

**NURSING FACILITIES VBP READINESS ASSESSMENT TOOL
END USER LICENSE AGREEMENT**

This End User License Agreement (“EULA”), dated as of the date set forth on the signature page attached hereto, is by and between Health Management Associates, Inc., a Michigan corporation, and the individual or entity whose signature is set forth below.

PLEASE READ THIS EULA CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION BEFORE SIGNING THIS EULA OR USING, INSTALLING OR DOWNLOADING THE NURSING FACILITIES VBP READINESS ASSESSMENT TOOL (“TOOL”). BY SIGNING BELOW OR USING, INSTALLING OR DOWNLOADING THE TOOL, YOU ARE ENTERING INTO AND AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. AS DESCRIBED BELOW, SIGNING BELOW OR USING, INSTALLING OR DOWNLOADING THE TOOL ALSO OPERATES AS YOUR CONSENT TO AUTOMATIC UPDATES OF THE TOOL WITHOUT FURTHER NOTICE TO YOU. IF YOU COMPLY WITH THIS EULA, YOU HAVE THE RIGHTS BELOW FOR EACH LICENSE YOU ACQUIRE.

1. **General.** The terms “HMA,” “Our,” “Us” and similar terms refer to Health Management Associates, Inc., a Michigan corporation, and its subsidiaries and affiliates. The terms “You,” “Your” and similar terms refer to the individual or entity that is subject to this EULA.

2. **License and Restrictions.** Subject to the terms and conditions of this EULA, HMA hereby grants You and You hereby accept a limited, non-exclusive, non-sublicensable, non-transferable, revocable license (“License”) to use the Tool and related documentation solely to have the Tool produce the number of Nursing Facilities VBP readiness assessment reports (each, a “Report”) to which You are entitled by virtue of Your payment of the applicable fees. For the avoidance of doubt, You have no right to and are expressly prohibited from using the Tool to produce more Reports than you are entitled. Further, You shall use the Tool strictly in accordance with the terms and conditions of this EULA and shall not: (a) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the Tool; (b) make any modification, adaptation, improvement, enhancement, translation or derivative work from the Tool; (c) violate any applicable federal laws, rules or regulations in connection with Your access or use of the Tool; (d) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of HMA or its affiliates, partners, suppliers or the licensors of the Tool; (e) use the Tool for any revenue generating endeavor, commercial enterprise or other purpose for which it is not designed or intended, (f) make the Tool available over a network or other environment permitting access or use by multiple users at the same time; (g) use the Tool for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by HMA; (h) use any proprietary information or interfaces of HMA, its affiliates or its suppliers or other intellectual property of HMA, its affiliates or its suppliers in the design, development, manufacture, licensing or distribution of any applications, accessories or devices for use with the Tool; or (i) store, backup or distribute infringing files, information or data or other files, information or data that may be prohibited by applicable laws, rules and regulations. Except as provided above, HMA retains all right, title and interest in the Tool and any related documentation and nothing contained herein shall be construed as the relinquishment on the part of HMA of any of HMA’s ownership interest in the Tool and any related documentation.

3. **Account Registration and Maintenance.** To use the Tool, You must register for an account by completing the account registration forms presented to You by HMA. You must have a valid email address to have an account with Us. OUR PRIMARY MODE OF COMMUNICATION WITH YOU IS THROUGH EMAIL. You are solely responsible for maintaining accurate, complete and current contact information with Us. You are also solely responsible for maintaining the confidentiality of Your username and password. We shall assume that every login for the Tool using Your username and password is You. You shall be solely liable for any and all actions and activities that occur under Your username and password. If You are a business entity, whether profit or non-profit, You shall be solely liable for any and all actions committed by anyone to whom You granted permission to use the Tool on Your behalf or through your account.

4. **Your Data.** You are the owner of the data that you input into the Tool (“Data”), as well as the Report(s). You hereby grant HMA and HMA hereby accepts a non-exclusive, non-sublicensable, non-transferable license to access, modify and use the Data and the Report(s) to the extent HMA determines necessary or beneficial for the purpose of providing the Reports, providing the Services described below or creating anonymous Data as further described in Section 10. You shall be solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and rights to use all Data.

5. **Fee.** In consideration of the rights and License granted under this EULA, You shall pay HMA a fee (“**Fee**”) as provided in the HMA Tool documentation. Such Fee shall be paid promptly after signing this EULA and, in any event, prior to Your use, installation or downloading of the Tool. From time to time, HMA may increase its Fees.

6. **Support.** In connection with the rights and License granted under this EULA, HMA may provide You with support services (“**Services**”) in the form of one telephone call of up to one hour in length, at a time to be mutually agreed upon between You and HMA. Such Services shall be at no additional cost to You; provided, however, that any Services beyond one telephone call of up to one hour in length shall be charged at HMA’s then current rates for such Services.

7. **Confidentiality.** From time to time during the term of this EULA, either party (as the “**Disclosing Party**”) may disclose or make available to the other party (as the “**Receiving Party**”) non-public proprietary and confidential information of Disclosing Party (“**Confidential Information**”); provided, however, that Confidential Information shall not include any information that: (i) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this EULA; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party source is not and was not prohibited from disclosing such Confidential Information; (iii) was in the Receiving Party’s possession prior to Disclosing Party’s disclosure hereunder; or (iv) was or is independently developed by the Receiving Party without using any Confidential Information. In addition, Confidential Information does not include suggestions and feedback from You, as described in Section 9, or anonymous Data, as described in Section 10. The Receiving Party shall protect and safeguard the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, not use the Disclosing Party’s Confidential Information or permit it to be accessed or used for any purpose other than to exercise its rights or perform its obligations under this Agreement, and not disclose any such Confidential Information to any person or entity, except to the Receiving Party’s employees, contractors, representatives, advisors and agents who need to know the Confidential Information to assist the Receiving Party to exercise its rights or perform its obligations under this Agreement and who are bound by confidentiality obligations no less stringent than those contained herein. If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify the Disclosing Party of such requirements to afford the Disclosing Party the opportunity to seek a protective order or other remedy. The confidentiality obligations described herein shall survive the expiration or termination of this EULA for a period of two years.

8. **Intellectual Property Rights.** You acknowledge and agree that the Tool, the Services (including all intellectual property rights arising therefrom) and related documentation and all copyrights, patents, trademarks, trade secrets and other intellectual property rights associated therewith are, and shall remain, the property of HMA, its affiliates, partners, suppliers and licensors. Furthermore, You acknowledge and agree that the source and object code of the Tool and the format, directories, queries, algorithms, structure and organization of the Tool are the intellectual property and proprietary and confidential information of HMA and its affiliates, partners, licensors and suppliers. Except as expressly provided in this EULA, You are not granted any intellectual property rights in or to the Tool, the Services or related documentation by implication, estoppel or other legal theory, and all rights in and to the Tool, the Services and related documentation not expressly granted in this EULA are hereby reserved and retained by HMA, its affiliates, partners, suppliers and licensors. The Tool may use or include third party software that is subject to open source and third party license terms (“**Third Party Software**”). You acknowledge and agree that Your right to use such Third Party Software as part of the Tool is subject to and governed by the terms and conditions of the open source or third party license applicable to such Third Party Software, including, without limitation, any applicable acknowledgements, license terms and disclaimers contained therein. In the event of a conflict between the terms and conditions of this EULA and the terms of such open source or third party licenses, the terms of the open source or third party licenses shall control with regard to Your use of the relevant Third Party Software. In no event shall the Tool or components thereof be deemed by You to be “open source” or “publicly available” software.

9. **Enhancements and Feedback.** HMA may at any time and from time to time, in its sole discretion, automatically update the Tool without Your prior notice or consent and upgrade, enhance, change and modify the Tool (collectively, “**Enhancements**”). All Enhancements shall remain subject to this EULA. You may provide feedback to HMA with respect to the Tool, the Services and the Reports. You understand and agree that HMA may use Your feedback without obligation to You of any kind. If You provide feedback, You hereby grant HMA and its affiliates an unrestricted, nonexclusive, royalty-free, perpetual, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute

and display such feedback throughout the world in any media. You further agree that HMA is free to use without limitation and without any compensation to You any ideas, concepts and know-how that You or individuals acting on Your behalf provide to HMA.

10. Term and Termination. This EULA and the License granted to You hereunder shall commence at the time and on the day You sign this EULA or install, access or use the Tool, whichever is earlier. This EULA and the License granted to You hereunder shall automatically terminate or expire upon the earlier of non-payment of the Fee, cancellation of Your account, expiration of Your subscription, issuance of the Report(s) to which you are entitled by virtue of Your payment of the applicable fees, HMA's discontinuance of the Tool and Your failure to comply with this EULA. If any party claims that You have infringed its intellectual property in any manner, HMA may immediately terminate Your account without prior notice to You. HMA MAY, IN ITS SOLE AND ABSOLUTE DISCRETION, DENY USE OF AND ACCESS TO ALL OR ANY PORTION OF THE TOOL, INCLUDING SUSPENDING OR TERMINATING YOUR LICENSE AND YOUR ACCOUNT IF HMA DETERMINES THAT YOU ARE USING THE TOOL IN A MANNER INCONSISTENT WITH THIS EULA OR IN VIOLATION OF LAW. Upon termination of this EULA or the License, You shall cease all use of the Tool. You hereby acknowledge and agree that HMA may, but is not required to, delete all of Your Data upon termination of this EULA or the License; provided, however, that, in any event, HMA may retain and use your Data for any purpose whatsoever to the extent such Data is or is modified by HMA to become anonymous without reference to You.

11. Disclaimer. YOU ACKNOWLEDGE AND AGREE THAT THE TOOL, THE SERVICES AND THE REPORTS ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS, AND THAT YOUR USE OF OR RELIANCE UPON THE TOOL, AND ANY THIRD PARTY SOFTWARE ACCESSED THEREBY, AND THE SERVICES AND THE REPORTS IS AT YOUR SOLE RISK AND DISCRETION. HMA AND ITS AFFILIATES, PARTNERS, SUPPLIERS AND LICENSORS HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES AND GUARANTIES REGARDING THE TOOL, THIRD PARTY SOFTWARE, SERVICES AND THE REPORTS, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHERMORE, HMA AND ITS AFFILIATES, PARTNERS, SUPPLIERS AND LICENSORS MAKE NO WARRANTY THAT (I) THE TOOL, THIRD PARTY SOFTWARE, SERVICES OR THE REPORTS WILL MEET YOUR REQUIREMENTS; (II) THE TOOL, THIRD PARTY SOFTWARE, SERVICES OR THE REPORTS WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, TIMELY, SECURE OR ERROR-FREE; (III) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL ACCESSED OR OBTAINED BY YOU THROUGH THE TOOL, THIRD PARTY SOFTWARE, SERVICES OR REPORTS WILL BE AS REPRESENTED OR MEET YOUR EXPECTATIONS; (IV) ANY ERRORS IN THE TOOL, THIRD PARTY SOFTWARE, SERVICES OR REPORTS WILL BE CORRECTED; OR (V) THAT ENCRYPTION ALGORITHMS, ASSOCIATED KEYS AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE. YOU UNDERSTAND AND AGREE THAT YOUR INSTALLATION, USE AND ACCESS OF THE TOOL, THIRD PARTY SOFTWARE, SERVICES AND REPORTS IS AT YOUR SOLE DISCRETION AND RISK AND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER, SOFTWARE AND THE LOSS OF DATA THAT RESULTS FROM ANY USE THEREOF.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM HMA SHALL CREATE ANY REPRESENTATION, WARRANTY OR GUARANTY. FURTHERMORE, YOU ACKNOWLEDGE THAT HMA HAS NO OBLIGATION TO CORRECT ANY ERRORS OR OTHERWISE SUPPORT OR MAINTAIN THE TOOL, SERVICES OR THE REPORTS. FOR THE AVOIDANCE OF DOUBT, HMA MAKES NO REPRESENTATION, WARRANTY, COMMITMENT OR STATEMENT REGARDING WHETHER YOUR FULFILLMENT OF THE SUGGESTIONS OR RECOMMENDATIONS IN THE REPORT WILL MAKE YOU READY TO ASSUME OR ENTER INTO VALUE BASED CONTRACTS.

YOU HEREBY AGREE AND ACKNOWLEDGE THAT HMA DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT (I) VIRUSES, WORMS, TROJAN HORSES, AND OTHER UNDESIRABLE DATA, OR SOFTWARE, OR (II) UNAUTHORIZED USERS MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR DATA, WEB SITES, COMPUTERS, OR NETWORKS. YOU ARE SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF YOUR DATA AND SYSTEMS.

12. Liability. UNDER NO CIRCUMSTANCES SHALL HMA OR ITS AFFILIATES, PARTNERS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES

ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF OR INABILITY TO ACCESS OR USE THE TOOL, THE SERVICES, THIRD PARTY SOFTWARE OR THE REPORTS, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE AND WHETHER OR NOT HMA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, HMA'S AGGREGATE LIABILITY TO YOU (WHETHER UNDER CONTRACT, TORT, STATUTE OR OTHERWISE) SHALL NOT EXCEED THE AGGREGATE FEES PAID BY YOU TO HMA HEREUNDER IN THE TWELVE (12) CALENDAR MONTHS PRECEDING THE ALLEGED DAMAGES. IF THE TOOL IS PROVIDED TO YOU WITHOUT CHARGE, THEN HMA SHALL HAVE NO LIABILITY TO YOU WHATSOEVER. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. YOU EXPRESSLY RECOGNIZE AND ACKNOWLEDGE THAT SUCH LIMITATION OF LIABILITY IS AN ESSENTIAL PART OF THIS EULA AND IS AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF THE TOOL.

13. Indemnification. You shall indemnify, defend and hold harmless HMA and its affiliates, partners, suppliers and licensors, and each of their respective officers, directors, agents and employees from and against any claim, proceeding, loss, damage, fine, penalty, interest and expense (including, without limitation, fees for attorneys and other professional advisors) arising out of or in connection with the following: (i) Your access to or use of the Tool, Services, Third Party Software or Reports; (ii) Your breach of this EULA; (iii) Your violation of applicable laws, rules and regulations; (iv) Your negligence and willful misconduct; and (v) Your violation of the rights of a third party, including the infringement by You of any intellectual property or misappropriation of any proprietary right or trade secret of any person or entity.

14. Governing Law. All questions concerning the validity, interpretation and performance of this EULA shall be governed by and decided in accordance with the laws of the State of Michigan, without regard to any conflicts of laws and principles thereof. This EULA and the transactions contemplated herein are not and will never be subject to the Uniform Computer Information Transactions Act (prepared by the National Conference of Commissioner on Uniform State Laws) as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction. YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST HMA ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

15. Miscellaneous. If You are agreeing to this EULA on behalf of an entity, You represent and warrant that You have the full authority to bind that entity to this EULA and Your agreement to this EULA will be treated as the agreement of the entity. You also represent and warrant that you have read and understood this EULA, that You are not using the Tool to store Data subject to HIPAA and that You are not engaging in any activities that are inconsistent with this EULA. You understand and acknowledge that the Tool, Third Party Software and the Reports may be subject to export administration regulations relating to the export of technical data and products. This EULA is subject to, and You agree to comply with, any laws, regulations, orders and other restrictions on the export of the Tool, Third Party Software and Reports. If any provision of this EULA is held to be illegal, invalid or unenforceable in any respect, then the parties hereto shall substitute such provision with a legal, valid and enforceable provision which attempts to obtain the same result as the provision declared illegal, invalid or unenforceable. The provisions hereof are severable, and in the event any provision of this EULA is held to be illegal, invalid or unenforceable in any respect, then the remaining provisions of this EULA shall remain binding on the parties hereto. No waiver by any part of any of the provisions hereof shall be effective unless expressly set forth in writing and executed by the party so waiving. The waiver by any party of a breach of any provision of this EULA shall not operate or be construed as a waiver of any subsequent breach. The provisions of this EULA that by their nature survive the expiration or termination of this EULA shall so survive. This EULA constitutes the sole and entire agreement of the parties with respect to the subject matter of this EULA and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter hereof.

[SIGNATURE PAGE FOLLOWS]

The parties hereto have caused this EULA to be executed as of _____.

HEALTH MANAGEMENT ASSOCIATES, INC.

IF AN INDIVIDUAL:

Signature: 

Signature: _____

Name: _____

Name: Kelly Johnson

Title: Vice President

IF A BUSINESS ENTITY:

Name of business entity: _____

Signature: _____

Name: _____

Title: _____