

ORIGINAL

**MASTER LICENSE AGREEMENT
BETWEEN
SAN JUAN COLLEGE
and
EVALUATIONKIT, LLC**

EvaluationKIT, LLC, a limited liability company ("EvaluationKIT"), and San Juan College ("Customer") enter into this Master License Agreement (the "Agreement") as of the 9th day of December, 2013.

1. **Products and Services.** Subject to the terms and conditions set forth in this Agreement, and subject to applicable laws, regulations and government restrictions, EvaluationKIT agrees to provide the products and perform the services selected by Customer, as set forth in Exhibit 1 hereto ("**Services**"). EvaluationKIT reserves the right to subcontract the Services and to add, change or discontinue its Services upon thirty (30) days prior notice to Customer.

2. **Statements of Work.** Additional Services may be purchased pursuant to a Statement of Work. "**Statement of Work**" means the standard EvaluationKIT form that is signed by both parties and sets forth the services, deliverables and pricing for the products or services ordered by Customer.

3. **Ownership of Customer Information and Grant of License.** Customer shall retain ownership of all rights whatsoever in the Customer information, materials and intellectual property provided by Customer to EvaluationKIT (the "**Customer Information**"). Customer grants to EvaluationKIT a limited, nonexclusive license during the term of this Agreement to copy, transmit, use and prepare derivative works of the Customer Information to the extent necessary for EvaluationKIT to perform its obligations under this Agreement. This license cannot be assigned or sublicensed by EvaluationKIT. This license will expire upon the termination of this Agreement for any reason.

4. **Ownership of EvaluationKIT Information.** EvaluationKIT shall retain ownership of all rights, including copyrights, and intellectual and/or proprietary rights in information, materials and intellectual property provided by EvaluationKIT to Customer, including, but not by way of limitation, the computer software, hardware, source code, programming code and interfaces necessary to deliver the Services, all updates and enhancements, modifications, reproductions and corrections thereof and all related patent rights, copyrights, trade secrets, graphics, text, images, documentation, data, illustrations, software, music, videos, sound, pictures, compilations, survey templates, surveys, page layout, music, videos, sound, pictures, compilations, design, processes, procedures, magnetic translation, digital conversion, or other material contained in the Services and the EvaluationKIT website (the "**Site**"), to the extent provided and/or designed by EvaluationKIT, and further including trademarks, service marks, related goodwill and marketing strategies (the "**EvaluationKIT Information**"). EvaluationKIT shall also retain all right, title and interest, including all intellectual property rights therein, in and to any computer code, work product or any other work of authorship or invention conceived of, developed or created by EvaluationKIT under the terms of this Agreement or any Statement of Work.

Customer agrees not to, directly or indirectly: copy, reproduce, republish, upload, download, post, transmit or duplicate the EvaluationKIT Information, the Site, the Services, or the data related to the Services, in whole or in part, except as authorized by this Agreement. Customer agrees not to, directly or indirectly: distribute in any way, license or sublicense, sell or trade, pledge, assign, reproduce, modify, reverse engineer, decompile, disassemble, translate, create derivative works of, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the EvaluationKIT Information or the Services. Customer further agrees not to remove or destroy any copyright, trade secret, proprietary or confidential legends, markings or labels placed upon or contained or embedded within the EvaluationKIT Information or from the Site or the Services. "EvaluationKIT" and the EvaluationKIT logo are trademarks or registered trademarks of EvaluationKIT under the applicable laws of the United States and/or other countries. Other EvaluationKIT product or service names or logos appearing in the Site are either trademarks or registered trademarks of EvaluationKIT and/or its affiliates. The absence of a product or service name or logo from this list does not constitute a waiver of EvaluationKIT's trademark or other intellectual property rights concerning that name or logo. Customer shall use commercially reasonable efforts to prevent any violation of EvaluationKIT's intellectual property rights in the EvaluationKIT Information. Customer agrees not to use the Site to appropriate

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EvaluationKIT's trademarks or trade dress and/or to copy or imitate the "look and feel" of the Site, or any portions thereof, for any reason.

5. Grant of License. Subject to the terms and conditions of this Agreement and to timely payment by Customer, EvaluationKIT grants Customer a limited, nonexclusive, non-transferable, non-sublicensable license to access and use the applicable portions of the EvaluationKIT Site and Services and any work product created by EvaluationKIT pursuant to this Agreement or any Statement of Work as provided in this Agreement, for the sole purpose of Customer receiving the Services during the term of this Agreement. This license will expire upon the termination of this Agreement for any reason. This license also pertains to the upgrades and enhancements made to the EvaluationKIT Information or Services that may be, in EvaluationKIT's discretion, made commercially available and free of charge to its Customers. EvaluationKIT shall inform Customer if upgrades and enhancements are being made available free of charge under this Agreement or will require the payment of additional fees. All access and use of the EvaluationKIT Site and Services, and all upgrades or enhancements thereto, shall be subject to the terms and conditions of this Agreement. Customer agrees that Customer will not, without prior written permission from EvaluationKIT, use the Services to provide products or services to a third party. Customer's employees, students, faculty and staff shall not be deemed "third parties" but are authorized users of Customer. Customer and its authorized users will use the Services only in compliance with this Agreement and all applicable laws including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation and child protective email address registry laws. Customer agrees that EvaluationKIT is serving as "host" and is not the sender of Customer email, and that Customer is solely responsible for its email and other activities using the Services. Customer agrees not to use the Site or Services to access or use third party mailing lists or otherwise prepare or distribute unsolicited email.

6. Location of the EvaluationKIT Information. Notwithstanding the foregoing, the EvaluationKIT Information shall be located on EvaluationKIT's servers and shall remain under the exclusive control of EvaluationKIT. Customer shall not have direct access to the servers hosting the EvaluationKIT Information and shall not have the right to modify the EvaluationKIT Information. Any attempt to gain unauthorized access to any computer system, accounts, lockers or databases maintained by or for EvaluationKIT is strictly prohibited.

7. Term. This Agreement shall be effective as of the date of execution of the Agreement by both parties ("**Effective Date**"). The Pilot Term of this Agreement ("**Pilot Term**") shall commence on February 1st, 2014 and shall continue until May 15th, 2014. Thereafter, the initial term of this Agreement ("**Initial Term**") shall commence on May 16th, 2014 and shall continue for a TWO (2) year period unless Customer gives written notice to EvaluationKIT that Customer wishes to terminate this Agreement before May 15th, 2014; upon EvaluationKIT's receipt of such written notice Customer's license to the EvaluationKIT Site and Services shall terminate. **The term of the Agreement shall be renewed automatically for successive periods of one (1) year each (a "Renewal Term")** after the expiration of the Initial Term and any subsequent Renewal Term, **unless** EvaluationKIT provides Customer, or Customer provides EvaluationKIT, with a written notice to the contrary at least forty-five (45) days prior to the end of the Initial Term or any Renewal Term. If either party provides written notice of non-renewal, this Agreement shall automatically terminate upon expiration of the current Term. Each Renewal Term shall incorporate and be governed by EvaluationKIT's then current pricing, which EvaluationKIT shall provide to Customer not less than sixty (60) days prior to the start of any Renewal Term, unless otherwise stated in the Agreement.

8. Termination.

Termination for Breach. This Agreement may only be terminated by either party if the other is in material breach of any provision of this Agreement, after written notice of default and opportunity to cure has been given to the breaching party. The notice of default must provide for an opportunity to cure of at least thirty (30) days following receipt of notice. If the breach is not cured before the cure date stated in the notice then the party giving notice may terminate this Agreement by giving the breaching party written notice of termination, which will be effective upon delivery. Nonpayment of invoices by Customer shall be a material breach.

Other Termination. Except for termination for breach by EvaluationKIT as set forth in this Paragraph 8, if this Agreement is terminated prior to the end of the Initial Term or the then current Renewal Term, Customer shall remain obligated for full payment of annual license fees.

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Effect of Termination or Expiration. Upon termination or expiration of this Agreement for any reason, all access to the Site and Services and all licenses granted hereunder shall immediately terminate, Customer shall discontinue all use of the Services, and all Customer Information and data stored on the Site will be permanently deleted. All fees set forth herein shall become immediately due and payable. Notwithstanding the termination of this Agreement, the rights and duties of the parties under Paragraphs 3, 4, 9, 12, 13, 14, 15, 16, 19, 20, 21, and 22 all provisions pertaining to ownership of intellectual property, and all provisions that by their nature are intended to survive expiration or termination, shall survive and remain in full force and effect.

9. Fees. Pricing for EvaluationKIT Services provided pursuant to this Agreement is set forth in Exhibit 1, attached hereto. Additional Services provided by EvaluationKIT to Customer shall be provided as set forth in a Statement of Work entered into between the parties. All prices are quoted in U.S. dollars and all payments shall be made in U.S. dollars. The fees hereunder do not include any applicable sales, use, excise, VAT or other taxes or duties levied or based on this Agreement or the Services provided hereunder.

10. Invoices; Late Fees; Interest. EvaluationKIT will invoice Customer upon the date of the Customer's execution of this Agreement for the period covering the Initial Term, and payment for the Initial Term is due upon execution of this Agreement. Customer shall be invoiced for Renewal Terms thirty (30) days prior to Renewal date, and shall pay such invoices within forty-five (45) days of the date of the invoice. Customer shall not make deductions of any kind from any payments due EvaluationKIT. No payment by Customer to EvaluationKIT of any lesser amount than that due to EvaluationKIT shall be deemed to be other than a payment on account, and no endorsement or statement on any check or in any letter accompanying any check or other payment shall be deemed an accord and satisfaction. EvaluationKIT may accept any payment without prejudice to EvaluationKIT's right to recover any remaining balance or to pursue any other remedy provided in this Agreement, or by applicable law. If any invoice is not paid in full within 45 days of the invoice date, Customer shall pay an additional late payment fee equal to 1.0% of the unpaid amount.

If Customer fails to pay invoices within sixty (60) days after the invoice date, EvaluationKIT may, after providing seven (7) days written notice to Customer, suspend the Services. If EvaluationKIT employs legal counsel to enforce payment obligations Customer shall pay EvaluationKIT's reasonable attorney's fees and court costs.

11. EvaluationKIT's Warranties and Representations. EvaluationKIT warrants that (a) the Services provided will be performed with reasonable care and skill, and (b) it has the right to give Customer access to the EvaluationKIT Services. As Customer's exclusive remedy and EvaluationKIT's sole obligation for breach of the warranty in subitem (a) above, EvaluationKIT shall reperform any defective Services at no additional charge. EvaluationKIT MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED BY EvaluationKIT HEREUNDER. EvaluationKIT HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR PURPOSE AND NONINFRINGEMENT.

12. Limited Liability. EXCEPT FOR VIOLATIONS OF PARAGRAPH 4, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE EvaluationKIT'S SERVICES. EvaluationKIT'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL BE FOR DIRECT DAMAGES AND SHALL BE LIMITED TO THE REFUND OF ALL FEES PAID FOR THE LAST 12 MONTHS UNDER THIS AGREEMENT.

13. Acknowledgement. Customer acknowledge (i) the fees set forth in this Agreement and any other contemplated charges are based on the disclaimer of warranty and limitation of liability specified above and (ii) such charges would be substantially higher if any of these provisions were unenforceable.

14. FERPA. EvaluationKIT warrants to Customer that it will not make available or distribute any student information in violation of the Family Educational Rights and Privacy Act ("The Buckley Amendment" or "FERPA").

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18. **Authority to Sign.** The persons executing this Agreement for and on behalf of the parties hereto represent that they are fully authorized to do so for and on behalf of their respective principals.

19. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and affiliates.

20. **Entire Agreement.** This Agreement (including the Exhibits) supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter. This Agreement may only be amended in a writing executed by both parties.

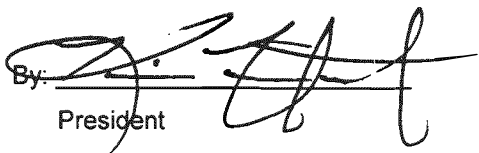
21. **Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

22. **Waiver.** A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day set forth below.

EvaluationKIT, LLC

CUSTOMER

By: 

President

By: Toni Hopper Pendergrass
Printed Name: DR. Toni H. Pendergrass
Title: President

Date: 1.24.2014

Date: 12-17-13

11-1-2013

12-15-2013

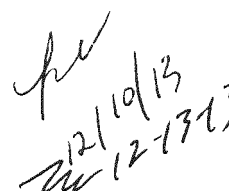


EXHIBIT 1

SERVICES AND PRICING

Description of Services:

The Services to be provided to Customer and the fees for those Services are set forth below. Any capitalized terms not defined in this Exhibit shall have the same definitions as set forth in the Agreement.

- **Account Management:** Allows direct management of the account, including the Account Hierarchy and Administrator Users.
- **Survey Authoring:** Ability to easily build and manage different survey instruments.
- **Project Management:** Functionality to manage the business rules surrounding projects, including start/end dates, access dates to reports for instructors and administrators, and email functionality to all user types.
- **Reporting:** The ability to generate a variety of reports at all levels of the account hierarchy, and provide reporting access to appropriate users according to administrative level and/or if they are an instructor of a specific course.

Services Availability:

EvaluationKIT is committed to maintaining operation of the EvaluationKIT Services on a 24-hours per day, 365 days per year basis. From time to time, however, and as may be necessary to maintain the proper operation of the EvaluationKIT Solution, EvaluationKIT may take its servers down for repairs, upgrades or routine maintenance. EvaluationKIT will use commercially reasonable efforts to minimize the impact of such operations and, if reasonably possible, notify Customer in advance of planned system downtime.

EvaluationKIT will provide operational support to Customer operational staff who manage the EvaluationKIT Solution during normal business hours (9:00am – 5:00pm Mountain time), Monday through Friday, excluding EvaluationKIT holidays. Operational support is available during these times via phone support line and email.

Fees for Services:

A. License Fee:

The License Fee includes unlimited Annual Survey Enrollments and use of the EvaluationKIT Online Course Evaluation Solution.

	Pricing
Pilot Term License	Free
Initial Term EvaluationKIT Standard License Fee	
Year 1	\$ 10,800
Year 2	\$ 14,000
Initial Term License Fee Total	\$ 24,800*

***The EvaluationKIT License Fees are non-refundable.**

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