



End User License Agreement

IMPORTANT: This End-User License Agreement (“EULA”) is a legal agreement between you (an individual person on behalf of a single legal entity, who will be referred to collectively in this EULA as “End User”) and HTS3 Management Services, Inc.® d/b/a HTS3S3 (referred to in this EULA as “HTS3”). READ THIS AGREEMENT CAREFULLY BEFORE USING ANY HTS3 SERVICES. IT PROVIDES LICENSES TO USE THE APPLICABLE SERVICE(S), INFORMATION REGARDING SUPPORT SERVICES AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS.

You are entering into this EULA on behalf of yourself and your employer (“Employer”), such that the term “End User” shall include both you and Employer and the license granted and restrictions and limitations recited herein apply to Employer as well as to you as a representative of Employer. Should you cease working for Employer, Employer may continue to operate under this EULA.

By installing, copying, accessing or otherwise using any Service(s) or any Support Services, End User represents and warrants that End User has the power and authority to enter into this Agreement and agrees to be bound by the terms of this EULA. If End User does not agree to the terms of this EULA, HTS3 is unwilling to license and provide access to the Services to End User or provide any Support Services.

END USER IS ASKED TO REVIEW AND EITHER ACCEPT OR NOT ACCEPT THE TERMS OF THIS EULA. IF END USER AGREES TO BE BOUND BY ALL TERMS OF THIS EULA, CLICK THE "I AGREE" BUTTON BELOW AND PROCEED TO INSTALL, DOWNLOAD AND/OR ACCESS THE SERVICE. IF EITHER YOU OR EMPLOYER DOES NOT AGREE TO BE BOUND BY ALL THE TERMS OF THIS EULA, HTS3 IS UNWILLING TO GRANT YOU OR EMPLOYER ANY RIGHTS TO USE THE SERVICE, AND YOU MUST STOP INSTALLING AND ACCESSING THE SERVICE AND INDICATE REJECTION OF THIS EULA BY CLICKING THE "CANCEL" BUTTON.

1. Definitions.

“Authorized User” means, collectively, End User and any individual employees or authorized agents of End User accessing or using the Services solely on behalf and for the benefit of End User solely in connection with the operation of End User’s internal business operations.

“End User Data” means all data or information submitted by End User to the Services.

“Service(s)” means the HTS3 proprietary software and/or software application accessed pursuant to an Order Form (as defined below) or management or consulting services agreement between HTS3 (and/or its affiliates) and End User for use, as applicable, in connection with the review, analysis, status and/or use of certain End User Data relating to End User’s business. As set forth in the official registration documents (each an “Order Form”) or other documentation used to procure the Service(s) and/or to identify the Service(s) procured, the Services may include, without limitation, HTS3’s Optimum Productivity Enhancer™ (also known as Productivity Tracker™) and HTS3’s Optimum Financial Statement™ software products that HTS3 has developed or other software products that HTS3 is developing and/or testing (“Development Software”).

“Suggestions” means any ideas, suggestions, enhancements, recommendations or other feedback provided by End User related to HTS3 regarding the Services.

2. Services.

- (a) *License.* HTS3 shall make the Services available to End User and its Authorized Users pursuant to the terms of this EULA. In exchange for End User’s agreement to this EULA, HTS3 hereby grants to End User a limited, non-exclusive, non-transferable license to permit its Authorized Users to use and access the Services.

- (b) *User ID.* Except with the prior written consent of HTS3, access to the Services will be solely limited to End User and its Authorized Users. Each Authorized User will be assigned by HTS3 a unique account name and password for access to and use of the Services ("User ID"). End User shall be solely responsible for ensuring the security and confidentiality of all User IDs. End User acknowledges that it will be fully responsible for any and all liability incurred through use of any User ID and that any use of the Services under a User ID will be deemed to have been performed by End User. HTS3 shall have no responsibility for the consequences of unauthorized access to the Services that arises from unauthorized disclosure of a User ID or password issued to or on behalf of End User. End User shall notify HTS3 immediately of any suspected theft, loss or fraudulent use of such User ID or password.
- (c) *End User Responsibilities.* End User is solely responsible for the acts and omissions and use of the Services by its Authorized Users and for such Authorized Users compliance with this EULA. Under the terms of this EULA, End User is not permitted, nor is End User permitted to cause or permit Authorized Users or any third party to:
- (i) transfer the license to use the Services or sublicense or assign the license or any rights under this EULA;
 - (ii) use, copy or distribute the Services or any component thereof, except as expressly permitted by this EULA or for any purpose for which the Services are not intended or authorized;
 - (iii) modify, adapt, alter, translate, decompile, disassemble, misuse or otherwise reverse engineer the Services or any license keys received in connection with the Services or reduce the Services to human-readable form by any means whatsoever;
 - (iv) remove, change or obscure any identification, copyright or other notices from the Services;
 - (v) distribute, rent, sell, loan, lease, sublicense or otherwise deal in the Services and/or any elements of the Services;
 - (vi) adapt, alter, create derivative works based on, modify, or translate the Services, in whole or in part;
 - (vii) access the Services in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Services; and
 - (viii) electronically transfer the Services in whole or in part from its computer server, or any other computer or device, to any third party, or enable any timesharing or service bureau use of the Services to any third party.
- (d) *Equipment.* End User shall be responsible for obtaining and maintaining any equipment and services needed to connect to, access or otherwise use the Services, including without limitation, modems, hardware, software, networking and web servers (collectively, the "Equipment"). End User shall be responsible for ensuring that all Equipment is compatible with and sufficient for use of the Services.
- (e) *Development Software.* End User acknowledges that HTS3 is developing certain software products and may provide such software without any accompanying service obligation, technical support, or improvements from HTS3. Provision of the Development Software under this Agreement is experimental and shall not create any obligation for HTS3 to continue to develop, produce, support, repair, offer for sale or in any other way to continue to use, provide or develop the Development Software either to End User or any other party. The Development Software is believed to contain defects and any opportunity to test the Development Software hereunder is afforded solely for the purpose of encouraging collaborative testing aimed at further development of the Development Software and identification of defects. End User is advised to safeguard important data and to use caution and not to rely in any way on the correction functioning or performance of the Development Software and any accompanying materials or documentation. End User assumes all responsibility for selecting the Development Software to achieve the intended results, and or the results obtained from the use of the Development Software.
- (f) *Ownership.* The Services are proprietary to HTS3 and/or its licensors. The Services are licensed pursuant to the terms of this EULA and not sold. Without limitation, all rights, title and interest in and to the Services and all copyright, trade secret rights, patents, trademarks, moral rights, Suggestions and any other intellectual property or proprietary rights in and to the Services, and all copies of the Services or any software that forms a part of the Services regardless of the form or media on which it exists, shall at all times, remain the exclusive property of HTS3 and/or its

licensors. To the extent any Suggestions are not owned by HTS3, End User hereby grants, a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual right and license to use, modify and/or incorporate in the Development Software any and all Suggestions. End User acknowledges that all Suggestions are provided without any expectation or obligation of payment or remuneration therefor. No obligation is assumed or may be implied on the part of HTS3 for the receipt or examination of Suggestions to use the Suggestions or compensation Client. All rights not expressly granted under this EULA are reserved by HTS3.

- (g) *Equitable Relief.* End User agrees that in the event of actual or threatened breach of this Section by End User or any Authorized User, HTS3 will have no adequate remedy at law, may suffer irreparable damages, and will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

3. Support and Maintenance.

HTS3 from time to time may make available certain technical support services ("Support Services") in connection with Services, which may include support to answer general inquiries regarding the use and functionality of the Services and support to correct Services issues materially affecting the operation of the Services. If End User identifies or experiences any defect, error or problem with the Services, End User shall document and promptly notify HTS3 of such error or problem by utilizing the Feedback tab located in the upper right corner of the Services screen.

4. Term and Termination.

- (a) *Term.* (i) For hospital End Users (including their Authorized Users) of the Optimum Productivity Enhancer (as known as Productivity Tracker™) and/or other software product to which HTS3 provides management services pursuant to an applicable management or consulting agreement, the term of this EULA will be coterminous with such management or consulting agreement unless an applicable Order Form or other documentation used to procure the Service(s) sets forth differently; provided, however, that in the event HTS3 discontinues providing to its customers the respective Service(s) on a date (each a "Service Termination Date") prior to termination of the applicable management or consulting agreement, this EULA shall terminate on the applicable Service Termination Date(s). (ii) For all other End Users (including their Authorized Users), the term of this EULA will be the term for which End User has contracted for or, if obtained upon payment of a fee, paid the applicable fees for the respective Service(s) as described in the Order Form(s) or other documentation used to procure the Service(s) unless earlier terminated hereunder. To the extent, if any, of any conflict between this EULA and the applicable management agreement, consulting agreement, Order Form or other documentation referenced in this Section 4(a), the terms of this EULA will control with respect to the Service(s) and Support Services, as each is defined in this EULA.
- (b) *Termination.* This EULA and the licenses granted hereunder may be terminated by HTS3, without refund, if End User fails to make full payment of any amount due to HTS3 in accordance with this or any other agreement with HTS3. Notwithstanding the foregoing, End User's rights to use the Services will terminate automatically if End User fails to comply with any terms of this EULA. This EULA will also terminate without further action or notice by HTS3 if End User becomes bankrupt, goes into liquidation, suffers or make any winding up petition, makes an arrangement with creditors, has an administrator, administrative receiver or other receiver appointed, or if End User suffers or files any similar action in consequence of debt.
- (c) *Survival.* Notwithstanding any expiration or termination of this EULA, all payment obligations incurred prior to expiration or termination shall survive, and the following provisions shall survive: 2, subsections b, c, f and g, this Section 4(c) and Sections 6, 7 8, 9, 10 and 11. All other rights granted hereunder will cease upon termination.

5. Taxes.

End User is responsible for the payment of all taxes associated with its use of the Services (other than taxes based on HTS3's net income), including, but not limited to, any applicable sales or use tax, import taxes, taxes on telecommunication services, information services, data processing services or similar governmental charges that may be assessed by any jurisdiction, whether based on gross revenue or delivery of products or services.

6. Confidentiality.

- (a) *Non-Disclosure.* By virtue of this EULA, both Parties may have access to non-public or proprietary information of one another ("Confidential Information"). Each Party agrees to take reasonable precautions to safeguard such Confidential Information by using the same degree of care, but in no event less than a reasonable standard of care, to prevent unauthorized access or use as such Party uses to protect its own Confidential Information of similar nature. Except as affirmatively required by law or as required to exercise its rights and perform its obligations hereunder, neither Party shall use, provide, disclose or otherwise make available such Confidential Information to any third party.
- (b) *Exclusions.* Confidential Information does not and shall not include information that: (i) is or becomes publicly available through no act or omission of the Party that receives such information ("Receiving Party"); (ii) the Party that disclosed such information ("Disclosing Party") generally discloses to third parties without restriction on disclosure; (iii) is disclosed to the Receiving Party by a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iv) is independently developed by the Receiving Party; or (v) is previously known to the Receiving Party without nondisclosure obligations.
- (c) *Relief.* The Parties acknowledge that (i) the restrictions and obligations contained in this Section are reasonable and necessary to protect each Party's legitimate interests; (ii) in the event of a violation of these restrictions, remedies at law may be inadequate and such violation may cause irreparable damages to the Disclosing Party; and (iii) the Disclosing Party shall be entitled to seek immediate injunctive and other relief against a violation of this Section, without bond and without the necessity of showing actual money damages.

7. Disclaimer of Warranties.

- (a) *Disclaimer.* THE SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" (AND FOR DEVELOPMENT SOFTWARE ON A "WITH ALL FAULTS") BASIS AND ARE INTENDED FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY. HTS3 HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS AND IMPLIED (WHETHER ARISING UNDER LAW OR EQUITY OR CUSTOM OR USAGE), INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. END USER EXPRESSLY WAIVES RELIANCE UPON ANY SUCH WARRANTIES. THE SERVICES IN NO WAY PROVIDE OR ATTEMPT TO PROVIDE DEFINITIVE INFORMATION THE SERVICES ARE REFERENCE TOOLS FOR IDENTIFYING FOLLOW-UP AREAS FOR END USER; AND ARE FOR BUSINESS REVIEW ONLY AND SHALL NOT INCLUDE LEGAL OR MEDICAL REVIEW OR ANALYSIS, NOR SHALL THE SERVICES BE USED TO REACH LEGAL OR MEDICAL CONCLUSIONS. HTS3 MAKES NO WARRANTIES REGARDING THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR RESULTS OBTAINED THROUGH USE OF THE SERVICES, AND HTS3 SHALL HAVE NO LIABILITY FOR ANY USE OF SUCH INFORMATION OR RESULTS. WITHOUT LIMITATION OF THE FOREGOING, HTS3 EXPRESSLY DISCLAIMS ANY WARRANTY THAT DEVELOPMENT SOFTWARE WILL MEET END USER'S REQUIREMENTS OR THAT ITS OPERATIONS WILL BE UNINTERRUPTED OR ERROR-FREE.
- (b) *Medical Disclaimer.* Various expressions of medically related information, analysis and/or reasoning may be provided through the Services and may be used by End User. While such medical information provided by the Services may enhance the quality of clinical reasoning and may provide useful information for quality improvement and quality assurance, it is not a substitute for the professional judgment of a clinician or administrator and in no event should any such

information be used as the sole or primary basis for clinical decision-making or clinical reasoning. The Services do not provide medical advice, diagnoses or recommendations about medical treatment, and do not recommend or endorse any products, actions or information for any particular circumstances. End User shall be solely responsible for assuring appropriate use by its Authorized Users of all medical information provided through the Services and for communicating the content of this Section to its Authorized Users and any other personnel who may have access to the medical information provided through the Services.

- (c) *No Other Warranty.* No employee, agent, representative or affiliate of HTS3 has authority to bind HTS3 to any oral representations or warranty concerning the Services. Any written representation or warranty not expressly contained in this EULA will not be enforceable.

8. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, HTS3 SHALL NOT BE LIABLE TO END USER, ANY AUTHORIZED USER OR ANY THIRD PARTY, HEREUNDER, WHETHER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY OF THE FOLLOWING, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT OR TORT, INCLUDING NEGLIGENCE OR OTHERWISE:

- (A) ANY LOSS OF BUSINESS;
- (B) LOSS OF REPUTATION;
- (C) LOSS OF PROFITS OR GOODWILL;
- (D) LOSS OF USE;
- (E) LOSS OR DAMAGE TO OR CORRUPTION OF DATA;
- (F) THE UNAUTHORIZED DISCLOSURE OF SENSITIVE, VALUABLE, OR CONFIDENTIAL INFORMATION;
- (G) LOSS ATTRIBUTABLE TO THE FAILURE TO MAKE AND RETAIN REASONABLE BACK-UPS OF DATA;
- (H) INTERRUPTION OF BUSINESS;
- (I) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM THE SERVICE AND/OR ANY SUPPORT SERVICES; AND
- (J) ANY COSTS OF PROCURING SUBSTITUTE GOODS, SERVICES, TECHNOLOGY OR RIGHTS;
- (K) REPAYMENT, FINES, OR PENALTIES OF ANY SORT RELATING TO ANY REIMBURSEMENT REQUESTED BY, OR MADE TO, END USER, OF OR BY ANY PAYOR, INCLUDING WITHOUT LIMITATION ANY GOVERNMENTAL PAYOR.

END USER ACKNOWLEDGES AND CONFIRMS THAT THE COMMERCIAL AND ECONOMIC TERMS UPON WHICH HTS3 AGREES TO LICENSE THE SERVICES HAVE BEEN CONDITIONED TO A SUBSTANTIAL EXTENT BY THE ABILITY OF HTS3 TO MAKE AND ENJOY THE FULL PROTECTION OF THE DISCLAIMER AND LIMITATION OF LIABILITY SET FORTH IN THIS EULA AND AGREES, REPRESENTS AND CONFIRMS THAT THE CONTENTS OF SUCH SECTIONS ARE FAIR AND REASONABLE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY IN ALL INSTANCES. IF ANY EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS EULA IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION AND HTS3 BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT COULD OTHERWISE BE LIMITED, SUCH LIABILITY WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT ACTUALLY PAID FOR THE SERVICES UNDER THIS EULA.

9. Indemnification.

End User shall defend, indemnify and hold HTS3 and its officers, directors, employees, representatives and/or agents or each of them harmless at all times from and against any and all losses in connection with or as a result of any claim that arises from (i) the conduct of End User's business; (ii) any breach of this EULA by End User; and/or (iii) End User's unauthorized release of health information, release of inaccurate or improperly formatted health information, and/or failure to follow applicable contracts or federal and/or state law and/or regulations, including without limitation, regarding reimbursement and/or privacy and security of health information. HTS3 will provide End User with prompt written notice of any such claim,

action or proceeding to which the foregoing indemnity relates, and HTS3 will have the right to participate in the defense thereof with counsel of HTS3's choice.

10. End User Data; Protected Health Information.

End User acknowledges and agrees that in the course of accessing and receiving the Services, it may provide certain protected health information to HTS3. End User shall provide all data necessary for the Services and acknowledges and agrees that End User is solely responsible for ensuring the accuracy and security of its data. End User shall ensure that all End User data provided to HTS3 is accurate and complete in all respects. End User shall be solely responsible for obtaining all requisite consents for use of End User data contemplated by this EULA and shall collect, store and transmit all such data in secure environments and through secure connections compliant with HIPAA (as defined below) requirements using industry-accepted security technologies.

End User and HTS3 agree to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (PL 104-91) ("HIPAA"), the HITECH Act provisions of the American Recovery and Reinvestment Act of 2009 (PL 111-5) ("ARRA") and regulations enacted by the United States Department of Health and Human Services at 45 C.F.R. Parts 160 – 164 (the "Privacy and Security Rules") in the performance of their respective obligations hereunder. In that regard, End User and HTS3 further agree to comply with the provisions of the Business Associate Addendum attached to the service agreement between the parties and incorporated therein by reference. In the event of conflict between the Business Associate Addendum and any provision of this EULA, the terms of the Business Associate Addendum shall control.

In the event End User encounters any protected health information not belonging to End User, End User shall immediately notify HTS3 and shall not use or disclose such information for any purpose.

11. Miscellaneous.

- (a) *Severability.* If a court of competent jurisdiction finds any provision of this EULA invalid or unenforceable, that provision of the EULA will be amended to achieve as nearly as possible the intent of the Parties, and the remainder of this EULA will remain in full force and effect.
- (b) *Governing Law; Venue.* This EULA shall be construed and interpreted in accordance with the domestic laws of the state of Tennessee, excluding any choice of law rules. Unless the Parties agree in writing to mediate or arbitrate a dispute, all disputes arising out of this EULA will be subject to the exclusive jurisdiction of the state and federal courts with applicable jurisdiction located in the metropolitan area of Nashville, Tennessee, and each Party hereby consents to the personal jurisdiction thereof. Each Party hereby waives any right to trial by jury with respect to any dispute, suit, action or proceeding arising out of or relating to this EULA or otherwise relating to the relationship of the Parties, whether in contract, tort or otherwise.
- (c) *No Waiver.* No modification, amendment or waiver of any provision of this EULA shall be effective unless in writing and signed by the Party to be charged. The failure of either Party to enforce at any time the provisions of this EULA shall in no way constitute a present or future waiver of such provisions, nor shall it in any way affect the right of either Party to enforce each and every such provision thereafter.
- (d) *No Assignment.* End User may not sell, assign, sublicense, encumber or otherwise transfer this EULA, the Services, the license granted hereunder, or any rights in and to any of the foregoing, directly or indirectly without the express prior written consent of HTS3. For purposes of this EULA, any merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets with respect to End User shall, without limitation, be deemed an attempted assignment of this EULA by End User. Any attempt by End User to assign its rights or obligations under this EULA in breach of this Section shall be void and of no effect. HTS3 may assign its interests under this EULA on notice to End User. This EULA shall be binding upon and inure to the benefit of HTS3 and End User and their successors and permitted assigns.
- (e) *Independent Contractors.* In performing their duties hereunder, the Parties shall be and shall act as independent contractors, and neither Party is or will act as a partner, agent, employee of, or in joint venture with, the other Party. Neither Party will have the authority to bind the other Party, contractually or otherwise, except as specifically authorized in this EULA

- (f) *Access to Books and Records.* HTS3 shall retain and make available, upon request, for a period of four years after the furnishing of the Services as part of this EULA, the agreement and books, documents and records which are necessary to certify the nature and extent of the costs thereof when requested by the Secretary of Health and Human Services or the Controller General or any of their duly authorized representatives. This provision relating to the retention and production of documents is included because of possible application of section 1861(v)(1)(H) of the Social Security Act to this EULA. If section 1861(v)(1)(H) is inapplicable, then this Section shall be inoperative and without force or effect.
- (g) *Non-Exclusion.* Neither Party is, or during the term of this EULA will be, excluded from participation in any federal healthcare program.
- (h) *Force Majeure.* If either Party is prevented from performing any of its obligations under this EULA due to any cause beyond such Party's reasonable control, including, without limitation, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, or hackers, time for that Party's performance will be extended for the period of the delay or inability to perform due to such occurrence without liability to the other Party; provided, however, that End User will not be excused from the payment of any sums of money owed by End User to HTS3.
- (i) *Export Controls.* The Services provided in connection with this EULA is for use in the United States only. End User will not export or send the Services and any software provided therein or any portion or aspect thereof to any other country or territory.
- (j) *Notices.* Notices under this EULA shall be sent to the other Party User at the address shown on the Order Form or as shown on another agreement between the parties, as applicable, and notices to HTS3 shall be sent to HTS3 Management Services, Inc., 5110 Maryland Way, Suite 200, Brentwood, TN 37027, ATTN: President with a copy also to "Legal Notices" for HTS3 at the same address, or as updated from time to time in writing by either Party, and will be deemed delivered to the receiving party three (3) days after being placed in the U.S. Mail, postage pre-paid, on actual receipt upon hand delivery, or the next day upon delivery by overnight carrier.
- (k) *Entire Agreement; Counterparts.* With respect to the subject matter hereof, this EULA and any exhibits or Order Form pertaining hereto contain the entire agreement between the Parties concerning the Services, and such agreement supersedes all prior written and oral and all contemporaneous oral agreements and understandings between HTS3 and End User concerning the Services. Any exhibits or Order Form pertaining hereto may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. Signatures transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.