

## HFS HCRIS SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

IMPORTANT! PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE HCRIS SOFTWARE AS A SERVICE.

This HCRIS Software as a Service Subscription Agreement (“Agreement”) is between you and International Micro Design, Inc. doing business as Health Financial Systems (“HFS”) regarding the HFS HCRIS Software as a Service, which may also include printed materials, and online or electronic documentation (collectively “HCRIS SaaS”).

**BY CLICKING THE ACCEPT BUTTON, OR BY USING THE HCRIS SaaS, YOU MANIFEST YOUR ACCEPTANCE OF, AND YOUR INTENTION TO BE BOUND BY, THIS AGREEMENT.** If you accept the Agreement as an agent or employee of an organization, you hereby represent to HFS that you are authorized to accept the Agreement on the organization’s behalf.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT CLICK THE ACCEPT BUTTON AND DO NOT USE THE HCRIS SaaS. CONTACT HFS TO OBTAIN A REFUND OF ANY SUBSCRIPTION FEES YOU PAID FOR THE HCRIS SaaS.

In consideration of the commitments and consideration set forth below, the adequacy of which the parties hereby acknowledge, the parties agree as follows.

### **1. DEFINITIONS.**

The following capitalized terms will have the following meanings whenever used in this Agreement.

“End Users” means your officers, directors, members, employees, contractors, and agents (a) who are authorized by you to access and use the HCRIS SaaS, pursuant to the rights granted to you in this Agreement; and (b) for whom access to the HCRIS SaaS has been purchased by you,.

“HCRIS SaaS” means HFS’s web based HCRIS software as a service database website and related computer software applications used to analyze HCRIS data and create reports, all of which are hosted on HFS’s servers and is accessed remotely, via the Internet.

“Subscription” means the rights granted to you by HFS to access and use the HCRIS SaaS, during the Term of this Agreement, subject to the terms and conditions set forth in this Agreement.

“Term” is defined in section 5.1 below.

“Terms of Use” means HFS’s Terms of Use policy governing use of HFS’s Online Services, including the HCRIS SaaS, and is published on the HCRIS SaaS website <https://www.hfssoft.com/termsfuse>. HFS may change the Terms of Use at any time by posting an updated version on the website. The updated version will become effective on the date the Terms of Use is posted on the website.

## **2. GRANT OF SUBSCRIPTION RIGHTS.**

During the Term of this Agreement, You are granted a non-exclusive, non-transferable Subscription that includes the right to access and use the HCRIS SaaS during the Term. This Agreement does not grant you any other rights to the HCRIS SaaS not specifically set forth herein.

**2.1. End Users.** Your End Users may access and use the HCRIS SaaS in such numbers and according to such restrictions as are set forth in this Agreement. You shall provide the complete name and contact information for each End User and update such information whenever any changes occur. This information shall be provided to HFS in the user registration process. Registered End Users shall create or receive valid login credentials for the HCRIS SaaS and when they login to the HCRIS SaaS, they must accept the Terms of Use before they can use the HCRIS SaaS. You will be liable to HFS for your End Users' acts and omissions related to their use of the HCRIS SaaS.

## **3. YOUR RESPONSIBILITIES & RESTRICTIONS.**

**3.1. Acceptable Use.** You shall comply with this Agreement and HFS's Terms of Use, as such policy may change from time to time. You are on notice that your End Users are likewise required to comply with this Agreement and the Terms of Use. In addition, You shall not: (a) provide HCRIS SaaS passwords or other log-in information to any third party; (b) share non-public HCRIS SaaS features or content with any third party; (c) access the HCRIS SaaS in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the HCRIS SaaS, or to copy any ideas, features, functions or graphics of the HCRIS SaaS; or (d) engage in web scraping or data scraping on or related to the HCRIS SaaS, including without limitation collection of information through any software that simulates human activity or any bot or web crawler. If HFS suspects that you have violated the requirements of this subsection 3.1, HFS may restrict, suspend, or terminate your Subscription to the HCRIS SaaS without advanced notice, in addition to such other remedies as HFS may have. HFS may, but is not obligated to, take any action against you or any End Users for violating this Agreement or the Terms of Use.

**3.2. Unauthorized Access.** You agree to take reasonable steps to prevent unauthorized access to the HCRIS SaaS, including protecting passwords and other login information. You shall notify HFS immediately if you know of or suspect unauthorized use of the HCRIS SaaS or breach of its security or integrity. You are responsible and liable for: (a) your End Users' use of the HCRIS SaaS, including unauthorized conduct through your account and conduct that would violate the Terms of Use or this Agreement; and (b) any use of the HCRIS SaaS through your account or passwords, whether authorized or not.

## **4. SUBSCRIPTION FEES.**

**4.1. Payment of Annual Subscription Fees.** You shall pay HFS the annual subscription fees for access to and use of the HCRIS SaaS. Annual subscription fees are based on the number of End Users and are calculated on the products page on the HFS website.

**4.2. Past Due Subscription Fees.** Subscription fees not paid within sixty (60) days of the date you purchased the Subscription, or received an invoice from HFS, are considered past due. If you owe past due subscription fees, HFS may refuse to provide technical support to you. Past

due subscription fees are a material breach of this Agreement, and HFS may terminate this Agreement and the Subscription granted herein.

**4.3. Costs of Collection.** Any past due subscription fees shall be subject to costs of collection, including court costs and reasonable legal fees, and shall accrue interest at the rate of one and one-half percent (1.5%) per month or at the maximum interest rate permitted by law.

**4.4. Taxes.** Amounts due under this Agreement are payable to HFS without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source (collectively, "Sales Tax"). Except as forbidden by applicable law, HFS may require that you submit applicable Sales Taxes to HFS. However, the preceding sentence does not apply to the extent that you are tax exempt, provided you give HFS a valid tax exemption certificate within 30 days of the Effective Date. HFS's failure to include any applicable tax in an invoice will not waive or dismiss the parties' rights or obligations pursuant to this Section 5.4. If applicable law requires withholding or deduction of Sales Taxes or any other tax or duty, You shall separately pay HFS the withheld or deducted amount, over and above fees due. For the avoidance of doubt, this Section 5.4 does not govern taxes based on HFS's net income.

## **5. TERM**

**5.1. Term of Agreement.** This Agreement begins on the Effective Date and will remain in effect for one (1) year (the "Term"), unless earlier terminated.

**5.2. Renewal.** You may renew this Agreement for successive one (1) year Terms by paying the applicable annual subscription fee before the current Term expires, subject to HFS's approval. At its sole discretion, HFS may allow renewal after the Term has expired if you pay the required annual subscription fee for the new Term.

## **6. TERMINATION**

This Agreement may be terminated as outlined in this Section. Upon termination, the Subscription granted to you under Section 2 will also terminate, unless otherwise stated in this Agreement.

**6.1. Termination for Cause.** Either party may terminate this Agreement for the other's material breach by written notice specifying in detail the nature of the breach, effective in thirty (30) days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure. Without limiting HFS's other rights and remedies, HFS may suspend or terminate your and your End Users' access to the HCRIS SaaS at any time, without advanced notice, if HFS reasonably concludes you and/or your End Users have conducted themselves in a way that is inconsistent with the requirements of the Terms of Use or this Agreement or in a way that may subject HFS to potential civil or criminal liability.

**6.2. Termination for Convenience.** HFS may terminate this Agreement for any reason, or without reason, in HFS's sole discretion., after giving thirty (30) days written notice to you.

**6.3. Termination for Financial Condition.** This Agreement will automatically terminate, without notice, if you: (a) files a petition for insolvency or for the appointment of a receiver or trustee under U.S. federal or state law; (b) is the subject of an involuntary insolvency petition that is not dismissed within sixty (60) days; (c) initiates or becomes involved in a dissolution or liquidation; or (d) makes an assignment for the benefit of creditors.

## **7. MAINTENANCE AND TECHNICAL SUPPORT**

**7.1. Maintenance.** During the Term of this Agreement, HFS will provide software maintenance services. This includes correcting issues or defects in the SaaS and publishing periodic updates or patches as necessary to incorporate new batches of data released by CMS.

**7.2. Technical Support.** HFS will provide technical support to you during the Term of this Agreement. Support will be available via telephone or email during standard office hours, generally from 5:00 a.m. to 5:00 p.m. (PST), Monday through Friday, excluding holidays. Technical support is limited to issues directly related to the SaaS and its reports. Training may be offered at HFS's sole discretion and may be subject to additional fees and costs.

## **8. INTELLECTUAL PROPERTY RIGHTS**

All rights, title, and interest, including but not limited to copyrights in and to the HCRIS SaaS are owned by HFS. All rights not expressly granted to you in this Agreement are reserved by HFS.

## **9. TRADEMARK**

HFS is the owner of certain valuable trademark rights. Use of these marks, logos, and designs by you in advertising, or in any other manner, is prohibited without the prior written consent of HFS.

## **10. LIMITED WARRANTY**

HFS warrants that the HCRIS SaaS will perform substantially as described in the applicable user documentation. The HCRIS data published by CMS is not in the format of cost reports. HFS processes and organizes this data into cost reports for improved readability and usability. While HFS strives for accuracy in reproducing HCRIS data, it does not guarantee the completeness or precision of the cost reports generated. HFS makes no claim that the reports in its database are identical to those originally filed by Medicare providers. Except for this limited warranty, HFS makes no other representations or warranties regarding the accuracy, functionality, or performance of the HCRIS SaaS. This warranty replaces all other warranties, whether express, implied, or statutory—including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose—and any other warranty obligations of HFS. The subscription fee paid by you reflects the limited scope of this warranty.

## **11. DAMAGES**

**11.1. Limitation of Liability.** HFS shall not be liable to you for any damages arising out of or related to your use of the HCRIS SaaS. .

**11.2. Waiver of Consequential Damages.** In no event shall HFS be liable to you for any damages, including but not limited to lost profits, loss of data, business interruption, or any other economic or non-economic loss arising from your use of, or inability to use, the HCRIS SaaS—even if HFS has been advised of the possibility of such damages. HFS shall not be liable for any indirect, special, incidental, consequential, or punitive damages, whether based on

contract, tort, or any other legal theory. Additionally, HFS assumes no liability for the content of the HCRIS SaaS, including but not limited to any errors or omissions, defamation, infringement of publicity or privacy rights, trademark violations, business interruptions, personal injury, or disclosure of confidential information.

**11.3. Exclusive Remedy.** You are encouraged to notify HFS of any inaccuracies or deficiencies you identify in the HCRIS SaaS. During the Term of this Agreement, HFS will make reasonable efforts to correct any reported defects. Your sole and exclusive remedy shall be the repair of the SaaS that addresses the reported defect. If HFS is unable to remedy the defect within a reasonable period of time, you may elect to terminate this Agreement, in which case HFS will refund any unearned portion of the subscription fees. The parties have agreed to allocate the risks and remedies related to defects and damages as set forth in this Section.

## **12. GOVERNING LAW AND VENUE**

The validity, construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its choice of law rules. The exclusive venues for any disputes arising from or related to this Agreement shall be in the Superior Court of California, Sacramento County, or the United States District Court for the Eastern District of California, Sacramento Division, and you irrevocably consent to personal jurisdiction in those venues.

## **13. FORCE MAJEURE**

Except for monetary obligations hereunder, neither party shall be liable for any failure or delay in performance due in whole or in part to any cause beyond the reasonable control of such party or its contractors, agents or suppliers, including but not limited to utility or transmission failures, failure of phone lines or phone equipment, power outages, strikes or other labor disturbances, acts of war or terror, sabotage, riots, looting, acts of God, floods, fires, tornados, hurricanes, tsunamis, pandemics, earthquakes, and other natural or man-made disasters ("Force Majeure").

## **14. COMPLETE AGREEMENT**

This Agreement, the exhibits and subordinate documents referenced in this Agreement, constitute the entire agreement between the parties with respect to the subject matter contained herein, superseding all previous agreements pertaining to such subject matter. All prior agreements, representations, warranties, statements, negotiations, understandings, and undertakings are superseded. You hereby represent and acknowledge that in entering into this Agreement you did not rely on any representations or warranties other than those explicitly set forth in this Agreement.

## **15. AMENDMENTS, MODIFICATIONS, OR SUPPLEMENTS**

Amendments, modifications, or supplements to this Agreement shall be permitted provided all such changes shall be in writing signed by the authorized representatives of both parties, and all such changes shall reference this Agreement and identify the specific article or section of this Agreement that is amended, modified, or supplemented.

## **16. SEVERABILITY**

In the event any provision of this Agreement is rendered invalid or unenforceable or declared void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect. If a court of competent jurisdiction determines that the exclusive

remedy provision of this Agreement fails of its essential purpose, the parties intend the consequential damages waiver to be separate and distinct from the exclusive remedy provision, and the waiver shall survive an adverse finding regarding the validity of the exclusive remedy provision.

## **17. ASSIGNMENT**

You may not assign or transfer your interests, rights, or obligations under this Agreement by written agreement, merger, consolidation, operation of law, or otherwise, without the prior written consent of an authorized executive officer of HFS. Any attempt to assign this Agreement by you shall be null and void.

## **18. WAIVER OF BREACH**

No waiver of breach or failure to exercise any option, right, or privilege under the terms of this Agreement on any occasion or occasions shall be construed to be a waiver of the same or any other option, right, privilege on any other occasion.

## **19. MISCELLANEOUS**

**19.1. HFS Data Collection Practices.** HFS collects data regarding the identity of End Users, the account associated with each End User, the date and time End Users access the HCRIS SaaS, any reports created by End Users, any files downloaded by End Users, and any searches or comparisons performed by End Users. By using the HCRIS SaaS you acknowledge and consent to HFS's data collection practices. The data collected will be used by HFS for administrative purposes. Collected data will not be shared with any third parties.

**19.2. Notices.** The parties may send any notices regarding this Agreement to the other parties principal place of business. Alternatively, HFS may send notices to the email address you provided to HFS when you registered as an End User, and such notices will be deemed received 24 hours after they are sent. You may send notices to HFS to [legal@hfssoft.com](mailto:legal@hfssoft.com), and such notices will be deemed received 24 hours after they are sent.

**19.3. Conflicts with "Click Wrap" Subscription Agreement.** In the event that the provisions of this Agreement conflict with the provisions of another HCRIS subscription agreement between you and HFS that was signed by the parties ("Signed HCRIS Subscription Agreement"), the provisions of the Signed HCRIS Subscription Agreement shall take precedence over any conflicting provisions in this Agreement..