

Pulsara

ENTERPRISE LICENSE AGREEMENT

This Enterprise License Agreement (“Agreement”) is effective as of _____, 201__ by and between the City of Hollywood, a municipal corporation of the State of Florida (the “Licensee”) and CommuniCare Technology, Inc. dba Pulsara (“Pulsara”) a Delaware corporation, at 2880 Technology Boulevard West, Bozeman, MT 59718.

WHEREAS, Pulsara has developed a cloud-based platform for acute care coordination that enables improved communication among emergent healthcare providers; and

WHEREAS, Licensee is seeking to coordinate communication for emergent healthcare conditions.

Article 1. Definitions

“Content” –means any and all text, graphics, images, audio content, audiovisual content, data, app usage, other materials and any other information provided on or entered into the Software or made available by Licensee or its Healthcare Providers through the Software including all healthcare related information.

“Healthcare Providers” – means Licensee’s physicians, physician assistants, nurses, paramedics, emergency care responders, other physician extenders providing Medical Services on behalf of Licensee whether they are employees, independent contractors or professionally affiliated with Licensee, as a member of Licensee’s medical staff or other Licensee authorized personnel.

“Medical Services” – Means any and all medical and/or surgical services, and all related health care services, including advice, instructions, diagnoses, treatments, procedures, and other services provided by Healthcare Providers.

“Patient Information” - means, collectively, information and data related to the provision of healthcare services to patients, their health status, medical records, and related information, including images, reports, and lab and test results, medical treatments performed by Healthcare Providers, and other “protected health information,” as defined under HIPAA.

Article 2. Grant

2.01 Grant of Software License. Pulsara grants to Licensee a royalty-free, limited, nonexclusive, nontransferable license during the term, in the territory of the United States for Licensee’s provision of Medical Services to access and use the Pulsara Solution (“Software”). Pulsara reserves all rights not expressly granted.

2.02 Reciprocal Grant of Content. Licensee grants Pulsara a nonexclusive, royalty-free, worldwide license to store, use, analyze, display, reproduce, modify, post, transmit and otherwise distribute any Content in de-identified and aggregated format to other Licensees and third parties subject to compliance with the Business Associate Agreement (“BAA”), attached as Appendix A or other applicable BAA and applicable law related to Patient Information.

2.03. No Fee Implementation and Support Services. For no fee or other costs, Pulsara will implement and provide Licensee access to the Software.

Article 3. Term and Termination.

3.01 Term. The term of this Agreement shall be three (3) years and will automatically renew for successive three (3)-year terms, unless Licensee notifies Pulsara in writing sixty (60) days prior to the initial term expiration date that Licensee intends not to renew.

3.02 Suspension and Healthcare Provider Termination. Pulsara may temporarily suspend access to and/or use of the Software by Licensee in the event (1) of a security breach by Licensee, , or (2) Licensee is otherwise in breach of this Agreement and such breach is not cured. Pulsara may terminate a Healthcare Provider's access, if the Healthcare Provider is in violation of the terms of their End User License Agreement or any other agreement, policy, or terms of use applicable to the Software.

3.03. Termination. Either party may terminate this Agreement prior to the expiration of the Term upon written notice to the other party only as follows:

- a) if either party breaches a material provision of this Agreement and such breach is not cured within 30 days after written notice has been given to the breaching party;
- b) in the event of a filing of a petition in bankruptcy whether voluntary or involuntary or an assignment for the benefit of creditors;
- c) by Licensee upon 60 days' written notice to Pulsara; or
- d) by Pulsara upon 60 days' written notice to Licensee.

3.04. Effect of Termination. Upon any termination of this Agreement, Licensee's access to the mobile application, administrative dashboard, modules and data will terminate.

Article 4. Usage

4.01 Authorized Use. Except as expressly set forth in this Agreement, Licensee will not distribute or otherwise make available the Software, in any form, to any third party other than its Healthcare Providers. Licensee will employ reasonable security measures necessary to prevent unauthorized users from accessing the Software and Licensee's Healthcare Providers' account activation information, User IDs, Passwords, and PINs (collectively, "Login Information"). Licensee is solely responsible for the maintenance of all Login Information, including but not limited to, preventing access by terminated workforce or Healthcare Providers. Licensee shall immediately notify Pulsara of unauthorized access to, or use of, such Login Information. Without the prior written consent of Pulsara, which will not be unreasonably withheld, Licensee will not utilize the services of any third party to assist Licensee in using the Software. Licensee will be responsible for Licensee's use of the Software. Licensee is responsible and liable for ensuring that all Healthcare Providers comply with the terms of this Agreement.

4.02. Restrictions. Licensee agrees that it and its Healthcare Providers will not, in connection with using the Software: (1) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful or violative of third party privacy rights; (2) send or store material containing software viruses, worms, trojan horses or other harmful computer code, files, scripts, agents or programs; (3) interfere with or disrupt the performance of the Software, or the data contained in the Software; (4) attempt to gain unauthorized access to the Software or its related systems or networks; or (5) access the Software for purposes of monitoring its availability, performance, or functionality in

any manner that may result in degradation of the performance of the Software, or for any other benchmarking or competitive purposes.

4.03. Third Party Technology and Websites. Any and all third party technology or websites provided, made available, linked to, or otherwise accessible through the Software (“**Third Party Technology**”) is provided solely as a convenience to Licensee and not under the control of Pulsara. Pulsara does not endorse, recommend, or otherwise make any representations or warranties with respect to any Third Party Technology. Pulsara does not have any responsibility or liability to Licensee for any Third Party Technology which Licensee accesses and Licensee uses at Licensee’s own risk and subject to the rights, licenses and clearances necessary for use of the Third Party Technology.

4.04. Reverse Engineering. Licensee agrees that Licensee and its Healthcare Providers will not reverse-engineer, decompile, disassemble, translate, create derivative works from, or otherwise attempt to obtain access to the source code of, any aspect of the Software. Licensee agrees that Licensee and its Healthcare Providers will not copy, reproduce, alter, or otherwise modify the Software. Licensee agrees that Licensee and its Healthcare Providers will not lease, loan, sublicense, distribute, or otherwise provide others access to or with any aspect of the Software, except as expressly permitted in this Agreement. Licensee will not use its IT infrastructure to load test Pulsara’s back-end systems. Further, Licensee agrees not to develop, sell or distribute applications that are capable of launching, being launched from or are otherwise integrated with the Software without Pulsara’s express written consent.

4.05. Patient Information. Licensee and Pulsara acknowledge and agree that the Software may be used to transmit, collect, store, access, manage, and display Patient Information between and among Licensee and Healthcare Providers and that Patient Information may be stored by Pulsara. Licensee acknowledges and agrees that the Patient Information stored by Pulsara shall not serve as the system of record for any patient, personal representative of a patient, health care provider, any business associate of a health care provider, or any affiliates of the foregoing. Licensee agrees that Licensee’s provision and use of all Patient Information will be in compliance with HIPAA and all other applicable Laws. In connection with providing the Software to Licensee, the Parties will enter into the BAA. Licensee will require all of its Healthcare Providers to comply with HIPAA in connection with their use of the Software. Further, Licensee will ensure that it and its Healthcare Providers, as applicable, have received prior written consent from all patients whose Patient Information is transmitted, collected, stored, accessed, managed, or displayed through the Software, as required by HIPAA, authorizing all uses set forth in this Agreement.

4.06 Usage Data and Statistics. Pulsara will own and retain usage of aggregated data and statistics including treatment and response times (“Data”) that may be disclosed to third parties for any purpose in de-identified format in accordance with HIPAA Rules.

4.07 Medical Advice and Treatment. Licensee acknowledges and agrees that Pulsara does not provide medical advice, diagnosis, or treatment. Licensee further acknowledges and agrees that the Software is merely a conduit of information related to patients and the provision of healthcare to patients by independent third party Healthcare Providers. Pulsara assumes no liability for or relating to the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of the Software. Accordingly, Licensee acknowledges and agrees that its Healthcare Providers are solely responsible for all Medical Services and other services such Healthcare Providers provide in connection with using the Software or otherwise.

Article 5. Warranty

5.01 Warranty. Pulsara warrants that the Software licensed in this Agreement is free from significant programming errors and substantially complies with functionality criteria as set forth in www.pulsara.com.

5.02 Limitations on Warranty. EXCEPT AS PROVIDED FOR IN SECTION 6.01, PULSARA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SOFTWARE, AND EXPRESSLY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING ANY WITH RESPECT TO MERCHANTABILITY, RELIABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PULSARA, MAKES NO WARRANTY, REPRESENTATION, OR GUARANTY: (1) AS TO THE SEQUENCE, ACCURACY, TIMELINESS, RELEVANCE, OR COMPLETENESS OF THE SOFTWARE; (2) AS TO ANY INFORMATION OFFERED OR PROVIDED WITHIN OR THROUGH THE SOFTWARE REGARDING TREATMENT OF MEDICAL CONDITIONS, ACTIONS, DIAGNOSES, PROCEDURES, APPLICATION OF MEDICATION, OR OTHER PROVISION OF MEDICAL SERVICES; (3) THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, LICENSEE'S USE OF THE SOFTWARE, AND ANY THIRD PARTY TECHNOLOGY IS AT LICENSEE'S OWN RISK.

5.03 Limited Access. Pulsara disclaims and waives any and all responsibility of Pulsara for any defect or service interruption in connection with local telecommunication network activity, capacity and compatibility with third party communication equipment, Internet access, software, browsers and servers, or the Licensee's computer and telecom systems used to access the Software. Licensee agrees that Pulsara is in no way responsible for any telecommunications or internet difficulties Licensee may experience as a result of attempting to transmit data while using the Software and Licensee waives any and all claims against Pulsara in connection with such use, unless the difficulties were caused solely by the gross negligence or willful misconduct of Pulsara.

5.04 Limited Liability. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, COSTS, EXPENSES OR LOSSES OR LOST PROFITS UNDER THIS AGREEMENT. PULSARA WILL NOT BE LIABLE FOR ANY FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT BECAUSE OF CIRCUMSTANCES BEYOND ITS CONTROL. PULSARA WILL NOT BE LIABLE FOR ANY FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT BECAUSE OF MISUSE OF THE SOFTWARE OR THIRD PARTY TECHNOLOGY. PULSARA'S TOTAL CUMULATIVE LIABILITY FOR ALL MATTERS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE TOTAL ANNUAL VALUE OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY.

Article 6. Indemnification.

6.01 Mutual Indemnification. Licensee shall indemnify, defend and hold Pulsara, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with any use of the Software, any breach of this Agreement by Licensee and any Excluded Claim as set forth below. Pulsara shall indemnify, defend and hold Licensee's officers, employees and agents attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with (i) Pulsara's breach of this Agreement or (ii) actual or alleged infringement of any patent, copyright or other property right arising from the Software. Notwithstanding any of the foregoing, Pulsara will have no obligation to defend Licensee with respect to any claim based upon an Excluded Claim as set forth below.

6.02 Excluded Claims. Excluded Claims means (1) Licensee's failure to use the Software in accordance with this Agreement or for purposes not authorized by this Agreement; (2) incorporation of any part of the Software into any other product or process, or the use of any part of the Software in conjunction with software, hardware, or data if such Claim would not have arisen if not for such incorporation; (3) any modification, addition, or change to any part of the Software made by or on behalf of Licensee, its Healthcare Providers, employees, agents, or representatives, or any other party on behalf of Licensee, its Healthcare Providers, employees, agents, or representatives; (4) any Claim or Loss related to any Third Party Technology; (5) any Claim or Loss arising from any acts or omissions of Licensee and/or any Healthcare Provider related to the provision of Medical Services or Licensee's other operations; or (6) any Claim or Loss related to any Content that Licensee, its Healthcare Providers, employees, agents, or representatives provide to or otherwise transmit using the Software.

Article 7. Intellectual Property

7.01 Ownership and Title. Except for the limited license and use rights expressly granted to Licensee under this Agreement during the Term, all title to and the rights in the Software (including any and all Updates), including ownership rights to patents (registrations, renewals, and pending applications), copyrights, Trademarks, trade secrets, Pulsara's or third party hardware, other technology, any derivatives of and all goodwill associated with the foregoing is the exclusive property of Pulsara and/or third parties.

7.02 Confidentiality (a) Each Party agrees not to reveal or disclose any Confidential Information of the Disclosing Party for any purpose to any third party, or to use any Confidential Information for any purpose other than as contemplated in, or otherwise necessary in connection with the Party's performance under this Agreement without the prior written consent of the Disclosing Party unless requested or required by law, regulation or legal process to disclose upon prompt notice to the other party. Each Party agrees to treat Confidential Information disclosed to it by the other with the same degree of care as the receiving party uses in protecting its own confidential and proprietary information, but in no event less than a reasonably prudent person.

(b) "Confidential Information" means any and all non-public, confidential proprietary information, trade secrets, and such other confidential information of or relating to a party furnished by the party and/or its representatives ("**Disclosing Party**") on a confidential basis to the other Party ("**Receiving Party**") excluding Patient Information, which is addressed in the

BAA and as set forth in Chapter 119, "Public Records Act", Florida Statutes and in accordance with HIPPA regulations. Notwithstanding anything in this Agreement to the contrary, Confidential Information will not include information which: (1) at or prior to the time of disclosure by the Disclosing Party was known to or independently developed by the Receiving Party, except to the extent unlawfully appropriated by the Receiving Party or third party; (2) at or after the time of disclosure by the Disclosing Party becomes generally available to the public through no wrongful or negligent act or omission on the Receiving Party's part; or (3) the Receiving Party receives from a third party free to make such disclosure without breach of any legal obligation.

Article 8. General Provisions

This Agreement will be construed in accordance with and governed by the laws of the State of Florida without regard to the choice or conflicts of law provisions of any jurisdiction. In the event that Licensee institutes any action or proceeding arising out of or relating to this Agreement, exclusive jurisdiction will be in the state or federal court for Broward County, Florida. In the event that Pulsara institutes any action or proceeding arising out of or relating to this Agreement, exclusive jurisdiction shall be in the state or federal court where the Licensee is located. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Licensee and Pulsara as a result of this agreement or use of the Software. The rights and/or obligations contained in this Agreement may not be assigned, delegated or otherwise transferred by either party (except to a direct or indirect parent or subsidiary) without the prior written approval of the other party, not to be unreasonably withheld, provided, however that either party may assign this agreement in connection with a merger, consolidation or acquisition of a party resulting in a change of control or a transfer or sale of all or substantially all of the assets of either party. No assignment or delegation shall relieve either party of liability for its obligations hereunder. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by that party in writing. This Agreement, together with any applicable BAA, comprises the entire agreement between Licensee and Pulsara and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. This Agreement may be signed in counterparts.

PULSARA Enterprise License Agreement

Pulsara and Licensee have executed this Agreement as of the date first written above

LICENSEE:

City of Hollywood, a municipal corporation
of the State of Florida

PULSARA

By: _____
Peter Bober, Mayor

By: _____

Attest:

Printed Name, Title

Patricia A. Cerny, MMC, City Clerk

Endorsed As to Form and Legality for
the use and reliance of the the City of
Hollywood, Florida, only.

Jeffrey P. Sheffel, City Attorney