End User License Agreement

This End User License Agreement (this "**Agreement**") sets out the terms and conditions that govern the use of Software (as defined below) available from the General Board of Higher Education and Ministry of The United Methodist Church ("**Licensor**") by you, a user of the Software ("**User**").

Licensor provides the Software solely on the terms and conditions set forth in this Agreement and on the condition that User accepts and complies with them. By accessing, using, downloading, or installing the Software, User acknowledges that it is entering into a legally binding agreement with Licensor subject to these terms and conditions. User's rights and obligations with respect to use of the Software are as follows:

      1.   <u>Definitions</u>. For purposes of this Agreement, the following terms have the following meanings:

      "**Documentation**" means user manuals, technical manuals, and any other materials provided by Licensor, in printed, electronic, or other form, which describe the installation, operation, use, or technical specifications of the Software.

      "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

      "**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

      "**Software**" means the software programs that User is accessing and using, namely, the EM360 assessment tool and all related online or mobile applications, and any Updates made available to User by Licensor under the terms of this Agreement.

      "**Term**" is defined in Section 10.

      "**Third Party**" means any Person other than User or Licensor.

      "**User Account**" means the account created by and personally tied to the User for accessing the Software.

      "**Update**" means all updates, upgrades, bug fixes, error corrections, enhancements, and other modifications to the Software.

      2.   <u>License Grant and Scope</u>. Subject to and conditioned upon User's strict compliance with all terms and conditions set forth in this Agreement, Licensor hereby grants to User a non-exclusive, non-transferable, non-sublicensable license during the Term to use the Software and Documentation, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 3 or elsewhere in this Agreement. This license grants User the right to create a User Account for, access, and use the Software in accordance with the related Documentation.

      3.   <u>Use Restrictions</u>. User shall not, directly or indirectly:

(a)   modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;

(b)   combine the Software or any part or functionality thereof with, or incorporate the Software or any part or functionality thereof in, any other programs except as may be expressly authorized or directed by the Documentation;

(c)   reverse engineer, disassemble, decompile, decode, manipulate, download, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

(d)   remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;

(e)   sell, sublicense, distribute, publish, frame, mirror, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(f)   use the Software or Documentation in violation of this Agreement or in violation of any law, regulation, or rule or; or

(g)   use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor's commercial disadvantage.

4.   <u>Responsibility for Use of Software</u>. User is responsible and liable for all uses of the Software and Documentation, directly or indirectly, through User's User Account. Specifically, and without limiting the generality of the foregoing, User is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation occurring on Users Account by any Person, whether such access or use is permitted by or in violation of this Agreement. User is responsible for all information and data submitted through or uploaded to the Software.

5.   <u>Password Control</u>. User agrees to maintain the User Account username and password as private and confidential information. User's username and password and any authorization thereunder may not be transferred, leased, assigned, or sublicensed without Licensor's prior written consent. User will not itself, and will not allow others to, circumvent the password restrictions implemented by the Software. User further agrees to notify Licensor immediately upon discovery or suspicion of compromise of the confidentiality of the User's Password and of any change in contact information.

6.   <u>Technical Support Services</u>. User may obtain technical support services from Licensor through the following link: EM360Support@gbhem.org. Support requests will be responded to within eight (8) hours. Technical support services consist of (i) User providing to Licensor a reasonable description of a problem related to User's use of the Software and (ii) Licensor or a Third Party acting on Licensor's behalf attempting to resolve the reported problem.

7.   <u>Updates</u>. Licensor may (but undertake no obligation to) develop Updates to the Software and implement such Updates from time to time in their sole discretion. User agrees that Licensor has no obligation to develop any Updates at all or for particular issues. Licensor will provide Updates to User free of charge if User is entitled to such based on the nature of User's account and access rights. User

agrees that all Updates made available to User will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement.

8. <u>Collection and Use of Information</u>. User acknowledges that Licensor may transmit data and information regarding User or User's comments, statements, or other information collected by or through the Software to Third Parties on whose behalf the information is being requested or gathered (e.g., the employing institution, diocese, ministry, annual conference, etc. of User or the person whom User is evaluating). The storage and transmission of such data and information shall be subject to the privacy policy established by Licensor and available at https://www.gbhem.org/em360-resources/. Further, Licensor may, directly or indirectly, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used for the purposes of: (i) improving the performance of the Software or developing Updates; and (ii) verifying User's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.

9. <u>Intellectual Property Rights</u>.

(a) User acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to User. User does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto, other than to use the same in accordance with the license granted and subject to all terms, conditions, and restrictions under this Agreement. Licensor (or the party through whom Licensor has licensed such rights) reserves and shall retain its entire right, title, and interest in and to the Software, Documentation, and all Intellectual Property Rights arising out of or relating to the Software and Documentation.

(b) User shall safeguard all Software, Documentation, and all copies thereof from infringement, misappropriation, theft, misuse, or unauthorized access. User shall promptly notify Licensor if User becomes aware of any infringement of the Intellectual Property Rights in the Software and/or Documentation and fully cooperate with Licensor in any legal action taken by Licensor to enforce its Intellectual Property Rights.

(c) In the course of using the Software or Documentation, User may provide Licensor with feedback, including but not limited to suggestions, observations, errors, problems, and defects regarding the Software, Documentation, or other Licensor services (collectively "**Feedback**"). User hereby grants Licensor a worldwide, irrevocable, perpetual, royalty-free, transferable, sub-licensable, non-exclusive right to use, copy, modify, distribute, display, perform, create derivative works from, and otherwise exploit all such Feedback.

10. <u>Term and Termination</u>.

(a) This Agreement and the license granted hereunder shall remain in effect until terminated as set forth herein (the "**Term**").

(b) Licensor may terminate this Agreement, effective upon written notice to User, if User, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Licensor provides written notice thereof.

(c) User may terminate this Agreement by ceasing to use the Software and notifying Licensor of the same.

(d)   Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and User shall cease using and destroy all copies of the Software and Documentation.

11.   <u>Warranty Disclaimer</u>. THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO USER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE USER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

12.   <u>Limitation of Liability</u>. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS AFFILIATES BE LIABLE TO USER OR ANY THIRD PARTY WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, OR OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, MULTIPLE, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA, LOSS OF INCOME, LOSS OF OPPORTUNITY, LOST PROFITS, COSTS OF RECOVERY, OR ANY OTHER DAMAGES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT FOR BREACH OF CONTRACT, NEGLIGENCE, OR OTHERWISE, AND WHETHER OR NOT LICENSOR OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. THE TOTAL CUMULATIVE LIABILITY OF LICENSOR AND ITS AFFILIATES IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, OR OTHER OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY TERMS INCORPORATED BY REFERENCE, SHALL NOT EXCEED ONE HUNDRED DOLLARS ($100).

13.   <u>Indemnification</u>. User will indemnify and hold harmless Licensor and its officers, directors, employees, agents, licensors and other providers, against any and all claims, actions, proceedings, suits, liabilities, losses, damages, costs and expenses, including attorneys' fees (collectively, "**Liabilities**") arising out of or relating to User's breach of this Agreement or User's use of the Software (but excluding any Liabilities to the extent caused by Licensor's gross negligence or willful misconduct). Licensor reserves the right to assume the sole control of the defense and settlement of any claim, action, proceeding or suit for which User is obliged to indemnify Licensor. User will cooperate with Licensor with respect to such defense and settlement.

14.   <u>Limitation on Claims</u>. ANY CAUSE OF ACTION OR CLAIM USER MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOFTWARE OR DOCUMENTATION MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

15.   Miscellaneous.

(a)   All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule.

(b)   Licensor will not be responsible or liable to User, or deemed in default or breach by reason of any failure or delay in the performance of its obligations hereunder, where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, fluctuations or non-availability of electrical power, non-functionality of User equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.

(c)   Notices may be sent by Licensor to User through the User Account or to any email address indicated by User in the User Account information. User may send notices to Licensor through the means established in the User Account or Software, or to the email addresses: EM360@GBHEM.org.

(d)   This Agreement, together with all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between User and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Customer agrees that the electronic text of this Agreement constitutes a writing and its assent to the terms and conditions hereof constitutes a "signing" for all purposes.

(e)   User shall not assign, delegate, or otherwise transfer any of its rights, obligations, or performance under this Agreement, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. No transfer will relieve User of any of its obligations or performance under this Agreement. Any purported transfer in violation of this Section 15(e) is void. Licensor may freely assign, delegate, or otherwise transfer all or any of its rights, obligations, or performance under this Agreement without User's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f)   This Agreement is for the sole benefit of the parties hereto, and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(g)   This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. Any waiver of the provisions of this Agreement will be effective only if in writing and signed by Licensor. A waiver of any provision, breach, or default by Licensor or Licensor's delay in exercising its rights shall not constitute a waiver of any other provision, breach, or default.

(h)   If any term or provision of this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(i)   This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(j)   The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.