

KDQOL Complete[™] TERMS OF SERVICE

These *KDQOL Complete*[™] Terms of Service ("Terms of Service") set forth the entire understanding between you, acting as an authorized representative for a dialysis clinic registered by you on this website (referred to as "you" or "Clinic") and Medical Education Institute, Inc. (MEI) regarding Clinic's access and use of a data analysis and management service known as *KDQOL Complete*[™] for use by dialysis care providers to administer, score, and interpret Kidney Disease Quality of Life survey (*KDQOL*[™]-36) scores, and store survey data in a single, secure location.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **ACCEPTANCE OF TERMS OF SERVICE.** These Terms of Service are effective immediately upon clicking the "Submit" button with the "I have read and agree to the Terms of Service" check box checked, or upon accessing the Services (as defined herein) for which Terms of Service have been accepted on your behalf. You may not use the Services until you or an authorized entity or individual who has granted you access, has read and accepted all of the Terms of Service. **IF YOU USE THE SERVICES, YOU ARE RESPONSIBLE FOR UNDERSTANDING AND COMPLYING WITH THESE TERMS OF SERVICE.**

Although MEI will attempt to notify you of significant changes to the Services or Terms of Service, we may modify the Services or Terms of Service at any time and for any reason, and without notice.

2. **BUSINESS ASSOCIATE AGREEMENT.** Clinic hereby agrees to the Business Associate Agreement posted at the end of these Terms of Service, the terms and conditions of which are incorporated herein by reference in their entirety.
3. **SERVICES.** Upon receipt of payment in accordance with these Terms of Service and upon execution of a Business Associate Agreement, in a form that complies with the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act (Title XIII, Subtitle D), including any regulations promulgated thereunder, MEI shall grant Clinic a non-exclusive, non-transferable, limited right to access and use *KDQOL Complete*[™] during the Term (as defined herein) to administer, score and interpret Kidney Disease Quality of Life survey(*KDQOL*[™]-36) scores and store survey data for a single dialysis clinic at a single location (the "Services"). Clinic shall be solely responsible for providing and maintaining proper operation of computer equipment and internet services that enable access to the Services.

4. SUBSCRIPTION FEE.

- a. Initial Fees. Clinic shall pay MEI an annual fee for access and use of *KDQOL Complete*TM (the "Subscription Fee") based upon the Patient Census (as defined herein) of the Clinic. The Patient Census determines a Plan Size. The Plan Size/Subscription Fee schedule is as follows:

Clinic Patient Census	Plan Size/Subscription Fee
≤ 10 individuals	Small Plan/\$100 per year
11- 49 individuals	Medium Plan/\$250 per year
≥ 50 individuals	Large Plan/\$350 per year

The Fee Schedule is subject to change with written or email notice.

"Patient Census" shall mean **the number of individuals for whom the Clinic is currently providing care.**

- b. Fee Changes. Clinic shall accurately report the Patient Census. If the Patient Census of the Clinic increases such that the Plan Size/Subscription Fee increases, Clinic shall notify MEI, and MEI will invoice Clinic for the increase in Subscription Fee.

NOTE: The number of patients associated with a Clinic is limited to the number allowed by the Plan Size. If data are entered for more patients than the Plan Size allows, MEI will invoice Clinic for the increase in Subscription Fee.

It is the responsibility of the Clinic to manage patient data in KDQOL COMPLETE to accurately reflect the Clinic's Patient Census. See User Manual for instructions.

- c. Payment. All invoices must be paid within fifteen (15) days of receipt. Payments may be made by secure online payment or via conventional check.

5. TERM AND RENEWAL. The Services begin upon receipt of the Subscription Fee by MEI and end twelve (12) months thereafter (the "Initial Term"). MEI will send Clinic an invoice for renewal of the Services approximately thirty (30) days prior to the end of the then-current Term (the "Anniversary Date"). If payment of the invoice is received within fifteen (15) days of the Anniversary Date, the Services will be renewed for an additional twelve (12) months (the "Renewal Term") (the Initial Term and any Renewal Terms shall

be referred to herein as the “Term”). If payment of the invoice is not received within fifteen (15) days of the Anniversary Date, the Services will immediately terminate and MEI will disable Clinic’s access to the Services.

6. TERMINATION. MEI may terminate, suspend, or limit access to the Services with or without notice, for Clinic’s violations of these Terms of Service, technical or security issues, or Clinic’s non-payment of fees. Clinic may terminate use of the Services at any time and for any or no reason. Clinic shall not be entitled to a refund of the Subscription Fee.

Upon termination of the Services, Clinic may request an electronic data file with all data associated with the Clinic. MEI shall use reasonable efforts to provide such data file, but shall not be responsible for the accuracy, loss or completeness of the data. Failure of MEI to provide such data file shall not constitute a breach of these Terms of Service.

7. REGISTRATION AND SECURITY. Clinic must register with MEI for access to the KDQOL Complete™ Services. Clinic shall designate a dialysis professional (the “Administrator”) to register the Clinic, provide his/her email address as a user ID, and create a user-generated password for access to the Services. KDQOL Complete™ allows the Administrator to enter data, generate reports, and authorize Users (as defined herein). The same Administrator may register more than one Clinic, but each Clinic can have only one Administrator.

“Users” are other dialysis professionals who may access *KDQOL Complete™* data. All Users must be authorized by the Administrator, and each User must have a unique email address and user-generated password. A User may be authorized to access *KDQOL Complete™* data for more than one Clinic if authorized by the Administrator of each of those Clinics.

Clinic is solely responsible for the actions of the Administrator and all Users. Clinic and each Administrator and User shall be solely responsible for maintaining the confidentiality of all user IDs, email addresses and passwords, and shall take appropriate precautions to prevent breaches of security with respect to the Services. Clinic shall immediately notify MEI of any unauthorized use of the Services or any other breach of security known to Clinic.

8. OWNERSHIP AND PRIVACY OF DATA. All data entered and stored in the Services by the Clinic shall remain the property of Clinic. MEI shall use the data only to provide the Services and otherwise in accordance with its Privacy Policy (see www.kdqol-complete.org and the Business Associate Agreement (see end of this document)).

9. **OWNERSHIP OF THE SERVICES.** Clinic acknowledges and agrees that the Services, including but not limited to the software, reports, visual presentations of data and all intellectual property embodied therein, are and shall remain the property of MEI and/or its licensors. Clinic shall not acquire any rights in the Services other than the limited license rights granted herein. Clinic shall not modify, reverse engineer, or take any actions to compromise MEI's rights in the Services, including but not limited to the use of unauthorized, duplicate or modified versions of the Services, reports or presentations of data. Clinic shall not access the Services by any means other than the interface provided by MEI.

(Note: The KDQOL™-36 survey forms were created using the KDQOL™-36 survey developed by RAND and the University of Arizona with permission from The KDQOL Working Group. For more information about KDQOL™-36, please see <http://gim.med.ucla.edu/kdqol/index.htm>.

10. **TECHNICAL SUPPORT.** Users and Administrators may call MEI at (608) 833-8033 during normal business hours (Mon-Fri, 9-5 central time) for technical support for the Services. Each Clinic will be entitled to 1 hour (60 minutes) of free technical support (tracked in 5-minute increments). Additional technical support will be charged at the rate of \$50 per hour. MEI cannot provide technical support for users' computer equipment, other software, or internet or email services.
11. **LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE PROHIBITED BY LAW, CLINIC EXPRESSLY UNDERSTANDS AND AGREES AS FOLLOWS.**

- a. MEI SHALL NOT BE LIABLE FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF MEI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR (iv) ANY OTHER MATTER RELATING TO THE SERVICE.
- b. MEI WILL NOT BE LIABLE FOR ANY (a) INTERRUPTION OF BUSINESS, (b) ACCESS DELAYS OR ACCESS INTERRUPTIONS TO OR RELATED TO THE SERVICES; (c) DATA LOSS, DISCLOSURE, NON-DELIVERY, MIS-DELIVERY, CORRUPTION, DESTRUCTION OR OTHER MODIFICATION; (d) UNAUTHORIZED ACCESS TO DATA ENTERED IN, OR BREACH OF ANY SECURITY MECHANISMS UTILIZED IN, THE SERVICES; OR (e) EVENTS BEYOND MEI'S REASONABLE CONTROL.

- c. IN NO EVENT SHALL MEI'S MAXIMUM AGGREGATE LIABILITY EXCEED THE AMOUNT PAID BY CLINIC TO MEI FOR SIX (6) MONTHS OF THE SERVICES.

12. DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE PROHIBITED BY LAW, CLINIC EXPRESSLY UNDERSTANDS AND AGREES AS FOLLOWS.

- a. CLINIC'S USE OF THE SERVICES IS AT CLINIC'S SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. MEI EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- b. MEI MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET CLINIC'S REQUIREMENTS, (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE REPORTS OR DATA THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, OR (iv) THE QUALITY OF ANY DATA, REPORTS OR INFORMATION OBTAINED BY CLINIC THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS. WHILE MEI WILL USE COMMERCIALY REASONABLE EFFORTS TO PREVENT UNAUTHORIZED ACCESS TO DATA WITHIN THE SERVICES, MEI MAKES NO WARRANTY THAT THE DATA WILL BE SECURE AGAINST SUCH UNAUTHORIZED ACCESS OR OTHER SECURITY BREACHES. MEI MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, UNLESS SUCH REPRESENTATIONS AND WARRANTIES ARE NOT LEGALLY EXCLUDABLE. MEI EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT CLINIC'S USE OF THE SERVICES WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), OR OTHER FEDERAL OR STATE STATUTES OR REGULATIONS. CLINIC IS SOLELY RESPONSIBLE FOR ENSURING THAT USE OF THE SERVICES, RELATED SERVICES OR DATA IS IN ACCORDANCE WITH APPLICABLE LAW.
- c. ANY DATA OR OTHER INFORMATION DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DOWNLOADED OR OBTAINED AT CLINIC'S OWN DISCRETION AND RISK AND CLINIC WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE

TO CLINIC'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH DATA OR OTHER INFORMATION.

13. INDEMNIFICATION. Clinic shall indemnify and hold MEI harmless from any loss, damage, liability or expense, including attorneys' fees, associated with any third party claim arising from or relating to (i) any negligent, reckless or intentional act or omission or willful misconduct of the Clinic, its agents or its independent contractors and (ii) the Clinic's material breach of these Terms of Service.
14. GOVERNING LAW AND VENUE. These Terms of Service shall be construed and interpreted in accordance with the laws of the United States and the State of Wisconsin. Any action brought to enforce or interpret these Terms of Service shall be brought in a court of competent jurisdiction in Dane County, Wisconsin.
15. ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding.