

CarePICS, LLC
6300 Westgate Road
Raleigh, NC 27617

**Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:

 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER ADM 4800.2H, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
 - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-

compliance, including the number of underreported Units of Software or Services ("Notice"); or
(b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.

- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) **Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

- (l) **Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) **Limitation of Liability: Subject to the following:**
- Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) **Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) **Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a

United States Federal Court.

CarePICS® Application

END USER LICENSE AGREEMENT

This End User License Agreement (this "Agreement") is between you and CarePICS, LLC., ("CarePICS") a Delaware corporation. Your use of the CarePICS® Application ("CarePICS®") and access to [CarePICS].com (the "Services") is subject to the terms and conditions of this Agreement, CarePICS's Privacy Policy and the [CarePICS].com Terms of Use.

You and CarePICS agree to the following:

- License:** Subject to the terms and conditions of this Agreement, CarePICS hereby grants you a non-exclusive, non-transferable license (without the right to sublicense, distribute, sell or provide the Services to any third party) to use CarePICS® to access Services during the term of this Agreement. Except for the limited license provided herein, all proprietary rights in or related to the Services are and will remain the sole and exclusive property of CarePICS. Neither this Agreement nor your access to the Services will be construed as granting you any rights other than the limited license provided in this Section 1. You will not and will not permit others to (a) provide any third party with access to the Services by any means; (b) modify, reverse engineer, reverse assemble or decompile Software; (c) engage in any unauthorized, illegal or misleading activity through the use of the Services; (d) introduce into the Services any code intended to disrupt the Services; or (e) copy, capture, save or otherwise record any PHI (as defined herein) received through the Services. CarePICS may, in its sole discretion, with or without notice, temporarily or permanently suspend your use of the Services and/or CarePICS® for any breach of this Agreement or violation of any rules relating to receipt, handling or security of PHI.
- Services Availability.** CarePICS may modify, replace, or discontinue CarePICS®, partially or entirely, for all or part of the Services for you or for all users in our sole discretion.
- HIPAA Regulations and Definitions.** This Agreement references subject matter described in the HIPAA Privacy and Security regulations found at 45 CFR Part 160 and Part 164. Terms used in this agreement, including but not limited to "Covered Entity", "Business Associate", "Protected Health Information ("PHI)", "use", "disclose", "Breach", and "Security Incident", will have the same meaning as defined in the above referenced regulations. Except as otherwise used herein, "Effective Date" will be the date and time that you agree to this Agreement.

4. **You Obligations:**

- a. **Registration Information:** You will be required to provide the information on the Network Associate Registration page prior to accessing the Services ("Registration Information"). CarePICS reserves the right to verify any and all Registration Information and may deny access to the Services in its sole discretion. You warrant that all information provided is true and accurate, and you will not impersonate others or otherwise mislead, confuse or deceive CarePICS or any other user of the Services.
- b. **Network Associate Representation and Warranties:** You must be authorized by a Covered Entity that is also a Network Partner of CarePICS to use the Services with regard to PHI of that Network Partner and you must be qualified under HIPAA to receive PHI that belongs to that Network Partner. You warrant that you will at all times when using the Services be a Covered Entity or a Business Associate and, if applicable, will have agreed to the terms of the Business Associate Agreement sent to you by the Network Partner that is the owner of PHI provided to you through the Services.
- c. **Tokens.** You will be assigned by a Network Partner or receive from CarePICS at the time that CarePICS receives the your network user license a "token" that contains a unique Password to be associated with your account. The same Password will provide access to Services through CarePICS® and also to [CarePICS].com. You are responsible for safeguarding your Password. CarePICS assumes no responsibility for lost, misappropriated or misused Passwords, and you will be solely responsible for all access to the Services made under your Password.
- d. **Compliance with Laws.** You will not use the Services for any unlawful purpose or in furtherance of any illegal activity. You warrant that you will comply with all applicable federal, state and local laws, executive orders, and regulations. You further warrant that at all times when using the Services you will have obtained all consents and/or permissions as required by law to receive, transfer, use or provide any personal information, PHI, and/or other data provided, entered, transferred or received by you using the systems that comprise the Services, and that your use of the Services will be conducted in accordance with all applicable laws, including but not limited to HIPAA.
- e. **Internet Connection.** In accepting the terms of this Agreement, you understand that the Services can only be accessed by means of an Internet connection not provided as part of this Agreement. It is your sole responsibility to obtain such connection through an internet service provider at your sole cost and expense.

5. **WARRANTY DISCLAIMER.** YOUR ACCESS TO THE SERVICES IS "AS IS". EXCEPT AS EXPRESSLY PROVIDED HEREIN, CarePICS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WARRANTIES THAT THE SERVICES WILL BE ERROR FREE OR AVAILABLE ON AN UNINTERRUPTED OR ONGOING BASIS, AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER IMPLIED OR STATUTORY, WITH REGARD TO THE SERVICES OR ANY RESULTS THEREFROM, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND/OR FITNESS FOR A PARTICULAR PURPOSE. YOU IS ULTIMATELY RESPONSIBLE FOR DETERMINING IF THE SERVICE MEETS YOU'S REQUIREMENTS. CarePICS DOES NOT WARRANT THE ACCURACY, QUALITY, TIMELINESS, COMPLETENESS, OR CONTINUED AVAILABILITY OF THE SERVICES, OR ANY RESPONSES OR RESULTS GENERATED THEREFROM.

6. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL CarePICS BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER FORSEEABLE OR UNFORSEEABLE, ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY IN TORT OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF CarePICS EXCEED AN AMOUNT EQUAL TO \$50. THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION 5 WILL SURVIVE AND APPLY EVEN IF THE LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED IN ITS ESSENTIAL PURPOSE. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM CarePICS'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

7. **Term and Termination.** The term of your CarePICS® membership and this Agreement is one (1) year from the later of the date of acceptance of the Agreement by a duly authorized Contracting Officer or CarePICS receives your membership fee, where applicable. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contracts disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution fo any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

8. **Mutual Representation and Warranty.** Where applicable, each party represents and warrants to the other party that all of its employees, agents, representatives and members of its work force, who services may be used to fulfill obligations under this

Agreement, are or will be appropriately informed of the terms of this Agreement and are aware of the legal obligation to fully comply with all provisions of this Agreement.

9. **Notices.** You agrees to maintain with CarePICS a valid and working email address for delivery of any notices required or otherwise related to this Agreement. You further agrees to whitelist CarePICS's email address, and/or take additional actions as necessary in your spam filter to assure delivery of such notices. CarePICS will use the email address of record for delivery of any notices to you. For notices from you to CarePICS, you will utilize U.S. mail, express courier, or hand delivery to CarePICS's address detailed above.

10. **Arbitration, Governing Law, Forum for Disputes.** All legal issues arising from or related to the use of the Services will be construed in accordance with, and all questions with respect thereto will be determined by United States Federal law. . Venue and statute of limitations are mandated by applicable Federal law.

11. **Miscellaneous.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Price List, and any applicable GSA Customer Purchase Orders, represents the entire and exclusive agreement of the parties with respect to the subject matter hereof, and supersedes any and all prior and/or contemporaneous agreements, whether written or oral. This Agreement, however, shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order. . If any provision of this Agreement is for any reason held to be illegal or unenforceable, such provision will be deemed separable from the remaining provisions of this Agreement and will in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement.