

BRAD GOODMAN SOLUTIONS, LLC
Software License Agreement

1. **Parties; Effective Date.** This Software License Agreement (“Agreement”) is between **BRAD GOODMAN SOLUTIONS, LLC.**, with offices at 7015 Centerline Drive, Charlotte, NC 28278 (“Licensor”) and the undersigned entity (“Licensee”).
2. **Purpose of Agreement.** Licensor is the owner or licensee of certain computer software programs relating to Emergency Services Scheduler (the “Software”). The Software is more fully described in Schedule A to this Agreement. This Agreement sets forth the terms and conditions under which Licensor will license the Software to Licensee.
3. **Grant of License.**
 - 3.1 Subject to Licensee’s compliance with the terms of this Agreement, Licensor grants Licensee a nonexclusive, nontransferable, single-site license to:
 - a. load and execute the Software in executable machine-readable form only, and subject to the limitations on the number of sites, workstations and/or users specified in Schedule A; and
 - b. use any user documentation provided by Licensor for the Software (“Documentation”) as required to exercise the rights granted in this Section.
 - 3.2 All rights not expressly granted to Licensee in this Agreement are reserved by Licensor, and Licensee may not use the Software or Documentation in any manner not expressly authorized by this Agreement. Licensee may use the Software and Documentation for its internal business operations only and not by, or for the benefit of, any affiliate, subsidiary, parent company or any other third party, nor may the Software be used for service bureau services. Licensee may exercise its rights under this Agreement only in the states and territories of the United States.
 - 3.3 Licensee shall not: remove or destroy any proprietary rights marks or legends on or in the Software or Documentation and on authorized copies; modify, enhance, adapt, translate, or create derivative works of the Software or Documentation; transfer, distribute, assign, sublicense, rent, lease, export or sell the Software; decompile, disassemble, or reverse engineer the Software; or make copies of the Software or Documentation other than for archival and backup purposes.
 - 3.4 Licensee acknowledges and agrees that the Software is licensed to operate only on the operating environment (“Environment”) and in association with the third party computer software programs (“Third Party Software”) set forth on Schedule A. Licensee is solely responsible for the acquisition, use and maintenance of all components of the Environment and all Third Party Software, and all associated costs and expenses.
4. **Delivery, Installation and Training.**
 - 4.1 Licensor will ship the Software, Documentation, and any other materials identified in Schedule A to Licensee, and will install the Software, within the time frames specified in Schedule A. Licensee shall make available a suitable place of installation with all facilities required.
 - 4.2 Installation of the Software by Licensor is included in the software license fees described in Schedule A. In addition, for no additional fees, Licensor will provide the training for the Software at Licensee’s facility, as described in Schedule A. Licensee may acquire additional services from Licensor at Licensor’s then-current professional services rates, or as otherwise agreed between the parties.

4.3 Licensee understands that Licensor is not responsible to make any modifications, changes, additions, deletions, or corrections, to the Software; however, Licensee explicitly grants Licensor access to update the Software at any time.

5. **Acceptance.** The Software is deemed accepted fourteen (14) calendar days after installation unless, within that time (the “Acceptance Period”), Licensee provides written notice to Licensor that the Software does not operate in substantial conformance with the warranties contained in this Agreement. If Licensee provides such written notice to Licensor, Licensor will use commercially reasonable efforts to, at its sole option, repair or replace the Software within a reasonable time of its receipt of the notice. However, if Licensor is unable to repair or replace the Software within thirty (30) days of its receipt of the notice, then Licensee may terminate this Agreement, return all Software, Documentation and other materials to Licensor, and receive a full refund of all fees paid to Licensor for the Software under this Agreement.

6. **Warranties and Disclaimers.**

6.1 Licensor warrants that for a period thirty (30) days after the Acceptance Date, the Software will operate in substantial compliance with its applicable Documentation. If during this period the Software does not perform as warranted, then Licensor will use commercially reasonable efforts to correct the nonconformance. If Licensor is unable to correct the nonconformance within a reasonable time, but in no event more than sixty (60) days, Licensee may terminate this Agreement, return all Software, Documentation, and other materials to Licensor, and receive a full refund of all fees paid to Licensor for the Software under this Agreement.

6.2 This Software warranty applies only to Software used in accordance with this Agreement, and does not apply if the Software media, or Software code has been subject to accident, misuse, or modification, and only if the nonconformance can be demonstrated on an unmodified version of the Software. It shall not be deemed a breach of this Software warranty if any failure of the Software to operate in substantial compliance with its applicable Documentation is caused, in whole or in part, by an error, malfunction or other problem with the Environment and/or any one or more Third Party Software products.

6.3 If Licensor investigates any nonconformance and such nonconformance is found to be caused by operator error, erroneous system configuration, modification, or other cause not inherent in the Software, Licensor reserves the right to charge for its services at its then-current professional service rates.

6.4 Licensor does not warrant that the functions contained in the Software will meet Licensee’s specific requirements, the requirements of Licensee’s particular industry, or will be error-free or operate without interruption.

6.5 THE WARRANTY AND REMEDY PROVIDED ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTY AND REMEDY UNDER THIS AGREEMENT, AND ARE PROVIDED IN LIEU OF, AND CREDENDO DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.6 Licensee further understands that any and all damages proximately caused by errors in the entry of scheduling information into the Software are the Licensee’s sole responsibility.

7. **Technical Support Services.**

7.1 Licensee may obtain technical support services for the fees and pursuant to the terms in Schedule A and subject to Licensor’s then-current technical support services policies and procedures.

7.2 Technical support services include: (a) when and if available, any updates, releases and enhancements to the Software made generally available to all licensees for no charge; and (b) telephone and remote computer support as to the use and operation of the Software, and error and defect verification, analysis and correction for the Software to the extent possible by telephone and remote computer.

7.3 Licensee may also request on-site assistance from Licensor. In such event Licensee shall pay Licensor its then current per-diem fees, and will reimburse Licensor for all reasonable traveling expenses, including meals, travel and lodging.

8. **Confidentiality.**

8.1 During this Agreement, each party may have access to information that is considered confidential by the other. This information may include, but is not limited to, the Software, Documentation, technical know-how, technical specifications, protocols, strategic business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data (“Confidential Information”).

8.2 Each party shall use the other party’s Confidential Information only for the purposes of this Agreement. Each party shall maintain the confidentiality of the other party’s Confidential Information in the same manner in which it protects its own Confidential Information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure or use of the other party’s Confidential Information.

8.3 Each party is permitted to disclose the other party’s Confidential Information to its employees, contractors and other third parties on a need to know basis only, provided that such employees, contractors and/or third parties have written or legal confidentiality obligations to that party no less stringent than those contained in this Agreement.

8.4 The confidentiality provisions of this Agreement do not apply to information that is or becomes generally available or known to the public through no act or omission of the receiving party; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the disclosing party; or created by a party independently of its access to or use of the other party’s Confidential Information.

8.5 Upon termination of this Agreement, each party shall return the other party’s Confidential Information and shall not use the other party’s Confidential Information for its own, or any third party’s, benefit. The provisions of this Section shall survive termination of this Agreement for so long as the Confidential Information remains confidential.

9. **Ownership.** Licensor is the owner of all intellectual property rights in and to the Software and Documentation, including copyrights, trade secrets, trademarks, patents, and know-how. Licensee acknowledges the foregoing and agrees to implement software protection measures designed to prevent unauthorized use and reproduction of the Software or Documentation, including, but not limited to, keeping the Software and Documentation in a secure place, under reasonable access and use restrictions not less strict than those applied by Licensee with respect to its own confidential information.

10. **Indemnification.**

10.1 Licensor shall defend, at its sole expense, any third party claim, demand or suit (“Claim”) against Licensee alleging that Licensee’s authorized use of the Software and Documentation infringes a third party’s U.S. patent, copyright, trademark, trade secret or other intellectual property right, and shall indemnify and hold Licensee harmless from and against any and all damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys’ fees) awarded or assessed against Licensee in association with the Claim, or reached through a negotiated settlement of the Claim.

- 10.2 This indemnification extends only to the Software delivered by Licensor and does not extend to: (1) any modifications, enhancements or other changes to the Software or Documentation created by or on behalf of Licensee (unless created by Licensor); and/or (2) any Claim arising out of the combination of the Software and any other code, software, hardware or any other products, provided that such infringement would not have occurred but for such combination.
- 10.3 If the Software infringes a third party's U.S. patent, copyright, trademark, trade secret or other intellectual property right, or Licensor reasonably believes that it is likely to infringe, then Licensor shall, at its sole expense either (1) procure for Licensee the right to continue using the Software; or (2) replace or modify the Software so that it is non-infringing, but maintains substantially the same functionality. If neither of these options is reasonably practical for Licensor, Licensor may terminate Licensee's right to use the Software and Documentation and refund to Licensee all license fees paid for the Software and Documentation, prorated on a straight-line basis over a period of three (3) years from the Acceptance Date of the Software.
- 10.4 Except for claims that are Licensor's obligation under Sections 10.1, Licensee shall defend, at its sole expense, any Claim against Licensor arising out of Licensee's (a) use of the Software and/or breach of this Agreement; and/or (b) any assertion that Licensee made false, misleading and/or otherwise deceptive statements with regard to Licensor and/or the specifications, features or capabilities of the Software; and shall indemnify and hold Licensor harmless from and against any and all damages, fines, penalties, costs, expenses and/or fees (including reasonable attorneys' fees) awarded or assessed against Licensor in association with the Claim, or reached through a negotiated settlement of the Claim.
- 10.5 In order to receive indemnification under this Section, the party seeking indemnification must promptly notify the other party of the assertion of the Claim; allow the other party to retain sole and exclusive control over the defense and/or settlement of the Claim; and cooperate with the other party, at the other party's expense, in the defense and/or settlement of the Claim. This Section sets forth each party's sole indemnification obligations and indemnification remedies in association with the Claims described above.

11. Fees and Payments.

- 11.1 Licensee will pay Licensor the license fees and technical support services fees pursuant to Schedule A. Licensee shall be charged a late fee of one and a half percent (1.5%) per month on all overdue amounts for any fees due and payable under this Agreement. Licensee shall pay all taxes arising out this Agreement, except for those based on Licensor's income.
- 11.2 Licensee may acquire additional licenses to the Software through the execution of agreed-upon Schedules to this Agreement. Unless otherwise specified in such additional Schedules, the terms of this Agreement shall apply to all Schedules executed between the parties.

12. Term and Termination.

- 12.1 This Agreement is effective on the date last signed by the parties (the "Effective Date") and continues for a period of twelve months, or until terminated in accordance with this Agreement.
- 12.2 Each party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after its receipt of written notice of such breach from the non-breaching party.
- 12.3 Upon termination of this Agreement by Licensor under Section 12.2, Licensee shall immediately: (a) discontinue all use of the Software and Documentation, (b) de-install and/or remove any and all copies of the Software, whether authorized or unauthorized,

from any computer or server upon which the Software has been installed by or on behalf of Licensee; and (c) return the all copies of the Software, Documentation and all other materials to Lessor.

- 12.4 Upon termination of this Agreement by Licensee under Section 12.2, Licensee's rights to use the Software and Documentation shall continue in effect subject to: (a) Licensee's continued compliance with all of the terms of this Agreement; and (b) Lessor's right to terminate Licensee's rights to use the Software and Documentation under the terms of Section 12.2 as the result of an uncured material breach of this Agreement.
- 12.5 All provisions of this Agreement regarding ownership, indemnification, non-solicitation, and limitations of liability shall survive any termination of this Agreement.

13. Limitation of Liability.

- 13.1 Except as in association with: (a) each party's indemnification obligations under this Agreement; (b) a party's violation of the other party's intellectual property rights; and/or (c) a party's breach of its confidentiality obligations under this Agreement; in no event shall either party be liable to the other party, regardless of the form of action or theory of recovery, in association with this Agreement or the Software for: (1) any indirect, special, exemplary, consequential, incidental or punitive damages, even if that party has been advised of the possibility of such damages; (2) lost profits, lost revenue, lost business expectancy, benefit of the bargain damages, business interruption losses or loss of data; or (3) direct damages in an amount in excess of all of the fees paid to Lessor under this Agreement during the twelve (12) month period immediately preceding the event giving rise to the dispute.
- 13.2 Except for claims arising out of a party's indemnification obligations, any claim arising out of, or related to, this Agreement must be initiated within one (1) year of the date the party knew, or reasonably should have known, of the existence of such claim against the other party.

14. Non-Solicitation. The Licensee shall not hire, solicit for hire or seek to engage the services of, nor offer to pay commissions, compensation or any other form of incentives to the employees or consultants of the Lessor without the prior express written consent of the Lessor, which may be withheld in that party's sole discretion. This Section shall expire twelve (12) months after the termination of this Agreement.

15. General.

- 15.1 This Agreement, all Schedules, and all amendments thereto contain the entire understanding of the parties with respect to the subject matter addressed herein and supersede, replace and merge all prior understandings, promises, representations and agreements, whether written or oral, relating thereto. This Agreement may not be modified except by a writing signed by both parties. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. The remedies accorded Lessor under this Agreement are cumulative and in addition to those provided by law.
- 15.2 Any waiver of a party's right or remedy related to this Agreement must be in writing, signed by that party to be effective. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will effect the other provisions of this Agreement.
- 15.3 This Agreement shall be governed by the laws of the State of South Carolina (exclusive of its choice of law rules), and the federal laws of the U.S.
- 15.4 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the fullest extent that it is

valid and enforceable under applicable law. All other provisions of this Agreement shall remain in full force and effect.

- 15.5 All notices must be in writing and sent either by hand delivery; messenger; certified mail, return receipt requested; overnight courier; or by facsimile or by e-mail (with a confirming copy) and shall be effective when received by such party at the address listed herein or other address provided in writing.
- 15.6 Licensee may not assign or sublicense this Agreement, in whole or in part, without Licensor's prior express written consent, which shall not be unreasonably withheld or delayed. Any attempted assignment or sublicense without such written consent shall be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

BRAD GOODMAN SOLUTIONS, LLC
Software License Agreement – Schedule A

1. Purpose – The Emergency Services Scheduler will perform the following operations:
 - a. Provide an internet based repository of schedule information including personnel information, part time shift availability, full time requests for time off, full time requests for shift swaps, and the current staffing assignments.
 - b. The software will provide a listing of available part time personnel to utilize for covering available shifts.
 - c. Paging/Email infrastructure to send emails via the hosting server.
 - d. News and updates section.
 - e. Check for required coverage of specified units.
 - f. Create a monthly calendar using the specified Full Time personnel.
 - g. Provide a means to Approve/Deny requests for shift swaps and time off requests.
2. Grant of License – The software will have a license for one (1) service unlimited users for that service and a maximum of 400 units.
3. Delivery, Installation and Training: Software delivery is not applicable due to all software services are hosted via the Lessor. Installation and configuration will be completed within one week of the payment in full. Two training sessions lasting a maximum of 6 hours each, is included with the software license. The Lessor shall provide proof of insurance 14 days prior to any onsite visits. **The setup fee is \$0.00.**
4. Technical Support Fees – Software errors shall be reported to the Lessor as soon as possible. Technical support or upgrades to the software will be negotiated on a case by case basis dependant on the extent of the modification. Upgrades can be provided at any time without notification to the Licensee by the Lessor if deemed an improvement to the software by the Lessor.
5. The scheduler price for the one (1) year term of 5/1/2015 to 4/30/2016 is \$1067.50.

AGREED AND ACCEPTED:

BRAD GOODMAN SOLUTIONS, LLC.

By: _____
(signature)

Name: BRAD GOODMAN, Owner
(printed)
Title: Managing Member
Date: 02/9/2015

YANKTON COUNTY
(Licensee's Full Legal Name)
By: Eric Ellingson
(signature)

Name: USA L. HUGHES
(printed)
Title: COUNTY MANAGER/ FINANCE OFFICER
Date: 2/13/15

This instrument has been pre-audited in the manner required
by the Local Government Budget and Fiscal Control Act.

Gary Gross
Deputy Finance Officer