

NCQA 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 (the “**Product**”).

“**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, as further described in Section 4 below.

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 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 version(s) (Commercial, Medicaid and/or Medicare) of Quality Compass®, which encompasses both the web-based tool (“**Tool**”) and the data Licensee is provided access to therein, described below, and any updates to a given version licensed by NCQA, whether in electronic or hard copy under this Agreement (the “**Product**”). Quality Compass is updated annually, and previous licensed versions remain available to Licensee for 3 additional years beyond the Product release date. Licensee may only access the version for years they have licensed. Licensee may need additional software to use the Product, and NCQA is not responsible for such additional software.

The Product contains audited performance results from individual Healthcare Effectiveness Data and Information Set (“**HEDIS**”®) and HEDIS Consumer Assessment of Healthcare Providers and Systems (“**CAHPS**”®) Survey measures, including submitted health plan rates, with State, Regional and National HEDIS and HEDIS CAHPS Survey benchmarks (averages and percentiles), collectively, the “**Data**.”

Each measure comprises a number of individual indicators (the “**HEDIS Measure Indicators**”). For example, the Childhood Immunization Status measure includes 19 individual HEDIS Measure Indicators (Childhood Immunization Status—Combination 10 is equivalent to one HEDIS Measure Indicator). Each question in a HEDIS CAHPS Survey composite measure is considered an individual HEDIS Measure Indicator.

2. License Grant and Restrictions.

Subject to the terms of this Agreement, NCQA hereby grants Licensee and its Licensed Users a personal, nonexclusive, nontransferable 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.

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 other person, entity, organization or association, including, without limitation, any parent, subsidiary, affiliate, shareholder, partner, member or related entity of Licensee. Except for authorized Licensed Users, each person, entity, organization or association, parent, subsidiary, affiliate or related entity is required to separately contract and register with NCQA to obtain and access the Product. Licensee shall abide by the following limitations and restrictions on the License:

- (A) For each year of access to the Product under this Agreement, Licensee may share/publish data (internally or externally, whether in single or multiple publications/reports) for up to 15 individual HEDIS Measure Indicators contained in the Product.
 - (1) Licensee may share/publish (internally or externally, whether in single or multiple publications/reports) no more than 2 benchmarks for each selected HEDIS Measure Indicator.
 - (2) Licensee may share/publish (internally or externally, whether in single or multiple publications/reports) up to 20 health plan product rates for each selected HEDIS Measure Indicator.
 - (3) Inclusion of additional HEDIS Measure Indicators, benchmarks or health plan product rates requires written approval of NCQA, which may be subject to fee assessment and require a separate license agreement.
- (B) Licensee may compare an individual health plan’s HEDIS Measure Indicators to another health plan’s HEDIS Measure Indicators in the same geographic market, or to several health plans’ HEDIS Measure Indicators in the same geographic market, provided that an average or percentile appears in the comparison (national, regional, state) for the particular HEDIS Measure Indicator(s).
- (C) 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.
- (D) Licensee agrees to abide by all applicable local, state, national and international laws and regulations.
- (E) Except as otherwise expressly permitted under this Agreement, Licensee may not itself or permit any third party to:
 - (1) Reproduce, republish, transmit, post, distribute, sublicense, rent, lease 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 copyright or trademark 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) modify or prepare derivative works from the Product;
 - (6) use any device or software to interfere or attempt to interfere with the proper operation of the Product;
 - (7) ship, transmit, transfer or export the Product into or the Data outside the U.S.;
 - (8) transmit the Product electronically or allow access to the Product over a network or a public computer-based information system that permits access to a greater number of users than licensed by Licensee; or
 - (9) use the Product in multiple computer or multiple user arrangements, unless that use is covered by a separate license for each computer or user.

3. Product Updates.

Any updates, modifications, enhancements or new versions of the Product provided or made available to Licensee by NCQA 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, Fee.

For Licensee to access and use the Product, Licensee shall register with NCQA, provide NCQA with an email address, pay the license fee (plus any applicable sales tax) (“**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 accesses and uses 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 nonrefundable 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 all passwords issued by Licensee to Licensed Users. The sharing, transferring or dissemination of passwords to 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, members or any other person or entity are unauthorized users.

5. Ownership, Copyright and Disclosure.

Title to and full ownership of the Product and all intellectual property rights therein (including, but not limited to, all copyrights, patent rights, database rights, trade secret rights) belong to NCQA. This Agreement shall not be interpreted to grant Licensee any ownership right in the Product, or any modification or portion thereof. NCQA's name and logo, and all other names, logos, icons, trademarks and/or service marks identifying NCQA and its programs, products and services, are proprietary trademarks of NCQA and any use not expressly provided for in this Agreement is strictly prohibited. .

Licensee must include the following statement when displaying the Data (benchmarks and/or rates) under the terms of this Agreement in any publication (external or internal):

“The source for certain health plan measure rates and benchmark (averages and percentiles) data (“the Data”) is Quality Compass[®] [current year] and is used with the permission of the National Committee for Quality Assurance (“NCQA”). Any analysis, interpretation or conclusion based on the Data is solely that of the authors, and NCQA specifically disclaims responsibility for any such analysis, interpretation or conclusion. Quality Compass is a registered trademark of NCQA.

The Data comprises audited performance rates and associated benchmarks for Healthcare Effectiveness Data and Information Set measures (“HEDIS[®]”) and HEDIS CAHPS[®] survey measure results. HEDIS measures and specifications were developed by and are owned by NCQA. HEDIS measures and specifications are not clinical guidelines and do not establish standards of medical care. NCQA makes no representations, warranties or endorsement about the quality of any organization or clinician who uses or reports performance measures, or any data or rates calculated using HEDIS measures and specifications, and NCQA has no liability to anyone who relies on such measures or specifications.

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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, noninfringement 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) NCQA and each NCQA Party disclaims and makes 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 NCQA Party shall have no liability or responsibility therefor.

7. 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.

8. Injunctive Relief.

Each party acknowledges that a violation of Sections 2, 5 or 7 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 7. The prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney's fees incurred because of any such legal action.

9. 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 currently supported by Microsoft.

10. 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 or interpretation 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. 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.

11. 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.

12. 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.

13. 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 5 business days after notice from NCQA.

Upon termination of this Agreement, all rights under this Agreement, including the License granted to Licensee, will cease and Licensee's access to the Product may be disabled. Upon termination of this Agreement, Sections 5, 6, 7, 8, 10, 11 and 15(C) of the Agreement, along with all payment obligations under this Agreement, shall survive such termination.

14. 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 13th Street NW, Third Floor, Washington, DC 20005. All notices to be given to Licensee under this Agreement 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 emailed 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 45 days after entering into this Agreement.

15. 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 and signed by an authorized officer of NCQA. NCQA reserves the right to change the terms of this Agreement at any time 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. Preprinted or stamped terms or conditions in Licensee invoices, Purchase Orders or forms are void and invalid, and shall not modify, waive, condition or qualify any provision(s) of this Agreement.
- (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 that 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.
- (E) **Assignment.** Neither party shall assign or otherwise delegate this Agreement or any rights, duties and/or obligations hereunder without the prior written consent of the other party. The obligations of both parties shall not terminate upon any assignment or delegation attempted without such prior written consent.
- (F) **Cancellation.** In the event Licensee chooses to remit payment, where applicable, for the Product at a later date, (via mailed check or otherwise), NCQA reserves the right to cancel Licensee's

order if NCQA fails to receive payment for the Product within 30 days of acceptance of this Agreement. Licensee will not be granted access or use of the Product (or it will be rescinded), and all Agreements related to the order and Product will be rendered null and void.

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 click “**Accept Agreement**.”

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