

End-User License Agreement for Early Adopter Digital Content Services Software Product

____ (“**Organization**”) is a licensee and early adopter of NCQA’s Digital Content Services Software (the “**Product**”). NCQA and Organization have entered into an Early Adopter Agreement for NCQA’s Digital Content Services Software Product (the “**Agreement**”). Organization desires to provide you with data generated by the Product or access to the Product as an Authorized End User of Organization (“**End User**” or “**you**”). The Product contains certain digital Healthcare Effectiveness Data and Information Set (HEDIS®) measures owned and copyrighted by the National Committee for Quality Assurance (“**NCQA**”) which have been licensed to Organization for use as part of the Product. The HEDIS measures contain or reference third-party codes including without limitation code values owned, licensed or otherwise provided by third parties (“**Third-Party Codes**”) and certain open-source software code. Please read this End-User License Agreement (“**EULA**”), which is a binding agreement between you and NCQA, before using the Product or the data produced by the Product.

BY ACCESSING OR USING THE PRODUCT OR DATA PRODUCED BY THE PRODUCT, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA.

IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT ACCESS OR USE THE PRODUCT OR ANY DATA PRODUCED FROM USING THE PRODUCT.

1. Definitions:

A. “Authorized End User” means a direct customer of Organization which may access Organization’s environment to use the Product or a customer of Organization that receives data from Organization generated from use of the Product.

B. “Measures” means the HEDIS measures included in the Product.

C. “NCQA Materials” as used in this EULA shall mean (a) the Product, and all elements, components, and executables of the Product; (b) content available within the Product, which includes the Measures; (c) NCQA’s Early Adopter Program Requirements including the NCQA HEDIS Core Implementation Guide, all reference materials and instructions provided by NCQA and any and all written materials describing or referring to the Product; (d) test decks used or deployed by NCQA to test implementation of the Product; and (e) trade names, trademarks, services names and/or service marks of NCQA and its licensors.

D. “Product” shall mean the early adopter version of NCQA’s Digital Content Services Software.

2. License Grant. Subject to the terms and conditions of this EULA, NCQA grants you a limited, non-exclusive, non-transferable, non-sublicensable license in the United States to use the NCQA Materials (including the Product) during the term of this EULA for internal health care operations, including quality improvement purposes and quality gap identification and closure (the “**License**”). Use of the Product to generate individual member level data or aggregate data for any purpose other than internal quality improvement and quality gap indemnification and closure is prohibited. **You are not permitted to publish or publicly report to third parties, including but not limited to regulatory authorities, states, value-based quality programs and the general public, data generated from use of the Product or aggregate**

results generated from data produced using the Product. The early adopter version of the Product does not aggregate individual member level data for purposes of aggregating results for HEDIS health plan reporting and use of the Product will not alleviate any requirements for health plans that report HEDIS to NCQA or regulatory authorities and HEDIS vendors that support health plan reporting of HEDIS to undergo a HEDIS Compliance Audit™ or the requirement to use logic certified through NCQA's Measure Certification™ Program.

3. License Restrictions. You shall:

- (i) only use the NCQA Materials in the manner and for the purposes expressly specified in this EULA;
- (ii) not authorize or permit any third-party or affiliate, subsidiary or related entity to use the NCQA Materials, or any portion thereof;
- (iii) not modify, adapt, create derivative works, copy, reverse engineer, decompile or disassemble the NCQA Materials, including but not limited to the Product or prepare derivative works from the NCQA Materials (including the Product), or any portion thereof, including but limited to the Product source code or the Measures therein;
- (iv) not delete or in any manner alter any notices, disclaimers or other legends contained in the NCQA Materials or appearing on any screens, copies or other materials obtained through use of the Product;
- (v) not advertise, offer for sale, sell, sublicense, ship, transmit, transfer or export the Measures independently from the Product;
- (vi) not attempt to access any systems, programs or data of NCQA that are not licensed under the Agreement or this EULA, or otherwise made available by NCQA for public use;
- (vii) not use the NCQA Materials in any manner that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law;
- (viii) abide by all applicable local, state, national and international laws and regulations, including The Health Insurance Portability and Accountability Act of 1996 and all laws, rules and regulations relating thereto;
- (ix) not use the NCQA Materials or any part thereof for purposes of: (a) developing, using or providing a competing commercial product or service; or (b) any other purpose that is to NCQA's detriment or commercial disadvantage; and

Considering the worldwide nature of the Internet, nothing in this EULA shall prohibit or restrict you from accessing the NCQA Materials, including the Product, from the Internet or through an on-line network, regardless of your geographic location; provided, that you are a U.S. entity or individual domiciled in the U.S. and that you agree to comply with U.S. laws, including U.S. copyright and export control laws and regulations and agree to the enforceability of these laws in the U.S. For the sake of clarity, your use of the Product, NCQA Materials and any data produced by the Product in any jurisdiction shall be governed solely by U.S. law, including U.S. intellectual property law.

4. Ownership, Copyright and Disclosure.

E. Except for the Third-Party Codes, the NCQA Materials, including but not limited to the Product, are protected by applicable United States and foreign laws and treaties, including copyright laws and treaty provisions. NCQA and/or its licensors own all rights, title and interests in the NCQA Materials, including trade secrets, patents, copyrights and database rights, and the NCQA Materials shall remain the exclusive property of NCQA or its licensors. Except as expressly provided in Section 2, End User has no

right, title, interest or license in the NCQA Materials, and no rights or licenses are granted except as expressly stated in this EULA.

F. The Product also contains elements of third-party open-source code embedded within the Product as noted in the copyright and disclaimer provisions and notices posted by NCQA at <https://www.ncqa.org/using-digital-content-services/> and, in the Product, and End User agrees to respect and comply with any licenses associated with such third-party open-source coding.

G. The Measures contain third party code values for convenience that crosswalk the Measures to third party medical and billing codes protected by copyright, including without limitation CPT® by American Medical Association, LOINC® by Regenstrief Institute, Inc., SNOMED CT® by the International Health Terminology Standards Development Organization, RxNorm by the U.S. National Library of Medicine, and Uniform Billing Codes by the American Hospital Association. All uses of the Third-Party Codes may require a license from the copyright owner and End Users are responsible for obtaining such licenses. Specific copyright and disclaimer provisions and notices, including those related to the Third Party Codes, are posted by NCQA at <https://www.ncqa.org/using-digital-content-services/>.

5. **Breach.** Any material breach of this EULA by you may cause irreparable harm to NCQA and shall entitle NCQA to seek injunctive relief and all legal and equitable remedies available to NCQA.

6. **Disclaimers.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT:

A. THE PRODUCT AND NCQA MATERIALS ARE PROVIDED “AS IS”, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NCQA, ITS DIRECTORS, OFFICERS, LICENSORS, SUBCONTRACTORS, AND AGENTS (“**NCQA PARTIES**”) MAKE NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT AND NCQA MATERIALS OR ANY OTHER INFORMATION OR MATERIALS DELIVERED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OR ACCURACY, AND NCQA DISCLAIMS AND MAKES NO WARRANTY OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE PRODUCT AND NCQA MATERIALS. THE MEASURES ARE NOT CLINICAL GUIDELINES AND DO NOT ESTABLISH A STANDARD OF MEDICAL CARE.

B. NCQA PARTIES MAKE NO WARRANTY THAT THE PRODUCT WILL BE ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER LIMITATIONS. ORGANIZATION IS RESPONSIBLE FOR THE SECURITY OF ITS OWN IMPLEMENTATION OF THE PRODUCT AND NCQA SHALL HAVE NO LIABILITY TO END USER FOR SECURITY VULNERABILITIES IN THE PRODUCT OR HARM CAUSED THEREBY.

C. THE USE OF THE NCQA MATERIALS IS ENTIRELY AT END USER’S OWN RISK AND THE NCQA PARTIES SHALL HAVE NO LIABILITY OR RESPONSIBILITY THEREFOR.

D. NO PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO INFORMATION, DATA OR OTHER MATERIALS (COLLECTIVELY “**DATA**”) SHARED PURSUANT TO THIS EULA, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTY

AS TO THE ACCURACY QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE SHARED DATA. USE OF THE SHARED DATA IS ENTIRELY AT A PARTY'S OWN RISK AND NO OTHER PARTY SHALL HAVE ANY LIABILITY OR RESPONSIBILITY THEREFOR.

E. NCQA DISCLAIMS ALL LIABILITY FOR USE OR ACCURACY OF ANY THIRD-PARTY CODES.

F. SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

7. Indemnity. You are responsible for your use of the Product and data generated from using the Product, and you will defend and indemnify the NCQA Parties from and against every claim, liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or in any way connected with: (a) your access to, use of, or alleged use of, the Product and data generated by the Product; (b) your violation of any portion of this EULA, any representation, warranty, or agreement referenced in this EULA, or any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. NCQA reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of that claim.

8. Limitation of Liability.

NCQA SHALL HAVE NO LIABILITY TO YOU FOR: (1) ANY DAMAGES RESULTING FROM USE OR INTERPRETATION OF THE PRODUCT OR DATA PRODUCED THEREFROM, INCLUDING BUT NOT LIMITED TO THE IMPACT, PROVISION OR STANDARD OF MEDICAL CARE; OR (2) ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE OR OTHER INDIRECT DAMAGES ARISING UNDER OR RELATED TO THIS EULA, IN EACH CASE WHETHER OR NOT NCQA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIABILITY OF NCQA SHALL OTHERWISE BE LIMITED TO ACTUAL AND DIRECT DAMAGES, NOT TO EXCEED \$10,000.

THE LIABILITY OF THE END USER TO NCQA ARISING UNDER THIS EULA WHETHER IN CONTRACT, TORT, OR OTHERWISE SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES. THE CUSTOMER SHALL HAVE NO LIABILITY FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES ARISING UNDER OR RELATED TO THIS EULA, WHETHER OR NOT THE CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EACH PROVISION OF THIS EULA THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES

ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THIS EULA. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS EULA. THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9. Termination. If Organization's rights to use the Product are terminated under the Agreement or you violate any provision of this EULA, your permission to use the Product may be terminated, upon notice. NCQA reserves the right to modify or discontinue the Product at any time (including by limiting or discontinuing certain features of the Product), temporarily or permanently, without notice to you. Termination of this EULA shall not impair your right to continue to use data generated from the Product prior to the termination of this EULA; provided such use is consistent with the limitations and restrictions set forth in this EULA. Sections 4, 6, 7, 8, 9, 11 and 14 shall survive termination of this EULA.

10. Investigation/Audit. Upon NCQA's request, End User will promptly render assistance in any investigation or audit to be carried out by or on behalf of NCQA to assess compliance with this EULA. End User shall provide reasonable access upon notice to its premises and systems to confirm compliance with this EULA. NCQA and anyone acting on its behalf will protect End User's confidentiality with respect to any confidential business information obtained from End User in the context of such investigation or audit, in so far as that information is not related to the use of the Product itself. An investigation or audit shall not be performed more than once per year, unless NCQA has concrete reasons to perform an investigation or audit on an ad hoc basis. NCQA shall be responsible for the cost of the investigation or audit unless such investigation or audit reveals that End User has breached the terms of this EULA, in which event End User shall reimburse NCQA for the costs of such investigation or audit.

11. Disputes.

A. Governing Law. This EULA will be governed by the laws of the District of Columbia without giving effect to District of Columbia choice-of-law principles. To the maximum extent permitted under applicable law, this EULA will not be subject to the Uniform Computer Information Transactions Act (prepared by the National Conference of Commissioners on Uniform State Laws) as currently enacted or as may be codified or amended from time to time by any jurisdiction. PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ("U.N. CONVENTION"), THE PARTIES AGREE THAT THE U.N. CONVENTION SHALL NOT APPLY TO THIS EULA.

B. Dispute Resolution. Any dispute arising out of or in connection with this EULA, the rights and obligations under this EULA or the breach, termination, formation or validity of this EULA (a "Dispute") that cannot be resolved within thirty (30) days shall be referred to and settled by arbitration. The arbitration shall be conducted in accordance with the Arbitration Rules of the American Arbitration Association (the "AAA") in effect at the time of the arbitration, except as such rules may be modified by mutual agreement of the parties. The applicable rules shall be the Commercial Rules in the event of a domestic dispute and the International Rules in the event of an international dispute, and any disagreement as to the applicable rules shall be resolved by the arbitrator appointed as described below. The seat of the arbitration shall be Washington, DC and the arbitration shall be conducted in English.

Disputes shall be heard by a panel of three (3) arbitrators. Within thirty (30) days after the commencement of arbitration, each of the parties shall select one person to act as an arbitrator and the two (2) selected shall select, in consultation with the parties that appointed them, a third arbitrator who shall serve as the president of the tribunal within forty-five (45) days of their appointment. If the arbitrators selected by each party are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA.

The award of the arbitrators shall be accompanied by a reasoned, written opinion. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. Each party shall continue to perform its obligations under this EULA pending final resolution of any dispute resolution procedure; provided that, nothing in this Section shall be construed as forfeiting the parties' rights to seek interim relief in a court of competent jurisdiction, and such actions shall not be incompatible with this EULA to arbitrate contained herein or the availability of interim measures of protection under the Arbitration Rules.

The parties agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including but not limited to any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the tribunal, the AAA, the parties, their counsel and any person necessary for the conduct of the proceeding, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

The terms of this EULA requiring arbitration are self-executing, and it is unnecessary for either party to petition a court to compel arbitration in order to initiate arbitration. The parties agree that any issue regarding the arbitrability of any claims or disputes arising under, relating to or in connection with this EULA is an issue solely for the arbitrators, not a court, to decide.

THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY OR OTHERWISE ON ANY CLAIM, CAUSE OF ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY INVOLVING OR RELATED TO THE TERMS, COVENANTS OR CONDITIONS OF THIS EULA OR ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH OR RELATED TO THIS EULA. THE PROVISIONS OF THIS EULA RELATING TO WAIVER OF TRIAL BY JURY SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS EULA.

C. Third Party Disputes. ANY DISPUTE YOU HAVE WITH ORGANIZATION OR A THIRD PARTY IS DIRECTLY BETWEEN YOU AND ORGANIZATION, AND YOU IRREVOCABLY RELEASE NCQA (AND ITS OFFICERS, DIRECTORS, AGENTS, SUBSIDIARIES, JOINT VENTURES AND EMPLOYEES) FROM CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

D. No Class Action. EACH PARTY WAIVES THE RIGHT TO LITIGATE IN COURT OR ARBITRATE ANY CLAIM OR DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.

12. Additional Terms; Modifications.

A. Additional Terms. Your use of the NCQA Materials and Data may be subject to additional terms, policies, rules or guidelines applicable to the NCQA Materials and Data that NCQA may post on its website (the “**Additional Terms**”), subject to the section of this EULA titled “Modification of this EULA.” All Additional Terms are incorporated by this reference into, and made a part of, this EULA. The rights granted under this EULA are limited to the NCQA Materials and Data.

B. Modification of this EULA. You acknowledge that the EULA may be modified or replaced on a going-forward basis at any time. Please check NCQA’s website periodically for changes to this EULA. If a change to this EULA materially modifies your rights or obligations, you will be required to accept the modified EULA in order to continue to use the NCQA Materials. This EULA will be identified by the most recent date of revision and will be effective immediately upon being made available through NCQA’s website or otherwise through the Product, except: (i) if any such modification materially alters your rights under this EULA, an attempt to notify you will be made directly through a message sent by NCQA to the email address you have provided to Organization, if any; (ii) such materially modified EULA will be effective upon the earlier of your use of the Product or data produced therefrom with actual knowledge of the changes or thirty (30) days after the changes are made available to you; and (iii) no modifications to this EULA will apply to any dispute between you and NCQA that arose prior to the date of such modification. What constitutes a material change will be determined at NCQA’s sole reasonable discretion. Your use of the Product or data produced therefrom after modifications to this EULA become effective constitutes your binding acceptance of such changes. If you are dissatisfied with the terms of this EULA or any modifications to this EULA, then you agree that your sole and exclusive remedy is to discontinue any use of the NCQA Materials, including any data produced from the Product.

13. Feedback. If you provide NCQA with any comments, bug reports, feedback, or modifications proposed or suggested by you for the Product (“**Feedback**”), such Feedback is provided on a non-confidential basis (notwithstanding any notice to the contrary you may include in any accompanying communication), and NCQA will have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into the Product and the NCQA Materials. You hereby grant NCQA a perpetual, irrevocable, nonexclusive license under all rights necessary to so incorporate and use for any purpose your Feedback related to the Product and the NCQA Materials.

14. Miscellaneous.

A. **No Third-Party Beneficiaries.** Nothing in this EULA shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

B. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this EULA on any occasion will not be considered a waiver or deprive or limit that party of the right thereafter

to insist upon strict adherence to that term in the particular instance or that term or any other term of this Agreement in any instance. Any waiver must be in writing.

C. **Force Majeure.** Neither party will be responsible or be held to have failed to meet its obligations under the EULA, if it either delays performance or fails to perform as a result of any strike, lockout or other labor dispute; fire, earthquake or other natural disaster or act of terrorism or casualty or damage to personnel, materials or equipment (a “**Force Majeure Event**”).

D. **Notice.** Any notice required or permitted to be delivered pursuant to this EULA shall be in writing and shall be deemed given upon delivery. All such notices shall be addressed to NCQA at the address set forth below, by email, or to such other address as NCQA shall notify you in accordance with this Section:

AVP, Information Products
NCQA
1100 13th Street NW, Third Floor
Washington, DC 20005
Phone: 202-955-3500

D. **Relationship of the Parties.** The parties have entered into this EULA as independent contractors only, and nothing contained in this EULA shall place, or shall be construed to place, the parties in the relationship of legal representation, employer-employee, partners, joint ventures, or agency and neither party will have the power or authority to obligate or bind the other party in any manner.

E. **Counterparts.** Each party shall, upon the reasonable request of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this EULA.

E. **Headings.** The headings and other captions in this EULA are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this EULA.

H. **Entire Agreement and Amendment.** The EULA supersedes all prior agreements, written or oral, between NCQA and End User relating to the subject matter of this EULA.

I. **Severability; Waiver.** If any part of any provision of this EULA is found to be invalid or unenforceable, the remainder of this EULA shall remain in full force and effect. No failure to enforce any terms of this EULA shall: (i) be effective unless expressly set forth in writing; (ii) constitute a waiver of such term in the future; or (iii) in any way affect the other terms hereof.

J. **Assignment.** You shall not assign or delegate this EULA or any of your rights or obligations hereunder without the prior written consent of NCQA. Any attempted assignment by you without such consent shall be null and void. NCQA may assign this EULA, or any of its rights under this EULA, to any third party with or without your consent.

15. Contact Information. If you have any questions about this EULA, please contact NCQA via my.ncqa.org.