

HEDIS®
End-User License Agreement
Last Updated January 1, 2020

Intelligent Medical Objects, Inc.'s ("**Vendor**") IMO Precision Sets ("**Product**") being provided to you ("**Customer**" or "**you**") contains Healthcare Effectiveness Data and Information Set (HEDIS®) measures and specifications, survey specifications for the Consumer Assessment of Healthcare Providers and Systems (CAHPS®) and/or HEDIS value sets (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.

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, non-exclusive, non-transferable, non-sublicensable license to use the Data or any portion thereof for the following internal 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.

All other uses, including a commercial use (including but not limited to vendors or consultants using or embedding the measures and specifications and/or HEDIS VSD into any product or service to calculate measure results or provide any measure-related service to customers for any purpose) and/or any external reproduction, distribution or publication (including but not limited to federal and state entities using or incorporating the measures into their programs) must be approved by NCQA and are subject to a license at the discretion of NCQA.

Any use beyond an internal, non-commercial use, including but not limited to a commercial use or external reproduction, distribution or publication of any part of the Data requires you to contact the NCQA licensing team by submitting a request through <https://my.ncqa.org> to discuss the need for a license.

2. License Restrictions. You shall:

- a. prominently display NCQA's trademark and copyright notices, as applicable, as provided in this EULA;
- b. only Adjust the Data, if applicable, or any portion thereof, as explicitly permitted by the Rules for Allowable Adjustments of HEDIS (the "Rules");
- c. not publicly display, report or submit HEDIS measure results ("Rates");
- d. not use the Data or any portion thereof for any purpose other than as specifically set forth in this EULA;
- e. not use the Third-Party Codes without an authorized license from the copyright owners;
- f. 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;
- g. 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;
- h. not alter or remove any copyright notices, patent notices, trademark and service mark notices, or other proprietary notices or disclaimers affixed to the Data;
- i. not advertise, offer for sale, sell, sublicense, ship, transmit, transfer or export the Data or any portion thereof in the Products outside of the United States or to any third parties or end-users primarily located outside of the United States;
- j. 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
- k. 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.

Considering the worldwide nature of the Internet, nothing in this EULA shall prohibit or restrict you from accessing the Data 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 Data in any jurisdiction shall be governed solely by U.S. law, including U.S. intellectual property law.

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 pursuant to the Rules. **The HEDIS VSD may not be adjusted or modified.** You hereby (a) unconditionally and irrevocably assign to NCQA the entire right, title and interest in and to any intellectual property rights that you may now or hereafter have in or relating to the Data and Adjustments, whether held or acquired by operation of law, contract, assignment or otherwise and (b) irrevocably waives 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 thereto. 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 DISCLAIMS ALL LIABILITY FOR USE OR ACCURACY OF ANY THIRD-PARTY CODES.
- e. 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. Anyone desiring to use or reproduce the Data without modification for an internal non-commercial purpose may do so, pursuant to this EULA, without obtaining any approval from NCQA.
- b. All other uses, including a commercial use and/or external reproduction, distribution and publication must be approved by NCQA and are subject to a license at the discretion of NCQA. Reprinted with permission by NCQA. © [current year] NCQA, all rights reserved.
- c. The American Medical Association holds a copyright to the CPT® codes contained in the measure specifications.
- d. The American Hospital Association 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. The UB Codes contained in the HEDIS specifications may be used by health plans and other health care delivery organizations for the purpose of calculating and reporting HEDIS measure results or using HEDIS measure results for their internal quality improvement purposes. All other uses of the UB Codes require a license from the AHA. 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.

10. 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.

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. 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."
- 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. 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:

Manager, Information Products
NCQA
1100 13th 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.

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