

OSIMS USE AND LICENSE AGREEMENT

DATED: Wednesday, September 28, 2005

Lethbridge School District No. 51 Outreach Schools/Programs having an office at
Suite 300 817-4 Ave. S.
Lethbridge, AB T1J 0P6
phone (403) 328-3558
fax (403) 328-3974
Attention: Frank Nemeth, System Administrator ("Lethbridge School District No. 51" or
"Service Provider")

and

,
Tel:
Fax:
Email:
Attention:

WHEREAS Lethbridge School District No. 51 has proprietary software and associated services known as OSIMS, that provides a service to educational institutions whereby student information can be uploaded to the OSIMS database ("Database") on a server and manipulated with OSIMS software known as the Outreach Student Information Management System ("Software") to yield student information management and statistics information for the use of all subscribers to the service. OSIMS also provides other services to its Subscribers, and each service that a Subscriber desires to implement will be described in an attachment hereto and referred to in this Agreement as the "Service";

AND WHEREAS Subscriber desires to gain access to the Service and Software as identified above by entering into this Agreement;

THIS AGREEMENT WITNESSES that in consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

1. LICENSE

Upon payment of the subscription and license fees set forth in this Agreement, Lethbridge School District No. 51 grants the Subscriber:

- a. access to and storage of Subscriber's data in the OSIMS Database; and
- b. a non-exclusive, non-transferable license to use the Outreach Student Information Management System Software over the Internet to manipulate the Database; and

- c. access to Lethbridge School District No. 51 telephone assistance services; all as more particularly described in Schedule "A" hereto and subject to the following terms:

Subscriber must:

- a. as a single user at any login session with its own username and password, access the Database resident on the OSIMS server for the purpose of inputting, editing and manipulating data relating to registration and student management;
- b. run the Software on the service to manipulate the Database data;
- c. maintain its username and password as Confidential Information and promptly notify Lethbridge School District No. 51 if it suspects or knows that an unauthorized third party knows its password or is accessing the Software, Database or Service;

Subscriber may:

- a. engage Lethbridge School District No. 51 to create a website for Subscriber according to Lethbridge School District No. 51 standard procedures for creating same, and upon payment of the requisite domain name registration charges and Lethbridge School District No. 51 fees for this Service;
- b. make reasonable use of Lethbridge School District No. 51 telephone troubleshooting and assistance services in connection with the above Service;

Subscriber shall not:

- a. modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy the OSIMS website pages or the Software that creates such pages;
- b. hack into or otherwise try to gain access to the servers on which the Software and Subscriber data are stored, or attempt to derive the source code of the Software that operates the Service;
- c. divulge or permit others to learn its unique username and password;
- d. remove any proprietary notices, labels, or marks from the Software;
- e. introduce any viruses, worms, Trojan horses or other instructions that materially affect the functionality of our or third party computers;
- f. knowingly input faulty data, alter data or destroy data relating to the Database;
- g. post any obscene, profane or illicit information on its website or otherwise use this website in a manner inconsistent with the management of student information; or
- h. create or allow links from its website that are in any way damaging to the reputation of Lethbridge School District No. 51.

2. TITLE AND RIGHTS

Title and copyrights to the Database, the Software, website creation procedures, and any accompanying documentation remain with Lethbridge School District No. 51, provided always that the Subscriber retains all title to and copyrights in the data that such Subscriber inputs into the Database. The Software is protected by copyright laws and international copyright treaties. Unauthorized copying of the Software or failure to comply with the above restrictions and faulty input, tampering or use of the Database or any website for purposes for which it was not intended will result in automatic termination of this license and use agreement and will make available to Lethbridge School District No. 51 and affected third parties other legal remedies.

3. SUBSCRIPTION FEES AND LICENSE FEES

- a. Subscriber shall pay Lethbridge School District No. 51 the subscription fees for access to the Database and Software or other Services as subscribed for from time to time according to the

rates set forth in Schedule "A" hereto, within ten days of receipt of an invoice, rendered twice per school year. If Subscriber uses Lethbridge School District No. 51 Services relating to the creation or modification of a website, it shall pay the fee for same as set forth in Schedule "A" hereto. Arrears shall attract interest at the rates published by Lethbridge School District No. 51 from time to time.

- b. Lethbridge School District No. 51 may price the subscription and license fees to Subscribers based on a commitment to subscribe to the Service for a period of longer than one year. In the event a Subscriber fails to renew its subscription to the Service during a following year when preferential pricing was extended based on such commitment, the Subscriber shall owe Lethbridge School District No. 51 the difference between the preferential rate and the rate normally charged for a single year.

4. LIMITED WARRANTY AND DISCLAIMER

SOFTWARE WARRANTY:

The Software is provided "AS-IS". Lethbridge School District No. 51 does not warrant that the Software will operate uninterrupted or error-free. EXCEPT AS SPECIFICALLY SET FORTH ABOVE, Lethbridge School District No. 51 MAKES AND YOU RECEIVE NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, STATUTORY INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SERVICE WARRANTY:

- a. Lethbridge School District No. 51 warrants that:
 - i. its servers will be as accessible and operational as are comparable servers of an Internet Service Provider of similar size and subscription base;
 - ii. it will maintain the physical and electronic security of its servers as are comparable servers of an Internet Service Provider of similar size and subscription base.
- b. The Subscriber's sole remedy in the event of breach of the above warranties is in the event of
 - i. credit for computing time where access to the servers was denied, or in the case of
 - ii. reasonable commercial efforts to restore of the Subscriber's data or if same is not possible, refund of the Subscriber's subscription costs for the period in which such breach occurred.
- c. ALL SOFTWARE, PRODUCTS, GOODS, SERVICES, SYSTEMS, INFORMATION, LINKS, DATA, SERVERS, HOST SERVERS, WEB SITES, AND WEB PAGES PROVIDED BY LETHBRIDGE SCHOOL DISTRICT NO. 51 OR UTILIZED BY THE PARTIES IN CONNECTION WITH THIS AGREEMENT (COLLECTIVELY HEREINAFTER THE "NETWORK") ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. LETHBRIDGE SCHOOL DISTRICT NO. 51 MAKES NO WARRANTY, EXPRESS OR IMPLIED, AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY STATUTE, LAW, COURSE OF DEALING, CUSTOM AND PRACTICE OR TRADE USAGE. LETHBRIDGE SCHOOL DISTRICT NO. 51 MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE USE, RESULTS, CORRECTNESS, ACCURACY, RELIABILITY, SUITABILITY OR OTHERWISE OF THE NETWORK.

5. LIMITATION OF LIABILITY

IN NO EVENT WILL LETHBRIDGE SCHOOL DISTRICT NO. 51 BE LIABLE FOR ANY DAMAGES, INCLUDING LOSS OF DATA, LOST PROFITS, COST OF COVER OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM THE USE OF ITS SERVERS, THE USE OF THE SOFTWARE OR ACCOMPANYING DOCUMENTATION, HOWEVER CAUSED AND ON ANY

THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF LETHBRIDGE SCHOOL DISTRICT NO. 51 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. PRIVACY AND SECURITY

Lethbridge School District No. 51 agrees that it will adhere to its published Privacy Policy in protecting Subscriber's identifier information that is collected in connection with Subscriber's access of the Software and the Database. Lethbridge School District No. 51 shall comply with all applicable privacy laws in the operation of its Database and Service.

7. TECHNICAL SUPPORT

Lethbridge School District No. 51 shall provide web-based and telephone support as described in Schedule "A" to provide:

- a. a direct response to Subscriber inquiries concerning the operation of the Network and its servers (not including the Software); and
- b. a procedure for contacting us directly for any problems or deficiencies relating to the Software or Service.

8. CONFIDENTIALITY

The terms of that certain Non-Disclosure Agreement attached hereto as Schedule "B" are incorporated by reference and attached hereto.

9. TERM AND TERMINATION

- a. Termination Without Cause. Subscriber shall have the right to terminate this Agreement upon 30 days written notice, without cause.
- b. Termination With Cause. In the event that a party fails to perform any of its material obligations under this Agreement and such failure remains uncured for ten (10) days after receipt of written notice thereof, the other party may withhold its performance hereunder or may terminate this Agreement.
- c. You as Subscriber shall, within 30 days after termination, remove from all storage media and processors any Software copies and certify in writing that they have been destroyed.
- d. The confidentiality provisions of this Agreement shall survive any termination of this Agreement and any license herein. Notwithstanding any termination, Subscriber shall remain obligated for any payments due to the Lethbridge School District No. 51 under this Agreement.

10. GENERAL

- a. This Agreement shall be binding upon and inure to the benefit of each party and its respective successors.
- b. All notices permitted or required by this Agreement shall be deemed to have been provided and received when delivered in person, when sent by facsimile transmission, or when deposited in the mail, certified, return receipt requested, with proper postage prepaid, addressed to the receiving party at the address set forth below:

If to Lethbridge School District No. 51:

Lethbridge School District No. 51 Outreach Schools/Programs having an office at
Suite 300 817-4 Ave. S.

Lethbridge, AB T1J 0P6
phone (403) 328-3558
fax (403) 328-3974

Attention: Frank Nemeth, System Administrator ("Lethbridge School District No. 51" or "Service Provider")

- c. This Agreement shall be construed in accordance with the laws of the Province of Alberta, Canada. The venue for any lawsuit arising out of this Agreement shall be the Judicial District of Calgary.
- d. This Agreement may be executed in any manner of multiple originals by different parties hereto, each of which shall be deemed to be an original, and all of which shall be construed together and shall constitute one Agreement. An electronically transmitted copy of this Agreement bearing a facsimile of a party's signature shall be deemed an enforceable original for all purposes.
- e. If any term or provision of this Agreement be declared void or unenforceable, the remainder of this Agreement shall not be affected thereby. Headings and titles in this Agreement are for descriptive purposes only.
- f. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom enforcement of the amendment, modification or waiver is sought.
- g. The relationship of the parties shall be that of independent contractors. Nothing herein shall be construed to imply a partnership, principal-agent, or joint venture relationship between the parties. Neither party shall be deemed to be the agent of the other or have the right, power or authority to act on behalf of or to create any obligation, express or implied, on behalf of the other.
- h. No third-party shall be deemed to be a third-party beneficiary, whether intended, incidental or otherwise, of this Agreement or of any provision hereof.
- i. The foregoing constitutes the complete agreement between the parties with respect to the subject matters hereof.

DATED: Wednesday, September 28, 2005

IN WITNESS WHEREOF the parties have executed this Agreement:

Lethbridge School District No. 51
Outreach Schools/Programs

By: _____

Name: _____

Title: _____

*Subscriber

By: _____

Name: _____

Title: _____

Schedule "A": Service Description and Fees

DATED: Wednesday, September 28, 2005

Lethbridge School District No. 51 Outreach Schools/Programs having an office at
Suite 300 817-4 Ave. S.
Lethbridge, AB T1J 0P6
phone (403) 328-3558
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Attention: Frank Nemeth, System Administrator ("Lethbridge School District No. 51" or "Service Provider")

and

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Tel:
Fax:
Email:
Attention:

1. Student Information Package

The OSIMS Student Information package provides a school district/division with user-friendly tools to manage the collection of student information throughout the school year at the touch of a button.

The Student Information Package includes:

- Student General Information
- Student Contact Information
- Social Agency Worker Information
- Student Status
- Case Notes
- Student Photo ID (digital camera required)
- Student IPP Coding
- Transcript/Mark Record Sheet(s)
- Stats and Reports Package
- Decentralized School/Program(s) and staff management.
- Annual web hosting

Add On Plug-Ins:

- Library (Bar Code scanner required)
- Student Fees
- Individual Program Plan (based on Alberta Learning specifications).
- Custom Reports
- Custom Graphic Design
- Custom Domain Name

Fee Schedule

Description	Rate	Qty	Total
Hosting:			
Web Hosting	Included		
Service:			
Training	\$?????		
Telephone & Email Support	Included		
Student Management Package			
Package (first 400 status records)	\$650/ school year		
Additional status records	\$1.00/status record		
Plug-in Features:			
Library	\$100/school year		
Student Fees	\$100/school year		
Individual Program Plan	\$100/school year		
Custom Reports	\$50/hr.		
Custom Graphic Design	\$100		
Custom Domain Name Hosting	\$50/school year		
Custom Features/ Functionality	Fee based on Project		
Misc:			
Subtotal:			
GST: (number ????????)			
Total:			

Schedule "B": CONFIDENTIALITY AGREEMENT

DATED: Sunday 09th of November 2003

Lethbridge School District No. 51 Outreach Schools/Programs having an office at
Suite 300 817-4 Ave. S.
Lethbridge, AB T1J 0P6
phone (403) 328-3558
fax (403) 328-3974
Attention: Frank Nemeth, System Administrator ("Lethbridge School District No. 51" or "Service Provider")

and

,
Tel:
Fax:
Email:
Attention:

Each of Lethbridge School District No. 51 and Subscriber are a party and both are parties to this Agreement, and this agreement binds each party's parent(s), subsidiary(ies), and affiliated corporations or entities, or those entities exercising control of a party or those entities controlled by a party.

WHEREAS the parties have engaged or will engage in discussions and/or the exchange of documents respecting the access and use of commercial software over the internet, and in the course of same, have disclosed or may disclose to the other party certain Confidential Information (as defined below). The parties are executing this agreement to define and protect their rights in respect of such Confidential Information.

In consideration of the promises and mutual covenants set forth herein, the parties agree as follows:

- a. Definition: "Confidential Information" shall mean all information, data, code, screen displays, strategies, business plans, marketing and financial data, drawings, schematics, samples, devices, demonstrations, knowhow, showhow and other materials, whether subject to or protected by copyright, patent, industrial design, trademark, registered or unregistered, trade secret or other intellectual property protection, and communicated (whether in writing, orally or graphically) before or after the date of this agreement by one party to the other party. To be treated as "Confidential Information" from the date hereof, all such information must be clearly identified as "proprietary" or "confidential" by the disclosing party. All information disclosed prior to the date hereof shall be considered Confidential Information without such identification or labelling.
- b. The parties agree that:
 - i. each will keep in strict confidence and not use for any other purpose, except as required by this agreement, the Confidential Information communicated to it by the other party;
 - ii. each will use the same degree of care in protecting the Confidential Information disclosed as it would in protecting its own Confidential Information;
 - iii. neither party shall divulge, reproduce, publish (or authorize or permit anyone else to do so) any of the Confidential Information communicated to it by the other party except to those of its employees and professional advisors as may require access to the

- Confidential Information on a strict need - to - know basis for furthering the business relationship between the parties; and
- iv. neither party shall use the Confidential Information communicated to it to duplicate, replicate, reproduce, redesign, reverse engineer or remanufacture any products of the party communicating the Confidential Information.
 - c. Each party represent and warrants that it enters into this agreement without violating any fiduciary, contractual or statutory obligations owed to a third party. Nothing in this agreement shall confer any interest in, any license to, or any rights respecting the Confidential Information communicated by one party to the other or respecting any of the products of the party communicating the Confidential Information. No obligations are expressed or implied by this agreement other than as set forth herein. The receiving party has no right whatsoever to use any Confidential Information except for the express purpose of the evaluations being pursued.
 - d. Upon either party providing the other party with ten (10) days' written notice, or upon the expiry of this Agreement, each party shall return to the other party all materials and devices comprising each other's Confidential Information, including any copies of same.
 - e. The obligations of each receiving party respecting the Confidential Information disclosed by the disclosing party shall not apply to any Confidential Information which:
 - i. is at the time of disclosure, or thereafter becomes, a part of the public domain through no act or error by the receiving party;
 - ii. was in the lawful possession of the receiving party before disclosure by the disclosing party, as shown by competent evidence; or
 - iii. is hereafter received by the receiving party from a third party who is under no restriction of disclosure to third parties;
 - iv. was independently developed by the receiving party through no use of the Confidential Information;
 - v. is required to be released under court order or regulatory authority, provided the disclosing party is promptly given a copy of such order and the receiving party cooperates with the disclosing party if the disclosing party elects to dispute such requirement for disclosure.
 - f. Neither party may assign or transfer any of its rights or obligations under this agreement to a third party or in connection with a merger or acquisition, unless it has secured the prior written consent of the other party, which consent shall not be unreasonably withheld. This agreement shall enure to the benefit of and be binding upon the permitted successors and assigns of the parties.
 - g. The obligations set forth in this agreement shall terminate three (3) years from the date of this agreement. This agreement shall be governed by the laws of the province of Alberta without reference to conflict of laws principles.
 - h. A receiving party acknowledges that, in the event of a breach by such receiving party of the confidentiality provisions hereof, the disclosing party may not have an adequate remedy in money or damages. The disclosing party shall therefore in the discretion of a court, be entitled to obtain injunctive relief against any such breach by the receiving party in any court of competent jurisdiction without proving actual damage, if any, sustained by the disclosing party. The disclosing party's rights hereunder shall not in any way be construed to limit or restrict its right to seek or obtain other relief or damages under this Agreement or applicable law.
 - i. This agreement may be executed in counterpart, each of which when executed and delivered is an original but all of which taken together constitute the same instrument. The facsimile of this agreement, when executed and transmitted shall be considered as an original, legal and enforceable document.
 - j. All notices shall be in writing and may be delivered by hand, courier, or fax to the addresses and contact persons set forth at the beginning of this agreement. Such communications are deemed received on the day of actual receipt by whatever means dispatched or the next business day following weekend days or a statutory holiday.

IN WITNESS WHEREOF the parties have executed this agreement on

DATED: Wednesday, September 28, 2005

IN WITNESS WHEREOF the parties have executed this Agreement:

Lethbridge School District No. 51
Outreach Schools/Programs.

*Subscriber

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____