



ASP Software License Agreement

Important—Please Read Carefully

This ASP Software License Agreement, along with all materials referenced herein (“Agreement”) is a legal agreement between an entity (“User”) and The National Committee for Quality Assurance (“NCQA”) to permit User to access and use, subject to the terms of this Agreement,

- (i) NCQA’s software identified on the license agreement page, <http://www.ncqa.org/tabid/673/Default.aspx> and accompanying documentation provided electronically (“Software”) and
- (ii) Services relating to User’s access and use of the Software, including the provision of a Web site, content therein and hardware and software relating thereto (“Services”).

USER MUST READ THIS AGREEMENT CAREFULLY BEFORE INDICATING ACCEPTANCE AT THE END BY CLICKING THE “I ACCEPT” BUTTON. IF USER DOES NOT AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, CLICK THE “I DO NOT ACCEPT” BUTTON AT THE END OF THIS AGREEMENT AND USER WILL NOT BE PERMITTED TO ACCESS AND USE THE SOFTWARE AND SERVICES. INSTEAD, PLEASE CONTACT NCQA TO DETERMINE WHETHER THE SOFTWARE AND SERVICES MAY BE PURCHASED OR RECEIVED BY NON-ELECTRONIC MEANS.

1. License Grant.

Subject to the terms of this Agreement, NCQA grants User a nonexclusive, nontransferable license to access and use the Software and Services for internal business purposes only, without the right to sublicense such rights, provided User unconditionally agrees to access and use the Software and Services in accordance with this Agreement (“License”). Under the License, User may print out, or otherwise make, printed copies (“Copies”) of the reports, numeric results and other information or materials generated from User’s access and use of the Software and Services for internal business purposes only. Any updates, modifications, enhancements or new versions of the Software and Services provided or made available to User by NCQA, in accordance with Section 14 of this Agreement, shall be considered Software and Services 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 Software and Services without notice to User or any liability to NCQA or any NCQA Party (as defined in Section 2); however, NCQA agrees to make commercially reasonable efforts to provide User with prior notice of any such changes.

2. Disclaimers.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT,

- (A) THE SOFTWARE AND SERVICES ARE 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 SOFTWARE AND SERVICES 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 SOFTWARE AND SERVICES ARE, OR WILL BE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS OR OTHER PROGRAM LIMITATIONS;
- (C) USER 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 USER FROM ACCESSING AND/OR USING THE SOFTWARE AND/OR SERVICES OR OTHERWISE RESULTING FROM THIS AGREEMENT, AND
- (E) USE OF THE SOFTWARE, SERVICES AND REPORTS IS ENTIRELY AT USER'S OWN RISK, AND NCQA AND EACH OF NCQA PARTIES SHALL HAVE NO LIABILITY OR RESPONSIBILITY THEREFORE.

3. LIMITATIONS ON LIABILITY.

THE TOTAL LIABILITY OF NCQA AND THE NCQA PARTIES IN THE AGGREGATE TO USER OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SOFTWARE AND SERVICES WILL BE LIMITED TO THE PAYMENTS RECEIVED FROM USER 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, SOFTWARE AND/OR SERVICES, WHETHER 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 ALTERATION, DESTRUCTION OR LOSS OF ANY DATA OR INFORMATION INPUT, GENERATED OR OBTAINED FROM ACCESS AND/OR USE OF THE SOFTWARE AND SERVICES, INCLUDING ANY REPORTS OR NUMERIC RESULTS, WHETHER 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 USER, AND THE PRICING FOR THE LICENSE REFLECTS SUCH LIMITATIONS. IF USER IS NOT SATISFIED WITH THE SOFTWARE AND SERVICES, THE ENTIRE LIABILITY OF NCQA AND THE NCQA PARTIES, AND USER'S EXCLUSIVE REMEDY, SHALL BE TO IMMEDIATELY STOP ACCESSING AND USING THE SOFTWARE AND SERVICES AND CONTACTING NCQA WITHIN 60 DAYS OF AGREEING TO THIS AGREEMENT AND REQUESTING A FULL REFUND OF THE FEES PAID BY USER 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 USER.

NOTWITHSTANDING THE FOREGOING, NCQA WILL INDEMNIFY AND HOLD USER 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, TRADE-MARK OR OTHER INTELLECTUAL PROPERTY BASED ON MATERIAL SUPPLIED BY NCQA TO USER UNDER THIS AGREEMENT.

4. Registered and Licensed Users.

In order for User to access and use the Software and Services, User shall register with NCQA, provide NCQA with an e-mail address, pay the license fee ("Fee") and obtain a unique password ("Password") for accessing the Software and Services. The Fee shall be determined at the time of registration based on the number of licensed users of the Software and Services, and is non-refundable upon use of the Password. Upon receiving a Password, User may issue unique passwords to its employees and agents (as described in subsection (a) of Section 7(B) of this Agreement), up to the number of licensed users paid for by User ("Licensed Users"). NCQA and User acknowledge and agree that NCQA may obtain e-mail addresses from Licensed Users upon their accessing and using the Software and Services. User is responsible and wholly liable for all acts or omissions committed under User's Password and any and all passwords issued by User to Licensed Users. Any and all personal information obtained from User or a Licensed User by NCQA relating to this Agreement and the Software and Services is subject to NCQA's privacy policy, located at <http://www.ncqa.org/Programs/ISS/privacy.htm>, and User agrees to the terms and conditions of such privacy policy by clicking the "I Accept" button below.

5. User Representations and Warranties.

User represents and warrants to NCQA that this Agreement shall be binding on User, and, unless User is an individual, User represents and warrants that this Agreement was executed by an authorized signatory of User with the authority to enter into binding agreements on behalf of User.

6. Proprietary Rights.

The Software and Services are 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 Software and Services, including trade secrets, patents, copyrights and database rights, and the Software and Services shall remain the sole and exclusive property of NCQA or its licensors. Except as provided in Section 1 of this Agreement, User has no right, title, interest or license in the Software or Services, and is granted none.

7. License Restrictions.

7A. Software and Services. Except as otherwise expressly provided in this Agreement, User agrees to abide by the following limitations and restrictions on the License:

- (a) Only use the Software and Services in the manner and for the purposes expressly specified in this Agreement;
- (b) Not decompile, disassemble, analyze or otherwise examine the Software and Services for the purpose of reverse engineering (except to the extent this restriction is expressly prohibited by applicable law);

- (c) Not delete or in any manner alter any notices, disclaimers or other legends contained in the Software and Services or appearing on any screens, documents, reports, numeric results or other materials obtained by User through use of the Software and Services (“Notices”);
- (d) Reproduce and display all Notices on Copies User makes, in accordance with this Agreement;
- (e) Not 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 Software and/or Services;
- (f) Not attempt to access any systems, programs or data of NCQA or any NCQA Party that are not licensed under this Agreement, or otherwise made available by NCQA or a NCQA Party for public use;
- (g) Not copy, reproduce, republish, upload, post, transmit, or distribute the Software or Services, or any portion thereof, or facilitate or permit a third party to do so;
- (h) Not use any device or software to interfere or attempt to interfere with the proper operation of the Software and Services;
- (i) Not ship, transmit, transfer, or export the Software and Services into any country or use the Software and Services in any manner prohibited by United States export laws, restrictions or regulations;
- (j) Not modify or prepare derivative works from the Software and/or Services;
- (k) Not transmit the Software or Services electronically or allow access to the Software or Services over a network or a public computer-based information system which permits access to a greater number of users than licensed by User;
- (l) Not use the Software or Services in multiple computer or multiple user arrangements unless that use is covered by a separate license for each computer or user;
- (m) Not rent, lease or distribute or otherwise transfer possession of any copy of the Software or Services to any third party, and
- (n) 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.

7B. Reports and Numeric Results. User agrees and understands that any reports and numeric results generated or otherwise received from the access and use of the Software and Services are preliminary and do not constitute a final score, accreditation, certification, recognition or distinction, as applicable, from NCQA or any NCQA Party. NCQA’s Decision Maker (as identified in the applicable Policies and Procedures) makes the final decision on accreditation, certification, recognition, distinction or other NCQA status, as applicable. NCQA incorporates the decision, as well as any changes recommended by the Decision Maker, to generate a final report with numeric results for the organization. NCQA reports and numeric results are not final until NCQA’s Decision Maker or other appropriate body as identified in the applicable Policies and Procedures evaluates them.

The reports and numeric results may only be used by User for its internal business purposes to examine, review and otherwise analyze its business operations, and may not be used by, disclosed to, represented to or otherwise communicated to any third party for any other purpose; provided, however, such reports and numeric results may be submitted to and used by NCQA and/or one or more NCQA Parties in accordance with the terms and conditions of a separate agreement between User and NCQA. User may

not represent itself as accredited, certified, recognized or earning distinction, as applicable, by NCQA or any NCQA Party, based on reports or numeric results without a final NCQA decision, as described in this Section 7(B). User agrees to comply with the guidelines for publication, advertising and marketing of accreditation, certification, recognition, distinction or other NCQA status that may be issued by NCQA from time to time. The following activities are expressly prohibited in connection with the Software and Services:

- (a) No individual or entity may purchase from NCQA, or use the Software and Services, regardless of their source, to evaluate another organization against NCQA standards, provided, however, that the prohibition in this subsection (a) does not apply to individuals or entities that are assisting the organization with its readiness evaluation and preparation for an NCQA Survey;
- (b) User may not use the Software and Services to evaluate another organization against NCQA standards except as part of User's internal preparation for an NCQA Survey, including specifically the evaluation of a delegate's performance in order to conduct oversight as required by NCQA Standards;
- (c) User may not allow a third party to use the Software and Services User has purchased to evaluate another organization against NCQA Standards. Notwithstanding any other term of this Agreement, any breach of User's obligations in this Section 7(B) shall result in the automatic termination of this Agreement, without any further action on the part of User or NCQA. NCQA reserves the right to prohibit User from participating in any accreditation, certification, recognition, distinction process or program offered by or on behalf of NCQA or any NCQA Party for a period to be determined by NCQA or the applicable NCQA Party.

8. Data.

User agrees that NCQA and the NCQA Parties are permitted to access any information or data User enters or provides while accessing or using the Software and Services ("Data") and any reports or numeric results, and prior to User's submission of Data, reports and numeric results, for the sole purpose of ensuring proper access and use of the Software and Services by User, in accordance with this Agreement and to maintain and troubleshoot Software and Services. Following User's submission of Data, reports and numeric results to NCQA, NCQA has access to such Data, reports and numeric results in accordance with the applicable Agreement for NCQA Survey. Subject to the terms and conditions of this Agreement, NCQA shall store and otherwise maintain Data, reports and numeric results, and NCQA shall follow the same archival procedures for User's Data, reports and numeric results as NCQA employs for its own data, as modified from time to time in NCQA's discretion. In the event of any loss or damage to User's Data, reports or numeric results, User's sole and exclusive remedy shall be for NCQA to use commercially reasonable efforts to replace or restore the lost or damaged data from the latest backup of such Data, reports or numeric results which NCQA has maintained in accordance with its standard archival procedures.

9. Confidentiality.

User acknowledges that the Software and Services constitute and contain confidential, proprietary and copyrighted information and subject matter of NCQA and NCQA Parties ("Confidential Information"). User agrees to not, directly or indirectly, without NCQA's prior written consent, use the Confidential Information for any purpose other than as expressly permitted under this Agreement; divulge, discuss, provide, transmit, copy, make available or otherwise communicate Confidential Information to a third party; or permit any third party to use such Confidential Information.

Confidential Information shall not include information that is shown by competent evidence:

- (a) Is in or lawfully enters the public domain without breach of this Agreement;
- (b) User can demonstrate was possessed by User prior to first receiving it from NCQA or an NCQA Party;
- (c) Was developed by User independently and without use of or reference to the Confidential Information; or
- (d) Was lawfully received by User from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Notwithstanding the foregoing,
 - (i) Each party shall be permitted to disclose Confidential Information of the other party if such disclosure is required by law, provided that the party required to disclose Confidential Information of the other party shall
 - (a) Give prompt notice of such requirement to the other Party so it will have the opportunity to seek a protective order or other appropriate remedy; and
 - (b) Cooperate in the other party's attempts to obtain confidential treatment of such Confidential Information; and
 - (ii) Each party (and each employee, representative or other agent of such party) shall be permitted to disclose to any and all persons, of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions and other tax analyses) that are provided to the party relating to such tax treatment and tax structure.

10. 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.

11. Injunctive Relief.

Each party acknowledges that a violation of Sections 1, 7, 9 or 10 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 1, 7, 9 or 10. The prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney's fees incurred because of any such legal action.

12. Hardware and Service Requirements.

User is solely responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communications services (such as long-distance phone charges) not owned or operated by or on behalf of NCQA, that allow User to access and use the Software and Services, and for all expenses relating thereto (plus any applicable taxes). User agrees to access and use the Software and Services 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 and the NCQA Parties do not make any commitments with respect to use or performance of the Software and Services with browsers other than those currently supported by Microsoft.

13. Performance.

User understands and agrees that the operation and availability of the systems used to access and interact with the Software and Services, including the public telephone, computer networks and the Internet, or to transmit information, whether or not supplied by User or NCQA, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the Software and Services. NCQA and the NCQA Parties are not in any way responsible for any such interference with or prevention of User's access and/or use of the Software and Services.

14. Training and Support.

Unless User and NCQA enter into a separate agreement, NCQA will not provide any training or onsite support to User relating to the Software and Services. NCQA will provide User with:

- (a) Commercially reasonable telephone and e-mail support for the Software and Services during normal business hours; and
- (b) Updates and enhancements for the Software and Services, to the extent that NCQA generally makes such updates and enhancements available to Users without a separate charge.

15. Indemnity.

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

16. U.S. Government Users.

If User uses the Software and Services on behalf of a U.S. government agency, this Agreement constitutes the entire agreement between the government agency and NCQA and is binding on government users in accordance with the policy stated at Federal Acquisition Regulation (FAR) [48 CFR] §§ 12.211 and 12.212 (for non-defense agencies) or Defense FAR Supplement (DFARS) [48 CFR] §§ 227.7201 and 227.7202 (for defense agencies). The Software and Services are commercial items which have been developed at private expense and not under a government contract. Pursuant to Federal Acquisition Regulation (FAR) [48 C.F.R.] 12.212 (for non-defense agencies) and Defense FAR Supplement (DFARS) [48 C.F.R.] 227.7202-1 and 227.7202-3 for defense agencies, the government's rights in the Software and Services are limited to those rights granted in this Agreement.

17. Termination.

User's right to use the Software and Services shall be effective from the date User accepts this Agreement by clicking "I ACCEPT" below, and shall terminate when User ceases all access and use of the Software and Services and provides NCQA with notice of such termination or as otherwise provided in this Agreement. NCQA may terminate this Agreement immediately if User 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 User, under this Agreement will cease and User's access to the Software and Services may be disabled. Upon termination of this Agreement, Sections 2, 3, 5, 6, 7B, 9, 11, 15, 17, 19A, 19C and 19D of the Agreement, along with all payment obligations under this Agreement, shall survive such termination.

18. Electronic Agreement/Notices.

18A. Notices. All questions, comments or notices concerning this Agreement shall be submitted to NCQA by User via e-mail at customer.support@ncqa.org or via mail at: NCQA, Attention: Customer Support, 1100 13th Street NW, Suite 1000, Washington, DC 20005. All notices to be given under this Agreement to User shall be submitted by NCQA via e-mail at the account User provided to NCQA pursuant to Section 4 or to User upon accessing the Software and Services. B. Acceptance. By clicking “I Accept” below and providing NCQA with User’s e-mail address under Section 4, User agrees and consents to:

- (i) Contract electronically with NCQA for the Software and Services in accordance with this Agreement;
- (ii) Receipt of electronic legal notices regarding this Agreement to the e-mail account User provided under Section 4 or upon accessing the Software and Services; and
- (iii) That by clicking “I Accept,” User intends to be bound by this Agreement.

18B. Agreement. In order to access, download and print this Agreement, User 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 User. User 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. D. Changes. If User consented to receive ongoing legal notices from NCQA via e-mail, User may:

- (i) Update its e-mail information by providing notice to NCQA and/or
- (ii) Withdraw such consent by providing notice to NCQA.

Please be aware that if User withdraws consent, such withdrawal of consent will not be effective until the date of receipt. The legal effect of this intervening time period is that User is still bound by the terms of this Agreement during such period. The legal consequence of withdrawing User’s consent shall not act to void or invalidate User’s actions prior to the effective date that shall remain subject to the terms of this Agreement. Upon withdrawing User’s consent, User will be responsible for all incurred fees and charges payable under this Agreement.

19. Miscellaneous.

19A. Modifications. This Agreement is the complete and exclusive statement of the agreement between User 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 User except upon mutual agreement by the parties in writing, signed by an authorized officer of NCQA. NCQA reserves the right to change the terms of this Agreement, including its privacy policy at any time, by providing User with notice of such changes. Any use of the Software and Services by User after NCQA’s publication or e-mail of any such changes shall constitute User’s acceptance of the Agreement as modified.

19B. Force Majeure. NCQA will not be responsible for any failure to perform due to causes beyond its reasonable control, including acts of God, acts of terrorism, war, riot, embargoes, acts of civil or military authorities, national disasters, strikes and the like.

19C. Governing Law and General Provisions. This Agreement will be governed by the laws of the District of Columbia, excluding the application of its rules on conflicts of law. 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.

19D. 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, which 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 Software and Services, press “I Accept,” which will create a legal contract that will bind USER and NCQA as soon as you press “I Accept.”

To DECLINE this Agreement for the Software and Services, press “I Do Not Accept,” which will deny you access and use of the Software and Services.