

Americas Headquarters 6805 Route 202 New Hope, Pa 18938 www.mccanntesting.com North American Sales Office 800 Township Line Road Suite 300 Yardley, Pa 19067 Tel: 800.230.2213 opt 3 Support:support@mccann.com

# McCann Associates Software Service End-User Subscription Agreement (EUSA)

## IMPORTANT NOTICE TO SUBSCRIBER...PLEASE READ CAREFULLY:

The terms "we", "us", and "our" refer to McCann Associates Holdings, LLC d/b/a McCann Associates "McCann"). "You", "your", "grantee", "subscriber" or "end-user" refer to the individual and/or entity that has procured and/or who (which) accesses or uses Services whether the end-user has purchased and paid for Services directly or whether Services have been procured for the benefit of end-user access and use at no additional charge to such end-user. By way of example, an educational institution may pay for its administrators, teachers and students to access and use Services. Similarly, a corporation could pay for its employees to access and use Services. As an end-user, you are bound by the terms and conditions of this User Service Agreement whether you have paid directly for Services" or whether your access and use of Services has been paid for by a third party. "Subscription Services" or "services" refer to McCann's web-based SaaS application accessed by you via the internet. "Technical services" refers to support, consulting, or other services including customizations you have ordered (if any apply). The terms 'SaaS', 'Subscription Services' or 'services' or or other services' or 'services' or 'services'' or 'services''

## LEGAL AGREEMENT

This McCann End-User Subscription Agreement ("Agreement") is a legal agreement between you (either an individual or a single entity subscriber) as Subscriber Licensee/Grantee and McCann, Licensor/Grantor for use of the SaaS incorporating proprietary underlying Virtual Scoring Toolset<sup>™</sup> and IntelliMetric<sup>®</sup> or other proprietary technologies and any related documentation. Services are accessed solely through use of the SaaS IP domain, web address and Application Protocol Interface (API) technology via the Internet. By using SaaS, you agree to be bound by the terms of this Agreement and subscription. If you do not agree to the terms of this Agreement, you may not use the SaaS. SaaS is licensed on a software-as-a-service basis through subscription, it is never sold. The terms and conditions for access to and use of Services include and protect any related documentation or materials that may be distributed to you or to which you may gain access as an end-user. Your access to and use of Services is authorized exclusively by McCann at its sole discretion and is further contingent upon timely and seasonable payment of subscription and/or service fees as a condition precedent to initial and continued end-user access and use of such Services. Typically, the Service is procured on an entity-subscription or individual-use basis. For applicable details, check with the entity with which you are associated or employed and which has purchased Services for your related use. Pricing, fees, as well as the manner and timing of payment for Services may be governed collaterally by separate purchase order. For further details, check with the entity with which you are associated or employed and which may have purchased Services for your use. By using Services, you agree to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, you may not use Services.

## MODIFICATIONS TO SERVICES AND TERMS AND CONDITIONS OF USE

McCann may at any time make modifications, changes, revisions, maintenance updates, enhancements and alterations to services or this User Services Agreement, without prior notice. Subscribers are responsible for regularly reviewing this Agreement. Your continued use of Services following any modifications, changes, revisions, maintenance updates, enhancements, and alterations shall constitute your acceptance of each modification, change, alteration and the like.

## WHAT THIS SUBSCRIPTION AGREEMENT COVERS

Domestic and Foreign Intellectual Property statutes, treaties, conventions, protocols and agreements, including copyright laws (collectively "Intellectual Property law") protect Software as a Service ("SaaS"). SaaS is accessed exclusively on a subscription basis, it is not sold; SaaS is not a 'product' it is a pure service. As a subscriber, you acknowledge, assent to and agree to abide by all Intellectual Property law pertaining to and protecting Measured Success. You must hold a valid subscription, which we assign to you, in order to use Measured Success.

Your order is not effective until accepted by us. Upon acceptance we grant you limited authority to access and use SaaS on a personal subscription basis, i.e. only valid paid-up subscribers have authority to access and use the service. SaaS is intended exclusively for the personal use of each individual paid subscriber. Sharing of subscription details,



including username and password is strictly prohibited and shall be immediate cause for cancellation of service without notice. Your subscription will terminate at the end of your paid-up subscription period. The subscription may be subsequently renewed at the then current renewal price. Under certain circumstances, renewing subscribers may be eligible for discounts or other incentives - please see the heading 'SUBSCRIPTION RENEWAL' for important information regarding marketing, your assent to receive email and other marketing offers, incentives and other discounts that may apply to your subscription or subscription renewal.

#### **OWNERSHIP AND PROPERTY RIGHTS**

McCann reserves the right to deal with and contract with whom it desires at its sole discretion. Access to and use of Services is a privilege granted exclusively by McCann as Subscription Grantor. At its sole discretion, McCann may monitor, cancel or limit your access to and use of Services without notice of any kind. Potential subscribers are subject to contractually-valid acceptance criteria established by McCann. Subscriber understands and acknowledges that McCann holds all right, title and interest to SaaS, including, but not limited to, trade secret, patent, trademark and copyright in Subscription Services and documentation. Subject to the terms of this Agreement, McCann grants to the individual subscriber who has paid for SaaS, a non-exclusive non-transferable subscription to use Subscription Services during the term of this Agreement or the length of the term for which the subscriber has paid for the SaaS service, whichever is shorter. Additional or individual details and/or constraints or restrictions upon use of SaaS may be contained with the McCann Associates Master Services Agreement Purchase Order attached separately herewith. Use of Services is limited to non-commercial, educational or valid business purposes only as agreed between McCann and subscriber; you may access and use Services on a subscription or individual subscription basis depending upon how Services were purchased or procured. For applicable details, check with the entity with which you are associated or employed and which has procured Services for your related use.

## SUBSCRIBTION GRANT AND OTHER TERMS OF USE

Upon your acceptance as an end-user/subscriber, McCann grants to you a non-exclusive, non-transferable, limited authority to access and use Services on a individual subscription basis by use of a special username and password ("entry key") to be issued by McCann and that shall be used only for purposes consistent with this Agreement and the pedagogic or other business nature and objectives for which Services were developed and procured. The entry key is McCann confidential information as defined within this Agreement and should not be used for any purpose inconsistent with the terms and conditions of this Agreement or the technology itself. A subscription does not grant you any rights to use McCann proprietary interfaces and other intellectual property in the design, development, manufacture, licensing or distribution of third party products, applications, devices, materials and accessories for use with SaaS or other McCann technologies. Some of those rights may be available under a separate agreement from McCann Associates. For more information, please contact McCann Associates.

You may not share or otherwise divulge the entry key assigned to you to any other person. Doing so will invalidate your subscription and may subject you to civil penalties. This subscription will terminate at the end of the service term shown on the McCann Associates Master Services Agreement Purchase Order you received after subscription (receipt), subscription agreement or contract between you or the entity with which you are associated or employed (if not purchased individually) and McCann. The typical SaaS subscription service period runs for one (1) year from date of purchase.

The subscription may be subsequently renewed at the then current renewal price. Domestic and Foreign Intellectual Property statutes, treaties, conventions, protocols and agreements, including copyright laws (collectively "Intellectual Property law") protect the Services and all underlying technologies and connected intellectual property. As a subscriber, you acknowledge, assent to and agree to abide by all Intellectual Property law pertaining to and protecting Services and technology. In all cases, you must hold a valid subscription and a specifically assigned entry key in order to access and use Services. Only valid and paid-up subscribers have authority to access and use Services exclusively for personal use. A subscriber may use Services only for the time period for which subscription has been authorized by McCann. Any attempt to use an entry key, transfer use of Services or actual use of Services by anyone other than the valid subscriber shall constitute a breach of this End-User Service Subscription

COPYRIGHT © 2012 by McCann Associates. All Rights Reserved. No part of this work may be used, accessed, reproduced or distributed in any form or by any means or stored in a database or any retrieval system, without the prior written permission of McCann Associates or its subsidiaries and /or affiliates.



Agreement and subscription and shall result in immediate termination of the subscription as described below under the heading 'Termination'.

Subscriber shall not cause any part of the Application in any way to be decompiled, disassembled or reverse engineered, reverse compiled or re-implemented nor shall any attempt to do so be undertaken or permitted. Subscriber agrees not to modify nor create a derivative of any part of the Services, underlying software application or components thereof nor remove, edit, copy, or modify any product identification, copyright or other notices. Intentional attempts to trick, deceive, mislead, fool or otherwise circumvent the legitimate purposes for which the SaaS has been purchased, including false or purposefully designed submissions calculated to test, reveal or expose underlying scoring technology or other product functionality ("false submission") shall be considered a breach of this subscription agreement and shall be cause for immediate cancellation of subscription without refund or reimbursement of any kind. Subscriber agrees not to modify nor create a derivative of any part of SaaS, remove any product identification, copyright or other notices, create or aid in the creation of false submissions.

## TERMINATION

Without prejudice to any other rights, we may terminate this subscription if Subscriber breaches or fails to comply with any term or condition of this Agreement or associated collateral agreement. In such event, Subscriber shall immediately cease and desist from further use of any materials or documentation connected with Services and shall destroy and/or return, within the exclusive option of McCann, all related or connected documentation or materials. Upon request of McCann, terminated subscribers must provide a written statement acknowledging discontinued use of Services and documentation. Upon request of McCann, terminated subscribers shall provide McCann with a sworn verification as to subscriber's discontinued use of Services and return or destruction of such related documentation or materials.

#### CONFIDENTIAL INFORMATION

For purposes of this Agreement, confidential information shall include: the entry key used exclusively by a single assigned end-user and all materials or documentation relating to or used in conjunction with the Service. Subscribers shall not use, disclose or otherwise disseminate to any other person or entity any Confidential Information or any copy or summary of any Confidential Information. Subscribers shall not remove or duplicate any Confidential Information or participate in any way in the removal or duplication of any Confidential Information without McCann's prior written consent specifically to do the same. In the event that any party or its representatives is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any information supplied to such party in the course of its dealings with the other party or its representative, it is agreed that such party will provide prompt notice of such request or requirement to McCann so that McCann may seek an appropriate protective order and/or by mutual agreement waive compliance with any contrary provisions of this Agreement. Upon the termination of this Agreement, at McCann's discretion, subscribers shall destroy or return promptly to McCann: (i) all copies thereof made; and (ii) all portions of all compilations, studies, notes, analyses and memoranda prepared in connection with the examination thereof or derived therefrom that contain or reflect any Confidential Information. Upon request of McCann, subscribers shall provide McCann with a sworn verification as to the return or destruction of such Confidential Information.

#### LIMITED WARRANTY

MCCANN WARRANTS TO SUBSCRIBER THAT SUBSCRIPTION SERVICES WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH CURRENT FUNCTIONAL DOCUMENTATION. MCCANN PROVIDES NO WARRANTY THAT THE USE OF SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. MCCANN'S TOTAL LIABILITY WITH RESPECT TO THIS WARRANTY AND SUBSCRIBER'S SOLE REMEDY FOR BREACH OF THIS WARRANTY SHALL BE LIMITED TO SCORE CORRECTION OR REUSE OF SUBSCRIPTION SERVICES AT NO ADDITIONAL CHARGE TO SUBSCRIBER. NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. IN NO EVENT, HOWEVER, SHALL MCCANN BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE SERVICE.

3

COPYRIGHT © 2012 by McCann Associates. All Rights Reserved. No part of this work may be used, accessed, reproduced or distributed in any form or by any means or stored in a database or any retrieval system, without the prior written permission of McCann Associates or its subsidiaries and /or affiliates.



THE ABOVE IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY MCCANN. MCCANN MAKES AND SUBSCRIBER RECEIVES NO OTHER WARRANTY EXPRESS OR IMPLIED. THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE SET FORTH ABOVE, THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF MCCANN FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE DELIVERY, USE OR PERFORMANCE OF ANY SUBSCRIPTION SERVICES OR INTELLECTUAL PROPERTY PROVIDED TO SUBSCRIBER BY MCCANN.

#### LIABILITY

UNDER NO CIRCUMSTANCES SHALL MCCANN'S LIABILITY TO THE SUBSCRIBER HEREUNDER INCLUDE, NOR SHALL MCCANN BE LIABLE FOR, ANY CLAIM OR DEMAND AGAINST MCCANN BY A THIRD PARTY, EXCEPT AS SPECIFIED IN ABOVE, OR FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR PRODUCTS OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, TORT OR COVER DAMAGES HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM NEGLIGENCE OR FROM DELAY OF DELIVERY OR FROM LOSS OF DATA, BUSINESS OR GOODWILL, WHETHER OR NOT SUBSCRIBER HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

## ASSIGNMENT

This Agreement and the subscription granted hereunder may not be assigned, licensed, transferred or otherwise alienated by subscriber to any other party.

## FEES

Use of Subscription Services is subject to current and seasonable payment of applicable participation and/or special fees, if any, by Subscriber. Failure to comply with payment terms in consideration of continued and valid subscription use shall be grounds for suspension, revocation or termination of subscriber's access to Subscription Services.

## GOVERNING LAW

This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania. In the event that any provision of this Agreement is deemed invalid or unenforceable, the other provisions of this Agreement shall continue in full force and effect.

#### OTHER

This Agreement constitutes the entire understanding between McCann and the Subscriber with respect to the subject matter hereof and supersedes any prior agreements, understandings, negotiations or offers between them. Any modification or amendment of the terms of this Agreement shall not be binding upon either party unless such amendment or modification is in a written form signed by an authorized representative of each party.

ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY MCCANN.

Rev. 09/2012. McCann Associates.

4

COPYRIGHT © 2012 by McCann Associates. All Rights Reserved. No part of this work may be used, accessed, reproduced or distributed in any form or by any means or stored in a database or any retrieval system, without the prior written permission of McCann Associates or its subsidiaries and /or affiliates.