



TELANIA, LLC. – ELEAP™ PSP SERVICE AGREEMENT

THE FOLLOWING, WHEN ACCEPTED BY YOU (WHETHER AS AN INDIVIDUAL, OR IF APPLICABLE, ACTING AS THE REPRESENTATIVE OF A COMPANY, CORPORATION OR OTHER ENTITY) SHALL CONSTITUTE YOUR AGREEMENT TO THE TERMS AND CONDITIONS SET FORTH BELOW. PLEASE READ THIS AGREEMENT CAREFULLY.

TELANIA, LLC. SHALL BE REFERRED TO IN THIS AGREEMENT AS “TELANIA”, “US” OR “WE”.

OUR SERVICES AND THE ELEAP PSP WEBSITE SHALL BE REFERRED TO IN THIS AGREEMENT AS “THE ELEAP SERVICE”, THE “SERVICE” OR THE “ELEAP WEBSITE”.

“YOU” or “YOUR” MEANS THE ORGANIZATION THAT YOU REPRESENT.

1. ACCEPTANCE OF TERMS

Everyone who uses the Service – including trial versions of the Service – shall be bound by this Agreement. If you do not agree to the terms and conditions set forth below, then you should not access or use the Service.

2. LICENSE

Upon your acceptance of this Service Agreement and payment of all usage fees due (except in the case of a “free trial” program), Telania will grant you nonexclusive access to the eLeaP Website, which provides tools that will enable you to create, manage and administer online performance management services. Unless you are participating in our “free trial” program, you must pay all usage fees (see Section 4.1 below) for you and all of your eLeaP Service users (“Enrollees”) prior to accessing the eLeaP™ Service. If you are participating in our “free trial” program, you must pay all usage fees after the trial period to continue to access the eLeaP Service. You agree to not access the Service by any means other than through the interfaces that are provided by Telania. The eLeaP Service may include certain communications from Telania. As part of your eLeaP Service you will not be able to opt out of receiving certain of these communications that relate to the Service, and you acknowledge and agree that Telania can send such communications as a part of the Service.

3. REGISTRATION

To access the Service and set up your account, you will be asked to provide Telania with the following personal and/or organizational information, in addition to other information that we may request: Your name and the name of the organization you represent, your email address, your postal address, phone number and fax number or the address, phone number and fax



number of the organization you represent, the names and email addresses of Enrollees, and the total number of employees employed at the organization you represent.

In consideration of your use of the Service, you agree to: (i) provide true, accurate, current and complete information about yourself and/or your organization, and (ii) maintain and promptly update during the term of this Agreement your personal/organizational information to keep it true, accurate, current and complete. If Telania has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, you agree that Telania may suspend and/or terminate your or your organization's account.

Upon completion of the registration process, we will send an automatically generated password to the email address you provided. You are responsible for maintaining the confidentiality of the password and of controlling access to your account. You are fully responsible for all activities that occur under your password or with respect to your account. You must ensure that all uses of your account and password comply with this Agreement. Your password and account may not be shared, and you may not permit any other person to use them, other than an authorized Telania representative.

4.0 TERM AND TERMINATION

This Agreement commences on the date of acceptance by you of this Agreement and continues until terminated by Telania or you in accordance with the terms of this Agreement.

4.1 FEES

After your free trial, to continue receiving the Service, you must pay a monthly or annual usage fee. This is a recurring fee and is charged monthly or annually. The cost to add additional Enrollees is provided at our website <https://performance.eleapsoftware.com>

The fees include unlimited calls to our customer service line including online chat support, email support, and unlimited space for content for one year of service. Our support services are available from 9AM Eastern Standard Time until 6PM Eastern Standard Time Monday – Friday, Saturdays from 9AM EST to 12PM EST, with observance of most national Holidays.

You will be automatically renewed unless you give written notice 30 days prior to your next renewal date. To cancel your automatic renewal, send an email to billing@eleapsoftware.com or send a letter to 1300 South 4th St, Ste 350, Louisville, KY 40208). To add Enrollees, please follow the instructions outlined on our website at www.eleapsoftware.com.

4.2 TERMINATION

You may terminate the Service by giving written notice (via email or by letter) to Telania. If you cancel the Service, your cancellation will take effect within five days of our receipt of your notice. Telania will not be required to refund any fees for the month in which Telania receives your termination notice or in which Telania effects your cancellation. No further payment to Telania will be required by you for any subsequent months after receipt of your termination



notice. Telania will provide you a prorated refund of all annual license fees paid and any monthly fees paid in advance within thirty days of receipt of the termination notice. After cancellation, you will no longer be able to access the eLeaP Website or Service and all information contained therein may be deleted by Telania. You agree to release Telania from any liability for the deletion of such information or content.

Telania may immediately terminate your access to the Service and the eLeaP Website for the following reasons: (a) breaches or violations of the Agreement, including the failure to pay fees that are due, (b) requests by law enforcement or other government agencies, (c) a request by you, or (d) suspected illegal or immoral behavior.

Upon the expiration, cancellation, or termination of the Service or this Agreement, Telania will permanently destroy all performance management data, materials, documents, reports, information, or any other content uploaded, posted, transmitted or otherwise made available via the Service by you ("Content"), including all copies. All Content will be available for download by you before cancellation.

4.3 SURVIVAL

The following provisions will survive any expiration or termination of the Agreement: Sections 7, 8, 9, 10, 13, 14, 15, and 16.

5. ELEAP SERVICE PRIVACY POLICY

All Registration data and other information that is collected by Telania is subject to our Privacy Policy and will be maintained in accordance with Telania's privacy policy at www.eleapsoftware.com.

6. RESTRICTIONS ON USE OF SERVICE

(a) **No Offensive Content.** You agree that you will not use, or allow others to use, your account to post, transmit, promote, or facilitate the distribution of any threatening, abusive, libelous, defamatory, obscene, pornographic, profane or otherwise objectionable information of any kind.

(b) **No Illegal Material Or Encouragement Of Illegal Behavior.** You agree that you will not use, or allow others to use, your account to post, transmit, promote, or facilitate the distribution of any unlawful or illegal material, including but not limited to material that would constitute or encourage a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law, rule or regulation. You agree that you will not use this site to commit a crime, or to plan, encourage or help others to commit a crime.

(c) **No Violation Of Copyright, Trademark Or Trade Secret Rights.** You agree that you will not use the eLeaP Website to publish, post, distribute or disseminate another's proprietary information, including but not limited to trademarks, trade secrets or copyrighted information, without the express authorization of the rights holder.

(d) **No "Spamming," Advertisements Or Chain Letters.** You agree that you will not use, or allow others to use, your account or use the information available through the eLeaP



Website, to post, transmit, promote, or facilitate the distribution of any advertising (including but not limited to mass or bulk e-mail), promotional materials or other forms of solicitation. You will not post or transmit requests for money, petitions for signature, chain letters or letters relating to pyramid schemes. We reserve the right, in our sole discretion, to determine whether such post or transmission constitutes an advertisement, promotional material or any other form of solicitation.

(e) **No “Hacking.”** You agree that you will not use, or allow others to use, your account to unlawfully access other computers or services, or to cause a disruption of service to other eLeaP Website users.

(f) **No Impersonation Of Others.** You agree that you will not use the Service to impersonate another user or otherwise falsify one's user name in an e-mail or in any post or transmission to any person, group or mailing list.

(g) **No “Viruses.”** You agree that you will not use, nor allow others to use, your account to intentionally transmit computer “viruses,” or other harmful software programs and that you will use your best efforts to prevent the unintentional transmission of such viruses or other harmful software programs.

(h) **Telania’s Right to Remove.** Telania reserves the right not to post any data or materials to, or to remove any data or materials from, its site without notice to you or any other user and without liability to Telania. You agree to release Telania from any claims or allegations that may result from such removal. Further, you agree to release Telania from any liability, cost or damage arising out of any action or inaction of any Enrollee that is in violation of law or of this or any other agreement with Telania.

7. OWNERSHIP OF WEBSITE ACCOUNT AND SECURITY

The Service and the eLeaP™ Website may not be used for any purpose not expressly permitted by this Agreement. Your use of the Service and the eLeaP Website does not transfer to you any ownership or other rights in the Service or eLeaP Website or eLeaP’s copyrighted content. You agree to refrain from copying, imitating, reproducing, republishing, uploading, posting, transmitting, modifying, reverse engineering, indexing, cataloguing or distributing in any way, in whole or in part, the Service or the eLeaP Website or any part thereof without express written permission from Telania.

You are responsible for all activity (other than that of Telania) occurring on your pages of the eLeaP Website. You agree to abide by all applicable local, state, federal and international laws, treaties and regulations in connection with your use of the Service. You are responsible for overseeing your pages of the eLeaP Website and the activities that occur through your account, including those of your Enrollees.

You agree to (a) notify immediately Telania of any unauthorized use of your password or account, or any other breach of security or of this Agreement of which you become aware, and



(b) exit from your account at the end of each session.

You agree that all user names and passwords remain the property of Telania and may be cancelled, changed or suspended at any time by Telania without notice and without Telania incurring any liability for the same. Telania is not under any obligation to verify the actual identity or authority of any user who has accessed the eLeaP Website via your user name and password.

You agree that Telania is not liable for any loss or damage from your failure, or an Enrollee's failure, to fully comply with the terms of this Agreement. Under no circumstances will Telania be liable, in any way, for any such acts of commission or omission by you or an Enrollee, including any damages of any kind incurred as a result of such acts of commission or omission.

8. ACCOUNT HOLDER/USER/ENROLLEE OBLIGATION & RESPONSIBILITIES

You are permitted to post content on your pages of the eLeaP Website. Telania is not responsible for any Content that you upload, post, transmit or otherwise make available via the Service. Notwithstanding the foregoing, Content is deemed your confidential and proprietary information, and Telania agrees that it will not provide access to or disclose Content to any third-party other than your Enrollees as part of the Services. Telania agrees to take all reasonable measures to prevent unauthorized disclosure of your Content.

You hereby agree that you are the owner or validly authorized licensee with respect to any and all Content provided by you for use on the Service, and you hereby grant to Telania a worldwide, non-exclusive, revocable license to copy, store, transmit, digitally display and otherwise distribute such content to your Enrollees as part of the Service.

Other than as explicitly detailed in this Agreement, Telania will not be liable for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, transmitted or otherwise made available via the Service. Telania has the right to remove any Content that in Telania's sole judgment violates the spirit or letter of this Agreement or with respect to which Telania receives any complaint or allegation of infringement.

9. WARRANTIES AND DISCLAIMERS

(A) THE SERVICE IS PROVIDED ON AN "AS IS" BASIS AND USE OF THE SERVICE IS AT YOUR OWN RISK. TELANIA DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE. TELANIA DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

(B) TELANIA DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM TELANIA'S DATA CENTER AND THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT



TIMES, ACTIONS TAKEN OR THE FAILURE TO ACT BY THESE THIRD PARTIES CAN PRODUCE SITUATIONS IN WHICH YOUR OR AN ENROLLEE'S CONNECTION TO THE INTERNET MAY BE IMPAIRED OR DISRUPTED. ALTHOUGH TELANIA WILL USE COMMERCIALY REASONABLE EFFORTS AS IT DEEMS APPROPRIATE TO AVOID AND ADDRESS SUCH OCCURRENCES, TELANIA CANNOT GUARANTEE THAT THEY WILL NOT OCCUR. ACCORDINGLY, TELANIA DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH OCCURRENCES.

YOU ARE RESPONSIBLE FOR MAINTAINING AND BACKING-UP ANY OF YOUR DATA AND INFORMATION THAT MAY RESIDE ON THE SERVICE AND THE ELEAP WEBSITE. TELANIA DOES NOT WARRANT THAT (I) THE SERVICE WILL MEET YOUR SPECIFIC REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, OR (V) ANY ERRORS IN THE WEBSITE OR RELATED SOFTWARE WILL BE CORRECTED.

(C) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU AGREE TO ASSUME RESPONSIBILITY FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR ANY LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

(D) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE AGREEMENT.

10. LIMITATIONS OF LIABILITY.

EXCLUSIONS. OTHER THAN THE INDEMINIFICATION OBLIGATIONS WITHIN SECTION 13, YOU AGREE THAT IN NO EVENT WILL TELANIA BE LIABLE TO ANY THIRD PARTY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY WILL BE RESPONSIBLE TO THE OTHER PARTY FOR ANY LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF THE SERVICE OR INTERRUPTION IN YOUR BUSINESS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

10.1 LIMITATIONS. BOTH PARTIES AGREE THAT EACH PARTY (YOU AND TELANIA), ITS AFFILIATES, OWNERS, SHAREHOLDERS, EMPLOYEES, OFFICERS AND AGENTS SHALL NOT BE LIABLE TO EACH OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OR DAMAGE, WHETHER DIRECT OR INDIRECT, RESULTING FROM DELAYS OR INTERRUPTIONS OF SERVICE DUE TO MECHANICAL, ELECTRICAL OR OTHER DEFECTS OR DIFFICULTIES, STORMS, STRIKES, WALK-OUTS, EQUIPMENT OR SYSTEMS FAILURES, OR OTHER CAUSES OVER WHICH EITHER PARTY, ITS AFFILIATES, OWNERS, SHAREHOLDERS, EMPLOYEES, OFFICERS, OR AGENTS AGAINST WHOM LIABILITY IS SOUGHT, HAVE NO REASONABLE CONTROL, OR FOR LOSS OR DAMAGE, DIRECT OR INDIRECT,



RESULTING FROM INACCURACIES, ERRONEOUS STATEMENTS, ERRORS OF FACTS, OMISSIONS, OR ERRORS IN THE TRANSMISSION OR DELIVERY OF SERVICES, OR ANY DATA PROVIDED AS A PART OF THE SERVICE.

10.2 MAXIMUM LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR CLAIMS REGARDING A BREACH OF CONFIDENTIALITY AND A PARTY'S INDEMNIFICATION OBLIGATIONS, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER PARTY RELATED TO OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY YOU IN THE PRECEDING SIX MONTH PERIOD TO TELANIA FOR THE SERVICE.

11. ADDITIONAL SOFTWARE

With respect to any additional software that may be made available by Telania in connection with the Service, if you elect to download or access such additional software, you understand that you may be required to agree to additional terms and conditions before you use such software.

12. EXTERNAL LINKS

The Service or the eLeaP Website may provide links to other Internet sites or resources. Telania has no control over such sites and resources and is not responsible for any damage or loss resulting from your access or use of such site.

13. INDEMNIFICATION

Each Party (meaning the organization represented and Telania, individually) agrees to indemnify and hold harmless the other Party from any liability, cost, expense, and loss, including reasonable attorneys' fees and costs (collectively, "Losses"), arising from a third-party claim or demand, resulting or arising from the indemnifying Party's : (a) infringement or misappropriation of any intellectual property rights; (b) defamation, libel, obscenity, slander, pornography, or violations of rights of privacy or publicity; (c) spamming or other offensive, harassing or illegal conduct or action; or (d) violation of applicable laws or regulations.

Each party agrees to provide prompt written notice of the existence of any Loss or potential Loss of which it becomes aware, and each Party shall have an opportunity to participate in the defense thereof.

14. MODIFICATIONS

Telania reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) or with 30 days notice. In the event of any such modifications or discontinuations by Telania, you may immediately terminate this Agreement without liability and all fees paid shall be refunded as described in section 4.2. Other than the refunding of fees paid, you agree that Telania shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.



15. INTELLECTUAL PROPERTY

The Service and all applicable software/programming code, trademarks, marketing systems, etc. used in connection with the Service (“Software”) contain proprietary and confidential information of Telania that is protected by U.S. law and international treaties. Except as expressly authorized in writing by Telania, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Software, in whole or in part. You further agree not to make any use of Telania’s trade or service marks, except as specifically authorized by Telania.

You retain all right, title, and interest in and to your Content, and anything derived therefrom. The disclosure, modification, or use of Content will not grant any right, title, or interest to Telania.

16. MISCELLANEOUS

16.1 FORCE MAJEURE. Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such a cause, and (b) uses commercially reasonable efforts to promptly correct such a failure or delay in performance.

GOVERNING LAW. The Agreement and the relationship between you and Telania shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Kentucky, USA, without regard to its conflict of law provisions. You and Telania agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within Jefferson County, Kentucky. The failure of either party to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. The Agreement, the Privacy Policy, any applicable Terms of Use for the Service and the Digital Millennium Copyright Act notice constitute the entire agreement between you and Telania and govern your use of the Service, superseding any prior agreements between you and Telania (including, but not limited to, any prior versions of this Agreement). You also may be subject to additional terms and conditions that may apply when you use other Telania services, or third-party content, software or services offered through the Service. If any provision of the Agreement or any of the other above referenced documents is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties’ intentions as reflected in such provision to the extent possible. All other provisions of the Agreement shall remain in full force and effect. The parties agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within three (3) years after such claim or cause of action arose or it shall be forever barred. Notwithstanding the foregoing, any claims, damages, and other liabilities arising from or related to a breach of the confidentiality obligations of this Agreement are not subject to the previously described limitation. Telania shall not be responsible to you or any of your Enrollees as a result of



any delay or default in the carrying out of its service obligations hereunder, which delay, or default is due in whole or in part to an event beyond of the reasonable control of Telania.

++++++SERVICE LEVEL ADDENDUM++++++

Telania will use commercially reasonable efforts to provide availability to the eLeaP Application on the Production Environment 99.95% of the time, except for the following exclusions:

- Maintenance and upgrade downtime

§ Telania reserves time to perform system maintenance that is required to meet our obligations outlined under this addendum and to ensure a premium user experience such as applying product updates, infrastructure maintenance & upgrades, security related updates and periodic testing of recovery and backup systems. During scheduled maintenance windows the Application Service may be unavailable or available at a reduced capacity.

§ Maintenance windows will be limited to two (2) hours occurring each Friday evening between the hours of 10:00 PM and 12:00 PM US Central time (GMT-6:00). No more than three times per calendar year Telania reserves the right to extend the scheduled maintenance window to a maximum of eight (8) hours in order to perform major product & infrastructure upgrades

§ Any maintenance window requiring application downtime will be communicated to client no less than 48 hours prior to the scheduled downtime. All Client Users will be notified upon logging into the Application Service. Fifteen (15) minutes prior to the scheduled downtime all Client Users actively logged into the Application Service will be notified via pop-up messaging of the pending downtime and provided the opportunity to save their work and exit the Application Service.

- Any unavailability caused by circumstances beyond Telania's reasonable control, including without limitation, acts of God, strikes or other labor disturbances, war, whether declared or not, sabotage, and/or any other cause or causes, whether similar or dissimilar to those herein specified, which cannot reasonably be controlled by Telania, computer, telecommunications, internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Telania's possession or reasonable control, and denial of service attacks.



+++++++CONTACT HOURS/SUPPORT+++++++

Our office hours are 9.00AM to 6.00PM EST.
Telania offers free training for the eLeaP Service
Telania offers free limited phone support after 6:00PM EST in case of emergencies.
Telania provides free online ticket support 24 hours a day, 7 days a week.

+++++++INTELLECTUAL PROPERTY+++++++

Should you need to terminate your contract, Telania will assist you download your courseware documents and reports. Telania does not make or have any claim on your intellectual property.

Acknowledgements:

You acknowledge and agree that your Enrollees will be required to accept reasonable Terms of Use prior to Telania granting them access to the service.

All correspondence regarding this agreement should be sent to:
legal@eleapsoftware.com