

## **NCQA PUBLICATION LICENSE AGREEMENT**

**WARNING:  
READ THE ENTIRE LICENSE AGREEMENT SET FORTH  
BELOW. IF YOU DO NOT AGREE TO THE TERMS OF  
THIS LICENSE AGREEMENT, RETURN THE PRODUCT  
TO NCQA AND THE COST OF THE PRODUCT WILL BE  
REFUNDED.**

**THE PRODUCT IS PROTECTED BY U.S. COPYRIGHT  
LAWS AND INTERNATIONAL TREATY PROVISIONS.  
ACCORDINGLY, YOU MUST TREAT THE PRODUCT AS  
OTHER COPYRIGHTED MATERIAL EXCEPT AS SET  
FORTH IN THE LICENSE AGREEMENT.**

These are the terms and conditions between the person or company purchasing the license to use the Product (hereinafter the "Customer") and the National Committee for Quality Assurance ("NCQA").

### **I. Product**

This version and any updates to this version provided by NCQA, whether in hard copy, diskette, and any related documentation including but not limited to the user's manual, licensed by Customer unless provided under the terms of a separate license agreement (collectively the "Product"). The Product is being licensed (not sold) to you, the Customer. Upon receipt of the package, the Customer is deemed to have accepted the license subject to the terms and conditions of this License Agreement. Customer may need additional software to use the Product and NCQA is not responsible for such additional software.

### **II. License**

NCQA hereby grants Customer a non-exclusive, non-transferable license to use the Product in accordance with the terms of this License Agreement. If the Product is in a diskette form the license is for the number of users for which Customer has paid the fee identified on the Agreement submitted by Customer to NCQA. Each user using the Product must be affiliated with Customer. Customer may not itself or permit others to: (i) distribute, sublicense, or copy the Product (except that Customer may make one (1) copy for each user for which Customer has purchased a license to use the Product); (ii) reverse engineer, decompile or disassemble the Product or modify or prepare derivative works from the Product; (iii) transmit the Product electronically or allow access to the Product over a network or a public computer-based information system which permits access to a greater number of users than licensed by Customer; (iv) rent, lease, or distribute or otherwise transfer possession of any copy of the Product to any third party.

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

Title to and full ownership of the Product belongs to NCQA. The Product contains proprietary and copyrighted information and notice to that effect must appear on all authorized copies of the Product made by Customer under this Agreement. Customer acknowledges that the Product remains the full and exclusive property of NCQA. Customer acknowledges that the Product contains, or may contain NCQA proprietary information and/or trade secrets, whether or not any portion of the Product is copyrighted or patented. Customer agrees to maintain the Product in strict confidence and abide by all terms and conditions of this Agreement.

Customer shall not disclose or publish any information contained in the Product. Under no circumstances may customer release any reproductions of the Product externally.

Any breach of this Agreement of any terms herein by Customer will subject Customer to injunctive relief and all legal and equitable remedies available to NCQA, including, but not limited to recovery of reasonable attorney's fees and termination of this Agreement. Noncompliance may also disqualify Customer from receiving future goods and services from NCQA.

In order to verify compliance with this Agreement, NCQA is granted the right, with prior written notification and during normal business hours, to examine all relevant records of Customer. Relevant records as used in this paragraph shall include all disk, magnetic tape, and hard copy files Customer develops containing information from the Product including all related correspondence and publications.

### **IV. Warranty**

NCQA warrants that the media on which the Product is furnished will be free of defects in materials and workmanship under normal use for a period of ninety (90) days from the date of purchase. In the event NCQA receives notification within the warranty period of any defects in the media, NCQA will, at its option, either replace such defective media or return to Customer the price paid for the Product.

**THIS WARRANTY IS IN LIEU OF ALL OTHER  
WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING,  
BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF  
MERCHANTABILITY AND FITNESS FOR A PARTICULAR  
PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND  
PERFORMANCE OF THE PRODUCT IS WITH THE  
CUSTOMER. IF APPLICABLE, CUSTOMER IS RESPONSIBLE  
FOR PROCURING ALL EQUIPMENT AND SOFTWARE  
REQUIRED IN CONNECTION WITH THE USE OF THE  
PRODUCT. NCQA DISCLAIMS WARRANTIES OF  
SEQUENCE, ACCURACY, AND COMPLETENESS OF DATA.**

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION  
OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW  
LONG IMPLIED WARRANTIES CAN LAST, SO THE ABOVE  
LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO  
YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC  
LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER  
RIGHTS WHICH VARY FROM JURISDICTION TO  
JURISDICTION.**

### **V. Limitation of Liability**

**IN NO EVENT WILL NCQA BE LIABLE FOR ANY  
CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY,  
INDIRECT OR OTHER SIMILAR DAMAGES, INCLUDING,  
WITHOUT LIMITATION, LOSS OR INACCURACY OF DATA,  
LOSS OF BUSINESS OR LOSS OF PROFITS, ARISING OUT OF  
THE USE OR INABILITY TO USE THE PRODUCT, EVEN IF  
NCQA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH  
DAMAGES AND IN NO EVENT SHALL NCQA BE  
RESPONSIBLE FOR ANY CLAIMS OF THIRD PARTIES.**

**IN NO EVENT WILL NCQA'S TOTAL LIABILITY FOR ANY  
DIRECT DAMAGES RESULTING FROM ANY CLAIMS,  
DEMANDS OR ACTIONS ARISING OUT OF OR RELATING  
TO THE PRODUCT, OR ANY PART THEREOF, OR THIS  
LICENSE AGREEMENT EXCEED THE PRICE PAID FOR THE  
PRODUCT WHETHER SUCH LIABILITY ARISES FROM ANY  
CLAIM BASED ON CONTRACT, WARRANTY, TORT OR  
OTHERWISE.**

SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS OR EXCLUSIONS OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU, TO THE EXTENT THAT LIABILITY IS, BY LAW, INCAPABLE OF EXCLUSION OR RESTRICTION.

**VI. Severability**

If any portion of this Agreement is determined by a court of competent jurisdiction or any appropriate legislature to be wholly or partially unenforceable, for any reason, such unenforceability shall not affect the balance hereof.

**VII. Termination**

NCQA may terminate this Agreement at any time and without notice if Customer violates any of the terms and conditions hereof. Upon termination, Customer agrees to immediately return to NCQA or destroy, at NCQA's option, all copies of the Product delivered to or in Customer's possession.

**VII. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the District of Columbia without regard to its choice of laws rules.

**IX. Assignment**

Customer shall not assign this Agreement without the written consent of NCQA.

**X. Survival**

The provisions of Sections III, IV and V of this Agreement shall survive the termination of this Agreement.

**XI. Contact**

Should Customer have any questions about this License Agreement or the Product please call NCQA at (202) 955-5697 or contact NCQA at 2000 L Street, N.W., Washington, D.C. 20036.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT AND UPON BREAKING THE SEAL OF THE PACKAGE, CUSTOMER AGREES TO BE BOUND BY ALL TERMS AND CONDITIONS HEREIN. THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN NCQA AND CUSTOMER WITH RESPECT TO THE PRODUCT AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS RELATING TO THE SUBJECT MATTER HEREOF.