

## IDI® 2018 LICENSE AGREEMENT

**THIS 2018 LICENSE AGREEMENT** (this “2018 License” or “License”) by and between IDI, LLC, the Licensor (“Company”), and you, the IDI® Qualified Administrator, the Licensee (“QA”), is made as of the completion of the IDI® Qualifying Seminar or, with respect to QAs licensed prior to the implementation of the 2018 License, immediately from the date of the notice of this revised 2018 License (the “Effective Date”).

*By clicking “I Agree” and using the Materials (as defined below), QA represents that he/she has read and understood the License and agrees to the terms and conditions of this License. We recommend that you print a copy of this License for future reference.*

### RECITALS

Company is in the business of, among other things, developing and marketing the Intercultural Development Inventory® (the “IDI®”), the information and all materials included under IDI Guided Development® (the “IDI GD”), the cloud-based IDI® analysis program and all web-based and other created materials associated with the IDI® or the IDI GD®, all information and materials, films, videos, logos, that are a part of the IDI® Qualifying Seminar, to include the IDI® Manual, the IDI® QA Resources and various previously developed versions and materials, including without limitation (collectively, the “Materials”).

The QA, having completed the IDI® Qualifying Seminar, has been provided with a variety of background information and education regarding the Materials designed to educate and enable QA to prepare presentations, training, and consulting related to such QA’s use of the IDI® and the Materials.

QA has requested the right to personally use and utilize the Materials for organizational and educational purposes designed to foster and develop intercultural competence. QA may utilize the Materials either (1) internally within an organization as an employee (“Enterprise Organization”); or (2) externally with other organizations as a consultant (“Client Organization”) (collectively Enterprise Organization and Client Organization are referred to as “Organization”). QA administers the IDI® to individual respondents (“Respondent”) within an Organization.

**NOW, THEREFORE**, in consideration of the foregoing, the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **License and Linking to Website.** During the Term hereof, Company hereby grants to QA, and QA hereby accepts, subject to the terms hereof and the supervision and approval of Company, a limited, nonexclusive, and nontransferable license to market and use the IDI® and the Materials in accordance with the express terms and conditions of this License (the “Intended Use”). This License is expressly limited to QA for the Intended Use. QA shall not modify or change the Materials without the prior written consent of Company, at Company’s sole discretion. QA is granted the limited permission to copy, for training and educational activities only, those Materials that are designated as “IDI Handout” (the “Limited Copyrights”). The license includes the right to use Company name, Company logo, and other trademarks and copyrights (“Intellectual Property”) described in this License as well as the right to link to Company website, [www.idiinventory.com](http://www.idiinventory.com) (the “Website”), consistent with the protocols established by Company and as set forth here. No individual or organization may use the Intellectual Property unless such individual or organization has one or more QAs employed or engaged by said organization who meet current licensing requirements, pursuant to this License. This 2018 License amends, restates, and supersedes all prior license agreements, including but not limited to the 2010 License Agreement and 2013 License Agreement.

2. **Terms and Conditions.** QA agrees, acknowledges, and covenants to comply with the following terms and conditions (“Terms and Conditions”), each of which constitute a material part of this License. Any violation of the Terms and Conditions may be grounds for immediate termination of this License, in the sole discretion of Company.

**A. Qualifications.**

1. Requirements. In order to qualify as a QA, he/she shall:
  - a. successfully complete the full duration of an IDI® Qualifying Seminar and the individual debrief training provided at the seminar by Company;
  - b. review, observe and follow additional policies or information provided to QAs by Company via email and/or posted on the IDI® QA Resources page on the Website from time to time; and
  - c. successfully complete any additional training and license updates, as required by Company, in its sole discretion (“Required Training”). Such Required Training may be offered in webinar form, as virtual training and/or web-based programs on the Website. Company reserves the right to require QA to attend an in-person Required Training.
2. Termination for Non-Compliance. Failure to comply with the Qualifications requirements listed above shall result in the termination of the License.

**B. Account Access.**

1. Account Access. QA and its authorized Respondents and/or Organizations shall access the Materials through the assessment website, currently <https://v3.idiassessment.com> but subject to change in the sole discretion of Company (“Assessment Website”). Company shall provide QA with administrative access to use the IDI® and Materials through an account on the Assessment Website (“Account”). Company strives to ensure that the Assessment Website and Account is reasonably accessible by QA, however, Company is not responsible for any claims, damages, or other issues arising because the Assessment Website and/or Account is not available.
2. Username and Password. All Accounts are created with a unique usernames and randomly generated passwords for the given Account.
3. QA Responsibilities. QA is solely responsible for (1) ensuring the Account contact information is accurate and up-to-date; (2) maintaining the security of the usernames and passwords; (3) only allowing Authorized Users (as defined below) to use the Account; and (4) any claims, disputes, or violations that arise from the unauthorized use or access of the Account.
4. Types of Accounts. There are two types of accounts:
  - a. Personal QA Account. Personal QA Accounts are restricted to access only by the licensed QA whose name is on the Account. If a QA works for an Enterprise Organization, it is recommended that QAs do not comingle the Enterprise Organization’s data with any data from outside projects. In the event that QA’s wishes to use the Materials for an Enterprise Organization, QA should request the Enterprise Account Service.
  - b. Enterprise Account Service. The Enterprise Account Service is restricted to access only by the QA account holder (“Primary QA”) and those individuals named by the Primary QA as Authorized Users. “Authorized Users” include (1) no more than three (3) Authorized Non-QA IDI® Coordinators; and (2) any additional licensed QAs within the Enterprise Organization. If an Authorized User is no longer a part of the Enterprise Account Service, then the Primary QA must inform Company by email and telephone or follow current instructions for revising the Enterprise Account Service.

Company reserves the right to add, change, or alter the types of Accounts at any time.

5. Company’s Right to Disable. Company reserves the right to permanently or temporarily disable and/or suspend any Account that is, or is believed to be, compromised or accessed by an unauthorized party at anytime in its sole discretion.

**C. Responsibilities when Using the Materials.**

1. Standards of Use. QA shall use the Materials, and the Intellectual Property in an appropriate manner, as stipulated by, and consistent with, the terms of the IDI® Qualifying Seminar, best practices, any communications from Company (including webinars, newsletters and email correspondence) and the information set forth on the Website or Assessment Website, as the same may be updated and modified from time to time hereafter, including without limitation information contained in the IDI® QA Resources. To ensure that QA maintains such quality standards, Company shall have the right at any time and from time to time to inspect or audit any goods and/or services being sold or rendered in connection with QA's use of the Intellectual Property and the Materials.

2. Permitted Use of IDI® and Materials. QA is permitted to use the IDI® and the Materials for:

a. IDI® Group Profile Reports, Group Profile feedback, IDI® Administrator Reports, training and development and other interventions based on IDI® Group Profile results;

b. IDI® Individual Profile Reports (“IPR”), Individual Profile feedback; training and development and other interventions based on IDI® Individual Profile results;

c. Individual Development Plan (“IDP”), provided it is used as required in Section 2(C)(5) below;

d. IDI® based individual coaching based on the IPR and the individual's customized IDP;

e. Program evaluation purposes defined as pretest/posttest use of the IDI® to test the impact of an intervention on the “experimental” group and/or to compare IDI® pretest and posttests for “control” group(s) and the “experimental” group(s) respondents;

f. Basic Research purposes in accordance with Section 2(C)(7) and except as stated in Sections 2(D)(5) and 2(D)(6); and

g. Baseline assessment purposes, pursuant to Section 5(C)(11) below.

3. Business to Business Use Permitted. QA shall only provide the IDI® and Materials through business to business relationships (e.g., schools, companies, agencies, etc.) and shall not provide the IDI® and Materials to the general public for individual assessments. QA shall be prohibited from offering the IDI® and Materials to the general public through direct marketing to individuals and mass marketing, including, but not limited to, email solicitations, QA's website, and other advertising methods.

4. Client Project Responsibility. QA shall have the sole and full responsibility for completing (or making arrangements to complete) IDI®-related projects with their Organizations, and Company expressly undertakes no responsibility for same.

5. Individual Profile Report. Prior to giving an IPR and IDP to a Respondent, the QA shall (1) have a one-on-one individual debrief session of a minimum of thirty (30) minutes or more with the Respondent (“Debrief Session”); and (2) discuss the IDP with the Respondent during the Debrief Session. The IDP can only be provided to the Respondent with the IPR at a Debrief Session.

6. Customized Questions. In order to ensure the standard of quality in administering the IDI®, if QA develops customized questions for an Organization, QA must discuss and provide information regarding customized questions, including their development, with the Organization before creating a customized IDI® assessment for the Organization and prior to administering the IDI®. QA and Organization must create a protocol to answer Respondent's inquiries should they arise regarding the customized questions. Company takes no responsibility for QA's customized questions.

7. Research Use. If QA conducts published research and writings or delivers public or professional presentations at conferences or other speaking engagements using the IDI® and/or the Materials (“Research”), then all such Research shall (1) comport with all applicable canons of professional scientific inquiry; (2) only be undertaken upon written notice to Company of intended Research using the Materials prior to conducting such studies or research; (3) ensure that the latest conceptualizations, protocols, and guidelines for using the Materials are incorporated in the study’s design and presentation/writing; and (4) provide proper attribution to the Company, pursuant to the guidance listed on the IDI® QA Resources. QA shall send Company a copy of the published Research in which the Materials were used, including, but not limited to, the article or presentation.

8. QA Marketing. QA shall maintain professional standards in the representation of, with respect to all marketing, training, and educational efforts, the IDI® and the Materials as a licensed provider, and QA shall make clear that QA has no claim of ownership regarding same, and expressly not create the impression, or allow for any confusion, among clients or others that the originator, developer, or owner of the IDI® and the Materials is anyone other than Company.

9. Intellectual Property Notices. At all times QA shall cause notices for federal copyright and trademark protection of Company, in the form listed on the IDI® QA Resources on each document comprising the Materials, whether written or electronic, on the QA’s website as well as any and all related marketing or promotional materials and Research. Such use of the Intellectual Property shall confirm Company’s copyright and trademark, and properly display, without modifying, hiding or otherwise changing, any and all copyrights, trademarks and/or Company logos that exist on or are used in connection with the Materials or any portion thereof.

10. Reproduction of Materials. Except for the Limited Copyrights, QA shall be prohibited from copying the Materials. QA shall not modify, change, or otherwise alter the Materials and shall administer them in their original form.

11. Baseline Assessment. QA may use the IDI® and Materials for “Baseline Assessment” purposes which is defined to include larger group assessment of intercultural competence designed to meet one or more of the following criteria: (1) take a “snapshot” of the organization as a whole or major unit(s) within the organization; (2) involves multi-layer identification of subgroup IDI® profiles; or (3) as part of or a measure of Engagement, Climate or Accreditation surveys. If using the Materials for a Baseline Assessment, QA is required to utilize the resources guide and template provided by Company to ensure the Baseline Assessment is accurate.

#### **D. Prohibited Conduct.**

1. Personnel Selection Prohibited. QA shall be prohibited from using the IDI® or Materials for personnel selection purposes (“Selection”), to include Hiring Talent (identify and select talent for the organization), Placement of Talent (assign individuals to positions or new responsibilities within the workforce), and/or Promotion of Talent (identify and select individuals within the workplace for advancement). QA shall direct any and all requests or inquiries for such services to Company and acknowledge that Company is the sole and exclusive Company of Selection services.

#### **2. Individual Profile Report Uses Prohibited.**

a. QA is prohibited from sending a Respondent their IPR and the IDP unless QA conducts a Debrief Session, as required in Section 2(C)(5) above.

b. QA is prohibited from sending the IDP as a stand-alone document to Respondent. The IDP must be given to a Respondent with his or her IPR during the Debrief Session.

c. There are no substitutions for a Debrief Session. QA must provide a one-on-one Debrief Session. It cannot be done in a larger group.

3. *Individual Profile Results Integration Prohibited.* QA shall not copy or incorporate any portion of a Respondent's IPR into another document, including, but not limited to, a presentation, power-point, article, book, learning module, video, research, or project without the express written release from the Respondent. QA shall keep a copy of the release for a minimum of five (5) years. Company shall not be held responsible for the QA's use of the IPR, in violation of this License.

4. *Changing Direct Email Prohibited.* QA shall use an email address that he or she solely monitors and shall not change his or her email on his or her Account to another person or department. Company uses this email to provide notice to QA about account and contract matters.

5. *Research for Competition Prohibited.* QA shall not use the IDI® and/or the Materials to test or support the development of a competing assessment or product.

6. *Research for Validation and Testing Prohibited.* QA shall not use the IDI® and/or Materials for purposes of validating, testing, or otherwise empirically supporting the development or use of other measures that purport to assess intercultural or cultural competence or sensitivity, cultural intelligence, cultural or diversity competence, effectiveness development, or any other similar purpose.

#### **E. Data Privacy and Security Requirements.**

1. *Data.* "Data" is defined as any data submitted to and/or collected by the Company in anyway, including, but not limited to, answers to the IDI® questions, customized questions, personal identifiable information (i.e. names, email, etc.), reports generated by the Materials, and other related information.

2. *Privacy Policy and Terms of Service.* It is suggested that QA have his/her own privacy policy and terms of service on the QA's website, if applicable, with respect to their Respondents, Organizations, and other users of such website. The Company's Privacy Policy and Terms of Service shall govern the use of the Assessment Website and the collection of Data. QA shall comply with the Privacy Policy and Terms of Service, which are listed on the Website and incorporated herein. If the Respondent, Organization or any third party ("End User") accesses the Assessment Website from the QA's website, then QA must disclose to the End User that he/she/it is going to the Company's Website, which is governed by the Company's Privacy Policy and Terms of Service.

3. *Controlling Agreements.* QA is responsible for ensuring that the End User agrees to and comply with License Agreement, Privacy Policy, and Terms of Service (collectively, the "Controlling Agreements") and applicable law, including, but not limited to, consent to the transfer of Data, pursuant to the terms of the Controlling Agreements. QA may not enter into any agreements that conflict with the Controlling Agreements, including, but not limited to, agreements regarding the protection, access, or transfer of data. QA shall notify Company in writing immediately of any changes, differences, or amendments to the QA's or Organization's privacy policy or terms of service that conflicts with or expands Company's Privacy Policy and Terms of Service as they relate to the collection and transfer of Data. QA shall inform Company within three (3) days if, in QA's reasonable opinion, QA believes that any policies or procedures of Company violate the applicable law in the QA's jurisdiction.

4. *Data Access.* Except if through the Enterprise Account Service or pursuant to Section 2(E)(6) below, only QA may access the Data for the End User. QA shall remain solely responsible for maintaining his or her End Users' Data, within the cloud-based IDI® analysis program maintained by Company. *In order to protect the integrity of the IDI® results and to prevent misunderstanding of IDI® results, QAs are prohibited from sharing Data with other QAs or integrating IDI® results except through the Enterprise Account Service.* QA acknowledges and expressly consents that Company may transfer the Data to subcontractors for processing.

5. *Data Privacy Protection.* QA shall comply with (i) its privacy policy, the Organization's privacy policies and confidentiality agreements, any other relevant agreements, policies

and/or controls that are communicated to it from time to time by Company; and (ii) any applicable international, federal, state, or local laws, when using the Materials or handling, accessing, or using any Data. This includes but is not limited to:

- a. Taking commercially reasonable steps to secure usernames, passwords, and all Data, whether in transit and/or storage;
- b. Storing all IDI<sup>®</sup> reports in a secure manner to ensure that they are not lost, stolen, shared or compromised; and
- c. Ensuring that email lists or other personally identifiable information for End Users are maintained in a secure manner and not used for unauthorized purposes.

6. Transfer of Data. Data may be accessed by the Organization or Respondent as long as they have a QA to read and interpret the Data. As such, upon request of the Organization or Respondent, QA shall transfer the Data, in accordance with Company's current guidelines, to another QA.

7. Data Breach. QA must immediately, but no later than twenty-four (24) hours, provide Company with written notice if he/she becomes aware of any actual or suspected unauthorized use of his/her credentials, username, password or Account and/or breach of security or its systems.

8. Data Removal. Upon request of a Respondent or Organization to delete or remove any Data, and to the extent technically feasible and allowed by applicable law, QA shall immediately provide the Company with written notice and comply with all required procedures. Otherwise, all Data is maintained by the Company for five (5) years, unless QA provides written request with a legitimate reason to Company one hundred and eighty (180) days prior to the expiration of this period.

9. Comparative Database and Benchmarking. The Data shall be stored within a comparative database with strict anonymity of Organization's and Respondent's names and confidentiality of information (collectively, the "Confidentiality Standards") and may, at Company's sole discretion, be used for industry benchmarking and comparative analyses in accordance with the Confidentiality Standards (the "Company Use"). By submitting the Data to the Company, QA grants the Company a worldwide, non-exclusive, irrevocable, royalty free, transferable license to use, copy, distribute, and display the Data solely for the Company Use, as described in this Section 2(E)(9). QA or Respondent, as applicable, may opt out the Data from Company Use by clicking the opt out option on the Assessment Website prior to the submission of Data. Once the Data is included in the comparative database, it cannot be removed.

#### **F. Enterprise Organization.**

1. Enterprise Account Service. Company offers Enterprise Account Service to Enterprise Organizations, in order to streamline the use of the Materials by QA within the Enterprise Organization and allow for collaboration.

2. Notice to Enterprise Organization. QA must inform his/her/its Enterprise Organization of the Enterprise Account Service to ensure that the Organization's data is collected in a manner that meets the Organization's needs.

3. Leaving an Enterprise Organization. When QA leaves an Enterprise Organization, QA must:

- a. Ensure his or her contact information in the Account reflects the change;
- b. Inform Company in writing that he or she is leaving the Enterprise Organization;
- c. Inform the Enterprise Organization in writing about steps to transfer any collected data to another QA;

d. If there is an Enterprise Account and QA is the Primary QA, then QA must name a QA as the new Primary QA and notify Company in writing of this selection; and

e. Cooperate and provide all authorizations required for the transfer of data.

3. **Term.** The term of this License shall be limited to the period commencing on the Effective Date through December 31, of the current year (the “Term”); provided, however, that this License, unless terminated in accordance with the terms of this License, shall automatically be extended for additional one (1) year periods commencing January 1, upon the QA’s: (i) continued compliance with the License and Terms and Conditions; and (ii) payment of all Charges (as defined below) for each such additional one (1) year period (“Renewal Term”).

4. **Charges.**

A. QA shall be responsible for payment of all applicable charges and costs as more fully set forth on the IDI® Schedule of Charges set forth on the Website (collectively, the “Charges”), which Charges may change from time to time. Company reserves the right to charge (1) an annual license update fee; (2) an additional fee for the Enterprise Account Service; (3) an hourly fee for ongoing compliance and regulatory matters if required by QA’s Organization; (4) service fees related to Data destruction, removal and/or reporting, including, but not limited to, litigation holds and document production requests; and (5) any other fees, as necessary, in Company’s sole discretion.

B. Charges are due upon the date of order of the Materials via a credit card payment. As a courtesy, Company may, but is not required to, agree to invoice or accept a payment directly from the Enterprise Organization or a Client Organization, upon prior written approval of Company; provided, however, that QA shall remain responsible for all Charges that remain unpaid after sixty (60) days, upon receipt by QA of notice from Company. Notwithstanding the aforementioned, Company reserves the right to charge interest, at the rate of 1.5% per month, for any and all Charges that remain unpaid after a period of thirty (30) days after the date of order or the date of service, as applicable, and QA agrees to be responsible therefore.

C. QA shall be responsible for any and all costs of collection incurred by Company, including reasonable attorneys’ fees and costs, whether suit is filed thereon or not.

5. **Acceptance and Changes.** QA’s continued acceptance of products and/or services of Company constitute QA’s acceptance of and agreement to all terms and conditions of this License. Company reserves the right to change the License, including the Charges, in its sole discretion. If any changes are made, Company will send QA an email notice, pursuant to Section 15, and such changes shall be effective immediately as of the date of the email notice. QA is required to provide an email that is in constant use and to regularly check the email from Company, which may provide for notices and changes. If a change is not acceptable to QA, QA may terminate this License pursuant to Section 6. QA’s continued acceptance of products and/or services of Company shall conclusively be considered to be QA’s acceptance of that change.

6. **Termination.**

A. Either party may terminate this License upon thirty (30) days prior notice to the other, pursuant to Section 15; provided, however, that QA shall remain responsible for the payment of any earned but unpaid Charges, together with any accrued interest. Any fees due or paid for a Renewal Term are not refundable. Notwithstanding the aforementioned, Company shall have the right to immediately terminate this License (1) upon the material breach of this License; (2) in the event that Company has evidence that QA, its agents, or employees are engaged in criminal activity; (3) in the event that QA, its agents or employees are engaged in conduct or have engaged in conduct which substantially impairs the reputation and goodwill of the Intellectual Property, the IDI®, and the Materials; or (4) for any other reason in its sole discretion. Upon termination, QA shall be required to cease and desist from using the IDI® and the Materials. Company will not refund any of the Charges or fees due pursuant to Section 4.

B. Upon termination, if the QA wishes to be relicensed, he/she must pass the current IDI® Qualifying Seminar to become licensed again. Company reserves the right to refuse to relicense a QA in its sole discretion.

7. **Materials.** The parties acknowledge and agree that only QA, for so long as QA has abided by the terms and conditions of this License, shall have the right to purchase the Materials, which Materials shall be purchased directly from Company through the Assessment Website.

8. **Title.** QA acknowledges that Company owns any and all copyright, trade secret, trademark and other proprietary rights in and to the Materials, including all modifications, derivative works and enhancements thereto.

9. **Warranty and Indemnity.**

A. IDI® and the Materials are based on the relevant research and insights of Company and its constituent members. Except as expressly provided in this License, neither Company nor any of its members make any claim or warranty regarding the use of the Materials or the fitness or suitability of same for QA's use, and QA remains solely responsible for the appropriate use of such Materials.

B. Company warrants that it owns, or has obtained the right to make available to QA for the uses contemplated in this License, the Materials. Company agrees to indemnify, defend, and hold harmless QA, its employees, agents, and affiliates, from any and all claims, causes of actions, losses, damages, judgments, and liabilities (including reasonable attorneys' fees and costs) arising from (i) a breach of the foregoing warranty; or (ii) any claim that the Materials infringe or violate any third party's intellectual property rights.

C. QA agrees to indemnify, defend, and hold harmless Company and its members, officers, employees and agents from and against any and all claims, damages, losses, liabilities, and expenses (including but not limited to reasonable attorneys' fees and costs) arising out of or relating to, directly or indirectly, the QA's, its clients, agents, and/or representatives' (i) use of the Materials; (ii) misuse of Data; (iii) breach of this License; or (iv) violation of any international, federal, state or local law, regulation, or ordinance.

D. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS LICENSE, IN NO EVENT WILL COMPANY BE LIABLE UNDER OR IN CONNECTION WITH THIS LICENSE OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE MATERIALS; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

E. IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY ARISING OUT OF OR RELATED TO THIS LICENSE, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID BY QA TO

COMPANY UNDER THIS LICENSE IN THREE MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. **Confidential Information.**

A. Except to the extent consented to in writing by Company, QA agrees not to disclose at any time to any person or entity any confidential, proprietary or privileged information disclosed by Company to QA or known by QA as a consequence of or through QA's relationship with Company, or which QA may now possess or may hereafter create or obtain about Company and its business and affairs ("Confidential Information"); provided, however, that the restrictions of this Section shall not apply: (i) as may be required in connection with the use of the Materials for the Organization or Respondent in compliance with the Intended Use, (ii) as may otherwise be required by law, or (iii) to the extent such information shall have otherwise become publicly available.

B. Upon request of Company, the Confidential Information shall be immediately destroyed if in writing or deleted if electronic and not maintained. Upon compliance with this Section 10(B), QA shall promptly provide written certification to Company of such compliance.

C. QA shall maintain strict confidentiality of Data and take appropriate security measures to protect such Data. In furtherance thereof, QA shall enter into strict confidentiality agreements with the Organization or Respondent to ensure the confidentiality of same.

11. **Binding Effect.** This License and the rights and obligations arising hereunder shall inure to the benefit of, be binding upon and enforceable by QA and Company and their respective successors and permitted assigns. It is understood and agreed that neither party shall be entitled to circumvent this License (including, without limitation, the provisions hereof relating to Confidential Information) by acting, directly or indirectly, by or through one or more of such party's principals, owners, employees, agents, affiliates, subsidiaries, or other related persons or entities under such party's supervision or control.

12. **Waiver.** The waiver of any right in this License shall be in writing and signed by the party against whom enforcement is sought. The waiver of any right in this License shall not be a waiver of any other right in this License.

13. **Arbitration.** Except for actions by Company arising from non-payment of the Charges or any other payment due under this License, and requests for injunction or other extraordinary relief, each of which may be pursued in a court of law having competent jurisdiction, any dispute arising out of or in connection with the relationship of the parties and/or this License shall be resolved by binding arbitration conducted by an arbitrator. To commence arbitration, the party desiring arbitration shall notify the other party in writing of its desire to arbitrate, which shall include a brief description of the disputes and/or issues to be arbitrated ("Arbitration Notice"). If the parties are unable to mutually agree upon the selection of the arbitrator within thirty (30) days of the Arbitration Notice, then one shall be appointed and the arbitration shall be conducted pursuant to Title 3, Subtitle II of the Courts and Judicial Proceedings Article, Annotated Code of Maryland. The arbitration proceedings shall be conducted in Montgomery County, Maryland. The arbitrator shall not contravene or vary in any respect any of the terms and provisions of this License. The award of the arbitrator shall be final and binding upon the parties hereto, their heirs, administrators, executors, successors, and assigns, and a judgment upon such award shall be entered in any court having jurisdiction. In any proceeding, whether in court or in arbitration, the court or arbitrator may award to the prevailing party, as a recovery from the other party, all expenses, including but not limited to reasonable attorneys' fees and/or the arbitrator's fees incurred in instituting or defending such action.

QA AGREES THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON ANY INDIVIDUAL BASIS; CLASS ARBITRATION AND CLASS ACTIONS ARE NOT PERMITTED AND QA AGREES TO GIVE UP THE ABILITY TO PARTICIPATE IN CLASS ACTION.

14. **Relationship of Parties.** Nothing in this License is intended to, or shall be deemed to, constitute a partnership, franchise, or joint venture between the parties, and neither party will hold the other party out as a partner or joint venturer. Company and QA are independent contractors; neither party is the agent, representative, or employee of the other party; and nothing in this License will be construed to create any relationship between them other than an independent contractor relationship. Neither party will have any responsibility nor liability for the actions of the other party except as expressly provided herein. Neither party will have any right or authority to bind or obligate the other party in any manner or make any representation or warranty on behalf of the other party.

15. **Notices.** Any notice required or desired to be given pursuant to this License shall be (1), to the QA, in the form of email and shall be deemed duly served for all purposes if sent to the QA's email address listed by the QA currently in the "My Account" page on the Assessment Website; or (2) to Company, if sent (a) certified mail, postage prepaid, return receipt requested; or (b) an overnight or express courier service that provides written confirmation of delivery to 2915 Olney Sandy Spring Rd., Unit D, Olney, MD 20832 or to such other address as Company may designate to QA from time to time. Any notice given by email as provided in this section shall be deemed given as of the date emailed. *QA is solely responsible for ensuring that Company has the correct email address and cannot unsubscribe from Company emails, alerts, and notices.*

16. **Assignment.** QA shall have no right to delegate, subcontract, assign, or transfer any interest in or duties under this License. Company shall have the right to delegate, subcontract, assign, or transfer any interest in or duties under this License.

17. **Applicable Law; Exclusive Venue.** This License, together with the relationship between Company and QA hereunder, shall be construed in accordance with and governed by the laws of the State of Maryland of the United States of America. Any dispute arising with regard to this License or such relationship, which is not subject to the binding arbitration provisions set forth in Section 13 above, shall be exclusively determined by the federal or state courts having jurisdiction over Montgomery County, Maryland and all parties hereby agree to submit themselves to the jurisdiction of such courts.

18. **Entire Agreement.** This License, the Terms of Service, and Privacy Policy, constitutes the entire agreement of the parties and supersedes any prior or contemporaneous understanding, agreement with respect to the products and services described herein, or license agreement, including, but not limited to, the 2010 License Agreement and the 2013 License Agreement. To the extent that the Terms of Service, Privacy Policy or any other agreement between Company and QA and/or Organization conflicts with the License, the License shall control.

19. **Third Parties.** No provision of this License shall be deemed to confer upon any other person or entity any remedy, claim, liability, reimbursement, cause of action, or other right whatsoever.

20. **Survival.** The Section 2, as well as, Section 8 through Section 23 shall survive the expiration or termination of this License.

21. **Recitals.** The Recitals set forth above are incorporated herein by reference and are expressly acknowledged and agreed to by the parties hereto.

22. **Headings.** Any paragraph headings or captions contained in this License shall be for convenience of reference only and shall not affect the construction or interpretation of any provision of this License. Wherever in this License the singular number is used, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.

23. **Savings Provision.** In the event any one or more of the provisions contained in this License are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability

shall not affect any other provision hereof, and this License shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.