



SEPSIS SCREENING TOOL LICENSE AGREEMENT

THIS LICENSE AGREEMENT is dated _____, 2018, and is by and between _____, with a principal office located at _____, (“Licensee”) and Home Care Association of New York State, Inc., having an office located at 388 Broadway, Albany, New York 12207 (“Licensor” or “HCA”).

WITNESSETH

WHEREAS, Licensor has developed and owns certain intellectual property relating to the “Home Care Sepsis Screening Tool” (the “HCA Licensed Material,” as further defined below); and,

WHEREAS, Licensee wishes to use the HCA Licensed Material in connection with its internal operations and activities, and the Licensor is willing to grant a non-exclusive license to Licensee for the HCA Licensed Material, upon the terms and conditions set forth herein; and,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** The term “HCA Licensed Material” shall mean the group of materials known as the Home Care Sepsis Screening Tool that includes certain electronic and/or written materials such as pdf, Excel and Word documents available on HCA web page.
2. **FEES.** Clinical use of HCA Licensed Materials is provided without charge for an HCA provider member, or, if not an HCA provider member, then for a specified fee; use and access of these materials are contingent on following the terms of this Agreement.
3. **GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement, HCA grants to Licensee a limited, non-exclusive, non-transferable license (the “HCA License”) to download, install and use the HCA Licensed Materials solely for Licensee’s internal operations and internal business purposes for its operations within the State of New York; use for Licensee’s operations occurring beyond the State of New York, if any, is subject to other agreements between Licensor and Licensee. Licensor shall retain all title, copyright, trademark rights, and other intellectual proprietary rights in, and ownership of, the HCA Licensed Materials regardless of the media upon which the original or any copy may be recorded or fixed. Any rights in HCA Licensed Materials not granted herein are expressly reserved by Licensor.
4. **SCOPE OF USE.** Licensee’s use of the HCA Licensed Materials may not exceed the applicable use restrictions under this Agreement.
5. **REPRESENTATIONS.** Licensee represents that it shall use the HCA Licensed Material only through employees, contracted staff or other personnel who have been, prior to such use, trained in the use of the HCA Licensed Material, at a minimum, by the successful participation in the entirety of the four (4) live or recorded HCA Licensed Material training webinars that are available through Licensor, and in further training/orientation provided by the Licensee’s trainer who participated in the “train the trainer” webinar that is available through Licensor; and that

the use of the HCA Licensed Material is monitored and supported as part of the Licensee's quality assurance/quality performance review function.

6. **OTHER RESTRICTIONS. THESE HCA LICENSED MATERIALS MAY NOT BE RESOLD OR USED AS CONTENT OR ADVERTISING FOR COMMERCIAL (FEE FOR SERVICE) TRAINING SEMINARS, WEBINARS, OR CONSULTING SERVICES; THESE MATERIALS MAY NOT BE INCORPORATED INTO SOFTWARE, EXCEPT LICENSEE'S ELECTRONIC HEALTH RECORDS SYSTEMS THAT LICENSEE USES FOR LICENSEE'S OPERATIONS; NO REVERSE ENGINEERING.** Licensee shall not, except as hereinafter provided, directly or indirectly: (i) sell, lease, redistribute or transfer any of the HCA Licensed Materials, whether in printed or electronic form; (ii) modify, create software programs based on, translate, create derivative works based on, sublicense, or distribute any of the HCA Licensed Materials; (iii) rent, lease or license any rights in any of the HCA Licensed Materials in any form to any person; (iv) Licensee may not use any HCA Licensed Materials for the benefit of any third parties or in any way other than Licensee's internal operations and internal business purposes; (v) or remove, alter or obscure any proprietary or copyright or trademark notices, labels, or marks on or within the HCA Licensed Materials; any breach by Licensee or any user who received the HCA Licensed Materials from Licensor shall be deemed to have been made by Licensee. This Agreement does not transfer to Licensee any title or any ownership right or interest in any HCA Licensed Materials and that the trademarks used alone and with associated logos as used in connection with these products is owned by Licensor. Licensee are not permitted to make any use of or alteration to the HCA Licensed Materials beyond the terms of this Agreement without the written authorization of Licensor. The integration of the HCA Licensed Materials into Licensee's electronic health record ("EHR") system or systems used for Licensee's analytics shall be permitted by this Agreement (including into EHR or analytics systems that are hosted by third-parties), provided that such integration and derivative use shall be limited solely to the internal operations of Licensee; and that, prior to allowing any third-party to integrate the HCA Licensed Materials into its EHR or other software, Licensor shall enter into an agreement in which such third-party agrees to be bound by the terms of this Agreement, and without limiting the generality of the foregoing, the third-party acknowledges in the written agreement that the HCA Licensed Material is the proprietary property of Licensor; that its integration of the HCA Licensed Material into its EHR or other systems is solely for the purposes of the Licensee's internal operations; and that the third-party is not permitted to provide, copy, distribute or use the HCA Licensed Material in any other manner or for any other purpose without the express written authorization of Licensor. Licensor reserves the right to withdraw its authorization to this user agreement at its discretion.
7. **TECHNICAL SUPPORT.** Technical support or guidance concerning the proper use of HCA Licensed Materials shall be limited to the mandatory training referenced in Section 5 (REPRESENTATIONS) of this Agreement and such other support as Licensor offers in its sole discretion.
8. **DATA COLLECTION.** Licensee agrees that, consistent with applicable law, it will disclose to Licensor, in intervals and a manner reasonably requested by Licensor, de-identified data that Licensee inputs, uses, creates or otherwise processes in connection with the HCA Licensed Material; provided, however, a Licensee that advises Licensor in writing that it lacks capacity to

provide such data in the manner requested, may, with Licensor's consent, provide the data in an alternate manner and upon intervals, that are agreed upon by Licensor and Licensee. Licensee's failure to disclose the information required hereunder shall be a breach of this Agreement.

9. **TERM OF AGREEMENT; TERMINATION.** The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) Licensee's permanent cessation of use of the HCA Licensed Materials; or (ii) thirty (30) days following Licensee's receipt from Licensor of written notice of Licensee's breach of this Agreement if Licensee fails to cure such breach within the thirty (30) day period. Upon termination of this Agreement, Licensee shall cease use of and destroy the HCA Licensed Material (including derivative software). Any rights or obligations under this Agreement that by their nature survive following termination shall survive following termination of this Agreement and continue to remain binding upon the parties.
10. **WARRANTY AND DISCLAIMER.** HCA LICENSED MATERIALS, AND ANY OTHER DOCUMENTATION, MATERIALS AND/OR DATA PROVIDED BY LICENSOR ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY LICENSOR ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. LICENSOR DOES NOT WARRANT THAT THE HCA LICENSED MATERIALS OR ANY OTHER INFORMATION, MATERIALS, DOCUMENTATION OR TECHNOLOGY PROVIDED UNDER THIS AGREEMENT WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. LICENSEE ACKNOWLEDGES THAT LICENSOR'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR LICENSEE'S BENEFIT ONLY. Licensor makes no warranty associated with the use of the HCA Licensed Materials to change any clinical outcome.
11. **LIMITATION OF LIABILITY.** IN NO EVENT WILL LICENSOR BE LIABLE FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION AND OTHER CONTRACT OR TORT CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT, OR THE USE OF THE HCA LICENSED MATERIALS.
12. **INDEMNIFICATION.** Licensee shall defend, indemnify and hold harmless Licensor, its directors, officers, employees, attorneys and agents from and against any liability, damage, loss or expense (including attorney's fees and expenses) incurred by or imposed upon any of Licensor and/or its directors, officers, employees, attorneys and agents in connection with any claim, suit, action or demand arising out of or relating to any exercise of any right or license granted or provided to Licensee under this Agreement under any theory of liability (including

without limitation, actions in the form of tort, warranty, or strict liability, or violation of any law, and regardless of whether such action has any factual basis).

13. **GOVERNING LAW.** This Agreement shall be governed in all respects by the laws of the State of New York, USA, without regard to choice-of-law rules or principles.
14. **SEVERABILITY.** If any provision of this Agreement is held to be illegal or unenforceable for any reason, then such provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under the law, and the remainder of this Agreement shall remain in full force and effect.
15. **ASSIGNMENT.** Licensee may not assign or otherwise transfer this Agreement without Licensor's prior written consent.

Licensee's Representative and Title (Print and Signature)

Date

HCA Representative Signature and Title

Date