or any of Licensee’s employees or Authorized Users.

7.6 **Publications.** Licensee may publish and present the results of Licensee’s use of the CHANL Software in peer-reviewed journals. Licensee agrees to provide acknowledgement to BWH and its designated professional staff who participated in the creation of the CHANL Software, in such publications or presentations in accordance with standard academic practice. No Confidential Information of BWH may be published or presented by Licensee.

## Article 8 – Representations and Warranties

8.1 **BWH’s Representations and Warranties.** BWH represents and warrants to Licensee as follows:



- (a) BWH is validly organized under the laws of the Commonwealth of Massachusetts as a charitable corporation and is in good standing.
- (b) The person signing below on BWH's behalf is authorized to do so and to bind BWH to this Agreement.

8.2 **Licensee's Representations and Warranties.** Licensee represents and warrants to BWH as follows:

- (a) Licensee is validly incorporated or organized as indicated at the beginning of this Agreement and are in good standing.
- (b) The person signing below on Licensee's behalf is authorized to do so and to bind Licensee to this Agreement.
- (c) Licensee will ensure compliance with this Agreement by Licensee's Authorized Users employees, agents, and contractors.

#### **Article 9 – Term and Termination**

9.1 **Term.** This Agreement begins on the Effective Date and continues for a period of one year or until the Research and/or Educational Purpose is concluded, whichever occurs first (the "**Term**").

9.2 **Termination.** This Agreement may be terminated by BWH if the Licensee or any of the Authorized Users fails to meet any of its material obligations under this Agreement and fails to remedy such default or breach within sixty (60) days following receipt of written notice from BWH of such breach or default.

9.3 **Effect of Termination.** The following provisions apply when this Agreement terminates (by expiration or otherwise).

- (a) **License Termination.** All Licenses will terminate.
- (b) **No Further Use.** Licensee will immediately stop using the Licensed Software, Documentation, and Methodology, and will confirm to BWH in writing that Licensee has done this.
- (c) **Destruction.** Licensee will immediately destroy or permanently erase, and will not retain any copy of, the Licensed Software or Documentation,. Licensee will confirm to BWH in writing that Licensee has done this.

#### **Article 10 – Miscellaneous Provisions**

10.1 **Disclaimers.**

(a) SECTIONS 8.1(a) AND 8.1(b) ARE BWH'S ONLY WARRANTIES. BWH GIVES NO OTHER WARRANTY AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE FOLLOWING:

1. ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFORMATIONAL CONTENT, TITLE, SYSTEMS INTEGRATION, OR NON-INFRINGEMENT;
2. ANY WARRANTY THAT THE CHANL SOFTWARE OR THE SERVICES WILL SATISFY ANY OF LICENSEE'S REQUIREMENTS OR ANY REGULATION, STANDARD, OR GOVERNMENTAL CRITERION (E.G., MEANINGFUL USE REQUIREMENTS); AND
3. ANY WARRANTY THAT THE CHANL SOFTWARE OR THE SERVICES ARE WITHOUT DEFECT OR ERROR OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR FREE.

(b) LICENSEE ACKNOWLEDGES THAT THE LICENSED SOFTWARE AND THE CHANL SOFTWARE HAVE BEEN DESIGNED FOR RESEARCH PURPOSES ONLY AND HAS NOT BEEN REVIEWED OR APPROVED BY THE FOOD AND DRUG ADMINISTRATION OR BY ANY OTHER AGENCY, AND FURTHER ACKNOWLEDGES THAT CLINICAL APPLICATIONS ARE NEITHER RECOMMENDED NOR ADVISED. FURTHER, NOTWITHSTANDING ANY TERM OR CLAUSE TO THE CONTRARY IN THIS AGREEMENT, LICENSEE ACKNOWLEDGES, AND HEREBY AGREES, THAT ALL CLINICAL APPLICATIONS OF THE LICENSED SOFTWARE AND CHANL SOFTWARE ARE PROHIBITED UNDER THIS AGREEMENT.

(c) Licensee accepts the Licensed Software and CHANL Software on an "AS IS" basis. Licensee understands and acknowledges that the Licensed Software and CHANL Software are experimental, may contain errors and are subject to further development and revision, and agrees to assume the entire risk as to the use of and reliance on the Licensed Software and CHANL Software and the results obtained from their use. BWH does not guarantee the accuracy of the Licensed Software or CHANL Software, or of any results or data, and assumes no obligation to notify Licensee of any bug fixes, enhancements or other modifications that may be made to the Licensed Software or CHANL Software.

10.2 **Exclusion and Limitation of Liability.** IN NO EVENT WILL BWH BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, COVER, EXEMPLARY, PUNITIVE, INCIDENTAL OR OTHER INDIRECT DAMAGES, LOSSES, LOSS OF PROFITS, OR EXPENSES. THIS EXCLUSION OF LIABILITY APPLIES EVEN IF BWH HAS BEEN ADVISED IN ADVANCE OR ARE AWARE OF THE POSSIBILITY OF ANY SUCH DAMAGES OR LOSSES. IN NO EVENT WILL BWH'S AGGREGATE LIABILITY RELATING TO THIS AGREEMENT (INCLUDING EXHIBITS), OR THE LICENSED SOFTWARE, CHANL SOFTWARE, SERVICES, OR LICENSEE'S DATA EXCEED A LIMIT EQUAL TO THE TOTAL AMOUNT OF THE FEES RECEIVED BY BWH FROM LICENSEE UNDER THIS AGREEMENT. THE EXCLUSIONS AND LIMITATIONS OF LIABILITY IN THIS SECTION APPLY REGARDLESS OF THE FORM OF ACTION OR CLAIM – E.G. CONTRACT, WARRANTY, TORT, OR OTHERWISE. THIS AGREEMENT, INCLUDING ITS DISCLAIMERS AND EXCLUSIONS AND LIMITATIONS OF LIABILITY, REPRESENTS A MUTUALLY AGREED UPON ALLOCATION OF RISK AND THE CONSIDERATION GIVEN HAS BEEN SET TO REFLECT SUCH ALLOCATION.

10.3 **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and may be delivered in person or by either overnight courier or certified U.S. Mail given to the Parties at the addresses set out below or at such other address or facsimile number as the Parties may from time to time be informed.

To BWH:  
The Brigham and Women’s Hospital, Inc.  
75 Francis Street  
Boston, MA 02115  
Attn: Dr. Paul Anderson  
Sr. VP, Research

To Licensee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10.4 **Export Act.** Licensee hereby warrants and certifies that Licensee will not make available or export any of the CHANL Software or data to any country in contravention of any law or regulation of the United States or any of its agencies, including the Export Administration Act of 1979 and regulations relating to them.

10.5 **Severability.** If a court determines that a provision of this Agreement — or a provision’s application or interpretation — is invalid or unenforceable, then the remainder of this Agreement will remain in full force and effect. The Parties will interpret the remainder of the Agreement, and the invalid or unenforceable provision, in a way that most accurately achieves the Parties’ intent in entering into this Agreement.

10.6 **Assignment.** Neither Party may assign this Agreement, or any of its rights under this Agreement, (whether in connection with a merger, consolidation, sale, or otherwise) without the other Party’s prior written consent, and a Party’s attempt to so assign is null and void and is a default under this Agreement.

10.7 **Force Majeure.** “Force Majeure” means any delay, breach of contract, or event caused by acts of nature, strikes, lockouts, other labor troubles, riots, civil commotion, insurrection, war, crime, hacking, unauthorized intrusion, trespass, or other reason not BWH’s fault. BWH will not be in breach of contract or otherwise liable for any Force Majeure. If a Force Majeure prevents BWH from discharging BWH’s obligations under this Agreement, then the period of performance for those obligations will extend for a period that reasonably accounts and adjusts for the period of the delay caused by the Force Majeure. If BWH claims that a Force Majeure excuses BWH’s performance under this Agreement, then BWH will give prompt written notice to Licensee of the Force Majeure, use BWH’s commercially reasonable efforts to overcome or remove that Force Majeure, and continue to perform if and to the extent it is commercially reasonable to do so.

10.8 **Governing Law.** Except to the extent prohibited by law or regulation, this Agreement shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts, excluding its provisions with respect to conflict of laws.

10.9 **Relationship.** The Parties are independent contractors, and this Agreement does not constitute — and must not be construed to create — a partnership, agency, joint venture, or employment relationship. Nothing in this Agreement gives one Party the right, power, or authority to bind the

other or to act as an agent or representative of the other.

10.10 **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

10.11 **Waiver.** A Party may waive compliance by the other Party with a provision of this Agreement only if the waiver is in writing. A Party's waiver of compliance with a provision is a one-time waiver and does not waive that compliance a second or subsequent time, and is not a waiver of compliance with any other provision. For example, a Party's waiver of the other Party's breach or default does not — either expressly or impliedly — waive a second breach or default by the other Party of either the same or a different type of breach or default. Also, a Party's delay in exercising a right, power, or privilege under the law or this Agreement does not constitute a waiver of that right, power, or privilege.

10.12 **Contractors.** BWH may use contractors (including subcontractors) to perform or assist in the performance of this Agreement. Any subcontracting of Services or obligations to contractors will not excuse BWH from responsibility for the performance of those Services or obligations.

10.13 **Entire Agreement and Amendments.**

(a) This Agreement (which includes its Exhibit) contains the entire agreement and understanding between the Parties relating to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, understandings, and representations, either written or oral, relating to that subject matter. Any term of a purchase order or other document submitted by Licensee in connection with this Agreement that is in addition to, different from, or inconsistent with any term of this Agreement is not binding on BWH and is of no effect.

(b) The Parties may amend this Agreement in a written document signed by both Parties. Any amendment to this Agreement will be effective prospectively only, unless expressly agreed otherwise in the amendment.

10.14 **Use of Name.** Except as expressly provided in this Agreement or pursuant to specific prior written permission of the applicable party, neither Party shall use any of the names, logos, service marks or trademarks, or any adaptation thereof, of the other Party or any of its Affiliates, or of any trustee, director, officer, staff member, employee, student or agent thereof, or of any funding agency, in any advertising, promotional or sales material or publicity or in any document employed to obtain funds or financing, or to endorse or promote research results or products produced in whole or in part by operation of the Licensed Software or derived from or based on the CHANL Software. For BWH, such permission shall be obtained from BWH's Chief Public Affairs Officer.

10.15 **U.S. Government Rights.** For any of the CHANL Software supported by federal funding, the license granted under this Agreement is subject to the rights, conditions and limitations imposed by U.S. law including without limitation 35 U.S.C. § 202 et seq. and regulations pertaining thereto. Notwithstanding the foregoing, the Licenses granted under this Agreement do not constitute a response by Licensee to any request for proposals, bid solicitation or other invitation or offer to

contract by any governmental authority but instead constitute an offer to enter into a license agreement only upon the terms set forth in this Agreement.

10.16 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which will together be deemed to constitute one agreement. The Parties agree that execution of this Agreement by industry standard electronic signature software or by exchanging facsimile or PDF signatures will have the same legal force and effect as the exchange of original signatures and that in any proceeding arising under or relating to this Agreement, each Party hereby waives any right to raise any defense or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed agreement electronically.

10.17 **Authority.** A duly authorized representative of each Party will sign this Agreement, and each signature constitutes conclusive proof of that person’s authority to bind the Party represented by that person. Each person signing below represents that he or she has the power and authority to sign on behalf of the Party for whom he or she is signing and to bind that Party to this Agreement.

AGREED TO AND ACCEPTED BY:

\_\_\_\_\_ (“Licensee”)

By (signature): \_\_\_\_\_

Name (print): \_\_\_\_\_

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

The Brigham and Women’s Hospital, Inc.

By (signature): \_\_\_\_\_

Name (print): \_\_\_\_\_

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

**Exhibit A**

**Research and/or Educational Purposes**

The Research and/or Educational Purposes permitted under the License is as follows:

*[Insert description of permitted project, including title, PI, grantor (if any), and other identifying information]*

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**Licensed Software**

The Licensed Software includes the following computer programs, software products, applications, tools, and content to the extent that they are part of BWH's CHANL Software:

*[Something like the following, or another description that is sufficiently complete*

- *Study list*
- *Study de-identification*
- *Study query/retrieve*
- *Bi-directional measurement tool*
- *Basic image manipulation tools such as zoom, pan, and window/level*
- *Annotation tools for non-targets, resolved targets, and non-evaluable disease*
- *Annotated image captures for target and non-target lesions*
- *Time point comparison*
- *Integrated conformance checks for select PIM supported response criteria*
- *Saving of annotated images and measurements to PIM website]*

*Eg. Annotation data from notes*

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**Authorized Users**

The Authorized Users granted permission to use the Licensed Software for the Research and/or Educational Purposes are limited to the following individuals: *[Please list names below]*

_____	_____
_____	_____
_____	_____
_____	_____

**Fees and Charges**

No charge for the academic version of the software. Fees associated with installation, training, and support to use software per the contract.