END USER LICENSE AGREEMENT

This End User License Agreement is between Licensee (defined below) and Express Evaluations, Inc., a Utah corporation, regarding Licensee's use of the Software (defined below) and related documentation and other materials.

When Licensee uses the Software, Licensee acknowledges that Licensee has read this Agreement (defined below), understands it, and agrees to be bound by its terms. Any individual that acts on behalf of SAN JUAN COUNTY or other entity warrants that such individual is duly authorized to enter into this Agreement on behalf of SAN JUAN COUNTY or other entity. If Licensee does not agree to the terms and conditions of this Agreement, Licensee is not permitted to use the Software.

1. DEFINITIONS.

1.1 <u>Defined Terms</u>. Capitalized terms used in this Agreement have the following meanings:

(a) "**Agreement**" means this End User License Agreement and any other document incorporated herein by reference, including any Purchase Orders, as it may be amended from time to time.

(b) "**Archive Service**" has the meaning set forth in <u>Section 5.2(a)</u>.

(c) "**As-Documented Warranty**" has the meaning set forth in <u>Section 9.1(a)</u>.

(d) "**Authorized User**" means an employee or agent of Licensee that is assigned by Licensee to use the Software for legitimate business purposes.

(e) "**Breach**" means a misrepresentation made by a Party in this Agreement or a violation by a Party of any covenant or warranty in this Agreement.

(f) "**Breaching Party**" has the meaning set forth in <u>Section 12.2(a)</u>.

(g) "**Bug**" has the meaning set forth in <u>Section 7.2</u>.

(h) "**Bug Report**" has the meaning set forth in <u>Section 7.2</u>.

(i) "**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banks in Utah are authorized or required by law to close.

(j) "**Confidential Information**" means Protected Information and information that: (i) is disclosed in writing or other tangible form to the Receiving Party by the Disclosing Party and is designated in such writing or tangible form as confidential; (ii) is not generally known in the relevant industry or industry segment; and (iii) affords possessors of the information a commercial or business advantage over others who do not have the information. Confidential Information does not include

any information that, through no fault of the Receiving Party, is or becomes generally known or is developed independently by or on behalf of the Receiving Party, or is disclosed to the Receiving Party by a third party not having an obligation of confidence to the Disclosing Party.

(k) "**Disclosing Party**" means a Party disclosing Confidential Information to the other Party.

(l) "**Fee**" has the meaning set forth in <u>Section 2.2</u>.

(m) "**Governmental Authority**" means the United States of America, any state, commonwealth, territory or possession thereof and any political subdivision or quasi-governmental authority of any of the same, including, without limitation, any unit, tribunal, department, commission, board, bureau, administrative or regulatory agency or court.

(n) "**Express Evaluations**" means Express Evaluations, Inc., a Utah corporation.

(o) "**Identity Theft Prevention Program**" means that certain program adopted by Express Evaluations in compliance with all applicable Legal Requirements.

(p) "**Initial Term**" has the meaning set forth in <u>Section 3.1</u>.

(q) "**Legal Requirement**" means applicable common law and any applicable statute, permit, ordinance, code or other law, rule, regulation or order enacted, adopted, promulgated or applied by any Governmental Authority, including any applicable order, decree or judgment handed down, adopted or imposed by any Governmental Authority, all as in effect from time to time.

(r) "**License**" has the meaning set forth in <u>Section 2.1</u>.

(s) "**Licensee**" refers to a person (whether an individual or an entity) that has entered into a Purchase Order with Express Evaluations, paid all applicable fees, and been duly granted a License for the use of the Software. This term also applies to such person's Authorized Users.

(t) "**Material Bug**" means a Bug that renders the Software inoperable.

(u) "**Non-breaching Party**" has the meaning set forth in <u>Section 12.2(a)</u>.

(v) "**Party**" means either Express Evaluations or Licensee.

(w) "**Protected Information**" includes, but is not limited to, employer identification numbers, social security numbers, names, addresses, salary information, bank account information, and credit card information.

(x) "**Purchase Order**" means a separate written agreement between Licensee and Express Evaluations specifying the applicable Software, the term of the subscription, and the fees payable to Express Evaluations in connection with this Agreement. The Purchase Order may consist of an online order form submitted to Express Evaluations, a telephone order placed with Express

Evaluations that results in an invoice and confirmation of order provided to Licensee, or another written arrangement.

(y) "**Receiving Party**" means a Party receiving Confidential Information from the other Party.

(z) "**Renewal Date**" means the day after the Initial Term or any Renewal Term expires, unless renewal is cancelled in accordance with Section 2.2.

(aa) "**Renewal Fee**" has the meaning set forth in Section 2.2.

(bb) "**Renewal Term**" has the meaning set forth in Section 3.2.

(cc) "**Software**" means the applicable Express Evaluations product as specified in the Purchase Order.

(dd) "**Software Documentation**" means all user manuals provided in connection with the Software.

(ee) "**Term**" means the Initial Term together with any Renewal Terms.

(ff) "**Third Party Vendor**" has the meaning set forth in Section 6.1.

(gg) "**Trademarks**" has the meaning set forth in Section 8.1.

(hh) "**Unauthorized Code**" means any virus, Trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access; to disable, erase, or otherwise harm software, hardware, or data; or to perform any other such actions.

2. GRANT OF LICENSE AND FEES

2.1 Grant of License. The Software is licensed to Licensee by Express Evaluations on a limited basis and solely for the term of Licensee's subscription. In consideration of Licensee's compliance with all of the terms and conditions of this Agreement, Express Evaluations hereby grants Licensee a limited, personal, non-exclusive, non-assignable right to use the Software solely as described in this Agreement and as described in any Software Documentation Express Evaluations may provide or otherwise make available to Licensee (the "**License**"). The License granted to Licensee may not be sublicensed, distributed, commercially distributed, or otherwise shared with any other person without the express prior written consent of Express Evaluations. This Agreement does not grant Licensee any rights to patents, copyrights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights, functions or licenses in respect of the Software. If Licensee unlawfully creates any derivative work based on the Software, then Express Evaluations will be the owner of all such derivative works (and all intellectual property rights relating thereto) and any proceeds or profits derived therefrom by Licensee. The License only entitles Licensee to the use of the most recent version of the Software that Express Evaluations has released for use.

2.2 <u>Fees</u>. Prior to commencement of the License, Licensee shall pay Express Evaluations the fees specified in the applicable Purchase Order (the "**Fee**"). Except as otherwise provided in an applicable Purchase Order, Express Evaluations shall invoice Licensee on an annual basis for an amount agreed upon mutually between Express Evaluations and Licensee.

3. TERM

3.1 <u>Initial Term</u>. Unless a different period is specified in the applicable Purchase Order, the License is for a minimum one-year period from the effective date specified in the applicable Purchase Order (the "**Initial Term**").

3.2 <u>Extension of Term</u>. Except as otherwise provided in an applicable Purchase Order, unless either Party gives the other Party notice of cancelation at least thirty (30) days prior to the end of the Term, the License shall automatically extend for successive one year periods (each a "**Renewal Term**") which shall commence on the Renewal Date.

3.3 <u>Expiration of Term</u>. Upon the expiration of the Term or other termination of this Agreement, all use of the Software by Licensee shall immediately cease.

4. ACCESS AND USE OF SOFTWARE

4.1 <u>Initial Setup</u>. It is Licensee's sole responsibility to determine whether the Software is appropriate for Licensee's business needs and is compatible with Licensee's existing computer system and software programs. Express Evaluations will provide commercially reasonable technical support to Licensee at the commencement of the Term to ensure that Licensee is capable of accessing and using the Software. This technical support shall include access to user materials, online demos, and email support.

4.2 <u>Access to Software</u>. Some Software products will download and install to Licensee's local computer system and some Software products will be available for Licensee's access and use via a secure website provided and maintained by Express Evaluations. An appropriate Internet connection is necessary to access and use the Software. Express Evaluations shall inform Licensee of the applicable website(s) through which the Software may be accessed. From time to time, Express Evaluations may update or modify the website(s) used to access the Software, but shall inform Licensee of any such update or modification. It is Licensee's responsibility to maintain an appropriate Internet connection and computer system running the most recent and up-to-date version of Edge, Firefox, Chrome, or similar software, which shall be used to access the Software. Express Evaluations does not and will not provide copies of the Software on physical media (e.g., CDs). Express Evaluations' software is not intended to operate with Internet Explorer.

4.3 <u>No Backup Copy Rights</u>. Although Licensee's data and user-generated reports may be stored locally on Licensee's computer system, Licensee has no right to any backup copy of the operational Software.

4.4 <u>Security of Account Information</u>. It shall be Licensee's responsibility to register its user information, and create a secure user name and password for each Authorized User that complies

with the Express Evaluations' requirements, as modified from time to time. Licensee shall limit use of its user name and password to Authorized Users and for internal use only. Express Evaluations shall have the right to suspend or otherwise restrict Licensee's access of the Software in the event any suspicious activity is detected with respect to use of Licensee's account information. In any such event, Express Evaluations shall notify Licensee of such action and shall work with Licensee to resolve any suspicious activity.

4.5 <u>Catastrophic Loss Arrangement</u>. To ensure the availability of the Software to Licensee, Express Evaluations shall take commercially reasonable measures to ensure that loss of power or damage to the primary servers hosting the Software (including interruptions caused by malicious third-party software) shall not render the Software unavailable for any period longer than forty-eight (48) hours. These measures shall include hosting the Software on backup servers, providing alternate webservers for access, and maintaining a copy of all recent versions of the Software's source code on physical media in a secure location.

5. SECURITY OF LICENSEE DATA AND DATA RETENTION

5.1 <u>Licensee Safeguards</u>.

(a) <u>Account Access Information</u>. Licensee shall safeguard its user name and password by restricting access to only Authorized Users. Express Evaluations shall have no liability to any person for any damages or other losses suffered by Licensee (or any employee or agent of Licensee) related to any use of Licensee's user name and password resulting from Licensee's failure to safeguard said information.

(b) <u>Malicious Software</u>. Licensee shall keep its computer system free of viruses and other malicious software. Express Evaluations shall have no liability to any person for any damages or other losses suffered by Licensee (or any employee or agent of Licensee) related to any malicious software operating on Licensee's computer system (e.g., keylogging programs).

(c) <u>Phishing Scams and Spoof Websites</u>. Licensee shall train its employees regarding information security and shall not divulge account information via email to any person. Express Evaluations shall have no liability to any person for any damages or other losses suffered by Licensee (or any employee or agent of Licensee) related to any response by Licensee (or any employee or agent of Licensee) to any phishing scam or spoof website.

5.2 <u>Express Evaluations Safeguards</u>.

(a) <u>Data Retention</u>. The Software is not meant to satisfy any Legal Requirement related to document retention and it is the sole responsibility of Licensee to retain copies of any documentation that has a Legal Requirement that sets forth a retention period, either through the retention of hard copies or electronic copies stored on Licensee's local computer system.

(b) <u>Employee Screening</u>. Express Evaluations shall conduct employment reference checks and background investigations on all of its employees. The data analyzed in these background checks shall include the following:

(i) private and government agency reports related to any history of criminal, dishonest, or violent behavior, and other reports that relate to suitability for employment;

(ii) education (including degrees awarded);

(iii) employment history and abilities;

(iv) address history;

(v) social security number scans;

(vi) civil court filings;

(vii) motor vehicle and driving records; and

(viii) professional or personal references when required.

This information will be sought at the commencement of employment and at other times during employment, such as during reassignment or promotional periods, and following security infractions or other incidents.

Additionally, all Express Evaluations employees with access to Protected Information will undergo an additional extensive background check, which includes a credit check

(c) Employee Access. Only those employees of Express Evaluations that have passed the screening referenced in Section 5.2(b), and whose job requires access to particular Protected Information will be given access to that Protected Information.

(d) Physical Security. Express Evaluations shall maintain the servers that store Protected Information in a secured and alarmed facility housed separately from the main work site. Express Evaluations employees shall access the servers remotely and the only persons with physical access to the servers will be those employees with a legitimate business need to have such access. Each workstation at the main work site shall be assigned to a specific employee, password protected using commercially reasonable standards, and virus protected. Express Evaluations employees shall not be permitted to attach personal peripherals onto their workstations. Access to the main work site of Express Evaluations shall be monitored and limited by keycard access. After hours access shall be monitored and restricted to those employees with a legitimate business need.

(e) Identity Theft Prevention Program. Express Evaluations shall adopt and implement an Identity Theft Prevention Program.

5.3 Treatment of Confidential Information.

(a) Nondisclosure. The Receiving Party shall not disclose the Confidential Information of the Disclosing Party except as required by law.

(b) Court Orders. If the Receiving Party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose said Confidential Information, or if the Receiving Party is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then the Receiving Party will not be liable to the Disclosing Party for disclosure of Confidential Information required by such order if the Receiving Party complies with the following requirements:

(i) if an already-issued order calls for immediate disclosure, then the Receiving Party shall immediately move for or otherwise request a stay of such order to permit the Disclosing Party to respond as set forth in this subsection;

(ii) the Receiving Party shall notify the Disclosing Party of the motion or order by the most expeditious means possible; and

(iii) the Receiving Party shall join or agree to (or at a minimum shall not oppose) a motion or similar request by the Disclosing Party for an order protecting the confidentiality of the Confidential Information, including joining or agreeing to (or non-opposition to) a motion for leave to intervene by the Disclosing Party.

6. THIRD PARTY VENDORS

6.1 <u>Third Party Vendors</u>. Express Evaluations makes no representations or warranties with respect to the information security policies and practices of its Third Party Vendors. Upon request, Express Evaluations will provide Licensee with the contact information for each Third Party Vendor for Licensee's independent review of the adequacy of each Third Party Vendor's information security policies and practices. Should Licensee object to any Third Party Vendor, Express Evaluations will work with Licensee to arrange a commercially reasonable alternative.

7. UPDATES, BUGS, AND TELEPHONE SUPPORT

7.1 <u>Updates</u>. Express Evaluations shall, from time-to-time update the Software to improve functionality or add features. During the Term, Licensee must use the Software as updated or modified. Express Evaluations, at its sole discretion, will determine type, frequency, and notification parameters for updates or upgrades of the Software and any software documentation. The terms of this License will govern any Software updates provided by Express Evaluations that replace and/or supplement the original Software product.

7.2 <u>Bugs</u>. Licensee agrees to provide Express Evaluations with reasonable notice ("**Bug Report**") of any actual or potential defect ("**Bug**") in the Software. Express Evaluations shall evaluate any such Bug and take commercially reasonable steps to resolve the Bug. If the Bug is a Material Bug, then Express Evaluations shall resolve the Bug within forty-eight (48) hours. At its option, in lieu of resolving a Material Bug, Express Evaluations may revert to an earlier version of the Software that does not contain the Material Bug.

7.3 <u>Email Support</u>. During the Term, Express Evaluations will make support available by email to Licensee's Authorized Users at substantially all times from 9:00 a.m. until 6:00 p.m. MST each Business Day. Express Evaluations will make all attempts to respond to emails within the service delivery expectations of the agreement.

8. INTELLECTUAL PROPERTY MATTERS

8.1 <u>Intellectual Property Rights</u>. The content, organization, graphics, design, compilation, magnetic translation, digital conversion, routines, subroutines, formulae, and other matters related

to the Software are protected under applicable copyrights, patents, trademarks, and other proprietary and/or intellectual property rights. The copying, redistribution, use, or publication by Licensee of any such matters or any part of the Software, except as otherwise expressly authorized, is strictly prohibited. Express Evaluations expressly reserves all intellectual property rights in all text, programs, products, processes, technology, content, and other materials relating to the Software. Any and all logos, emblems, company names, product names, and service names ("**Trademarks**") referenced in or by the Software or accessible within any application of the Software are Trademarks of their respective owners. In particular, the name "Express Evaluations" and Express Evaluations' logo are trademarks of Express Evaluations. Licensee shall not acquire permission to use any Trademark owned by Express Evaluations or any third party Trademark referenced on, in, or by the Software without express permission from Express Evaluations or the applicable owner of the Trademark.

8.2 <u>Prohibitions</u>. Licensee shall not: (a) delete the copyright notices or any other proprietary legends on or in the Software; (b) decompile, modify, reverse engineer, disassemble or otherwise reproduce the Software, or create derivative works based on the Software; (c) copy, rent, lend, lease, sublicense, distribute, assign, or commercially exploit the Software; (d) use the Software in any manner that could damage, disable, overburden, or impair Express Evaluations' or any other party's search services, servers, or other services; (e) use, download or otherwise transmit the Software to a location other than as authorized in this Agreement; (f) permit the use of the Software or Software Documentation by unauthorized persons; or (g) export the Software or Software Documentation into any country that does not have copyright laws that will protect the copyright of Express Evaluations. Express Evaluations reserves all rights not expressly granted in this Agreement. Each of the terms and conditions of this Agreement is material to the Agreement and failure of Licensee to comply with any of these terms and conditions will result in automatic termination of the License.

9. WARRANTIES, LIMITATION OF LIABILITY, AND DISCLAIMERS

9.1 <u>As-Documented Warranty</u>.

(a) <u>Operation</u>. SUBJECT TO THE REMEDY LIMITATIONS SET FORTH BELOW, Express Evaluations warrants to Licensee that during the Term, the Software will operate in all material respects in accordance with the Software Documentation (the "**As-Documented Warranty**").

(b) <u>Deadline for Reports of Breaches of As-Documented Warranty</u>. No instance of noncompliance with the As-Documented Warranty will be deemed to be a Breach of that warranty unless the procedure set forth in <u>Section 7.2</u> is followed.

(c) <u>Exclusive Remedies for Breach of As-Documented Warranty</u>. Licensee's sole remedy for any Breach of the As-Documented Warranty, to the exclusion of all other remedies therefor, in contract, tort, or otherwise, is a refund of a pro rata portion of any Fees for any remaining portion of the Initial Term or Renewal Term, as the case may be.

9.2 <u>No Surreptitious Code Warranty</u>. Express Evaluations warrants to Licensee that the Software does not contain any Unauthorized Code (the "**No Surreptitious Code Warranty**").

9.3 <u>Non-infringement</u>. Express Evaluations warrants that the use of the Software by Licensee pursuant to this Agreement will not infringe any valid and subsisting intellectual property right owned by any person.

9.4 <u>Warranty Limitations</u>.

(a) <u>Limitations of Express Evaluations' Warranties</u>. Express Evaluations does not warrant:

> (i) that the operation of the Software will be error free in all circumstances;

> (ii) that all defects in the Software that are not material with respect to the functionality thereof as set forth in the Software Documentation will be corrected;

> (iii) that the operation of the Software will not be interrupted for short periods of time by reason of defect therein or by reason of fault on the part of Express Evaluations; or

> (iv) anything with respect to any information, content, goods, or services provided by any third party and accessed via link from any Express Evaluations website.

(b) <u>No Warranty by Express Evaluations</u>. Licensee will be exclusively responsible as between the Parties for, and Express Evaluations makes no representation or warranty with respect to:

> (i) Licensee is responsible for ensuring that employee identifiers provided to the Software are unique per company for all of Licensee's past and present employees;

> (ii) Determining whether the Software will achieve the results desired by Licensee;

> (iii) Selecting, procuring, installing, operating, and maintaining computer hardware to run the Software;

> (iv) Training Licensee's Authorized Users in computer operations, other than such Express Evaluations provided training as is expressly set forth in this Agreement;

> (v) Ensuring the accuracy of any input data used with the Software;

> (vi) Establishing adequate data backup provisions for backing up Licensee's data;
> (vii) Establishing adequate operational backup provisions (e.g., alternate manual operation plans) in the event of a defect or malfunction that impedes the anticipated operation of the Software;

> (viii) Ensuring the adequacy of any third party's information security policies and practices; and

(ix) Ensuring the accuracy and adequacy of any information, content, goods, or services provided by any third party, regardless of whether that information, contact, goods, or services are accessed via a link from any Express Evaluations website.

9.5 **DISCLAIMER OF ALL OTHER WARRANTIES AND REPRESENTATIONS.** THE EXPRESS WARRANTIES AND EXPRESS REPRESENTATIONS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND EXPRESS EVALUATIONS DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LICENSED SOFTWARE OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT EXPRESS EVALUATIONS KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, EXPRESS EVALUATIONS EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN LICENSEE WITH RESPECT TO THE LICENSED SOFTWARE OR ANY PART THEREOF.

IN NO EVENT SHALL EXPRESS EVALUATIONS BE LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR THE USE OF A NON-PROPRIETARY PLUG-IN THAT MAY BE ADDED TO THE SOFTWARE.

10. TERMINATION AND BREACH

10.1 Termination.

(a) End of Term. The License shall terminate at the end of the Term if either party gives the other party notice of cancelation at least thirty (30) days prior to the end of the Term.

(b) Early Termination by Express Evaluations. Unless otherwise provided in an applicable Purchase Order, Express Evaluations or the SAN JUAN COUNTY may terminate the License at any time upon thirty (30) days prior written notice to the other party. In the event a party terminates the License pursuant to this Section 10.1(b), Express Evaluations shall refund to Licensee a pro rata portion of any Fees for any remaining portion of the Initial Term or Renewal term, as the case may be, minus any amounts paid to Third Parties in commissions or referral fees.

(d) Termination Upon Breach and Failure to Cure. The Non-breaching Party may terminate the License immediately upon the occurrence of an uncured Breach after providing the Breaching Party with the notice and opportunity to cure required by Section 10.2.

10.2 Breach.

(a) Notice Required. The Party not in breach ("**Non-breaching Party**") shall give the Party in breach (the "**Breaching Party**") notice describing the Breach and stating the time provided below,

if any, within which the Breach must be cured. If a provision of this Agreement provides a cure period for the Breach in question (e.g., a period within which Express Evaluations can attempt to remedy a Material Bug), then that provision shall take precedence over any cure period set forth in this <u>Section 10.2</u>.

> (i) <u>No Cure Period</u>. No cure period is required, except as may be otherwise provided in this Agreement, if:
>
> > (A) This Agreement sets forth specific deadline dates for the obligation allegedly breached, and
> >
> > (B) The Breach is a willful breach of an obligation of the Breaching Party.
>
> (ii) <u>Non-willful Breach</u>. If the Breach is non-willful, then the Breaching Party shall have five (5) Business Days to cure the Breach after written notice of such Breach by the Non-breaching Party.

(b) <u>Cure</u>. The Breaching Party will be deemed to have cured such Breach if within the cure period the Breaching Party takes steps reasonably adequate to alleviate any damage to the Non-breaching Party resulting from the Breach and to prevent a similar future Breach.

11. DISPUTE RESOLUTION

11.1 <u>Informal Settlement Discussions</u>. With regard to any controversy or claim arising out of or relating to this Agreement, the parties will attempt to resolve the issue(s) with informal settlement discussions before filing litigation in any jurisdiction.

11.2 <u>Injunctive Relief</u>. If Licensee uses the Software in any unauthorized manner, or breaches any terms or conditions of this Agreement, and such use or breach would have a devastating and serious impact on Express Evaluations' continuing ability to compete profitably and would, therefore, result in immediate and irreparable injury, loss or damage to Express Evaluations, then in addition to Express Evaluations' right to recover damages for a breach of this Agreement, Express Evaluations shall also be entitled to obtain a temporary restraining order or a preliminary injunction from a court of competent jurisdiction, without the necessity of posting a bond, to prevent Licensee and Licensee's employees, agents, consultants, and independent contractors from engaging in any further use of the Software and the continued breach of this Agreement.

11.3 <u>EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.</u> INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT, OTHER THAN FOR INFRINGEMENT OF ONE PARTY'S INTELLECTUAL PROPERTY RIGHTS BY ANOTHER PARTY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND INCLUDING LOST PROFITS, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE, AND FURTHER INCLUDING

INJURY TO PROPERTY, AS A RESULT OF BREACH OF ANY WARRANTY OR OTHER TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

11.4 MAXIMUM AGGREGATE LIABILITY. INDEPENDENT OF, SEVERABLE FROM, AND TO BE ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EXPRESS EVALUATIONS' AGGREGATE LIABILITY TO LICENSEE (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY LICENSEE), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF THE FEE AND ANY RENEWAL FEE AS PROVIDED HEREIN.

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11.6 Choice of Law. The laws of the state of Utah, without giving effect to its conflict of laws principles, govern all matters arising out of or related to this Agreement and all transactions it contemplates including, without limitation, its validity, interpretation, construction, performance, and enforcement.

11.7 Forum Selection. Any Party bringing an action for injunctive relief shall bring the legal action or proceeding in either the United States District Court for the District of Utah, or in any court of the state of Utah sitting in Utah County, Utah. Each party consents to the exclusive jurisdiction of the United States District Court for the District of Utah, and the courts of the state of Utah sitting in Utah County, Utah, and their respective appellate courts. Each party agrees that the exclusive choice of forum set forth in this Section 11.7 does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

11.8 Attorneys' Fees. In the event that any dispute between the Parties should result in litigation or arbitration, the prevailing party to such dispute shall be entitled to recover from the other party all reasonable fees, costs, and expenses of enforcing any right of the prevailing party. Attorney's fees and costs include costs for such items for any appeals.

12. MISCELLANEOUS

12.1 Notice. Any notice required or permitted to be given under this Agreement shall be sufficient if sent via email to Licensee at the email address used during the registration process referenced in Section 4.5 or to Express Evaluations at info@ExpressEvaluations.com. The Parties may designate any other or additional email addresses from time to time in a writing delivered in accordance with this Section 12.1.

12.2 Assignment and Delegation. Licensee shall not assign the rights or obligations of this Agreement without the prior written consent of Express Evaluations. Express Evaluations may

freely assign its rights and obligations under this Agreement without Licensee's prior written consent.

12.3 <u>Successors and Assigns</u>. This Agreement shall be binding upon and inure to the benefit of the Parties' permitted successors and assigns.

12.4 <u>Third Party Beneficiaries</u>. This Agreement does not and is not intended to confer any rights or remedies upon any individual, group, or entity other than the Parties.

12.5 <u>Amendment</u>. This Agreement is subject to amendment by Express Evaluations from time-to-time and agreement to any such amendment shall be a condition precedent to the continued use of the Software by Licensee. Should Licensee refuse to agree to any such amendment, at Express Evaluations' option this Agreement will be deemed terminated by Express Evaluations as contemplated by <u>Section 11.1(b)</u>.

12.6 <u>Severability</u>. If any word, phrase, sentence, clause, section, subsection or provision of this Agreement as applied to either Party or to any circumstance is adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other circumstance or the validity or enforceability of any other word, phrase, sentence, clause, action, section, subsection, or provision of this Agreement to the extent possible without destroying the intent of this Agreement.

12.7 <u>Waiver</u>. The waiver of either Party of a breach or violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

12.8 <u>Strict Construction</u>. The language used in this Agreement shall be deemed to be in the language chosen by both Parties to express their mutual intent, and no rule of strict construction shall be applied for or against any Party by reason of such Party being deemed the draftsman of this Agreement.

12.9 <u>Interpretation</u>. The terms that are defined in this Agreement may be used in the singular or plural, as the context requires. Whenever the context of this Agreement requires, the gender of all words shall include the masculine, feminine, and neuter. The words "including," "includes," and "include" are deemed to be followed by the words "without limitation." References to "Sections" are to Sections of this Agreement, unless otherwise specifically provided.

12.10 <u>Captions</u>. Captions in this Agreement are asserted for convenience only and do not define, describe, or limit the scope or the intent of this Agreement or any of the terms of this Agreement.

12.11 <u>Entire Agreement</u>. Together with any Purchase Order, this Agreement contains the entire agreement between the Parties and supersedes all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, between the Parties with respect to the subject matter of this Agreement.

13. FEE SCHEDLE AND INVOICING

13.1 For annual licenses, Express Evaluations will submit the invoice to the Licensee's admin contact. The term of the contract is 365 days from the date this agreement is signed, or from the date agreed upon below. Subsequent annual invoices will be generated 30 days in advance to the end of the 365 day term.

License Start and Renewal Date: January 1, 2022

Initial Pricing Tier: 126-250, $4,500 per year

HR Consulting Services: $1,000 per year (Optional, can be cancelled after the first year)

Renewal Pricing Tier is based on the highest active employee count during the preceding 12 month period.

Pricing Schedule based on employee count

1-50 Employees	$1,500
51-125 Employees	$2,250
126-250 Employees	$4,500
251-500 Employees	$6,750
501-750 Employees	$9,000
751-1000 Employees	$12,750
Above 1000	To Be Quoted

_____ _____

Willie Grayeyes
San Juan County
Commission Chair

Date 12/29/2021
Albert Foster
Express Evaluations
President