

HCRM Website Terms of Use (Agreement)



Terms of Use Effective Date: July 1, 2020.

THESE HCRM WEBSITE TERMS OF USE (THIS “AGREEMENT”) IS A LEGALLY BINDING AGREEMENT (“AGREEMENT”) BETWEEN YOU, THE INDIVIDUAL OR ENTITY ACCESSING OR USING THIS SITE (“YOU”) AND HEALTH COST & RISK MANAGEMENT, LLC (“HCRM,” “WE” OR “US”). THIS AGREEMENT APPLIES TO OUR WEBSITE AT [HTTPS://WWW.HCRMNET.NET/](https://www.hcrmnet.net/) AND ANY OTHER WEBSITES OPERATED BY HCRM WHICH LINK TO THIS AGREEMENT (INDIVIDUALLY AND COLLECTIVELY, THE “SITE”).

BY ACCESSING OR USING THIS SITE, EITHER IN CONJUNCTION WITH OR INDEPENDENT OF ACCESSING OR USING THE HCRM HEALTH RISK MONITOR® OR OTHER HCRM SOFTWARE SOLUTIONS OR RELATED ONLINE SERVICES (COLLECTIVELY, THE “SERVICES”), OR BY ESTABLISHING AN ACCOUNT OR SUBMITTING ANY PERSONAL INFORMATION (AS DEFINED IN OUR [PRIVACY POLICY](#)) TO HCRM THROUGH THIS SITE, YOU AGREE TO THESE TERMS OF USE, AND CONSENT AND AGREE TO OUR [PRIVACY POLICY](#). IF YOU DO NOT AGREE, ACCESS TO AND USE OF THIS SITE IS NOT PERMITTED AND YOU MUST NAVIGATE AWAY FROM THIS SITE. YOU MAY NEVERTHELESS LEARN MORE ABOUT HCRM’S SERVICES BY CONTACTING US AT [773-782-6466](tel:773-782-6466) OR AS OTHERWISE DESCRIBED IN THE “CONTACT HCRM” SECTION BELOW.

NOTWITHSTANDING THE PRECEDING PARAGRAPH, IF YOU ARE AN INDIVIDUAL ACCESSING OR USING THIS SITE ON BEHALF OF AN ENTITY WHICH IS A CUSTOMER OF HCRM (“CUSTOMER”) AS THE RESULT OF ENTERING INTO A WRITTEN AGREEMENT WITH HCRM RELATED TO HCRM SERVICES, SUCH AS THE HCRM DATA SERVICES SUBSCRIPTION AGREEMENT (EACH, A “CUSTOMER AGREEMENT”), YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ACT ON BEHALF OF OUR CUSTOMER, AND YOU AND OUR CUSTOMER AGREE THAT IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THAT CUSTOMER AGREEMENT AND THIS AGREEMENT REGARDING THE SERVICES OR OTHERWISE, INCLUDING HCRM’S LIABILITY, OBLIGATIONS, LIABILITIES AND RESPONSIBILITIES, THE CUSTOMER AGREEMENT SHALL GOVERN.

VARIOUS ADDITIONAL RULES, GUIDELINES, REQUIREMENTS AND OTHER TERMS (“ADDITIONAL TERMS”) MAY APPLY. IF SO, THESE WILL BE POSTED, AND WE MAY MODIFY THEM FROM TIME TO TIME. ALL SUCH ADDITIONAL TERMS ARE HEREBY INCORPORATED INTO AND MADE PART OF THIS AGREEMENT.

IF YOU ARE A COMPETITOR OF HCRM, OR ARE ACTING ON BEHALF OF A COMPETITOR OF HCRM, YOU ARE PROHIBITED FROM ACCESSING OR USING THE SERVICES OR ANY INTERACTIVE FEATURES OF THIS SITE FOR ANY REASON, INCLUDING WHETHER TO MONITOR THEIR PERFORMANCE, FUNCTIONALITY OR AVAILABILITY, OR FOR OTHER BENCHMARKING OR COMPETITIVE PURPOSES, ABSENT THE EXPRESS WRITTEN CONSENT OF HCRM.

1. Modifications to Terms of Use and Site. HCRM may update and modify this Agreement from time to time for any reason and in any manner by posting a modified or replacement version on the Site. The modified Terms of Use will become effective and binding immediately upon posting. Your use of the Site after such posting shall be deemed to constitute acceptance by you of such modifications and you agree that such posting constitutes sufficient notice of the modification. We may also change or discontinue any aspect, service or feature of the Site at any time.

2. Account Creation and Registration; Site Conduct.

- 2.1** You may be given the opportunity by HCRM to register to create an account with HCRM (your “Account”) via an online registration form or otherwise in order to use certain features of the Site or to use the Services, which require a user ID and password (“User Credentials”). You agree that all elements and aspects of the Site and Services for which User Credentials are required for use or access, including the User Credentials themselves, comprise Confidential Information of HCRM. You agree to protect such Confidential Information in accordance with Section 4 (Confidentiality). Your Account and User Credentials are for your use only and cannot be shared or used by anyone else, as they may be associated and displayed with your name and the name of our Customer. You agree to notify HCRM immediately of any suspected or actual unauthorized use or any other breach of security involving the Account or your User Credentials of which you become aware. HCRM will not be liable for any loss or damages incurred as a result of unauthorized use of your Account or User Credentials. You are solely responsible for maintaining the confidentiality of your User Credentials, and are responsible for all activities occurring under your Account and/or User Credentials.
- 2.2** We will use and protect any Personal Information (as defined in the HCRM [Privacy Policy](#)) solely as described in the Privacy Policy and solely as required by applicable law. By registering to create your Account, you represent and warrant that all information that you provide to HCRM is current, complete and accurate to the best of your knowledge, including any payment information you provide. You agree to maintain and promptly update your Account registration information on the Site so that it remains current, complete and accurate. You are responsible for obtaining and maintaining all connectivity, computer software, hardware and other equipment needed for accessing and using the Site and any Services, and for all charges related to the same.
- 2.3** The following additional terms apply to your conduct when accessing or using the Site and of its content: (a) you agree not to interfere with or disrupt the Site or the servers or networks connected to the Site, or disobey any requirements, procedures, policies or regulations of networks connected to the Site; (b) you agree not to reproduce, duplicate, copy, sell, resell, distribute, mirror, frame, publicly display, publicly perform, translate, create derivative works of, re-publish or transmit or exploit, any portion of the Site or any of its content, nor any use of or access to the Site (in whole or in part) in any way or through any medium for distribution, publication or any commercial purpose, except with HCRM’s express written permission or as permitted by applicable laws; (c) you agree not to engage in any activity that would constitute a criminal offense or give rise to a civil liability; (d) you agree not to impersonate any person or entity, including, but not limited to, HCRM or any HCRM employee, or falsely state or otherwise misrepresent your affiliation with any person or entity; and (e) you agree not to interfere with any other user’s right to privacy, including by harvesting or collecting personal information about users of the Site or posting private information about a third party.
- 2.4** Any violation of this Section 2 will constitute a material breach of the Agreement and may result in termination of this Agreement and/or termination or suspension of your Account.
- 3. Intellectual Property Rights.** The Site and Services made available by HCRM, and all computer software in source code, object code or other form, databases, indexing, search, and retrieval methods and routines, hypertext markup language code, active server pages, intranet pages, text, graphics, photographs, trademarks, logos, icons, user interfaces, sounds, music, videos, artwork, and similar materials, including but not limited to the “look and feel,” layout, design, structure, color scheme, selection, combination and arrangement of the content present on the Site and all intellectual property and other rights, title, and interests therein, including copyrights, trade secrets, rights in trademarks and trade dress, patents, compilations, inventions, modifications, updates, extensions, enhancements, configurations, derivative works, discoveries, improvements, processes, methods, designs and know-how, whether or not copyrightable or patentable, pertaining to any of the foregoing, whether conceived by HCRM alone or in conjunction with others (collectively, “HCRM IP”), are owned by HCRM and/or its licensors, protected by applicable intellectual property laws of the United States and other countries, including but not limited to copyright laws, and the non-public-facing elements thereof constitute

trade secrets and confidential information of HCRM. Except for the rights expressly granted to You in this Agreement, all rights, title, and interests in the Site, the Services and all HCRM IP therein and any other proprietary rights thereto, are and shall remain solely owned by HCRM and its licensors. No element of the Site or Services may be copied or posted on any networked computer or published in any medium, and no modifications may be made to any aspect of the Site or Services. Notwithstanding the foregoing, you may display, copy and download content from the Site solely to assist you in determining whether to purchase the Services. HCRM reserves all rights not expressly granted in this Agreement.

- 4. Confidentiality.** You agree that all non-publicly accessible features, functions, elements, content and aspects of (a) the Services, (b) the Site requiring User Credentials (and the User Credentials themselves), (c) any HCRM-supplied documentation, (d) Submitted Content, and (e) all non-publicly available ideas, concepts, know-how, or techniques reflected or contained in (a)-(d), as they relate to the Services or the Site, including all modifications, configurations, enhancements and updates thereto, constitute confidential and proprietary trade secret information of HCRM (“Confidential Information”). You agree to take reasonable steps to protect Confidential Information from unauthorized use or disclosure, including not using it for any purpose other than to assist you, and our Customer with which you are associated, in the legitimate and authorized use of the Site and/or Services, and not disclosing it to anyone except other persons within our Customer’s organization who are authorized to have such access. Confidential Information also includes inventions, processes, designs, methods, discoveries and improvements reflected or embodied in the Services, which also constitute trade secrets of HCRM. Except with respect to the Services, which shall remain Confidential Information of HCRM, Confidential Information shall not include information you can establish by documentary evidence: (i) is or has become a part of the public domain without your fault, (ii) was in your lawful possession prior to the disclosure and was not obtained by you either directly or indirectly from HCRM, (iii) was lawfully disclosed to you by a third party without restriction on disclosure or violation of an obligation owed to HCRM, or (iv) was independently developed by you without reference to the HCRM Confidential Information. You acknowledge that any use or disclosure of HCRM Confidential Information in a manner inconsistent with the provisions of this Agreement may cause HCRM irreparable damage to HCRM for which remedies other than injunctive relief may be inadequate, and you agree that HCRM shall be entitled to receive from a court of competent jurisdiction injunctive or other equitable relief to restrain such use or disclosure in addition to other appropriate remedies.
- 5. Linked Sites.** For your convenience, some hyperlinks may be posted on the Site that link to other websites not under the control of HCRM. You agree that HCRM is not responsible for these other websites, any content on these websites, nor the acts or omissions of their owners or operators. If you initiate a transaction or otherwise interact with a website that our Site links to, even if you reached that website through our Site, the information you submit to complete that transaction becomes subject to the privacy practices and terms of use of the owner or operator of that linked website. You should read the privacy policies and terms of use of such other websites to understand how they use and protect personal information and other issues related to your interaction with them. HCRM is not responsible for the privacy, security or other information practices or any acts or omissions of its suppliers or any third parties or their websites.
- 6. Disclaimers and Limitations of Warranties and Liability.** The following provisions apply (subject to your rights under your Customer Agreement if you are a Customer of HCRM), and your use of HCRM’s Site constitutes your agreement to the following:

 - 6.1 YOU AGREE THAT USE OF THE SITE, SERVICES, AND ALL FEATURES AND FUNCTIONS THEREOF, IS AT YOUR SOLE RISK. NEITHER HCRM, ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE OWNERS, EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS, THIRD PARTY SERVICE PROVIDERS OR LICENSORS, WARRANT UNDER THIS AGREEMENT THAT USE OF THE SITE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTIES UNDER THIS AGREEMENT AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SITE OR SERVICES, NOR WITH RESPECT TO THE ACCURACY, RELIABILITY,**

PERFORMANCE OR CONTENT OF THE SITE, THE SERVICES OR ANY INFORMATION OTHERWISE PROVIDED THROUGH THE SITE OR SERVICES.

- 6.2** THE SITE, SERVICES, AND ALL INFORMATION CONTAINED HEREIN ARE PROVIDED UNDER THIS AGREEMENT “AS IS,” WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, EXCEPT TO THE EXTENT ANY SUCH WARRANTY IS INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THESE TERMS OF USE.
- 6.3** TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, IN NO EVENT SHALL HCRM, ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE OWNERS, EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS, THIRD PARTY SERVICE PROVIDERS OR LICENSORS, BE LIABLE TO YOU OR ANY THIRD PARTY UNDER THIS AGREEMENT FOR ANY BODILY OR PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF OR DAMAGE TO DATA, UNAUTHORIZED ACCESS TO DATA OR PERSONAL INFORMATION, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER AND/OR DEVICE OR TECHNOLOGY FAILURE OR MALFUNCTION NOR FOR ANY OTHER FORM OF DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES BASED ON ANY CAUSES OF ACTION ARISING OUT OF USE OF THE SITE OR SERVICES OR ANY ALLEGED FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, OR DELAY IN SERVICE, OPERATION, OR TRANSMISSION OF THE SITE OR SERVICES, OR ANY ALLEGED COMPUTER VIRUS OR OTHER MALWARE, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OF PROPERTY, AND/OR ANY UNAUTHORIZED ACCESS TO, DELETION, ALTERATION OF, OR USE OF OR POSTING OF ANY RECORD, CONTENT, DATA OR TECHNOLOGY, PERTAINING TO, OR ON THE SITE OR PROCESSED VIA THE SERVICES. YOU AGREE THAT THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH ALLEGATIONS ARE BASED IN CONTRACT, TORT, NEGLIGENCE, OR ANY OTHER THEORY OR CAUSE OF ACTION, EVEN IF HCRM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 6.4** IF APPLICABLE LAW DOES NOT PERMIT ALL OR ANY PART OF THE ABOVE LIMITATION OF LIABILITY TO APPLY TO YOU, THE LIMITATIONS WILL APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.
- 7. Indemnification.** You agree to defend, indemnify and hold harmless HCRM, its affiliates and their respective directors, officers, employees and agents from and against all claims and expenses, including attorneys’ fees, arising out of your use of the Site. HCRM reserves the right to take over the exclusive defense of any claim for which we are entitled to indemnification under this section. In such event, you shall provide HCRM with such cooperation as is reasonably requested by HCRM.
- 8. Termination.** HCRM may terminate or suspend this Agreement at any time without notice to you. Without limiting the foregoing, we shall have the right to immediately terminate your access to the Site in the event of any conduct by you which we, in our sole discretion, consider to be unacceptable, or in the event of any breach by you of this Agreement.
- 9. Survival.** All limitations and disclaimers of liability and warranties, provisions protecting HCRM IP, provisions granting rights and licenses to HCRM, and confidentiality obligations and indemnity obligations, in addition to those provisions which by their nature should reasonably continue to apply after termination of this Agreement, shall survive termination of this Agreement, or cessation of your use of the Site or Services.

- 10. Feedback.** You may provide, or HCRM may solicit, input regarding the Site or the Services, including comments, feedback or suggestions regarding the possible creation, modification, configuration, correction, improvement or enhancement of the Site or Services, or their operation, functions or features (collectively, “Feedback”). Any information HCRM discloses to you related to or in response to Feedback, including the Feedback itself if requested by HCRM, shall be protected as Confidential Information of HCRM in accordance with Section 4 (Confidentiality). For the consideration provided to you in the form of the right to use this Site (or the Services, as the case may be), you agree that HCRM shall own all rights, title, and interest in and to the Feedback, even if you have designated the Feedback as confidential, and that HCRM will be entitled to use the Feedback without restriction, attribution or remuneration to you. You hereby irrevocably assign to HCRM all rights, title, and interest in and to the Feedback and agree to provide HCRM any reasonable assistance HCRM may require to document, perfect, and maintain its rights in the Feedback.
- 11. Governing Law; Disputes.** Any and all disputes, claims and controversies arising out of or in connection with your access to, and/or use of the Site, and/or the provision of content, services, products and/or technology on or through the Site shall be governed by and construed exclusively in accordance with the laws and decisions of the State of Illinois applicable to contracts made, entered into and performed entirely therein, without giving effect to its conflict of laws provisions. Venue with respect to any dispute arising out of this Agreement shall be in the state or federal courts located in Chicago, Illinois.
- 12. Contact HCRM; Notices.** Please direct any questions or comments or inquiries regarding HCRM to William Bramble, bbramble@hcrmnet.net, tel. [773-782-6466](tel:773-782-6466) or to Rebekah Lane, rglane@hcrmnet.net, tel. [260-255-8560](tel:260-255-8560). All notices to HCRM required under this Agreement shall be sent via email to the preceding email address. By using the Site or sending communications to us through the Site, you are communicating with us electronically. You consent to receive from us electronically any communications related to your use of the Site. We may communicate with you by email or by posting notices on the Site. You agree that all communications agreements, notices, disclosures and other that are provided to you electronically satisfy any legal requirement that such communications be in writing. When you create an Account, provide Submitted Content or provide us with your email address or other contact information, you agree that we may contact you using that information. All notices from us intended for receipt by you shall be deemed delivered and effective when sent to the email address you provide to us.
- 13. Terms Generally.** The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “approval,” “consent” and “notice” shall be deemed to be preceded by the word “written.” The word “term” shall be deemed to refer to any term, condition or other type of provision under this Agreement. The word “will” shall be deemed synonymous with “shall” when referring to the acts or obligations of a party. The section headings used herein are for convenience only and shall not be given any legal import.
- 14. Entire Agreement.** This Agreement sets forth the entire agreement of the parties with respect to your use of the Site and the subject matter addressed herein, and supersedes all previous written or oral agreements between the parties with respect to the foregoing.
- 15. Third Party Beneficiaries.** The provisions of this Agreement are for the benefit of HCRM, its affiliates, successors, assigns, third party content providers and licensors, and each shall have the right to assert and enforce such provisions directly or on its own behalf as third party beneficiaries.
- 16. Non-Waiver.** No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.

- 17. Severability.** If any part of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, it will be replaced with language reflecting the original purpose in a valid and enforceable manner. The enforceable sections and language of this Agreement will remain binding on the parties.
- 18. Force Majeure.** HCRM shall not be responsible for any delay or failure to perform or for any resulting damages under this Agreement resulting from causes beyond its reasonable control, including acts of God or public enemies, public health emergencies, pandemics, earthquake, storms or other elements of nature, labor disputes, blockages, embargoes, riots or other industrial disturbances, mechanical, electrical, electronic, telecommunications, Internet or other third party supplier delay or failure, acts or orders of any governmental authority, criminal acts, war or terrorism, including cyberattack or other malicious intrusion into or breach of security with respect to data or computer systems.
- 19. Assignment.** You shall not assign, delegate, or otherwise transfer this Agreement or any of your rights or obligations hereunder, either voluntarily or by operation of law.
- 20. Compliance with Laws.** You are responsible for complying with all laws and regulations applicable to your use of this Site. You agree not to use or export (electronically or otherwise) the Site or any component thereof outside of the U.S. other than in compliance with all applicable U.S. export laws, rules, and regulations. You shall be solely responsible for such compliance.
- 21. Relationship of the Parties.** For purposes of this Agreement, neither party is an agent of the other, and neither party has any express or implied authority to act on behalf of, or make any representations whatsoever on behalf of, the other. Each party is an independent contractor with respect to the other and neither party shall have the power or authority to bind the other party to any contract or obligation.
- 22. Construction.** The rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any other document executed and delivered by either party in connection with the transactions contemplated by this Agreement.

End of Agreement.