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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 4800.2G ADM, 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 200 0) (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.

ATTACHMENT VII

END USER LICENSE AGREEMENT

EXHIBIT B

EULA

1. Definitions

1.1 "Capsule" means CapsuleTech, Inc., 300 Brickstone Square, Suite 203, Andover, Massachusetts 01810, for Licensees located in the US & Canada. Capsule Tech SAS, 9 rue Villa Pierre Ginier, 75018 Paris, France, for Licensees located outside the US & Canada.

1.2 "Licensee" means the company that installs and uses the Software.

1.3 "Software"/"Demo Software" means the DataCaptor Solution software and related documentation. Demo Software refers to any version of the Software provided on a temporary basis, for demonstration purposes or for which Licensee has not paid the license fees.

1.4 "Facility" means one hospital or other health care facility owned by Licensee (if in the US, a Facility is covered by one CMS Certification Number).

2. Use of the Software

2.1 License Grant. Capsule grants to Licensee a non-exclusive, non-transferable, perpetual right to use the Software in its Facility subject to Licensee complying with the terms and conditions of this Agreement, including payment for the proper number and type of Licenses. Licenses to Demo Software are not perpetual.

2.2 Installation. Upon installation by Licensee, the Software will generate a Site Code. Licensee will send the Site Code to Capsule and Capsule will send back the corresponding unique Site Key. Upon input of the Site Key, the Software will be activated for full functionality. A separate Site Key is required for each server on which the Software is installed.

2.3 Intended Use; Limitations. **The DataCaptor Solution is a Class II medical device regulated by the FDA that is indicated for use in data collection and clinical information management either directly or through networks with independent bedside devices. The DataCaptor Solution is not intended for monitoring purposes, nor is it intended to control any of the Medical Devices or hospital information systems it is connected to. The DataCaptor Solution is designed to collect data from Medical Devices to document electronic patient records or remotely display data only, and must not be used as a substitute for the independent medical judgment of a healthcare professional. Licensee covenants not to use the DataCaptor Solution inconsistent with these limitations, and acknowledges that Capsule will have no liability for any such use.**

3. Intellectual Property

3.1 Ownership. Licensee acknowledges that the Software is owned by and proprietary to Capsule and Capsule's suppliers, including all applicable rights to patents, copyrights, trade secrets and trademarks. Licensee shall not remove any copyright notices, patent markings, restricted right notices, restricted rights legends or other notices from the Software without prior written permission. Nothing herein will be construed to assign or transfer any intellectual property rights in the Software, or to license any rights other than as expressly set forth in this Agreement.

3.2 No Reverse Engineering. Except where expressly permitted by law despite such a limitation, Licensee shall not carry out reverse engineering on, decompile, disassemble or otherwise attempt to discover or

derive the source code or other underlying intellectual property of the Software. Licensee shall not create derivative works of the Software or combine the Software with other software.

3.3 Trademarks. Licensee shall not use the trademarks DATACAPTOR, NEURON or CAPSULE, or any other trademarks, service marks or logos of Capsule, in any manner or form and for any purpose that has not been approved in advance in writing by Capsule.

4. Limited Warranty

4.1 Software. Capsule warrants for a period of 90 days from activation of the first Site Key that the Software will perform substantially in compliance with the then-current documentation. Licensee's exclusive remedy for any material non-compliance will be for Capsule to modify or replace the Software to cure such non-compliance, or, if Capsule cannot cure the non-compliance, Capsule will refund the amount Licensee has paid for the Software and terminate this Agreement.

4.2 Demo Software. The Demo Software is provided "AS IS" with no warranties at all.

4.3 Disclaimers. **LICENSEE ACKNOWLEDGES THAT NO WARRANTIES OR CONDITIONS HAVE BEEN MADE BY CAPSULE EXCEPT FOR THE EXPRESS WARRANTIES SET OUT IN THIS SECTION 4. CAPSULE DISCLAIMS AND LICENSEE WAIVES ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES OR CONDITIONS BASED ON COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE.**

5. Limitation of Liability

5.1 Exclusions. Capsule will not be liable for any claims, damages or losses to Licensee or any third party resulting from (a) modification of the Software without the express written consent of Capsule, (b) use of the Software inconsistent with the documentation, applicable laws or the intended use set forth in Section 2.3, (c) connection of the Software with unsupported, defective or misconfigured medical devices, hardware, software, computer network, power or communications services, or (d) use of the Software without an update that would have prevented such claim (whether or not Licensee is paying for support).

5.2 Limitation. **CAPSULE IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES BASED ON LOST PROFITS, LOSS OF DATA OR USE, LOSS OF BUSINESS OR BUSINESS INTERRUPTION. IN NO EVENT WILL CAPSULE BE LIABLE FOR DAMAGES IN THE AGGREGATE EXCEEDING THE TOTAL AMOUNT OF FEES PAID TO CAPSULE IN THE 12 MONTHS PRECEDING THE CLAIM OF DAMAGES.** These limitations will otherwise apply regardless of the form of action, whether based on contract, tort, statute or any other legal or equitable theory, even if a party has been advised of the possibility of such damages and even if a remedy has failed of its essential purpose. These limitations will be enforced to the fullest extent permitted by applicable law.

6. Termination

6.1 Termination. Licenses to the Software are perpetual, except as set forth below:

(a) Capsule may terminate this Agreement and the Licenses if Licensee breaches this Agreement and such breach is not cured within 10 days after receipt of written notice specifying the breach.

(b) Licensee may terminate this Agreement and the Licenses at any time upon written notice to Capsule. Licensee will not be eligible for any refund of fees already paid.

(c) Unless otherwise extended or terminated in writing by Capsule, Demo Software licenses terminate 90 days after receipt of the Site Key.

6.2 Effect of Termination. Termination of this Agreement will terminate all licenses and will not relieve Licensee of its obligation to make any payment due prior to the effective date of termination. Immediately upon termination, Licensee will uninstall and destroy all copies of the Software and will certify such destruction to Capsule in writing.

7. General

7.1 US Government End Users.

(a) Capsule agrees to comply with all applicable equal opportunity laws including, if appropriate, the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, 60-250 and 60-741. The affirmative action clause and regulations contained in the preceding sentence will be incorporated by reference into this Agreement. No other terms or conditions required by any US Government contract or related subcontract shall be part of this Agreement or binding upon Capsule unless otherwise agreed to in writing between Capsule and Licensee, and Capsule rejects any government contract provisions included in or referred to by Licensee's request for quotation, purchase order or any other document.

(b) The DataCaptor Solution is a Commercial Item(s), as that term is defined at 48 CFR 2.101, consisting of Commercial Computer Software and Commercial Computer Software Documentation, as such terms are used in 40 CFR 12.212 or 48 CFR 227.7202, as applicable. Consistent with 48 CFR 12.212 or 48 CFR 227.7202-1 through 227.7202-4, as applicable, the DataCaptor Solution is being licensed to US 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 and elsewhere.

7.2 Severability; Waiver. The provisions of this Agreement will be deemed severable, and the invalidity or unenforceability of any one or more of its provisions will not affect the validity or enforceability of any other provisions. If any provision of this Agreement is finally declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the parties will substitute a valid and enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the economic positions and original intentions of the parties. The waiver or failure of either party to exercise any right provided for herein will not be deemed a waiver of any further right hereunder.

7.3 Assignment. Licensee may not assign, sell or otherwise transfer this Agreement or any License without the prior written consent of Capsule.

7.4 Governing Law. Any dispute in connection with the validity, interpretation or enforcement of this Agreement, or performance of the Software, will be handled as follows: If Licensee is headquartered outside the US & Canada, the Agreement will be governed by the laws of France and all disputes will be submitted to the exclusive jurisdiction of the courts in Paris, France. If Licensee is headquartered inside the US & Canada, the Agreement will be governed by the laws of Massachusetts, excluding its choice of law rules, and all disputes will be submitted to the exclusive jurisdiction of the state and federal courts in Boston, Massachusetts. Licensee consents to such governing law and jurisdiction and agrees that this is an appropriate venue and forum for such disputes. The parties agree that the following will not apply to this Agreement or to any transaction or relationship arising out of it: (i) UN Convention on Contracts for the International Sale of Goods, (ii) Uniform Computer Information Transactions Act, or (iii) American Law Institute Principles of the Law of Software Contracts. Any action or proceeding relating to this Agreement or to any transaction or relationship arising out of it must be commenced within one year (or the minimum period required by law, if longer) after the cause of action accrues. **To the maximum extent not prohibited by law, EACH PARTY WAIVES ANY RIGHT IT MIGHT HAVE TO TRIAL BY JURY of any dispute relating to this Agreement or to any transaction or relationship arising out of it.**

7.5 Entire Agreement. Unless Capsule and Licensee have entered into a separate agreement signed by both parties relating to the same subject matter, this Agreement constitutes the complete and exclusive statement of the terms and conditions between Capsule and Licensee, which supersedes and merges all prior and contemporaneous proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument signed by both parties.