

## **QUALITY COMPASS® LICENSE AGREEMENT**

This License Agreement along with all materials referenced herein (“Agreement”) is a legal agreement between the Licensee and The National Committee for Quality Assurance (“NCQA”) to permit Licensee through its Licensed Users to access and use, subject to the terms of this Agreement, NCQA’s product identified in this Agreement and accompanying documentation provided electronically. “Licensee” means only the legal entity or organization whose authorized acceptance appears below as evidence of agreement to these terms. “Licensed Users” means the individuals who shall be eligible to access and use the Product on behalf of the Licensee pursuant to Section 4 below.

**YOU MUST READ THIS AGREEMENT CAREFULLY BEFORE INDICATING ACCEPTANCE AT THE END BY CLICKING THE "ACCEPT AGREEMENT" BUTTON. THE INDIVIDUAL ACCEPTING THIS AGREEMENT ON BEHALF OF LICENSEE REPRESENTS THAT BY ELECTRONICALLY SIGNING THIS AGREEMENT THE INDIVIDUAL HEREBY BINDS THE LICENSEE TO THE TERMS OF THIS AGREEMENT, AND THAT SUCH INDIVIDUAL IS AN EMPLOYEE OF LICENSEE AND DULY AUTHORIZED TO ENTER INTO AND BIND LICENSEE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, CLICK ON THE "DECLINE" BUTTON AT THE END OF THIS AGREEMENT AND YOU WILL NOT BE PERMITTED TO ACCESS AND USE THE PRODUCT.**

### **1. Product.**

The Product is the versions (Commercial, Medicaid or Medicare) of Quality Compass® 2016 and any updates to a given version licensed by NCQA, whether in electronic or hard copy under this Agreement. Quality Compass is updated annually, and previous licensed versions remain available to Licensee for three additional years beyond the Product release year. Licensee may only access the version for years which they have licensed. To the extent the Licensee has access to multiple versions of Quality Compass, this Agreement applies respectively to the following Product versions: Quality Compass 2013, Quality Compass 2014, Quality Compass 2015 and Quality Compass 2016. Licensee may need additional software to use the Product and NCQA is not responsible for such additional software.

The Product contains individual Healthcare Effectiveness Data and Information Set (HEDIS®) and Consumer Assessment of Healthcare Providers and Systems (CAHPS®) measures as well as Plan Specific, Regional, State, Census and National HEDIS and CAHPS rates (the “HEDIS Measures”).

Each HEDIS measure may be comprised of a number of individual HEDIS indicators (the “HEDIS Measure Indicators”). For example, the Comprehensive Diabetes Care HEDIS measure includes ten (10) individual HEDIS Measure Indicators. Each question in a CAHPS composite HEDIS measure is considered an individual HEDIS Measure Indicator. Each RRU + Quality Index measure (Asthma, Cardiovascular Conditions, COPD, Diabetes and Hypertension) is comprised of multiple indices, all of which are also considered as individual HEDIS Measure Indicators.

### **2. License Grant and Restrictions.**

Subject to the terms of this Agreement, NCQA hereby grants Licensee a personal, non-exclusive, non-transferable license to access and use the Product or any portion thereof in accordance with this Agreement (“License”) as follows: competitor analysis; benchmark analysis; trended data analysis; quality improvement initiatives; data analysis; cost analysis; analysis of performance from year to year; profiling performance goals and surveillance; custom reporting; market research; and/or marketing/advertising plan performance. The License grants Licensee the right to access and use the Product, subject to the terms of this Agreement, to a limited number of Licensed Users as defined below. The License is not transferable from Licensee to any other person, entity, organization or association, including without limitation any affiliate, shareholder, partner, or member of Licensee. Nothing in this Agreement grants to Licensee any rights to transfer the License to or use of the Product by or on behalf of any parent, subsidiary or affiliate of Licensee. Except for authorized Licensed Users, each person, entity, organization or association, parent, subsidiary, or affiliate is required to separately contract and register with NCQA in order to obtain and access the Product. Licensee shall abide by the following limitations and restrictions on the License:

- (A) The maximum number of individual HEDIS Measure Indicators contained in the Product which may ever be shared (internally or externally) by Licensee (whether in a single or multiple reports), is fifteen (15) HEDIS Measure Indicators, no more than two (2) averages or percentiles contained in the Product. Inclusion of additional HEDIS Measure Indicators, averages or percentiles require written approval of NCQA, which may be subject to fee assessment and require a separate license agreement.
- (B) For Licenses with access to the Quality Compass RRU + Quality Index license, Licenses must jointly share the maximum number of individual HEDIS Measure Indicators as outlined in 2. (A). For example, a Licensee with access to a Commercial License and RRU + Quality Index License, would be permitted to publish a report with

twelve HEDIS Measure Indicators and three RRU + Quality Index Measure Indicators. Collectively, these fifteen rates equal what is permitted in Section 2. (A).

- (C) For Licenses with access to a Commercial, Medicaid, or Medicare license **and** a separate standalone RRU + Quality Index license, Licensee would be permitted to publish a report with up to fifteen HEDIS Measure Indicators and all five RRU + Quality Index Measure Indicators, respectively. For Licenses that **only** have access to a standalone RRU + Quality Index License, Licensee would be permitted to publish a report with all five RRU + Quality Index Measure Indicators.
- (D) Licensee may publish (whether in a single or multiple publications) the information contained in 2(A) above, for a maximum of twenty (20) health plan products contained in the Product. Publication of information on additional health plan products requires the written approval of NCQA.
- (E) Licensee may compare an individual health plan's HEDIS Measures or HEDIS Measure Indicators to another health plan's HEDIS Measures or HEDIS Measure Indicators in the same geographic market, or to several health plans' HEDIS statistics in the same geographic market, provided that an average or percentile appears in the comparison (i.e. national, regional, or state) for that particular measure(s).
- (F) Licensee agrees to comply with any guidelines for publication, advertising, marketing or use of the Product that may be issued by NCQA from time to time and posted on [www.NCQA.org](http://www.NCQA.org).
- (G) Licensee agrees to abide by all applicable local, state, national and international laws and regulations.
- (H) Except as otherwise expressly permitted under this Agreement, Licensee may not itself or permit others to:
  - (1) distribute, sublicense, or copy the Product in any format, including, but not limited to, other print or electronic publication service or product;
  - (2) decompile, disassemble, analyze or otherwise examine the Product for the purpose of reverse engineering (except to the extent this restriction is expressly prohibited by applicable law);
  - (3) delete or in any manner alter any notices, disclaimers or other legends contained in the Product or appearing on any screens, documents, or other materials obtained by Licensee through use of the Product;
  - (4) provide service bureau facilities or commercial time-sharing services to any third party or supporting operations for any third party through the access and/or use of the Product;
  - (5) copy, reproduce, republish, upload, post, transmit, or distribute the Product, or any portion thereof, or facilitate or permit a third party to do so;
  - (6) modify or prepare derivative works from the Product;
  - (7) use any device or software to interfere or attempt to interfere with the proper operation of the Product;
  - (8) ship, transmit, transfer, or export the Product into any country or use the Product in any manner prohibited by United States export laws, restrictions or regulations;
  - (9) transmit the Product electronically or allow access to the Product over a network or a public computer-based information system which permits access to a greater number of users than licensed by Licensee;
  - (10) use the Product in multiple computer or multiple user arrangements unless that use is covered by a separate license for each computer or user; or
  - (11) rent, lease, or distribute or otherwise transfer possession of any copy of the Product to any third party.

### **3. Product Updates.**

Any updates, modifications, enhancements or new versions of the Product provided or made available to Licensee by NCQA, in accordance with Section 11, Support, of this Agreement, shall be considered part of Product updates and subject to this Agreement. NCQA may at any time and for any reason elect to modify, discontinue, delete or restrict any aspect or feature of the Product without notice to Licensee or any liability to NCQA or any NCQA Party (as defined in Section 6); however, NCQA agrees to make commercially reasonable efforts to provide Licensee with prior notice of any such changes.

### **4. Registered and Licensed Users.**

In order for Licensee to access and use the Product, Licensee shall register with NCQA, provide NCQA with an email address, pay the license fee ("Fee") and obtain a unique password for accessing the Product ("Password"). The Fee shall be determined at the time of registration based on the number of authorized users. An authorized user is an employee of Licensee that is accessing and using the Product under the License solely on behalf of Licensee (each individual is a "User" and collectively referred to as the "Licensed Users"). The Fee is non-refundable upon use of the Password. Upon receiving a Password, Licensee may issue unique passwords solely to its Licensed Users, up to the number of Users paid for by Licensee. Licensed Users may only use and access the Product for Licensee's business purposes pursuant to Section 2 above and may not access or use the Product for any other purpose or for any other person or entity that is not the Licensee. NCQA and Licensee acknowledge and agree that NCQA may obtain email addresses from Licensed Users upon their accessing and using the Product. Licensee is responsible and wholly liable for all acts or omissions committed under Licensee's Password and any and all passwords issued by Licensee to Licensed Users. The sharing, transferring or dissemination of passwords with unauthorized persons is a material breach of this Agreement and a violation of the License. For avoidance of doubt, employees and agents of Licensee's parent, subsidiaries, affiliates, shareholders, partners, or members, or any other person or entity are unauthorized users.

### **5. Ownership, Copyright and Disclosure.**

Title to and full ownership of the Product belongs to NCQA. The Product contains proprietary and copyrighted information and notice to that effect must appear on all authorized copies of the Product made by Licensee under this Agreement. Licensee acknowledges that the Product remains the full and exclusive property of NCQA. Licensee shall not disclose or publish whether in hard or electronic copy, any information contained in the Product except as authorized herein. NCQA hereby acknowledges and permits Licensee's use and publication of the information contained in the Product only in the following manner:

Licensee must include the following statement when using HEDIS Measures or HEDIS Measure Indicators in the Product under the terms of this Agreement in any publication:

For Quality Compass: "The source for data contained in this publication is Quality Compass® [current year] (e.g. Quality Compass® 2016) and is used with the permission of the National Committee for Quality Assurance (NCQA). Quality Compass [current year] includes certain CAHPS data. Any data display, analysis, interpretation, or conclusion based on these data is solely that of the authors, and NCQA specifically disclaims responsibility for any such display, analysis, interpretation, or conclusion. Quality Compass is a registered trademark of NCQA. CAHPS® is a registered trademark of the Agency for Healthcare Research and Quality (AHRQ)."

### **6. Disclaimers.**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, (A) THE PRODUCT IS PROVIDED "AS-IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NCQA AND ITS DIRECTORS, OFFICERS, LICENSORS, SUBCONTRACTORS AND AGENTS ("NCQA PARTIES") DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE PRODUCT OR OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND ACCURACY; (B) NEITHER NCQA NOR ANY NCQA PARTY WARRANTS THAT THE PRODUCT IS OR WILL BE ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS; (C) LICENSEE ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF NCQA'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (D) EACH OF NCQA AND THE NCQA PARTIES DISCLAIM AND MAKE NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE REPORTS, DATA, SCORES, RESULTS OR OTHER INFORMATION OBTAINED, GENERATED OR OTHERWISE RECEIVED BY LICENSEE FROM ACCESSING AND/OR USING THE PRODUCT OR OTHERWISE RESULTING FROM THIS AGREEMENT, AND (E) USE OF THE PRODUCT IS ENTIRELY AT LICENSEE'S OWN RISK AND NCQA AND EACH OF NCQA PARTIES SHALL HAVE NO LIABILITY OR RESPONSIBILITY THEREFOR.

**7. Proprietary Rights.**

The Product is protected by applicable United States and foreign laws and treaties, including copyright laws and treaty provisions. NCQA or its licensors own all rights, title and interests in the Product, including trade secrets, patents, copyrights and database rights, and the Product shall remain the sole and exclusive property of NCQA. Except as provided in Section 2 of this Agreement, Licensee has no, and is not granted, any right, title, interest or license in the Product.

**8. Trade names and Trademarks.**

This Agreement does not grant to any party a license to use any trademark, trade name, or logo of the other party, and each party recognizes that the trademarks, trade names, and logos of the other party represent valuable assets of that party and that substantial recognition and goodwill are associated with such trademarks, trade names, and logos. Each party hereby agrees that it shall not use or permit any third party to use, at any time, the other party's trademarks, trade names, or logos, except as expressly permitted by this Agreement.

**9. Injunctive Relief.**

Each party acknowledges that a violation of Sections 2, 5, or 8 of this Agreement would cause irreparable harm to the other party for which no adequate remedy at law exists and each party therefore agrees that, in addition to any other remedies available, the aggrieved party shall be entitled to seek injunctive relief to enforce the terms of Sections 2, 5, or 8. The prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney's fees incurred because of any such legal action.

**10. Service Requirements.**

Licensee agrees to access and use the Product in accordance with any and all operating instructions or procedures that may be issued by NCQA and amended by NCQA from time to time. NCQA does not make any commitments with respect to use or performance of the Product with browsers other than those browsers currently supported by Microsoft.

**11. Support.**

NCQA will provide Licensee with (a) commercially reasonable telephone and email support for the Product during normal business hours; and (b) updates and enhancements for the Product, to the extent that NCQA generally makes such updates and enhancements available to Licensees without a separate charge.

**12. Limitation of Liability.**

THE TOTAL LIABILITY OF NCQA AND THE NCQA PARTIES IN THE AGGREGATE TO LICENSEE OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCT WILL BE LIMITED TO THE PAYMENTS RECEIVED FROM LICENSEE UNDER THIS AGREEMENT. NCQA AND THE NCQA PARTIES SHALL NOT BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY TYPE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE PRODUCT WHETHER OR NOT NCQA AND ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER BASED UPON BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE). NCQA AND THE NCQA PARTIES SHALL HAVE NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE OF THE PRODUCT, WHETHER OR NOT NCQA AND THE NCQA PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF DAMAGES AND LIABILITIES SET FORTH IN THIS AGREEMENT ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN NCQA AND LICENSEE, AND THE PRICING FOR THE LICENSE REFLECTS SUCH LIMITATIONS. IF LICENSEE IS NOT SATISFIED WITH THE PRODUCT, THE ENTIRE LIABILITY OF NCQA AND THE NCQA PARTIES, AND LICENSEE'S EXCLUSIVE REMEDY, SHALL BE TO IMMEDIATELY STOP ACCESSING AND USING THE PRODUCT AND CONTACTING NCQA WITHIN 60 DAYS OF AGREEING TO THIS AGREEMENT AND REQUESTING A FULL REFUND OF THE FEES PAID BY LICENSEE TO NCQA UNDER THIS AGREEMENT. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR DAMAGES (SUCH AS CONSEQUENTIAL OR INCIDENTAL DAMAGES), OR THE EXCLUSION OF IMPLIED WARRANTIES AND LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. NOTWITHSTANDING THE FOREGOING, NCQA WILL INDEMNIFY LICENSEE AND HOLD IT HARMLESS FROM AND AGAINST ANY LIABILITY, JUDGMENTS, CLAIMS, LOSSES AND EXPENSES (INCLUDING ATTORNEYS' FEES) RESULTING FROM OR RELATED TO A CLAIM BY ANY PARTY CLAIMING DAMAGES FOR INFRINGEMENT OF COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY BASED ON MATERIAL SUPPLIED BY NCQA TO LICENSEE UNDER THIS AGREEMENT.

**13. Indemnity.**

Licensee agrees to defend, indemnify and hold NCQA and each NCQA Party, harmless from any losses, liabilities, damages, actions, claims or expenses (including reasonable attorneys' fees and court costs) arising or resulting from Licensee's breach of any term of this Agreement or caused by acts or omissions performed by Licensee or under Licensee's Password or any password issued by Licensee to Licensed Users.

**14. Severability.**

If any portion of this Agreement is determined by a court of competent jurisdiction or any appropriate legislature to be wholly or partially unenforceable, for any reason, such unenforceability shall not affect the balance hereof.

**15. Termination.**

Licensee's right to use the Product shall be effective from the date Licensee accepts this Agreement by clicking "Accept Agreement" below, and shall terminate when Licensee ceases all access and use of the Product and provides NCQA with notice of such termination or as otherwise provided in this Agreement. NCQA may terminate this Agreement immediately if Licensee breaches a material term of this Agreement and fails to remedy that breach within five (5) business days after notice from NCQA. Upon termination of this Agreement, all rights, including the License granted to Licensee, under this Agreement will cease and Licensee's access to the Product may be disabled. Upon termination of this Agreement, Sections 2, 5, 6, 7, 9, 12, 13, 15, 17(A), 17(C), 17(D) of the Agreement, along with all payment obligations under this Agreement, shall survive such termination.

**16. Electronic Agreement/Notices.**

- (A) Notices. All questions, comments or notices concerning this Agreement shall be submitted to NCQA by Licensee via <https://my.NCQA.org> or via mail at: NCQA, Attention: Information Products, 1100 13<sup>th</sup> Street, NW, Suite 1000, Washington, DC 20005. All notices to be given under this Agreement to Licensee shall be submitted by NCQA via email at the account Licensee provided to NCQA pursuant to Section 4 or to Licensee upon accessing the Product.
- (B) Acceptance. By clicking "Accept Agreement" below and providing NCQA with Licensee's email address under Section 4, Licensee agrees and consents to (i) contract electronically with NCQA for the Product in accordance with this Agreement; (ii) receipt of electronic legal notices regarding this Agreement to the email account Licensee provided under Section 4 or upon accessing the Product; and (iii) that by clicking "Accept Agreement", Licensee intends to be bound by this Agreement.
- (C) Agreement. In order to access, download, and print this Agreement, Licensee should click on the link for the .PDF file version of this Agreement. Changes to these hardware and software requirements, if any, will be e-mailed to Licensee. Licensee may also request to receive a copy of this Agreement by U.S. mail free of charge by giving notice to NCQA of such request within forty five (45) days after entering into this Agreement.
- (D) Changes. If Licensee consented to receive ongoing legal notices from NCQA via email Licensee may (i) update its email information by providing notice to NCQA and/or (ii) withdraw such consent by providing notice to NCQA. Please be aware that if Licensee withdraws its consent, such withdrawal of consent will not be effective until the date of receipt. The legal effect of this intervening time period is that Licensee is still bound by the terms of this Agreement during such period. The legal consequence of withdrawing Licensee's consent shall not act to void or invalidate Licensee's actions prior to the effective date that shall remain subject to the terms of this Agreement. Upon withdrawing Licensee's consent Licensee will be responsible for all incurred fees and charges payable under this Agreement.

**17. Miscellaneous.**

- (A) Modifications. This Agreement is the complete and exclusive statement of the agreement between Licensee and NCQA, and supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this Agreement. This Agreement may not be modified by Licensee except upon mutual agreement by the parties in writing signed by an authorized officer of NCQA. NCQA reserves the right, at any time, to change the terms of this Agreement by providing Licensee with notice of such changes. Any use of the Product by Licensee after NCQA's publication or email of any such changes shall constitute Licensee's acceptance of the Agreement as modified.
- (B) Force Majeure. NCQA will not be responsible for any failure to perform due to causes beyond its reasonable control, including but not limited to, acts of God, acts of terrorism, war, riot, embargoes, acts of civil or military authorities, national disasters, strikes and the like.

- (C) Governing Law and General Provisions. This Agreement will be governed by the laws of the District of Columbia, excluding the application of its conflicts of law rules. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the remainder of the Agreement, which shall remain valid and enforceable according to its terms. The words "and" as well as "or" shall be interchangeable to provide the broadest interpretation, and the word "including" shall mean "including without limitation" and "including but not limited to" to provide the broadest interpretation. The headings contained in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement. NCQA's failure to exercise or enforce any right or power under this Agreement shall not constitute a waiver of such right or power.
- (D) Third Party Beneficiaries. Nothing contained in this Agreement is intended to confer upon any person other than the parties hereto and their respective successors and permitted assigns, any benefit, right or remedy under or by reason of this Agreement, except with respect to NCQA Parties who shall be deemed third party beneficiaries under this Agreement but solely with respect to those terms that specifically reference an NCQA Party or the NCQA Parties.

To **ACCEPT** this Agreement for the Product, **click Accept Agreement**, which will create a legal contract that will bind LICENSEE and NCQA as soon as you press "Accept Agreement".

To **DECLINE** this Agreement for the Product, **click Decline**, which will deny you access and use of the Product.

Copyright by The National Committee for Quality Assurance 2016. All rights reserved.