

## End User License Agreement – NCQA Measure Certification Program

[Licensee]’s (“**Vendor**”) [name of product] (“**Product**”) being provided to [Customer] (“**Customer**” or “**you**”) contains Healthcare Effectiveness Data and Information Set (HEDIS®) measures and specifications and survey specifications for the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) (the “**Data**”). The Data is owned and copyrighted by the National Committee for Quality Assurance (“**NCQA**”) and has been licensed to Vendor for inclusion in the Product. The HEDIS measures and specifications expressly exclude third-party intellectual property rights in the HEDIS Value Set Directory (“**HEDIS VSD**”), including without limitation code values owned, licensed or otherwise provided by third parties (“**Third-Party Codes**”). Please read this End-User License Agreement (“**EULA**”), which is a binding agreement between you and NCQA, carefully before downloading or using the Data within the Product.

***TO THE EXTENT YOU PERMIT ACCESS TO THE DATA THROUGH THE PRODUCT TO A THIRD PARTY, WHETHER AFFILIATED OR UNAFFILIATED, EACH AN “AUTHORIZED USER,” EXCEPT FOR THIS PARAGRAPH, YOU AGREE TO FLOW DOWN THE TERMS OF THIS EULA TO SUCH THIRD PARTY PRIOR TO PERMITTING ACCESS TO THE DATA. YOU SHALL BE RESPONSIBLE FOR THE ACTS AND OMISSIONS OF YOUR AUTHORIZED USERS.***

BY DOWNLOADING OR USING THE DATA WITHIN 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 DOWNLOAD OR USE THE DATA.

**1. License Grant.** Subject to the terms and conditions of this EULA, NCQA grants you a limited, perpetual, worldwide, non-exclusive, non-transferable, non-sublicensable license to use the Data or any portion thereof for the following non-commercial purposes: 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; population health initiatives; and/or market research.

**2. License Restrictions.** You shall:

- (i) use the Data only for population health purposes within an affiliated health plan network (e.g. Accountable Care Organization) and internal, quality improvement purposes (e.g., trend analysis) and not publicly display, disseminate or publish the Data, Adjustments (defined below) thereof or any portion of the same;
- (ii) prominently display NCQA’s trademark and copyright notices, including the measure Adjustment and certification notices, as applicable, as provided in this EULA on any output that includes the Data or any portion thereof;
- (iii) only Adjust the Data, or any portion thereof, as explicitly permitted by the Rules for Allowable Adjustments of HEDIS (the “**Rules**”), except that you may apply or adapt the

- Data to your non-U.S. jurisdiction (including without limitation translations; mapping, combining or cross-referencing Data with local third-party code values);
- (iv) report or submit HEDIS measure results (“**Rates**”) to external programs only if those Rates have been calculated by a HEDIS-certified vendor (“**HEDIS Certified Vendor**”) and stem from Rates that have been audited and approved by an NCQA-certified HEDIS Compliance Auditor (“**HEDIS Compliance Auditor**”), or as expressly approved in writing by NCQA in advance;
  - (v) not use the Data or any portion thereof for any purpose other than as specifically set forth in this EULA;
  - (vi) not use the Third-Party Codes without an authorized license from the copyright owners;
  - (vii) only publicly display Rates or conduct pay for performance incentive initiatives from/on Certified, Uncertifiable or Retired Measures;
  - (viii) not use, or authorize or permit any third party, affiliate, subsidiary or related entity to use the Data or any portion thereof for any purpose other than as specifically set forth in this EULA, including but not limited to copying, selling, renting, leasing, licensing, sublicensing, or distributing the Data or any portion thereof;
  - (ix) not reproduce, copy, reverse engineer, decompile or disassemble the Data or modify or prepare derivative works from the Data or any portion thereof except as expressly authorized by this EULA;
  - (x) not alter or remove any copyright notices, patent notices, trademark and service mark notices, or other proprietary notices or disclaimers affixed to the Data;
  - (xi) not use the Data in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; and
  - (xii) not use the Data for purposes of: (a) benchmarking or competitive analysis of the Data or (b) developing a product or service that could reasonably be determined as a replacing the Data. NCQA agrees that the foregoing provision does not restrict or prevent you in any manner from offering or developing a product or service that includes (i) measures, risk models or other specification independently developed by you, or (ii) measures, risk models or other specifications from a third party that may be or are competitive to any NCQA product or offering.

**3. HEDIS VSD.** The HEDIS VSD contains Third Party Codes, including without limitation CPT® by American Medical Association, LOINC® by Regenstrief Institute, Inc., SNOMED CT® by the International Health Terminology Standards Development Organisation, 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.

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

- a. Except for the Third-Party Codes, title to and full ownership of Data and all intellectual property rights therein (including, but not limited to, all copyrights, patent rights and trade secret rights) belong to NCQA, or NCQA has obtained the necessary rights in the Data to grant the rights and licenses set forth herein. This EULA provides only a limited license to use the Data and transfers no ownership or intellectual property interest or title in or to the Data. NCQA’s name and logo, and all other names, logos, trademarks and icons identifying

NCQA and its programs, products and services are proprietary trademarks of NCQA and any use not expressly provided for in this EULA is strictly prohibited. NCQA holds a copyright in these materials and can rescind or alter these materials at any time. These materials may not be modified by anyone other than NCQA or its designee. Use of the Rules to make permitted adjustment of the materials does not constitute a modification.

- b. As between NCQA and you, sole ownership rights to the Data and Adjustments reside with NCQA. “**Adjust**” or “**Adjustments**” as used in this EULA means all customizations, modifications, enhancements or other improvements developed by, on behalf of or implemented by you as permitted herein. You hereby irrevocably waive any and all claims you may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Data and Adjustments. 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 EULA is strictly prohibited.

**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.**

- a. THE HEDIS MEASURES AND SPECIFICATIONS WERE DEVELOPED BY AND ARE OWNED BY NCQA. THE HEDIS MEASURES AND SPECIFICATIONS ARE NOT CLINICAL GUIDELINES AND DO NOT ESTABLISH A STANDARD OF MEDICAL CARE.
- b. NCQA MAKES NO REPRESENTATIONS, WARRANTIES OR ENDORSEMENT ABOUT THE QUALITY OF ANY ORGANIZATION OR PHYSICIAN THAT USES OR REPORTS PERFORMANCE MEASURES AND NCQA HAS NO LIABILITY TO ANYONE WHO RELIES ON SUCH MEASURES OR SPECIFICATIONS.
- c. NCQA MAKES NO WARRANTY TO YOU, EXPRESS OR IMPLIED, WITH RESPECT TO INFORMATION OR MATERIALS DELIVERED PURSUANT TO THIS EULA, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY THAT THE DATA WILL BE FREE FROM INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, TRADE SECRETS OR OTHER RIGHTS OF THIRD PARTIES AND ANY WARRANTY AS TO THE ACCURACY QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE DATA.
- d. NCQA DOES NOT CERTIFY EVERY PERMUTATION OF THE RULES FOR ALLOWABLE ADJUSTMENT OF HEDIS FOR A MEASURE. AS SUCH, NCQA SHALL NOT BE RESPONSIBLE OR LIABLE IN ANY WAY FOR ANY MEASURE ADJUSTMENT PERFORMED BY THE VENDOR OR YOU. SUCH MEASURE ADJUSTMENTS ARE AT YOUR OWN RISK.

- 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 Data, and you will defend and indemnify NCQA and their respective officers, directors, employees, consultants, affiliates, subsidiaries, and agents (together, the “**Indemnified Entities**”) 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 Data; (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 DATA, 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 CUSTOMER 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. NCQA's Notice of Copyright.**

- a. NCQA holds a copyright in the Data and can rescind or alter the Data at any time. The Data may not be modified by anyone other than NCQA.
- b. Any commercial use and/or internal or external reproduction, distribution and publication must be approved by NCQA and are subject to a license at the discretion of NCQA. Any use of the materials to identify records or calculate measure results, for example, requires a custom license and may necessitate certification pursuant to NCQA's Measure Certification Program. Reprinted with permission by NCQA. © [current year] NCQA, all rights reserved.
- c. The American Medical Association ("AMA") holds a copyright to the CPT® codes contained in the measure specifications. All rights reserved. CPT is a trademark of the AMA. No fee schedules, basic units, relative values or related listings are included in CPT. The AMA assumes no liability for the data contained in the CPT codes. Applicable FARS/DFARS restrictions apply to government use.
- d. The AMA also hold copyright to the Health Care Provider Taxonomy Code Set codes. The codes are published in cooperation with the National Uniform Claim Committee ("NUCC") by the AMA. Applicable FARS/DFARS restrictions apply.
- e. The American Hospital Association ("AHA") holds a copyright to the Uniform Billing Codes ("UB") contained in the measure specifications. The UB Codes in the HEDIS specifications are included with the permission of the AHA. All uses of the UB Codes may require a license from the AHA. Specifically, anyone desiring to use the UB Codes in a commercial product to generate HEDIS results, or for any other commercial use, must obtain a commercial use license directly from the AHA. To inquire about licensing, contact [ub04@aha.org](mailto:ub04@aha.org).
- f. The American Dental Association ("ADA") holds a copyright to the Current Dental Terminology ("CDT") codes contained in certain measure specifications. The CDT codes in the HEDIS specifications are included with the permission of the ADA. All uses of the CDT codes require a license from the ADA. No alteration, amendments, or modifications of the CDT or any portion thereof is allowed. Resale, transmission, or distribution of copies of the CDT or other portions of the CDT is also not allowed. To inquire about licensing, contact [CDT-SNODENT@ada.org](mailto:CDT-SNODENT@ada.org).
- g. RadLex copyright 2014, The Radiological Society of North America (RSNA), all rights reserved. Licensed under RadLex License Version 2.0. You may obtain a copy of the license at: <http://www.rsna.org/radlexdownloads/> This work is distributed under the above

noted license on an “AS IS” basis, WITHOUT WARRANTIES OF ANY KIND, either express or implied. Please see the license for complete terms and conditions.

**10. Display of Measure Rates.** Except for output used solely for internal, quality improvement purposes (e.g., trend or gap analysis), you agree to clearly and conspicuously display, along with the HEDIS measure name or acronym, the **applicable HEDIS measurement year and complete calculated HEDIS measure result (“Rate”) name** (e.g., HEDIS MY 2020 Use of Imaging Studies for Low Back Pain - Unaudited Health Plan HEDIS Rate (or) HEDIS MY 2020 LBP - Unaudited Health Plan HEDIS Rate) next to any Rate on all output containing a Rate, including such Rates that may be used for population health purposes within an affiliated health plan network, in accordance with the following:

- a. **Unadjusted Certified Measures.** A Rate that has been certified via a NCQA Measure Certification Program<sup>TM</sup>, and is based on unadjusted HEDIS specifications, may not be called a “**Health Plan HEDIS Rate**” until it is audited and designated reportable by a HEDIS Compliance Auditor. Until such time, applicable Rates shall be designated or referred to as “**Unaudited Health Plan HEDIS Rates.**”
- b. **Adjusted Certified Measures.** A Rate that has been certified via a NCQA Measure Certification Program, and is based on adjusted HEDIS specifications, may not be called an “**Adjusted HEDIS Rate**” until it is audited and designated reportable by a HEDIS Compliance Auditor. Until such time, applicable Rates shall be designated or referred to as “**Adjusted, Unaudited HEDIS Rates.**”
- c. **Unadjusted Uncertified Measures.** *At times, the logic used to produce Rates from the Product will not have been certified by NCQA.* A Rate that has not been certified via a NCQA Measure Certification Program, and is based on unadjusted HEDIS specifications, may not be called a “**Health Plan HEDIS Rate**” until it is audited and designated reportable by a HEDIS Compliance Auditor. Such Rates are for reference only and are not an indication of measure accuracy. Until such time, such Rates shall be designated or referred to as “**Uncertified, Unaudited Health Plan HEDIS Rates**” and **may only be used for population health purposes within an affiliated health plan network and internal, quality improvement purposes (e.g., trend analysis).**
- d. **Adjusted Uncertified Measures.** *At times, the logic used to produce Rates from the Product will not have been certified by NCQA.* A Rate from a HEDIS measure that has not been certified via a NCQA Measure Certification Program, and is based on adjusted HEDIS specifications, may not be called an “**Adjusted HEDIS Rate**” until it is audited and designated reportable by a HEDIS Compliance Auditor. Such Rates are for reference only and are not an indication of measure accuracy. Until such time, such Rates shall be designated or referred to as “**Adjusted, Uncertified, Unaudited HEDIS Rates**” and **may only be used for population health management purposes within an affiliated health plan network and internal, quality improvement purposes (e.g., trend analysis).**
- e. **Uncertifiable Measures.** Not all HEDIS measure specifications are eligible for NCQA certification. As such, the logic used to produce Rates from those measures have not been certified by NCQA. As such, they shall be designated or referred to as “**Uncertifiable,**

**Unaudited Health Plan HEDIS Rates” or “Adjusted, Uncertifiable, Unaudited HEDIS Rates,”** as applicable. A list of current HEDIS measure specifications ineligible for certification can be found on NCQA’s website via ncqa.org. Once audited and designated reportable by an NCQA-Certified HEDIS Compliance Auditor, the “Unaudited” designation may be removed.

- f. For the sake of clarity, for each of Section 10 a.-e. above, once the measure rate is audited and designated reportable by an NCQA-Certified HEDIS Compliance Auditor, the “Unaudited” designation may be removed.

**11. Termination.** If you violate any provision of this EULA, your permission to use the Data may be terminated, upon notice. NCQA reserves the right to modify or discontinue the Data at any time (including by limiting or discontinuing certain features of the Data), temporarily or permanently, without notice to you. Termination of this EULA shall not impair your right to continue to use the Data contained in the Product or Rates contained in reports 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.

## **12. 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. *For the sake of clarity, you agree to comply with all applicable U.S. and non-U.S. laws, including but not limited to export control laws and regulations and agree to the enforceability of these laws in the U.S. U.S. intellectual property and contract laws, including U.S. copyright laws, shall be the governing law with respect to all intellectual property and other proprietary rights in the Data and Adjustments and otherwise arising out of or relating to this EULA.*
- b. **Dispute Resolution – Entities Incorporated in the United States.** 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. **Dispute Resolution – Entities Incorporated Outside the United States**. Any dispute arising out of or in connection with the use of the Licensed Measure Specifications under the Agreement, the rights and obligations under the Agreement or the breach, termination, formation or validity of the Agreement (a “**Dispute**”) that cannot be resolved within thirty (30) days shall be referred to and settled by arbitration administered by the International Centre of Dispute Resolution (the “**ICDR**”) in accordance with its International Arbitration Rules (the “**Arbitration Rules**”) in effect as of the Effective Date. 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 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 ICDR in accordance with the Arbitration Rules. The legal seat of arbitration shall be Washington, District of Columbia USA, provided that the tribunal may, for convenience, and without affecting the legal seat of the arbitration, order that hearings or meetings be held in such other location(s) as it may deem appropriate. The language of the arbitration shall be English. 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 Agreement 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 the agreement 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 ICDR, 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.

- d. Vendor Disputes. ANY DISPUTE YOU HAVE WITH VENDOR OR A THIRD PARTY IS DIRECTLY BETWEEN YOU AND VENDOR, 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.”

- e. 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.

**13. Export Control Laws.** You shall abide by the Export Administration Regulations (15 C.F.R. Part 730 et seq.); and (b) the sanctions, embargoes and restrictions administered by the United States Department of the Treasury Office of Foreign Assets Control as set forth in 31 C.F.R. 500-598 and certain executive orders, the European Union, European Union member states, United Nations, World Bank and other relevant government body (“**Export Control Laws**”) in use of the Data. The Data may be subject to Export Control Laws. You shall not directly or indirectly, export, re-export, or release the Data to, or make the Data accessible from, any country, jurisdiction or person to which export, re-export, or release is prohibited by applicable law. You shall comply with all applicable laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Data available outside the U.S.

You represent and warrant you are not a Restricted Party. “Restricted Party” means, collectively, any party that (i) appears on a restricted party list maintained by any relevant government body, including without limitation the Specially Designated Nationals and Blocked Persons List, Sectoral Sanctions Identification List, Foreign Sanctions Evader List, Denied Persons List, Unverified List, Entity List, and United Nations Security Council Sanctions Lists; (ii) is headquartered in, located in, or organized under the laws of a country or territory subject to comprehensive territorial sanctions, currently, Cuba, Iran, North Korea, Syria, and the Crimea region; or (iii) is owned or controlled by or acting on behalf of any party identified in (i) or (ii) above. You represent and warrant that you or any person acting on your behalf has not taken any action that is reasonably likely to result in it being designated as a Restricted Party.

**14. Additional Terms; Modifications.**

- a. Additional Terms. Your use of the Data and Rates may be subject to additional terms, policies, rules or guidelines applicable to the Data or Rates 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 Data and Rates, and nothing herein grants you any rights to the Product.
- 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 Data and yet to be calculated Rates. 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 Vendor, if any, or through a pop-up window or other notification when you access or use the Product; (ii) such materially modified EULA will be effective upon the earlier of your use of the Data or calculated Rates 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 Data or yet to be calculated Rates 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 Data, including continued calculation of Rates therefrom.

- c. Changes to the Data. NCQA reserves the right to modify, suspend or discontinue, temporarily or permanently, the Data with or without notice and without liability to you.

**15. Feedback.** If you provide NCQA with any comments, bug reports, feedback, or modifications proposed or suggested by you for the Data ("**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 Data. 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 Data. You acknowledge that you will address all support and Product-related requests and issues to the Vendor, and NCQA is not responsible for such requests or issue solving.

## **16. Miscellaneous.**

- a. Entire Agreement. This EULA sets forth the entire understanding of the parties relating to your use of the Data and supersedes all prior agreements and understandings between the parties relating to your use of the Data. This EULA shall control in the event of any conflict between this EULA and any Additional Terms.
- b. Further Assurances. 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.
- c. 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.

- 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, Measure Validation  
NCQA  
1100 13<sup>th</sup> Street NW, Third Floor  
Washington, DC 20005  
Phone: 202-955-3500

- e. Independent Contractor. The relationship among the parties is and will be that of independent contractors. This EULA does not establish or create a partnership, joint venture, or similar relationship among the parties and neither party has authority to contract for or bind the other party in any manner whatsoever.
- f. 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.
- g. Language. The EULA all other communications under or in connection with the EULA shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

**17. Contact Information.** If you have any questions about this EULA, please contact NCQA via [my.ncqa.org](http://my.ncqa.org).