

**MINNESOTA LITERACY COUNCIL
ADULT BASIC EDUCATION TECHNOLOGY SERVICES**

THIS AGREEMENT by and between Independent School District 271 acting for Metro South Adult Basic Education, 2575 W 88th St, Bloomington MN 55431, 952-681-6107, hereinafter referred to as "ABE Program," and the Minnesota Literacy Council, hereinafter referred to as "MLC", is entered into this 20th day of June, 2018, for the period of July 1, 2018, to June 30, 2019.

MLC agrees to:

1. Provide access to SID software (new name) and companion files that meet current Minnesota and National Reporting System (NRS) guidelines as of May 1, 2018.
2. Supply one online Technical Manual.
3. Offer staff training for SID as necessary, including the following:
 - On-site training for **new** ABE Programs (for as many staff as required);
 - Approximately 4 user meetings (2 hrs/each) at the Minnesota Literacy Council;
 - Telephone technical support;
 - Unlimited e-mail support.
4. Host the SID application and data files, which includes the following:
 - Files are stored on a secure server with redundant power and connectivity;
 - Backups of the entire system are performed nightly with versions kept both on- and off-site;
 - Backups of input data are performed twice a day;
 - Data is protected with SSL data encryption.
5. Provide support for the SID software including the following:
 - Ongoing software bug fixes;
 - Updated software security patches;
 - Implementation of new standard reports – custom report requests will be implemented if feasible;
 - Addition of new NRS tables;
 - Assistance with creating and formatting required Minnesota Department of Education (MDE) ABE reports;
 - Annual migration of student and class data to new terms;
 - Annual creation of entry NRS levels based on state ABE policy.
6. Burlington English and Edmentum Support and Administration Services
 - Offer access to Burlington English and Edmentum on-line learning system (number of seats to be determined).
 - Training – new user training, in-service training
 - Admin – create new teacher accounts, maintain student database
 - Reporting – run usage reports for consortia and/or state staff on request
 - Phone/email support – available to answer questions from teachers ("How do I...?")
 - Tech support – assist teachers with technical difficulties, refer to and/or contact ST Tech Support as necessary to resolve problem
7. Provide each consortia one Northstar Sponsor site license, which includes:
 - A Northstar portal through which consortia clients can access the assessments.
 - The ability to administer Northstar assessments in a proctored environment, and to award certificates to those passing at 85% or higher.
 - A database that will include the test results of all those accessing the assessments through the consortia portal.
 - An admin portal which includes access to online proctor training and other resources.
 - Support and technical assistance.

ABE Program agrees to:

1. Pay an annual fee of **\$ 18,733.10**, as is submitted by MLC with this agreement, for the use of SID, Burlington English, Edmentum, Northstar, and related technical support/training within thirty (30) days of billing date. The fee will be based on enrollment data submitted to MDE from the previous program year. Create user IDs and passwords for member ABE Programs.
2. Designate specific user access to reporting services through Visual Studios. Since these users will have access to all of ABE Program's members' data, this access must be closely controlled.
3. Limit the use of SID software to the purchasing ABE Consortium members only. The ABE Consortium member may have unlimited users within its ABE service area. Manuals and forms may be copied as necessary.
4. Ensure data integrity and security by performing the following activities:
 - Create a system for ensuring passwords are secure and changed when staff changes occur;
 - Notify MLC staff if announced updates have not been implemented in ABE Program's system;
 - Report software bugs in a timely manner and provide appropriate information for use in troubleshooting;

Additional Terms and Conditions

MLC will retain all rights to the SID system, including software (and any modifications to the software), reports and manuals. No portion of the software or accompanying materials may be reproduced, distributed or sold without written permission from MLC.

The software code will be available to users. However, if ABE Program modifies the code or restricts access by the software developer contracted by MLC to the code, MLC will not provide any of the support listed as a responsibility in Items 1, 4, and 5 under the "MLC agrees to" heading (including implementing reports). In addition, if ABE Program wants to convert back to standard SID software code in the future, the entire cost of conversion will be the responsibility of that ABE Program. ABE Program agrees to notify MLC if it decides to modify the code.

ABE Program assumes all responsibilities for data submitted to the State of Minnesota; MLC and its assigns are not liable for any calculation errors, omissions or financial penalties that may result from the use of the software.

See Attachment A for the End-User License Agreement which is herein incorporated into this agreement.

The Consortium manager signing this agreement is responsible for distributing a copy of this agreement and the End-User License agreement to all ABE Programs within the consortium and ensuring that all comply with the terms and conditions under these agreements.

Hold Harmless

Each party will indemnify and hold harmless, to the extent allowed by law, the other party and its officers, directors, employees and agents from all claims, actions, or suits of any kind or character caused by any claimed or alleged injuries or damages (including attorneys fees) by any person or property resulting from any act of commission or omission, intentional act or negligence by the other party.

Data Practices

Each party agrees to be bound by the provision of the Minnesota Government Data Practices Act as amended from time to time.

Insurance

During the term of this Agreement each party shall maintain commercial general liability insurance which states:

- A. General Comprehensive Liability Bodily injury in the amount of at least \$1,000,000 per individual and \$1,000,000 for injuries or death arising out of each occurrence.
- B. Property Damage Liability Property damage liability in the amount of \$1,000,000 for each occurrence.
- C. At the option of each party, any party may obtain coverage of at least \$1,000,000 for insurance stated in A and B above and obtain umbrella policies above the \$1,000,000 as stated in A and B above.
- D. Additional Insured Each party further agrees to name the other party as additional insured on the commercial general liability insurance policies basis and to provide each party with certificates of said insurance.
- E. Workers Compensation Each party shall carry Workers Compensation Insurance as required by the Minnesota Statute Section 176.181, Subdivision 2 and to provide the other party with a certificate of said insurance.
- F. Notification/Cancellation Each party agrees to notify the other party within thirty (30) days prior to cancellation or change in the terms of the above insurance coverage.

Human Rights

Both parties shall comply with all applicable laws and regulations including the following:

- A. The Minnesota State Human Rights Act, Minnesota Statutes Chapter 363.
- B. Federal, state and local affirmative action and equal employment opportunity principles.
- C. ADA Both parties agree to comply with the Americans with Disabilities Act (ADA) including all applicable Provisions of Title II-Public Services and in accordance with 28 C.F.R. Part 35 Subpart B-Section 35.130 of the US Department of Justice Regulations Section 504 of the Rehabilitation Act of 1973 and not to discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs or activities. Both parties agree to hold harmless and indemnify the other, to the extent allowed by law, from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the other party.

Amendment or Changes to Agreement

Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by both parties. This includes significant modifications to the attached software license.

Cancellation:

Either party may cancel with 30 days written notice. In the event of termination, all documents and software shall be treated or disposed of according to law. There shall be no further obligation of MLC to ABE Program. A portion of the annual fee may be refunded at MLC's discretion.

Entire Agreement:

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions, both written and oral, between the Parties with respect to the transactions contemplated hereby.

Severability

The invalidity of any one or more of the words, phrases, sentences, clauses, sections or subsections combined in this Agreement shall not affect the enforceability of the remaining portions of this Agreement or any part hereof, and, in the event that any one or more of the words, phrases, sentences, clauses, sections or subsections combined in this Agreement shall be declared invalid, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, section or sections, of subsection or subsections had not been inserted.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the day and year mentioned above.

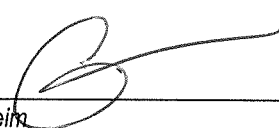
ABE Program

**Minnesota Literacy Council
700 Raymond Avenue Suite 180, St. Paul, MN 55114**

Authorized Representative – printed name/title

Authorized Representative – signature

Email address



*Eric Nesheim
Executive Director*

Attachment A

End User License Agreement for SID Database

Version PY 18-19

PLEASE READ THIS LICENSE CAREFULLY BEFORE USING THIS SOFTWARE. BY USING THIS SOFTWARE, YOU AGREE TO BECOME BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THE LICENSE, DO NOT USE THIS SOFTWARE.

The SID Database is licensed, not sold, to you, ABE Program, by the Minnesota Literacy Council (MLC) and its successors for use only under the terms of this License. MLC and its successors reserve any rights not expressly granted to you.

1. LICENSE.

- A. Subject to the terms and conditions of this agreement, MLC grants ABE Program, and the programs within its consortium, a non-transferable, non-exclusive right and license to use the Software and Documentation, including all changes, modifications, improvements, corrections and updates thereto.
- B. ABE program may assign unlimited users within the specific ABE service area.
- C. MLC retains and owns all rights, title and interest including, but not limited to, copyright, patent, and all other intellectual property rights in:
 - The Software and Documentation;
 - Any and all changes, modifications, improvements, corrections, updates and derivative works of the Software and Documentation by whomever made or created them.
- D. ABE Program is responsible for:
 - Supervising, managing and controlling ABE Program's use of the Software and Documentation;
 - Assuring proper machine configuration, audit controls, and operating methods;
 - Implementing sufficient procedures to satisfy the Minnesota Department of Education's ABE Program requirements for security and accuracy of input and output, as well as restarts and recovery in the event of a malfunction;
 - Purchasing software and maintaining adequate network capabilities that may be required to run the SID application;
 - Installing and purchasing adequate communication lines used in connection with the Software.
- E. ABE Program understands that technically advanced persons (including "hackers" who have malicious intentions, and "power users" who have productive intentions) may defeat whatever security measures are built in to protect the integrity of tables, queries, and other Application objects, and shall not hold MLC responsible for fixing any security-breach related problems within the scope of this Agreement.

2. SOFTWARE UPDATES AND MODIFICATIONS. MLC and the Developer are committed to increasing the functionality of SID as needed by the user community. Requests for updates and modifications (including reports) should be submitted to MLC's SID Administrator. The Administrator and the Developer will then evaluate the requested change in terms of the importance of the change and its effect on overall Software functionality. Changes that pass this scrutiny may then be completed. MLC does not guarantee that all requested changes will be implemented.

3. RESTRICTIONS. Any custom enhancements to the Protected Products requested by and/or paid for by ABE Program become part of the Protected Product and therefore owned by MLC, who has exclusive ownership rights to the Program Code, and retains the right to reuse and/or resell the Program Code,

including selling part or all of the Program Code to third parties. ABE Program may not sell, rent, lease, sublicense, assign, or transfer the license the Program Code enhancements, in whole or in part.

In addition, if ABE Program makes any custom enhancements then MLC has no further responsibility to support or maintain the SID Database for this ABE Program.

- 4. **TERMINATION.** This License is effective until terminated. This License will terminate immediately without notice from MLC, its successors, or judicial resolution if you fail to comply with any provision of this License. Upon such termination your user ID and access will be terminated.

See the "Cancellation" heading on the Service Agreement for voluntary termination options.

Sections 6, 7 and 8 of this agreement will survive any termination.

- 5. **PASSWORDS.** To gain access to and use the Software, you may be required to create a log-in ID and password. You are responsible for activity that occurs under your log-in ID. MLC has no obligation or responsibility with regard to your use, distribution, disclosure, or management of log-in information.
- 6. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR WARRANTIES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, MLC AND ITS SUCCESSORS EXPRESSLY DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE AND ACCOMPANYING WRITTEN MATERIALS. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
- 7. **LIMITATION OF REMEDIES AND DAMAGES.** In no event will MLC, its parent or subsidiaries, successors, or any of the licensors, directors, officers, employees, contractors or affiliates of any of the foregoing be liable to you for any consequential, incidental, indirect or special damages whatsoever (including, without limitation, damages for loss of program income, program interruption, loss of program information), whether foreseeable or unforeseeable, arising out of the use of or inability to use the Software, or any subsequent updates, upgrades or enhancements or accompanying written materials, regardless of the basis of the claim and even if MLC, its successor, or MLC's representative or successor has been advised of the possibility of such damage.
- 8. **GENERAL.** This License will be construed under the laws of the State of Minnesota. If any provision of the License shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this License will remain in full force and effect. If the Software is supplied to the United States Government, the Software is classified as 'restricted computer software' as defined in clause 52.227.19 of the FAR. The United States Government's rights to the Software are as provided in clause 52.227.19 of the FAR.

ABE Program

**Minnesota Literacy Council
700 Raymond Avenue Suite 180, St. Paul, MN 55114**

Authorized Representative – printed name/title

Authorized Representative – signature



*Eric Nesheim
Executive Director*