NeoCHART+ Agreement

This NeoCHART+ Agreement (this “Agreement”) is between you, the person who has or is attempting to download the NeoCHART+ Application onto an Apple Device, and Baylor College of Medicine (“BCM”).

1. NeoCHART+ Application: The “NeoCHART+ Application” means software for documenting the events of neonatal resuscitation in real time, and any later versions or updates of the NeoCHART+ Application that you rightfully obtain.

2. License for use on Apple Devices: Conditioned upon your acceptance of this NeoCHART+ Agreement (this “Agreement”) and your compliance with the License Restrictions, Baylor College of Medicine (“BCM”) grants to you, personally, a non-exclusive, non-transferable license to use one copy of the NeoCHART+ Application on one and only one Apple-branded product that you own or control (each “Your Apple Product”). The license is specific to Your Apple Product that you select and may not be transferred to another Apple-branded product that you own or control. The NeoCHART+ Application is licensed, not sold. Baylor does not grant to you any rights in the NeoCHART+ Application that are not expressly granted in this Agreement.

3. License Restrictions: Each of the following restrictions (the “License Restrictions”) is a condition to the License.

   License Restriction 1 – Your Apple Devices: You may not install or access the NeoCHART+ Application on any device other than Your Apple Devices.

   License Restriction 2 – Apple App Store Usage Rules: You may not use the NeoCHART+ Application in violation of the Usage Rules in the Apple App Store Terms of Service.

   License Restriction 3 – No Distribution: You may not distribute or make the NeoCHART+ Application available over a network where the NeoCHART+ Application could be used by multiple devices at the same time.

   License Restriction 4 – No Transfer: You may not transfer, redistribute or sublicense the NeoCHART+ Application.

   License Restriction 5 – Removal Required upon Sale of Apple Device: If you sell Your Apple Device to a third party, you must remove the NeoCHART+ Application from Your Apple Device before transferring possession to the purchaser.

   License Restriction 6 – No Copying: You may not copy (except for permitted installation on Your Apple Device), reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the NeoCHART+ Application, or any part thereof (except to the extent that this restriction is prohibited by law or to the extent permitted by the licensing terms governing use of any open-sourced components included with the NeoCHART+ Application).
4. **Consent to Use of Data:** You agree that BCM may collect and use technical data and related information—including but not limited to technical information about your device, system and application software, and peripherals—that is gathered periodically to facilitate the provision of software updates, product support, and other services to you (if any) related to the NeoCHART+ Application. BCM may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.

5. **Termination:** You may terminate this Agreement at any time. Your rights under this Agreement will terminate immediately if you breach any term of this Agreement.

6. **External Services:** The NeoCHART+ Application may enable access to services or websites of BCM or others (“External Services”). You agree to use External Services at your sole risk. BCM is not responsible for examining or evaluating the content or accuracy of any third-party External Services, and shall not be liable for any such third-party External Services. Data displayed by any NeoCHART+ Application or External Service, including but not limited to financial, medical and location information, is for general informational purposes only and is not guaranteed by BCM or its agents. You will not use the External Services in any manner that is inconsistent with the terms of this Agreement or that infringes the intellectual property rights of BCM or any third party. You agree not to use the External Services to harass, abuse, stalk, threaten or defame any person or entity, and that BCM is not responsible for any such use. External Services may not be available in all languages or in your home country, and may not be appropriate or available for use in any particular location. To the extent you choose to use such External Services, you are solely responsible for compliance with any applicable laws. BCM reserves the right to change, suspend, remove, disable or impose access restrictions or limits on any External Services at any time without notice or liability to you.

7. **NO WARRANTY:** YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE NeoCHART+ APPLICATION IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE NeoCHART+ APPLICATION AND ANY SERVICES PERFORMED OR PROVIDED BY THE NeoCHART+ APPLICATION ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND BCM HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE NeoCHART+ APPLICATION AND ANY SERVICES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND OF NONINFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BCM OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE NeoCHART+ APPLICATION OR SERVICES PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

8. **Limitation of Liability:** TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL BCM BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING,
WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO YOUR USE OF OR INABILITY TO USE THE NeoCHART+ APPLICATION, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF BCM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall BCM’s total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars ($50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

9. **Export:** You may not use or otherwise export or re-export the NeoCHART+ Application except as authorized by United States law and the laws of the jurisdiction in which the NeoCHART+ Application was obtained. In particular, but without limitation, the NeoCHART+ Application may not be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using the NeoCHART+ Application, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons.

10. **Commercial Item:** The NeoCHART+ Application and related documentation each is a “Commercial Item,” as defined in 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.

11. **Governing Law:** Except to the extent expressly provided in the following paragraph, this Agreement and the relationship between you and BCM shall be governed by the laws of the State of Texas, excluding conflicts of law provisions. You and BCM agree to submit to the personal and exclusive jurisdiction of the state and federal courts in Harris County, Texas, to resolve any dispute or claim arising from this Agreement.

12. **Apple is not a party and has no obligations:**

12.1 You and BCM acknowledge that Apple is not a party to this Agreement. You and BCM acknowledge Apple has no responsibility or liability for the NeoCHART+ Application or the content of the NeoCHART+ Application.

12.2 You and BCM acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the NeoCHART+ Application.
12.3 If the NeoCHART+ Application fails to conform with any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the NeoCHART+ Application, and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the NeoCHART+ Application. YOU ACKNOWLEDGE THAT BCM HAS DISCLAIMED ALL WARRANTIES.

12.4 You and BCM acknowledge that Apple has no responsibility for addressing any claim by you or any third party relating to the NeoCHART+ Application or your possession or use of the NeoCHART+ Application, including, but not limited to: (i) product liability claims; (ii) any claim that the NeoCHART+ Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation, including in connection with the NeoCHART+ Application’s use of the HealthKit and HomeKit frameworks.

12.5 BCM and you acknowledge that, in the event of any third party claim that the NeoCHART+ Application or the End-User’s possession and use of that Licensed Application infringes that third party’s intellectual property rights, BCM, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

12.6 You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

12.7 You must comply with applicable third party terms of agreement when using the NeoCHART+ Application.

12.8 You and BCM acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of this Agreement, and that, upon the End-User’s acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary of this Agreement.

13. **HIPAA Compliance:** The parties acknowledge that the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) requires covered entities to comply with certain privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time (65 Fed. Reg. 82462 (December 28, 2000), 67 Fed. Reg. 14776 (March 27, 2002) and 67 Fed. Reg. 53182 (Aug. 14, 2002) (collectively, the “Privacy Standards”)). You agree that you will not provide any PHI (as defined in HIPAA) to BCM. You agree to comply with the Privacy Standards of HIPAA. “HITECH” means The Health Information Technology for Economic and Clinical Health Act enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111–5).

**HOW TO CONTACT BCM:** Please direct all questions, complaints or claims with respect to the NeoCHART+ Application to BCM as follows:
Regine Fortunov  
Texas Children’s Hospital  
6621 Fannin St.  
Ste W6104  
Houston, TX 77030  
(832) 826-1380  
Regine.fortunov@bcm.edu

with a copy to:

Patrick Turley  
Associate General Counsel  
Baylor College of Medicine  
One Baylor Plaza  
BCMD-600D  
Houston, TX 77030  
(713) 798-6392  
pturley@bcm.edu