



## Qualifacts EHI Export Terms of Use

From time to time, Qualifacts Systems, LLC (together with its parents, subsidiaries, and affiliates (“Qualifacts”)) may provide to you an export of certain electronic health information (the “EHI Export”) in compliance with applicable health information technology certification requirements promulgated by the Office of the National Coordinator for Health IT (“ONC Certification Criteria”). These Qualifacts EHI Export Terms of Use (“Terms of Use”) govern the services provided by Qualifacts or any third party acting on Qualifacts’ behalf in connection with the EHI Export, and your receipt and use of any information provided in connection with the EHI Export.

By submitting a request for an EHI Export, you accept and agree to be bound by and abide by these Terms of Use. If you do not accept and agree to these Terms of Use, you may not submit a request for an EHI Export. Additionally, in the event of any conflict between these Terms of Use and the terms and conditions in the Software License and Master Services Agreement, Business Services Agreement or Term Sheet that you entered into with Qualifacts, these Terms of Use will control.

**1. Changes to the Terms of Use.** We may revise and update these Terms of Use from time to time at our sole discretion, and any subsequent requests for an EHI Export will be subject to the revised or updated version of these Terms of Use.

**2. EHI Exports.**

**(a) Conditions and Restrictions.** For any EHI Export request submitted by you, you represent and warrant that you have all rights, permissions, and consents required to request and receive any information requested in connection with an EHI Export, and you acknowledge and agree that you must: (1) use the EHI Export and any information provided in connection therewith solely in compliance with your own end user privacy policies and with all applicable federal, state, and local laws and regulations, including (to the extent applicable) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) and all regulations promulgated thereunder (45 C.F.R. §§ 160-164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act and all regulations promulgated thereunder, as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended from time-to-time (“HIPAA”) and similar patient and consumer privacy laws; (2) not use the EHI Export or any information provided in connection therewith in any way that violates the intellectual property rights or privacy rights of any applicable end user or other party; (3) not use or disclose any information made available through the EHI Export except as necessary for the purposes contemplated by ONC Certification Criteria and these Terms of Use; (4) not submit a request for an EHI Export for any purpose not permitted by these Terms of Use; and (5) not request an EHI Export or use any information provided in connection therewith in any manner that harms or (threatens to harm) Qualifacts’ business reputation or subjects (or reasonably may subject) Qualifacts to legal liability.

Any access to or use of information provided to you in connection with an EHI Export in violation of the conditions and restrictions set forth in this provision is a breach of these Terms of Use and grounds for immediate termination of these Terms of Use as set forth in Section 6, below.

- (b) Information and Documentation.** The EHI Export and any documentation or information provided in connection therewith is intended to comply in all respects with the requirements of ONC Certification Criteria.
- (c) Attribution.** In each case in which you have accessed any information provided in connection with an EHI Export and transmitted that information back to the requesting end user, in whatever form or medium, you may provide notice to such end user along with such transmission that the transmitted information was provided through Qualifacts. You may not otherwise use any Qualifacts name, logo, or other trademark for any other purpose, and if you wish to do so, you must contact [marketing@qualifacts.com](mailto:marketing@qualifacts.com) for permission.
- 3. Disclaimer of Warranties.** YOUR ACCESS TO AND USE OF THE EHI EXPORTS AND THE INFORMATION PROVIDED IN CONNECTION THEREWITH IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER QUALIFACTS NOR ANYONE ASSOCIATED WITH QUALIFACTS MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE EHI EXPORTS OR THE INFORMATION PROVIDED IN CONNECTION THEREWITH. QUALIFACTS HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.
- 4. Limitation of Liability.** IN NO EVENT WILL QUALIFACTS, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE EHI EXPORT. THIS DISCLAIMER INCLUDES ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL OR LOSS OF DATA, WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE. THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.
- 5. Indemnification.** You agree to defend, indemnify, and hold harmless Qualifacts, its affiliates, licensors, and service providers, and its and their respective officers, directors, employees,

contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms of Use, any request for an EHI Export, or your use of any information provided in connection with an EHI Export other than as expressly authorized in these Terms of Use.

- 6. Termination.** Qualifacts may terminate these Terms of Use with you for cause immediately upon written notice to you if you breach any provision of these Terms of Use.
- 7. Governing Law; Miscellaneous.** The laws of the State of Tennessee (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to these Terms of Use and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of these Terms of Use must be brought exclusively in a court of competent jurisdiction sitting in Nashville, Tennessee, and each party submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to these Terms of Use. If any provision of these Terms is found to be invalid by any court having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions, which will remain in full force and effect. Waiver of any of these Terms will not be deemed a further or continuing waiver of such term or condition or any other term or condition. These Terms of Use, as may be modified from time-to-time, constitute the entire agreement between you and Qualifacts with respect to the use of the EHI Exports and any information provided in connection therewith.