

# End User License Agreement and Limited Product Warranty for CARIS Products v2.1

**IMPORTANT - READ CAREFULLY:** This End-User License Agreement (this “EULA”) is a legal agreement between the Licensee and Teledyne CARIS (hereinafter referred to as CARIS) for the CARIS software product(s) (the “Software”) with which this EULA is delivered, which includes the computer software, whether delivered as a single part or as a collection of parts (“Components”). If the individual agreeing to this EULA is not doing so as an individual but on behalf of a company, government, or other entity for which the individual is acting (e.g., as an employee or governmental official) (the “Principal”), then “Licensee” means the Principal and the individual (the “Agent”) is binding the Principal to this EULA. If the Agent is accepting on behalf of the Principal, the Agent represents and warrants that the Agent: (i) has full legal authority to bind the Principal to the Terms and Conditions of this EULA; (ii) has read and understand the Terms and Conditions of this EULA; and (iii) agrees to the Terms and Conditions of this EULA on behalf of the Principal. **If you sign up for cloud services using an email address from the Principal, then (i) you will be deemed to represent the Principal, (ii) your acceptance of this EULA will bind the Principal to the terms and conditions of this EULA, and (iii) the word “Licensee” in these terms will refer to the Principal. If the Agent does not have the legal authority to bind the Principal, the Agent must not download, install or use the Software, and must immediately return the Software to CARIS.**

All of the contents of the files, CARIS services and other media with which this EULA is provided, including any templates, database schemas, xml file schemas, online/electronic documentation, and all copies thereof, as well as any upgrades, modified versions and updates to the Software now or hereafter licensed to the Licensee by CARIS are also subject to the terms and conditions of this EULA.

Any third-party software provided with the Software that is associated with a separate EULA is licensed under the terms and conditions of that EULA.

By issuing a Purchase Order against the Quotation issued by CARIS, or by downloading, installing, accessing, copying, or otherwise using the Software, the Licensee agrees to be bound by the terms of this EULA. **If the Licensee does not agree to the terms and conditions of this EULA, the Licensee must not download, install or use the Software, and must immediately return the Software to CARIS.**

## 1. GRANT OF LICENSE

- 1.1. Subject to the payment of applicable fees and compliance with the terms and conditions of this EULA, CARIS grants the Licensee:
  - 1.1.1. the right to use as many instances of the Software as their licensing permits;
  - 1.1.2. a non-exclusive right to use the Software and the software documentation solely for the Licensee’s own business operations for the relevant duration of the license, subject to termination in accordance with this EULA.
- 1.2. CARIS may provide some Components of the Software in the form of text files (Configuration Files) for the purpose of allowing the Licensee to modify the Software's behavior or appearance. The Licensee may modify Configuration Files installed with the copy of the Software for which the Licensee is licensed. CARIS will have no support, warranty, indemnity or obligations relating to, and assumes no liability for, these modifications or any effects they may have on the Software or the products generated using the Software.

## 2. COMMERCIAL OFF-THE-SHELF SOFTWARE

- 2.1. The Software is commercial off-the-shelf Software. It is the sole responsibility of the Licensee to ensure that functions of the Software fulfill the requirements and expectations of the Licensee.

### **3. RESERVATION OF RIGHTS AND OWNERSHIP**

- 3.1. CARIS reserves all rights not expressly granted to the Licensee in this EULA. The Software is protected by copyright and other intellectual property laws and treaties. CARIS owns the title, copyright and other intellectual property rights in the Software. The Licensee is granted a license only to use the Software for the purposes and subject to the terms and conditions of this EULA. This EULA does not grant the Licensee any rights to the intellectual property in the Software, including but not limited to any copyright, trademarks or service marks, of CARIS.

### **4. USER RESTRICTIONS AND LIMITATIONS**

- 4.1. The Licensee may only use as many instances of the Software as the licensing permits.
- 4.2. The Licensee shall not reverse engineer, decompile, or disassemble the Software.
- 4.3. The documentation that accompanies the Software is licensed for internal, non-commercial reference purposes only. It cannot be re-sold, redistributed, or otherwise transmitted externally.
- 4.4. The Licensee shall not transfer the Software or license to another Company or entity.
- 4.5. The Licensee shall not use, copy, modify, or transfer the Software, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this EULA.
- 4.6. The Licensee shall not use, copy, modify or transfer Components of the Software for the purpose of combining them with a different product from the one the Licensee is licensed to use.
- 4.7. This EULA applies to all Components of the Software.
- 4.8. The Licensee shall not circumvent the licensing, keys, and/or files.
- 4.9. The Licensee shall not sell, rent, lease or lend, or otherwise transfer the Software to others without CARIS' prior written permission.
- 4.10. The Licensee shall not use the Software in any way other than as expressly permitted under this EULA.
- 4.11. The Licensee shall not publish, distribute, transfer or disseminate any information related to the evaluation, performance, analysis, or comparison of the Software with any other product(s) without CARIS' prior written consent.
- 4.12. The sample and demo data set(s) and related script(s) delivered with some Software (Sample Data) are provided solely for the purpose of instructing the user on how to use the Software. The Sample Data are not to be redistributed, resold, or used in a production solution without CARIS' prior written consent.

### **5. CONSENT TO USE OF DATA**

- 5.1. The Licensee agrees that CARIS and its affiliates may collect and use technical information gathered as part of the product support services provided to the Licensee, if any, related to the Software. CARIS may use this information solely to improve its products or to provide customized services or technologies to the Licensee and will not disclose this information in a form that personally identifies the Licensee.

### **6. ADDITIONAL SOFTWARE/SERVICE**

- 6.1. This EULA applies to updates, supplements, or any other additions to the Software that CARIS may provide to the Licensee after the date the Licensee obtains the initial copy of the Software, unless they

are accompanied by separate terms and conditions. CARIS reserves the right to discontinue Internet-based services provided to the Licensee or made available to the Licensee through the use of the Software.

- 6.2. The Licensee is only entitled to install updates to the Software that have been obtained from CARIS during the period that the Licensee has a subscription for maintenance and support. Updates may also require additional or different license terms that must be accepted before completing the installation.

## **7. CLOUD SERVICES**

- 7.1. The Licensee grants CARIS and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce the Licensee's data or other content ("Licensee's Data") as needed for CARIS to provide online services ("Cloud Services") to the Licensee. CARIS will not access, use or disclose Licensee's Data without Licensee's written consent except as reasonably necessary to support the Licensee's use of Cloud Services, or as required by law or by order of a court or other government body. The Licensee retains all its rights, title and interest in Licensee's Data subject to the rights granted to CARIS under this EULA.
- 7.2. Licensee shall not access or attempt to access Cloud Services by any means other than the interface provided by CARIS or circumvent any access or user restrictions put into place to prevent certain uses of the Cloud Services, except as expressly permitted by this EULA.
- 7.3. Licensee shall not sell, license, sublicense, distribute, copy, rent, or lease Cloud Services, or otherwise make Cloud Services available to, or use Cloud Services for the benefit of, any third party, or transfer any of the rights that the Licensee receives hereunder;
- 7.4. Licensee shall not provide Licensee's Data or otherwise access or use Cloud Services in a manner that:
  - 7.4.1. violates any law or regulation;
  - 7.4.2. stores or transmits any software viruses, worms, Trojan horses or any other computer code, programs, or files designed to interrupt, degrade, impair, damage, or destroy the functionality of any software, hardware or telecommunications equipment;
  - 7.4.3. infringes or misappropriates any third-party rights;
  - 7.4.4. conducts any security scans, penetration tests, or any kind of monitoring or vulnerability test on Cloud Services at any time, without CARIS's prior written consent;
  - 7.4.5. breaches any security or authentication measures used by Cloud Services;
  - 7.4.6. publishes, distributes, transfers or disseminates any information related to the evaluation, performance, analysis, or comparison of the Cloud Services with any other online services without CARIS' prior written consent; or
  - 7.4.7. permits another person to use Cloud Services to conduct any of the matters Licensee is prohibited from doing.

The above list of unacceptable uses of Cloud Services is not intended to be exhaustive, but rather illustrative of the range of unacceptable uses. CARIS has the right, in CARIS's sole discretion, to determine whether any particular conduct constitutes an unacceptable use of Cloud Services.

- 7.5. CARIS may suspend Licensee's access to Cloud Services (i) if the Licensee engages in unacceptable use of Cloud Services; (ii) if the Licensee materially breaches this EULA; (iii) if CARIS reasonably believes that that the Licensee's use of Cloud Services will adversely affect the usability, functionality, or

integrity of Cloud Services; (iv) if CARIS reasonably believes that the Licensee's use of Cloud Services will expose CARIS to liability; (v) to prevent a threat or attack on Cloud Services; or (vi) if Cloud Services become prohibited by law or regulated to the extent that it would not be commercially feasible to provide Cloud Services.

- 7.6. CARIS will provide advance notice of suspensions and interruptions to the Licensee's access to Cloud Services where feasible to do so.
- 7.7. CARIS is not liable for any damages, liabilities or losses resulting from an interruption or suspension of Cloud services.
- 7.8. The Licensee shall immediately notify CARIS if the Licensee becomes aware of any unauthorized use of Cloud Services or any breach of security regarding Cloud Services.

## **8. TRADEMARKS**

- 8.1. A listing of USPTO-registered trademarks and trademarks owned by CARIS may be found at <http://www.teledynecaris.com/en/company/trademarks>. These trademarks are not to be adopted or used in any manner without the prior written consent of CARIS. Any additional trademark information is given in the "Trademark and Copyright" information included in the Software installation directory, the Software documentation, or the Software "About" box.

## **9. THIRD PARTY COMPONENTS**

- 9.1. Additional licensing information for third party components used by the Software is provided in the Software installation directory. Upon CARIS' request, the Licensee shall provide written confirmation that it has complied with its obligations in this Section.

## **10. TERMINATION**

- 10.1. Without prejudice to any other rights, CARIS may terminate this EULA if the Licensee fails to comply with the terms and conditions of this EULA. In such event, the Licensee must immediately destroy all copies of the Software and all of its component parts. Upon CARIS' request, the Licensee shall provide written confirmation that it has complied with its obligations in this Section.
- 10.2. The Licensee acknowledges that any failure to comply with the terms and conditions of this EULA will give rise to immediate irreparable damage to CARIS. Notwithstanding anything to the contrary in this EULA, CARIS shall have recourse to all available remedies at law or equity in relation to, and may obtain immediate and injunctive relief to prevent or mitigate, the breach or threatened breach of the obligations set out under this EULA. The Licensee further agrees that the covenants contained herein are reasonably necessary for the protection of legitimate business interests of CARIS and are reasonable in scope and content.

## **11. NOWARRANTIES**

- 11.1. CARIS provides the Software, support services (if any), and any related documentation as is and with all faults and, except as expressly granted by CARIS in writing elsewhere, hereby disclaims to the maximum extent permitted by law all other warranties and conditions, whether express, implied or statutory. This disclaimer includes, but is not limited to, any warranties of merchantability, fitness for a particular purpose, reliability or quality, accuracy or completeness, workmanship, or lack of viruses or negligence.
- 11.2. The Software is not intended for navigation. The Licensee understands and acknowledges that navigation requires the application of sound judgment and expertise in the process of integrating navigational information from all available sources.

11.3. The entire risk arising out of use or performance of the Software remains with the Licensee. As CARIS is not in a position to verify the data produced by its clients, data generated or processed by the Software is the Licensee's responsibility. The Licensee is solely responsible for verification of any such data and for ensuring that all appropriate and necessary precautions are in place prior to using the data in any way. CARIS is not responsible for the quality of data generated or produced by the Software, and is not responsible for damage to or loss or impairment of the data or for any injury (including death), damage or loss of any kind that may be caused, directly or indirectly, by use of or reliance upon the data.

## **12. EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES**

- 12.1. To the maximum extent permitted by law, in no event shall CARIS be liable for any special, incidental, punitive, indirect, or consequential damages whatsoever, including, but not limited to damages for loss of use, loss of revenues, loss of anticipated profits, loss of confidential or other information, loss of privacy, business interruption or loss of business, or for any other pecuniary or other loss whatsoever, howsoever arising, even if CARIS has been advised in advance of the possibility of such damages.
- 12.2. CARIS' total liability to the Licensee arising from or related to this EULA is limited to no more than the amount paid by the Licensee to CARIS hereunder. To the extent that this limitation of liability conflicts with any other provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this clause.
- 12.3. As used herein, the term "direct damages" means those damages which arise naturally or ordinarily and/or can reasonably be expected to result from a breach of this EULA or any agreement in which the EULA is incorporated. Direct damages specifically exclude indirect damages and consequential damages.
- 12.4. As used herein, the terms "indirect damages" and "consequential damages" mean damages which do not flow directly or immediately from a breach of this EULA or any agreement in which the EULA is incorporated, but only from a consequence or result of such breach. Indirect damages and consequential damages include, but are not limited to, loss of revenue or profits.

## **13. MISCELLANEOUS**

- 13.1. If for any reason a court finds any provision or portion of this EULA to be unenforceable, the remainder of this EULA will continue in full force and effect. CARIS may modify or amend this EULA at any time by providing the Licensee notice of the modification or amendment, and by installing, copying or using the Software after any such modification or amendment, the Licensee agrees to be bound thereby.

## **14. GOVERNING LAW**

- 14.1. This EULA is written and construed in the English language and its interpretation in any judicial or arbitration proceedings shall be in accordance with the meaning of the words and phrases in Canada, and performance of the Parties is construed and governed in accordance with the laws of the Province of New Brunswick, Canada, excepting its laws and rules relating to conflict of law. Neither (a) the United Nations Convention on Contracts for the International Sale of Goods, (b) the 1974 Convention on the Limitation Period in Contracts for the International Sale of Goods (hereinafter referred to as the "1974 Convention"), nor (c) the Protocol Amending the 1974 Convention done at Vienna, Austria, on April 11, 1980, apply in any manner to the interpretation or enforcement of this EULA.

## **15. DISPUTES AND ARBITRATION**

- 15.1. The Parties shall attempt to resolve any dispute, controversy, or claim arising under or relating to this EULA, including its interpretation, performance, or termination. If the Parties are unable to resolve such dispute, either Party may refer the dispute to arbitration. The arbitration shall be conducted in English and in accordance with the ADRIC Arbitration Rules of the ADR Institute of Canada, Inc., which shall administer the arbitration and act as appointing authority. The arbitration, including the rendering of the decision and/or award, shall take place in Fredericton, New Brunswick, Canada, and shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final

determination as to any discovery disputes between the Parties. Examination of witnesses by the Parties and by the arbitrator shall be permitted. A written transcript of the hearing shall be made and furnished to the Parties. The cost of this transcript shall be borne equally by the Parties. The award and/or decision of the arbitrator shall (a) state the reasons upon which the award is based and (b) shall be final and binding upon the Parties. The expense of the arbitration, including, but not limited to, the award of attorneys' fees to the prevailing Party, shall be paid as the arbitrator determines. Both Parties waive their right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The arbitrator shall be instructed that no award may be made of consequential, punitive or multiple damages.

- 15.2. The Licensee consents to the operation of this Section and irrevocably waives its sovereign immunity from all actions or proceedings in connection with any arbitration or post-arbitral enforcement.