

Software License Agreement

This Software License Agreement is made and entered into as of the date of the last signature below by and between the BLaST Intermediate Unit # 17 (“BLaST”) and the “Licensee”, (Wellsboro Area School District) under the following circumstances:

BLaST has developed one or more software applications for use in the creation, maintenance and management of individualized education plans and child accounting and reporting, and Licensee desires to license such application(s) from BLaST in accordance with the terms and conditions set forth in this agreement.

NOW, THEREFORE, in consideration of the premises set forth above, and the mutual covenants contained herein, and intending to be legally bound hereby, BLaST and Licensee agree as follows:

1. Definitions. Unless the context otherwise requires, the following terms when used in this Agreement shall have the meanings ascribed to them in this Section 1:

- a. “Application” means (i) BLaST’s proprietary software, as further described on Exhibit A hereto, (ii) the Updates, (iii) the Work Product, and (iv) all instructions, training, manuals, diagrams and other materials, in whatever medium or format, pertaining to the foregoing.
- b. “Updates” means fixes and other updates, enhancements, upgrades or releases of the Application which are made generally available without charge by BLaST to BLaST’s licensees; provided however the Updates shall not include (i) updates, enhancements, upgrades, re-releases or new releases which incorporate new functionality in the Application and/or for which BLaST charges a fee to its licensees, or (ii) new products or modules.
- c. “Work Product” means inventions, discoveries, software, or other works of authorship and other proprietary materials or other product developed by BLaST, its employees, agents or contractors in the course of BLaST’s performance of any services hereunder regardless of any participation, assistance or cooperation by Licensee or its agents.

2. License.

- a. Subject to the terms and conditions set forth, BLaST hereby grants Licensee a nonexclusive, non-transferable, limited license to have up to the maximum number of employees or agents of licensee set forth on Exhibit A hereto (the “Users”) use the application in machine-readable form at the site(s) specified on Exhibit A (the “Site”). Licensee may obtain licenses for additional Users and/or additional Sites as described in Exhibit A. unless the context otherwise requires, all references herein to

“Licensee” shall include the Users, and Licensee shall be liable for all acts and omissions of the Users. If the licensee is a school district of the Commonwealth of Pennsylvania, it may use the application solely for its own use. If the licensee is an intermediate unit of the Commonwealth of Pennsylvania, the licensee may “Resell” the application exclusively to its constituent school districts under the terms and conditions set forth in the “Reseller Agreement”, in addition to the tenants of this agreement. Any other use of the application is strictly prohibited. Licensee shall be solely responsible for obtaining and properly licensing all necessary hardware and software to run the Application.

- b. Licensee shall not, and shall not permit anyone under licensee’ direction or control to, reverse engineer, disassemble or decompile the Application or attempt to do so. Licensee may not modify, adapt, translate or create derivative works of the Application without BLaST’s express written consent. Licensee may not sell, lease, assign, sublicense or otherwise transfer, in whole or in part, this Agreement, the license, the Application, other BLaST provided materials, or any licenses or rights granted hereunder, except as approved by BLaST to constituent school districts assigned to the Licensee by the Commonwealth of Pennsylvania in writing. Licensee may not copy the Application or any part thereof; accept for inactive backup and archival purposes only.
 - c. Licensee shall be solely responsible for ensuring that performance of its obligations and exercise of its rights (including without limitation its use of the Application) under this Agreement comply with all applicable federal, state, and local laws, rules, regulations and orders, including without limitation all present and future laws and regulations relating to the privacy of individually identifiable medical, financial or other information.
3. **Services.** In connection with the Application, BLaST shall provide Licensee training and other services set forth on Exhibit A, and any additional services requested by Licensee and agreed to in writing by BLaST.
4. **Fees;**
Costs for term of Contract:
As described in Appendix A

Payment:

- a. In consideration of the license, implementation and agreed upon services, Licensee shall pay BLaST as follows: (a) upon execution of this agreement, the initial license fee in the amount set forth in Exhibit A, and the stipulated “per user” fee (b) on or before each anniversary, the annual license fee set forth in Exhibit A. BLaST shall have the right to modify the annual maintenance license fee upon not less than sixty (60) days prior written notice to Licensee. Licensee shall pay BLaST for additional agreed upon services in accordance with BLaST’s then–current rates, or as otherwise agreed in writing between BLaST and Licensee. Licensee shall

reimburse BLaST for all out of pocket expense actually incurred by BLaST in performing the implementation of the Application and/or the additional services, including without limitation; travel, lodging, telephone and photocopying expenses.

- b. Except as otherwise provided in Section 4.a., Licensee shall pay all License Fees, Additional Services Fees and Expenses within thirty (30) days after the date of BLaST's invoice. Any sum not paid by licensee when due shall bear interest until paid at a rate of 1.5% per month (18% per annum), or the maximum rate permitted by law, whichever is less. Licensee shall be responsible for the costs, including without limitation, reasonable attorneys' fees and court costs, incurred by BLaST related to BLaST's collection of any past-due amounts under this Agreement.

5. Term and Termination. The term of this agreement shall commence on the date hereof and shall continue until terminated in accordance with this Section. This agreement may be terminated as follows: (a) by either party, in the event of a material breach hereof by the other party, which breach remains uncured thirty (30) days after written notice is given to the breaching party; provided, however, that this agreement shall terminate immediately upon a breach by Licensee of any provision of Section 2, 6, or 10; (b) by either party, effective immediately upon written notice to the other party, in the event the other party ceases to actively conduct its business; (c) by either party, effective immediately upon written notice to the other party, should the other party become insolvent, file for bankruptcy or have a petition of bankruptcy filed against it; (d) by either party, for any reason, effective 60 days after written notice is received from the terminating party. Termination initiated by the licensee requires prorated payment of previously contracted fees if no fees for the contract period in force have yet been paid by the licensee. Regardless of initiating party, termination of the AGREEMENT upon written notice requires BLaST to reimburse licensee for fees already paid less the prorated amount for services rendered, and (e) by BLaST, in whole or in part, immediately if BLaST ceases providing the Application and/or the Services to its licensees. Upon termination of this Agreement, Licensee shall immediately discontinue all use of the Application. In such event, the License and rights granted hereunder shall expire and Licensee shall have no further rights or access to the Application.

6. Property Rights; Confidentiality. As between BLaST and Licensee, BLaST owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names, trade secrets and other proprietary rights) in and to the Application and all components, reproductions, modifications or derivative works thereof, in whole or in part. BLaST may utilize all ideas, suggestions, enhancements, reports or the like that Licensee provides to BLaST with respect to the Application without any obligation to the Licensee. Licensee agrees to

maintain the Application in confidence and to use a reasonable degree of care to protect the confidentiality of the Application.

7. Limited Warranty.

- a. BLaST does not warrant that: (i) operation of the Application will be uninterrupted or error free, (ii) functions contained in the Application shall operate in combinations which may be selected for use by the Licensee, or (iii) the Application will meet Licensee's requirements. BLaST's entire liability, and Licensee's exclusive remedy, for breach of the foregoing warranties shall be, at the option of BLaST, either return of the License Fees paid by Licensee for such nonconforming portion(s) of the Application (subject to the limitation in the last sentence of Section 7 c.) or repair the Application. This limited warranty is void if failure of the Application has resulted from misuse.
- b. THE FOREGOING EXPRESS LIMITED WARRANTIES ARE IN LIEU OF, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BLaST SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE APPLICATION AND SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BLaST DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY THAT THE APPLICATION SHALL OPERATE IN CONFORMANCE WITH LAW OR THAT SUCH APPLICATION WILL CAUSE OR PERMIT LICENSEE TO FULFILL ITS OBLIGATIONS TO STATE OR FEDERAL LAW.
- c. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BLaST BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE APPLICATION OR THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 8, BLaST'S ENTIRE LIABILITY WITH RESPECT TO THE APPLICATION, THE SERVICES AND THIS AGREEMENT SHALL BE LIMITED, IN THE AGGREGATE, TO THE FEES ACTUALLY PAID BY LICENSEE DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

- 8. Copyright and Trademark Indemnification.** BLaST will defend, at its expense, any action brought against Licensee to the extent that it is based on a claim that the use of the Application within the scope of this Agreement infringes any United States copyright or trademark. BLaST will indemnify Licensee from any costs, damages, and fees incurred by Licensee which are attributable to such

claim, provide that Licensee notifies BLaST promptly in writing of the claim. Licensee shall permit BLaST to defend, compromise or settle the claim and provide all available information, assistance and authority to enable BLaST to do so. Licensee shall have no authority to settle any claim on behalf of BLaST. Should the Application become, or in BLaST's opinion, be likely to become the subject of a claim of infringement of a copyright or trademark, BLaST may (a) procure for Licensee, at no cost to Licensee, the right to continue to use the application, (b) replace or modify the Application, at no cost to Licensee, to make same non-infringing, or (c) if the right to continue cannot be procured or the Application cannot be replaced or modified, terminate the license to use such application, remove the Application, and where License Fees were prepaid by Licensee, grant licensee credit for such portion of the prepaid period as has not yet expired. BLaST shall have no liability for any claim of copyright or trademark infringement based on the (i) use of other than the latest release of the Application, if such infringement could have been avoided by the use of the latest release of the Application and such latest version had been made available to licensee, or (ii) use or combination of the Application with software, hardware, or other materials not approved by BLaST. THIS SECTION 8 STATES THE ENTIRE LIABILITY OF BLaST WITH RESPECT TO INFRINGEMENT BY THE APPLICATION OR ANY PART THEREOF AND BLaST SHALL HAVE NO ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

- 9. Indemnification.** The Parties agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, and agents from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including without limitation reasonable attorneys' fees) suffered by the indemnified party arising from or in connection with any breach of this agreement, or any negligent or wrongful acts or omissions in connection with this agreement, by the indemnifying party or by its employees, directors, officers, subcontractors, or agents. The Parties indemnification obligations shall survive the expiration or termination of the agreement. Each party shall hold the other harmless from any liability, including court costs and expenses of litigation, by reason of claims arising out of the use or misuse of the software and hardware products used to provide the technology services, which are the subject of this Agreement. Each party waives its right of subrogation against the other with respect to any claim in any way arising out of, or related to, the subject of this Agreement.
- 10. Nondisclosure:** Unless prior written consent is obtained from a party hereto, the other party will keep in strictest confidence all information identified by the first party as confidential, or which, from the circumstances, in good faith and in good conscience, should be treated as confidential; provided that (a) the owner thereof has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public. Such information includes but is not limited to all forms and types of financial, business, scientific, technical, economic, or engineering

information, including patterns, plans, complications, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or not stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. A party shall be excused from these nondisclosure provisions if the information has been, or is subsequently, made public by the disclosing party, is independently developed by the other party, if the disclosing of the information, or if the disclosure is required by any law or governmental or quasi-governmental rule or regulation.

- 11. Force Majeure.** BLaST shall not be liable to Licensee for any failure or delay caused by events beyond BLaST's reasonable control, including, without limitation, any failure to act or delay of Licensee.
- 12. Notices.** All notices, consents, waivers or other communications which are required or permitted shall be in writing and will be deemed to have been given three (3) business days after mailing if sent by registered or certified mail (postage prepaid), one (1) business day after mailing if sent by overnight courier service, or on the date delivered or transmitted if delivered personally or sent by facsimile transmission, in each case to the parties at the addresses set forth on the signature page hereto (or to such other addressee or address as will be set forth in a notice given in the same manner).
- 13. Miscellaneous.** This Agreement, including any attached exhibits, supersedes all prior discussions, understandings and agreements between the parties with respect to the subject matter hereof, and constitutes the entire agreement between the parties with respect to this subject matter. This agreement shall not be modified or amended except in writing executed by both parties to this agreement. This Agreement is made under and shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without reference to any provisions regarding conflicts of laws. Any dispute arising out of or in connection with this Agreement shall be adjudicated exclusively in the state or federal courts located in Lycoming County Pennsylvania, and both parties consent to personal jurisdiction and venue therein.

IN WITNESS WHEREOF, the parties here to have, by their duly authorized representatives, executed this agreement as of the date indicated.

BLaST Intermediate Unit # 17 (“BLaST”)

BY: _____

Its: _____

Date: _____

Address: 2400 Reach Road
PO Box 3609
Williamsport, PA 17701
Attn: Dr. Christina Steinbacher-Reed/ Executive Director
Fax: 570-323-1738

 (“Licensee”)

BY: _____

Its: _____

Date: _____

Address: _____

Attn: _____

Fax: _____

Appendix A

License Costs:

Module/Modules	Costs:	
Penn Data, IEP, Child Accounting, Services Rendered/ACCESS Module	\$2,500 per year for the base package and \$150.00 per teacher per year.	

Hosting and Support Services:

IT services for maintenance, systems specialist support, daily backups and telephone support for IU staff.

These costs include the following:

IT services for maintenance, systems specialist support, daily backups and telephone support for IU staff.

Training Costs:

\$950.00 per day (2 presenters) plus travel expenses

Customized software development, reports and data exports \$88.00 per hour.