

## **TERMS OF USE**

These Terms of Use (“Terms of Use”) contain provisions applicable to your general use of CarePICS.com (this “Site”). If you have entered into an End User License Agreement (a “EULA”) with CarePICS, LLC. (“CarePICS”) to use a Product, Software and/or Service (collectively “Products” and each as defined in the EULA or on this Site), there are additional terms included herein that may apply to you.

ATTENTION: PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE ACCESSING OR USING THIS SITE. BY USING THIS SITE OR DOWNLOADING MATERIALS FROM THIS SITE, YOU AGREE TO THESE TERMS OF USE.

### **A. Terms Applicable to All Users**

**Overview.** The information provided on this Site is for information and communication purposes only. You may view, print and download the materials on this Site, but all copies of downloaded materials must retain all copyright and other proprietary notices contained in the original materials. You may not reproduce, distribute, publicly display, or otherwise use them for any public or commercial purpose without the express written permission of CarePICS.

**Changes to Terms.** CarePICS may, at any time, for any reason, without notice and in its sole discretion make changes to these Terms of Use, this Site, including its look, feel, format, and content, and the Products as described or offered on the Site. Any changes will take effect when posted to the Site. Continued use of the Site or the Products constitute your acceptance of the modified Terms of Use.

**Intellectual Property.** Trademarks, logos, images, files, text and graphics used or displayed at this Site consist of copyrights, trademarks, and intellectual property owned, registered, controlled and/or licensed by CarePICS. Unauthorized use of any materials at this Site may violate copyright, trademark or other laws. No materials from this Site may be copied or retransmitted unless expressly permitted by CarePICS. Except as expressly set forth in these Terms of Use, nothing on this Site shall be construed as conferring any license to, or ownership interest in, any of the information located on this Site or any of CarePICS’s or any third party’s intellectual property rights.

**No Warranty or Guarantee.** YOUR USE OF THIS SITE IS TOTALLY AT YOUR OWN RISK AND YOU ASSUME ALL RESPONSIBILITY FOR SUCH USE. ALL MATERIALS PROVIDED AT THIS SITE ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-

INFRINGEMENT, ALL OF WHICH CAREPICS EXPRESSLY DISCLAIMS. CAREPICS MAKES NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE. CAREPICS DOES NOT GUARANTEE OR WARRANT THAT FILES AVAILABLE FOR DOWNLOADING THROUGH THE SITE ARE OR WILL BE FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER CODE WITH CONTAMINATING OR DESTRUCTIVE PROPERTIES. CAREPICS IS NOT RESPONSIBLE FOR THE ACCURACY AND/OR COMPLETENESS OF INFORMATION OR MATERIAL ON THIS SITE, NOR DOES CAREPICS UNDERTAKE ANY OBLIGATION TO ENSURE THE SITE IS UPDATED. YOU ARE SOLELY RESPONSIBLE FOR ACCURACY OF DATA INPUT AND FOR ENSURING THAT YOU CAN RECONSTRUCT DATA INPUT TO THE SITE IN THE EVENT OF LOSS. YOU ARE RESPONSIBLE FOR ANY RESULTS OR OTHER CONSEQUENCES OF ACCESSING THIS SITE AND USING THE CONTENT AND FOR TAKING PRECAUTIONS TO ENSURE THAT ANY CONTENT YOU ACCESS, DOWNLOAD OR OTHERWISE OBTAIN IS FREE OF VIRUSES OR ANY OTHER HARMFUL COMPONENTS. THIS WARRANTY DISCLAIMER MAY VARY DEPENDING UPON THE PRODUCT, SOFTWARE AND/OR SERVICES PROVIDED BY MTS. SOME STATES DO NOT ALLOW A DISCLAIMER OF IMPLIED WARRANTIES, SO SOME OF THE FOREGOING MAY NOT APPLY TO YOU. YOUR LEGAL RIGHTS MAY ALSO VARY FROM JURISDICTION TO JURISDICTION.

**Online Purchasing.** In addition to obtaining general information about CarePICS and our Products, this Site provides an Internet-based venue through which you may pay for CarePICS's Products. In addition to these Terms of Use, your use of Products will be subject to the terms and conditions of any EULA that may accompany Products, and your use of any Product will be conditioned upon your acceptance of the EULA. CarePICS's obligations with regard to Products are subject to the terms and conditions of the applicable EULA and any applicable agreement between you and MTS. In the event of any contradiction between these Terms of Use and the EULA, the terms of the EULA will govern.

**User Submissions.** Subject to our Privacy Policy and any applicable law, material, information or other communication you transmit or post to this Site is, and will be treated as, non-confidential and non-proprietary, and may be used by CarePICS without compensation to you.

**Third Party Sites and Links.** If you use any link to a third party site that is located on this Site, you are leaving this Site. Links to third-party sites are provided solely for your convenience. CarePICS has not reviewed any third-party site, does not control the content of any third-party site, and accepts no responsibility for such content. CarePICS does not endorse or make any representations about third-party sites, any information, software or products found there, or any consequences or results of their use. Accessing any third-party site from this Site is at your own risk.

**No Unlawful Or Prohibited Use.** As a condition of your use of this Site, you warrant to CarePICS that you will not use the Site for any purpose that is unlawful under any applicable law, prohibited by these Terms of Use or contrary to any notice posted on this Site. You may not use the Site in any manner that could damage, disable, overburden, or impair the Site or interfere with use of the Site by any other party. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Site or the Products, Software or Services offered on the Site.

Neither you nor any other individual or entity authorized by you to use the Site or the Products shall do or attempt to do any of the following:

- 1) use the Site, Products, Software or Services to link, email, post, email, transmit, communicate or otherwise make available any material that:
  - a) is pornographic, obscene, offensive, abusive, discriminatory, abusive, defamatory, libelous, harassing, threatening, or otherwise harmful;
  - b) is likely to harm CarePICS's computer systems or any third party's computer systems, including without limitation material containing any virus, worm, Trojan horse, malware, spyware, or other data or code that may cause a defect, malfunction, corruption, interruption or denial service, or other undesired modification;
  - c) is any improper solicitation, including "spam" or "junk mail";
  - d) infringes any copyright, trademark, patent, or other intellectual property right, discloses any trade secret or other confidential or proprietary information whether belonging to CarePICS or to any third party; or
  - e) would harm minors in any way, including without limitation material that violates child pornography laws, child sexual exploitation laws, or laws prohibiting the depiction of minors engaged in sexual conduct;
- 2) use CarePICS's network to engage in illegal or abusive behavior, including gaining unauthorized access to or use of any data, services, systems or network, or probing, scanning or testing the vulnerabilities of any systems or networks; or
- 3) impersonate or use the account, login or registration information of any other person or entity.

**Users Disputes.** You are solely responsible for your interactions with other users of this Site or the Products. CarePICS has no obligation or responsibility to mediate disputes between you and other users.

**Claims Resulting From Your Use of the Site.** As a condition for use of this Site, you agree to indemnify, defend and hold harmless CarePICS and its affiliates, providers, licensors, suppliers and each of their officers, directors, employees and agents from and against any and all damages, liabilities and expenses, including attorneys' fees and damages arising out of or resulting from your use of this Site, including, without limitation, any claims alleging facts that would constitute a breach by you of these Terms of Use.

**Miscellaneous.** In addition to the EULA and any other terms regarding use of Products, these Terms of Use constitute the entire agreement between you and CarePICS and supersede any prior agreements, whether written, oral or otherwise, with regard to your general use of the Site. CarePICS's failure to enforce any provision of these Terms of Use shall not constitute a waiver of its rights to do so. CarePICS may assign its rights and duties under these Terms of Use to any party at any time without notice to you. If any provision of these Terms of Use is determined by a court of competent jurisdiction to be unenforceable, the provision will be deemed modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from these Terms of Use, and the remainder of these Terms of Use will continue in effect.

#### **Arbitration.**

Except as regarding any action seeking equitable relief, including without limitation for the purpose of protecting any CarePICS confidential information and/or intellectual property rights, any controversy or claim arising out of or relating to these Terms of Use or this Site shall be settled by binding arbitration in accordance with the commercial arbitration rules, in effect at the time the proceedings begin, of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be held in Wake County, NC, USA.

All information relating to or disclosed by any party in connection with the arbitration of any disputes hereunder shall be treated by the parties, their representatives, and the arbitrator as proprietary business information. Such information shall not be disclosed by any party or their respective representatives without the prior written authorization of the party furnishing such information. Such information shall not be disclosed by the arbitrator without the prior written authorization of all parties. Each party shall bear the burden of its own counsel fees incurred in connection with any arbitration proceedings.

Judgment upon the award returned by the arbitrator may be entered in any court having jurisdiction over the parties or their assets or application of enforcement, as the case may be. Any award by the arbitrator shall be the sole and exclusive remedy of the parties. The parties hereby waive all rights to judicial review of the arbitrator's decision and any award contained therein.

**Digital Millennium Copyright Act Notifications and Counter-notifications.** If you believe that any content hosted on the Site violates your rights under the copyright law of the United States, you may file a notification of such claimed infringement with CarePICS's designated agent at [ CarePICS, LLC, 6300 Westgate Road, Raleigh, NC 27617 ].

Pursuant to 17 U.S.C. 512(c)(3), the following information must be provided for a valid notification of claimed copyright infringement:

- 1) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- 2) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- 3) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
- 4) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- 5) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- 6) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

If your content has been removed from the Site due to a notification filed against you, then you may file a counter-notification with CarePICS's designated agent above. Pursuant to 17 U.S.C. 512(g)(3), the following information must be provided in the counter-notification:

1. A physical or electronic signature of the subscriber;
2. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
3. A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
4. The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial

district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

If CarePICS receives a valid counter-notification, the Digital Millennium Copyright Act provides that the removed material be restored or access re-enabled.

If you have any other concerns that any content hosted on the Site or the Services violates your intellectual property rights under laws other than the copyright law of the United States, please contact us at [ ].

## **B. ADDITIONAL TERMS APPLICABLE TO USERS OF PRODUCTS, SOFTWARE OR SERVICES GOVERNED BY THE HEALTHCARE INFORMATION PORTABILITY ACT ("HIPPA")**

Terms used but not defined in this Section B shall have the meaning assigned under 45 CFR Part 160 and Part 164.

**Covered Entities.** Covered Entities registered with CarePICS as "Network Partners" on this Site will be solely responsible for HIPPA compliance by "Network Associates" that it authorizes to receive, use, or access Protected Health Information ("PHI") owned by that Covered Entity that may be stored, transmitted, received, or shared using any Product offered by CarePICS.

Any registered Network Partner may establish a relationship with any other Network Partner for the sharing of PHI between networks and among their collective Network Associates. The participating Network Partners are responsible for compliance with all aspects of HIPPA and any other applicable law or regulation.

**Business Associate Relationship.** CarePICS will function as a Business Associate with regard to Covered Entities registered as Network Partners. No use of this Site to store, transmit, receive or share PHI is authorized until such time as the Covered Entity has registered as a Network Partner and executed the CarePICS Business Associate Agreement.

**Network Associates.** Network Associates are granted access to PHI owned by a Network Partner at the sole discretion of that Network Partner. Any registered Network Associate may be invited by a Network Partner to share PHI.

CarePICS makes no representation that the purchase of any Product designed or intended to facilitate access to or sharing of PHI will result in any affiliation of a Network Associate with any Network Partner. Nor does CarePICS warrant any ongoing relationship between any Network Associate and any Network Partner.

Payment of any fee to CarePICS by a Network Associate is intended solely to establish the Network Associate's availability for sharing of PHI with that Network Associate by registered Network Partners.