e-ELL PRO Software License Agreement

MediaNet Solutions, Inc. (hereinafter "MSI"), owner of e-ELL PRO Software, (hereinafter "Software") produces the Software that is used in English Learner (EL) student management and administration.

Software License Agreement – By logging into the Software, you agree that you have been authorized by the Local Education Agency (LEA) and/or agency (hereinafter "Licensee") that possess a license to the Software for its own internal use, and MSI is willing to grant Licensee such a license, subject to the terms and conditions of this Agreement. By logging into the Software, you agree to abide by the terms and conditions as set for the Licensee as set forth in this agreement. The Software is licensed (not sold) under yearly subscriptions allowing Licensee to use the Software during the specified subscription period.

Grant of Software License - By subscribing to the Software, the Licensee is hereby granted a nontransferable, nonexclusive license to use the Software for the term of the subscription. Licensee agrees that it will not assign, sublicense, or transfer Licensee's rights under this Agreement, or pledge, lease, rent, lend or sell Licensee's copy of the Software to others. Software is defined as the e-ELL PRO computer program and interface used to view, input, and print data for special education student management or other documents and information. It also includes any updates or maintenance releases to the Software during the subscription term.

Term - The term of this Agreement shall run from the initial year (12-months) and then for each annual period for which the Software subscription is renewed. This Agreement is effective upon receipt of Software and shall continue until terminated. This Agreement will terminate automatically if Licensee does not renew the annual subscription and pay the associated fees, billed annually after the first year.

User Login and Passwords - All Licensee staff using the Software to complete, review and print special education reports and forms, or any other reports or data included in Software modules will be entitled to log onto the Software and view and/or manipulate data. Passwords are to be kept confidential and not shared with persons or entities outside Licensee's institution. This protects the integrity of Licensee's information. Anyone with a valid set of user/group names and password(s) can log in and manipulate the Software's data. It is the responsibility of the Licensee to ensure that individual and/or group passwords are managed in compliance with the requirements of Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA) as appropriate.

Trade Secrets and Ownership - Licensee understands and agrees that the Software constitutes valuable properties and trade secrets of MSI embodying substantial creative efforts and confidential information, ideas, and expressions. The Software, whether the original or any complete or partial copies thereof, whether said original and copies are made by Licensee or anyone else, and all copyright, patent, trade secret, and other intellectual and proprietary rights therein, are and remain the property of MSI. Aspects of the Software that are MSI's trade secrets include the specific design and structure of the Software. Further, any and all details of this Agreement, the consideration paid by Licensee for the Software, and all other related details and information are Proprietary Information and, thus, the property of MSI. Licensee agrees not to disclose, discuss, or divulge this information to any third party or legal entity without the prior written consent of MSI.

Restrictions on Use - The license granted by MSI to Licensee to use the Software is subject to the following restrictions:

- The Software may be used only by Licensee for its internal business purposes and only for the direct benefit of Licensee.
- The Software may be used at any point in time only by the number of persons and/or for the number of students for whom a license fee has been paid; all such use may only be by those persons using the Software for the benefit of Licensee in the course and scope of their employment with Licensee.
- Access to the Software can only be provided to outside agencies and/or entities as approved and accepted by MSI.

Service Level Commitment - MSI is committed to providing superior service and support. MSI's service level commitment provides security, uptime guarantee, system response time guarantee, and product support to the Licensee.

- (A) Security The student data created by Licensee is owned exclusively by Licensee. MSI will never use Licensee's data or make the data available to any third party without written permission. MSI ensures the privacy of Licensee's data by utilizing industry best-practices for security such as password protection, data encryption and secure networks. Data is stored using Microsoft SQL Server on Windows servers housed in a state-of-the-art Data Center that follows FERPA data security policies and procedures. The transfer of sensitive data, such as student data is accomplished over a secure network using secure socket layers (SSL). Components of the system, where technically feasible, are redundant and fault tolerant.
- **(B) Uptime Guarantee** The portions of the Software services which are operated by MSI will have at least 99% uptime, as measured monthly, excluding planned downtime. MSI will notify Licensee within two business hours of any known and verified unscheduled downtime and update the status to Licensee periodically until the service is restored. MSI will notify Licensee when the service is restored. Planned downtime will be no greater than eight hours monthly and will occur at a regularly scheduled time during off-peak periods.
- (C) Product Support Technical support for Software is provided as part of the subscription fee for each subscription. For any issues related to use of the Software for the purpose(s) intended, MSI staff are available for phone or e-mail support for the Licensee's designated technical support Primary Contacts (hereinafter "PC") as deemed necessary by MSI personnel and subscribed for and designated by Licensee. PCs are a pre-defined limited set of Licensee staff that are authorized to receive technical support from MSI in the use of the Software. Technical support services are available through toll-free phone and e-mail Monday through Friday (except major holidays) from 8:00 am to 5:00 pm (GMT-Arizona) with response times within 2 business hours.

Termination - This Agreement is effective from the start date set forth in the "Term" section through the end date as set forth in the "Term" section and shall remain in effect for each annual period for which the Software subscription is renewed. Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches any obligation and fails to cure such breach within thirty (30) days after receiving notice; provided, however, that, (a) for any noncompliance with this Agreement or the Terms of Service, MSI may terminate this Agreement in a shorter period of time if such termination is necessary for MSI to avoid liability or (b) for Licensee's failure to timely pay fees due, MSI may immediately terminate this Agreement and discontinue the Software. Termination of this agreement is automatic if the annual Maintenance and Support fees are not received by MSI within sixty (60) days of invoice. Notwithstanding anything to the contrary in this Agreement, either party shall have the right to immediately terminate this Agreement in the event the other party: (a) terminates or suspends its business; (b) becomes subject to any bankruptcy or insolvency proceeding under United States Federal or state statute that is not cured within sixty (60) days; (c) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority; or (d) has wound up liquidated, voluntarily or otherwise ceased to conduct its business in the normal course.

Upon termination or expiration of this Agreement, Licensee shall immediately pay all amounts due to MSI as of the date of termination or expiration (and all unpaid charges will be deemed to immediately become due), and immediately cease all use of the Software. Termination of this Agreement shall not bar MSI from seeking any other remedy it may have available against Licensee for breach of the Agreement. Licensee shall hold MSI harmless for any loss or other consequences of a termination of the License under this Agreement.

Except as otherwise expressly provided herein, all Licensee's rights under this Agreement will immediately terminate upon the termination or expiration of this Agreement. Any and all provisions, promises and warranties contained herein which by their nature or effect are required or intended to be observed, kept or performed after termination of this Agreement will survive the termination or expiration of this Agreement and remain binding upon and for the benefit of the parties hereto.

Cancellation/Refund - If a subscription and/or this Agreement is cancelled or terminated by Licensee after the commencement of the subscription year, there will be no full or partial refunds. If a subscription and/or this Agreement is cancelled or terminated by MSI, a pro-rated portion equal to the fees paid by Licensee minus the costs incurred by MSI will be refunded to the Licensee.

Limited Warranty - MSI warrants that the Software will perform substantially in accordance with its defined purpose during the course of the subscription period.

Disclaimer of Warranties - EXCEPT AS PROVIDED HEREIN, THIS SOFTWARE AND ANY RELATED SERVICES ARE PROVIDED "AS-IS", AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MSI, ITS AFFILIATES, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD-PARTY CONTENT AND SERVICE PROVIDERS DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THIS SOFTWARE, THE RELATED MATERIALS AND ANY SERVICES RENDERED IN CONJUNCTION WITH THE SOFTWARE, INCLUDING THEIR FITNESS FOR A PARTICULAR PURPOSE, THEIR QUALITY, THEIR MERCHANTABILITY, OR THEIR NON-INFRINGEMENT. MSI does not warrant that the Software is free from bugs, viruses, errors, free from interruption, or other program limitations. MSI makes no warranty regarding the accuracy, completeness, sequence, timeliness or availability of the software or any part thereof, including any information or other materials transmitted by licensee or authorized third parties using the software.

Access to Service - The parties acknowledge that, since the Internet is neither owned nor controlled by any particular entity, MSI can make no guarantee that any given user will be able to access the Software at any given time. There are also no assurances that access and service will be available at all times or be uninterrupted, and MSI shall not be liable to Licensee for failure of accessibility to the Software, including due to failures of the computer which it is installed on or for other causes beyond MSI's reasonable control.

Indemnification - Licensee agrees to completely indemnify, hold harmless and defend MSI, including its officers, directors, shareholders, and agents, against any and all claims, including claims by third parties, agents or employees of Licensee, which arise directly or indirectly out of this Agreement, out of Licensee's use or operation of the Software, or out of exporting, sending, transmitting and/or sharing of Software data, except for the sole and/or gross negligence of MSI or the intentional and willful misconduct of MSI.

Limitation of Liability and Assumption of Risk - MSI shall not be responsible or liable for any incidental, actual, or consequential damages suffered by Licensee through the uses or operation of the Software, whether or not such damages or the risk of such damages were disclosed to MSI or reasonably foreseen. The entire risk of use and consequences of use of the Software including, but not limited to, lack of compliance with State or Federal rules or regulations, is assumed by and falls completely on Licensee. MSI shall not be liable in any respect for any claims, loss or injury alleged to have resulted from use of or in reliance on the Software. In this respect, Licensee agrees to completely indemnify, hold harmless and defend MSI, including its officers, directors, shareholders, and agents, against any and all claims, including claims by third parties, agents or employees of Licensee, which arise directly or indirectly out of the Licensee's use or operation of the Software.

The Software provides features that can be used to send, export and/or share Software data with external computer systems owned by the Licensee or contracted by the Licensee with other entities related to the Licensee's needs that include but are not limited to state, federal and/or Medicaid reporting requirements. MSI shall not be responsible or liable for any incidental or consequential damages suffered by Licensee in the exporting, sending, transmitting and/or sharing of Software data, whether or not such risks or damages were disclosed to MSI or otherwise reasonably foreseen. The quality and usefulness of the Software data is solely the responsibility of the Licensee to assess and maintain. The entire risk and consequences of exporting, sending, transmitting and/or sharing of Software data is assumed by and falls completely on the Licensee and it shall hold MSI harmless in any respect for any claims, loss or injury alleged to have resulted from use of or in reliance on the Software's data. In this respect, Licensee agrees to completely indemnify MSI including its officers, directors, shareholders, and agents, and defend against any and all claims, including claims by third parties, agents or employees of Licensee, which arise directly or indirectly out of exporting, sending, transmitting and/or sharing of Software data.

Limitation of Damages – The parties agree that any claim for damages against MSI arising directly or indirectly out of this Agreement or the use of the Software is limited to and shall not exceed the most recent amount paid by Licensee for a 12 month license to use the Software. In no event shall MSI be liable for any indirect, incidental, consequential, special, multiple, punitive or exemplary damages or lost data, loss of goodwill, work stoppage, hardware failure or malfunction, or loss of federal or state benefits including Medicaid reimbursements or privileges, even if MSI has been advised of the possibility of such damages, whether arising out of tort, contract, warranty or strict liability, and even if the limited warranty remedy fails of its essential purpose. This limitation of liability does not apply if liability arises as a result of MSI's intentional misconduct or willful or gross negligence.

Assignment - MSI shall have the right to assign this Agreement, and all of its rights and privileges under this agreement, to any other person, firm or corporation without Licensee's prior consent; provided that the assignee shall expressly assume and agree to perform the obligations and the functions of MSI relative to this agreement. Licensee may not assign this Agreement, or any rights granted to Licensee under this Agreement.

Complete Agreement - This Agreement sets forth MSI's entire liability and Licensee's exclusive remedy with respect to the Software. The Licensee acknowledges that this Agreement is a complete statement of the Agreement between Licensee and MSI, and that there are no other contemporaneous understandings, promises, representations, or descriptions regarding the Software or any related services. This Agreement does not limit any rights that MSI may have under trade secret, copyright, patent, or other laws. The representatives of MSI are not authorized to make modifications to this Agreement, or to make any additional representations, commitments, or warranties binding on MSI, other than in writing signed by an officer of MSI. Accordingly, such additional statements are not binding on MSI, and the Licensee should not rely on such statements. If any provision of this Agreement is invalid or unenforceable under applicable law, then it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect.

Jurisdiction and Governing Law - The validity and performance of this Agreement shall be governed by Arizona law, except as to copyright and trademark matters, which are governed by federal law. The parties agree that the exclusive venue for any legal actions arising out of this agreement shall be filed in the courts of Maricopa County in and for the State of Arizona.