

District School Board of Pasco County

20430 Gator Lane • Land O' Lakes, Florida 34638 • 813/794-2221

Heather Fiorentino, Superintendent


www.pasco.k12.fl.us

Department of Purchasing
Kendra Goodman, CPPO, CPPB, Purchasing Agent
813/794-2221 Fax: 813/794-2111
727/774-2221 TDD: 813/794-2484
352/524-2221 e-mail: kgoodman@pasco.k12.fl.us

May 4, 2010

MEMORANDUM

TO: Honorable School Board Members

FROM: Kendra Goodman, CPPO, CPPB, Purchasing Agent 

SUBJECT: Contract and Permission to Place Purchase Order, Premio Computer Inc.
eSembler Teacher Gradebook and Parent Access Software

On April 9, 2005, official action was taken to award a direct negotiated contract to Premio Computer Inc. This program implements an enterprise-wide, electronic gradebook to automate the taking of attendance, support classroom management, and facilitate the issuance of student grades. The system also eliminates scanning of attendance and grades, and reduces the volume of paperwork and amount of staff time involved with the attendance and grading process.

Each year since the inception of the original contract, we have received permission to place a purchase order to Premio to cover maintenance and support services for the software (see attached memo from Mr. Bruce Baldwin, Director of Information Services). This year, Premio issued new maintenance terms and conditions, and has asked that we execute a new contract. The contract term will be upon Board approval through September 1, 2011, and is renewable annually at the mutual agreement of the parties. Its terms and conditions have been extensively reviewed and negotiated by Purchasing, and have been approved by Nancy Alfonso, Board Attorney. We are permitted to negotiate these terms and conditions under Florida Administrative Rule 6A-1.012(14).

We are requesting Board approval of the contract terms and conditions (the referenced attachments are very lengthy, and are on file in the Purchasing Department). We are also requesting permission to issue a purchase order for maintenance and support in the amount of \$71,400.

Please contact Bruce Baldwin or me if you have any questions or concerns.

KDG/az
Attachments



Y9030

District School Board of Pasco County

7227 Land O' Lakes Boulevard • Land O' Lakes, Florida 34638 • 813/ 794-2000

Heather Fiorentino, Superintendent

www.pasco.k12.fl.us

Department of Information Services

Bruce Baldwin, Director

813/ 794-2416 Fax: 813/ 794-2172

727/ 774-2416

352/ 524-2416 e-mail: bbaldwin@pasco.k12.fl.us

April 22, 2010

TO: Kendra Goodman, CPPO, CPPB, Purchasing Agent

FROM: Bruce W. Baldwin, Director of Information Services 

SUBJECT: eSembler Teacher Gradebook and Parent Access Software
Premio Computer, Inc.

On April 9, 2005 action was taken to award a direct negotiated contract to Premio Computer, Inc. This program implemented an enterprise-wide electronic gradebook to automate the taking of attendance, support classroom management, facilitate the issuance of student grades, and enhance parent/school communication.

A new contract has been negotiated with Premio to continue the use of eSembler. I am requesting Board approval of the attached contract and permission to place a purchase order in the amount of \$71,400 to Premio. The new contract will result in cost savings of between \$7400-\$11,000 (based on our estimate of student growth) due to an improved system of calculating cost based on student enrollment. I am requesting funding continue to be software capital outlay dollars.

Please feel free to contact me at your earliest convenience if you have any questions or concerns.

PREMIO, INC.
ESEMBLER SOFTWARE SERVICES AGREEMENT

This Software Services Agreement ("Agreement") is entered into as of the Effective Date defined below by and between PREMIO, INC. ("Premio"), with its place of business at 918 Radecki Court, City of Industry, CA 91748, and the undersigned customer below ("Customer"). In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

DOCUMENTS COMPRISING THE AGREEMENT

This Agreement shall be comprised of all Exhibits listed below and attached hereto which are expressly incorporated and made a part of this Agreement.

Attachments:

- Exhibit A: General Terms and Conditions
- Exhibit B: Statement of Work and any future Statement(s) of Work as separately agreed in writing
- Exhibit C: Teacher User Manual
- Exhibit D: Implementation Information
- Exhibit E: Integration Information

EXECUTED as of _____ (the "Effective Date") by the parties hereto each acting under due and proper authority.

PREMIO, INC.

"Customer"

By _____

By _____

Rob Greer, VP of Product Management
Print Name and Title

Allen Altman, Board Chair

Print Name and Title

CONTRACT REVIEWED
AND APPROVED:
Rog 4/26/10

EXHIBIT A

GENERAL TERMS AND CONDITIONS

This Exhibit is made as of the Effective Date and pertains to and is made a part of the Software Services Agreement between Premio and Customer (the "Agreement"). All undefined capitalized terms herein shall have the meanings ascribed to such terms as set forth in the Agreement. If any terms of this Exhibit are inconsistent with the terms of the Agreement, then the terms of this Exhibit shall control.

1. PROVISION OF SERVICE AND CUSTOMER RESPONSIBILITY

- 1.1 Premio will make the following services (collectively, the "Service") available to Customer during the term of this Agreement, subject to the terms of the Agreement and each mutually acceptable written documents relating to the Service executed by both Customer and Premio: a) the *eSembler for Education* ("eSembler" or "eSembler Software") software services ordered by Customer as specified in the applicable Statement of Work; and (b) any additional services ordered pursuant to a mutually acceptable written amendment to the Agreement or Statement of Work. Customer is required to pay Premio certain Service Fees (hereinafter defined) in order to use, utilize, access or maintain the Service. In the event that Customer wishes to customize the eSembler Software beyond the standard edition as provided by Premio, Premio will provide Customer with a proposed scope of work and quotation for approval.
- 1.2 Customer recognizes that its participation is essential to the delivery of Service by Premio. Customer shall use its best efforts to provide Premio with data and configuration information necessary to assist Premio in fulfilling its obligations under this Agreement. Customer shall designate a single employee who shall be assigned the primary responsibility for communicating with and providing necessary assistance to Premio during the term of this Agreement. Customer shall have the sole responsibility for obtaining and maintaining network and/or Internet connectivity to servers hosting the eSembler Software. Premio shall not be obligated to provide any equipment or hardware to Customer for any purpose relevant to the Service with the exception that Premio offers hardware and software resources to temporarily mount the initial development environment.

2. GRANT OF RIGHTS; OWNERSHIP OF PROPERTY; USE RESTRICTIONS

- 2.1 Grant of Rights and License. Subject to the terms of the Agreement and provided that Customer makes the applicable payments to Premio: (a) Premio hereby grants Customer a non-exclusive, non-transferable, worldwide license during the term of the Agreement to access and use the eSembler Software solely for Customer's internal purposes as contemplated by the Agreement, subject to the Service scope and pricing specified in the Agreement ("Software License"); and (b) Customer hereby grants Premio a non-exclusive, non-transferable, worldwide right to use the electronic data specifically pertaining to Customer and/or its users and students that is used in relation to the Service (collectively, "Customer Data") as necessary for the limited purpose of performing the Service. Premio will allow Customer to access or use the eSembler Software in a limited capacity following the termination of the Software License as provided in Sections 3.2 and 8.4 of this Agreement.
- 2.2 Ownership. Premio and its licensors and suppliers own and retain all right, title, and interest in and to the following (collectively, "Premio Property"): (a) the Service, the eSembler Software, and all other software, hardware, technology, documentation, and information provided by Premio in connection with the Service; (b) all ideas, know-how, and techniques that may be developed, conceived, or invented by Premio, in whole or in part, during its performance under the Agreement; and (c) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (a) and (b) above. Any innovations developed or conceived by Customer in relation to the eSembler Software shall be deemed to have been assigned to Premio. Except as otherwise expressly authorized herein or by Premio in writing, the non-

CONTRACT REVIEWED
AND APPROVED:

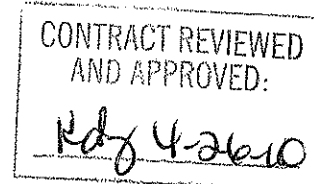
Kdy 4/26/10

exclusive use rights set forth in the Agreement are the entirety of Customer's rights in connection with the Premio Property. Customer owns and retains all right, title, and interest in and to the Customer Data and all intellectual property rights therein. Except as otherwise expressly authorized herein or by Customer in writing, the non-exclusive use rights set forth in the Agreement are the entirety of Premio's rights in connection with the Customer Data.

- 2.3 Restrictions. Customer agrees to comply with all applicable hardware, software, data and other technical requirements for Customer's use of the Service and/or Premio Property as established by Provider from time to time, and Customer agrees to use the Service and/or eSembler software in accordance with its then-current documentation, which may be provided in electronic form. Except as expressly permitted under the Agreement, Customer shall not directly or indirectly do any of the following: (a) provide access to Premio Property to any third parties without the express written consent of Premio; (b) access, use, sell, distribute, sublicense, broadcast, or commercially exploit any Premio Property or any rights under the Agreement beyond the scope specified in this Agreement (such as for any third parties on a rental or sharing basis); (c) knowingly introduce any infringing, obscene, libelous, or otherwise unlawful data or material into the Service; (d) copy, modify, or prepare derivative works based on Premio Property; (e) modify or attempt to modify any source code related to the Premio Property; (f) reverse engineer, decompile, disassemble, or attempt to derive source code from any Premio Property; or (g) remove, obscure, or alter any intellectual property right or confidentiality notices or legends appearing in or on any aspect of any Premio Property.

3. SUPPORT, TRAINING AND SOFTWARE MODIFICATION

- 3.1 Annual Support. Annual support service for the eSembler Software in the form of unlimited helpdesk service and free software updates and upgrades ("Annual Support") may be purchased by Customer by paying the fee listed on the Statement of Work, or Premio's then-current fee ("Annual Support Fee"). Upgrades may generally be made available on a biennial basis while updates may be made available any number of times between upgrades and do not generally follow a strictly defined release schedule. In the event that Customer fails to purchase or otherwise pay for the Annual Support but later requires support services, the support may be provided, at the sole discretion of Premio, either (a) at the then published hourly rate for services, or (b) for the prorated monthly Annual Support Fee currently in effect.
- 3.2 Discontinuance of Annual Support; Limited License. The purchase of Annual Support is optional after the first year of Customer's use of the eSembler Software. The Customer may continue to use the eSembler Software under the Software License for a period of six (6) months after Customer has terminated the Annual Support ("Grace Period") at which time the Software License shall terminate. Following the conclusion of the Grace Period, Customer shall have no further rights to input new Customer Data into the eSembler Software. Customer is deemed to have been granted a limited, perpetual and irrevocable license after the conclusion of the Grace Period to continue to use eSembler Software to access and manage the pre-termination Customer Data (including data inputted during the Grace Period).
- 3.3 Error Correction and Software Modification. Premio will provide Customer with error corrections, bug fixes, patches or other updates to the eSembler Software to the extent that such error corrections are necessary for the utilization of Service and eSembler Software. In the event that the eSembler Software must be altered or modified as a result of changes in any state laws or regulations, Premio will make any such alteration or modification at the formal request of Customer and Customer will pay Premio its pro-rata share of the reasonable costs of Premio's services.
- 3.4 Additional Services. Any services beyond those described in this section 3 and the applicable Statement of Work will be subject to Premio's published standard rates and fees at the then-current hourly rate.



4. FEES AND PAYMENT TERMS

- 4.1 Service Fees. In connection with Customer's use of Service, Customer may be required to pay the following fees which may collectively be referred to as "Service Fees": (a) an one-time License Fee according to the number of Peak Students in exchange for the Software License; (b) Annual Support Fee; (c) any Adjusted Fees as provided in Section 4.2; and (d) any additional fees for additional services ordered by Customer or rendered by Premio under the applicable Statement of Work ("Additional Fees").
- 4.2 Calculation of Fees. The License Fee and Annual Support Fee are calculated based on the total number of "Peak Students" (hereinafter defined) managed via eSembler. In the event that the number of Peak Students actually managed by eSembler *at any time* (including during the Grace Period) exceeds the total number of students allowed under the Software License or Annual Support purchased by Customer prior to the increase of the number of students, Customer agrees to pay Premio the difference between the current applicable Licensee Fee and Annual Support Fee (calculated by the increased number of students) and the original License Fee and Annual Support Fee ("Adjusted Fees"). "Peak Students" means the highest number of Active Students (hereinafter defined) on any single day during a 12-month period. An "Active Student" is one who was scheduled in a class and a) received at least one assignment score; or b) has had grade or comment information submitted via eSembler's *Submit Grade* tool; or c) has received a submitted value of "Present" in eSembler's *Attendance* Tool. Premio reserves its right to increase the Annual Support Fee no more than ten percent (10%) on a yearly basis.
- 4.3 Payment. Customer shall pay all fees specified in each Statement of Work in accordance with the payment terms set forth therein. Except as otherwise expressly set forth in the applicable Statement of Work, fifty percent (50%) of the License Fee and Annual Support Fee are due prior to the inception of Service implementation. The remaining balance is due upon completion of the installation and configuration of Service. The installation is considered "completed" when the Service is being used, to any extent, by Customer. In subsequent years, the Annual Support Fee is due in full and is billed annually on the anniversary date of the initial software installation or on a date mutually agreed upon by Premio and Customer. All Additional Fees shall be due according to the industry standard invoice terms dictated by Premio.
- 4.4 Taxes. Premio's fees do not include any governmental taxes, assessments, fees, or duties that may be applicable in connection with the transactions contemplated by this Agreement ("Taxes"). Customer will be responsible for paying all Taxes.
- 4.5 Payment Default. If, at any time, Customer is delinquent in the payment of any fees due hereunder, Premio may (a) suspend all Service and Customer's access to the eSembler Software, or (b) order Customer to immediately stop using the Service and eSembler Software, in its sole discretion and without prejudice to its other rights until such fees are paid in full. Late payments hereunder will accrue interest beginning as of the due date at the highest rate allowed by applicable law.

5. WARRANTIES AND LIMITATIONS

- 5.1 Mutual Warranties. Premio and Customer each hereby represents, warrants, and covenants to the other that: (a) it has the authority to enter into the Agreement, to grant the rights granted by it under the Agreement, and to perform its obligations under the Agreement; and (b) it will comply with all applicable laws and regulations that may be in effect during the term of the Agreement as they apply to such party's obligations under the Agreement.
- 5.2 No Infringement. Premio warrants that the Service, and the use thereof by Customer in accordance with the terms of the Agreement, does not and will not infringe, or constitute an infringement or misappropriation of, any intellectual property rights of a third party. Customer warrants that the Customer Data, and the use thereof by Premio in accordance with the terms of the Agreement, does

CONTRACT REVIEWED
AND APPROVED:
Katy Y. [Signature]

not and will not infringe, or constitute an infringement or misappropriation of, any intellectual property rights of a third party. Each party's exclusive remedy and the other party's entire liability for any breach of the warranties set forth in Sections 5.1(a) and 5.2 shall be the indemnification provisions set forth in Section 6 below.

- 5.3 Service Warranties. Premio warrants that, during the term of the Agreement, the Service provided hereunder: (a) will be performed in a professional manner consistent with generally accepted standards reasonably applicable to the provision of the Service; (b) will be performed substantially in accordance with the technical manuals and user documentation relating to the operation and use of the Service that are provided by Premio to Customer under the Agreement, as reasonably updated by Premio from time to time; and (c) does not knowingly contain any virus or disabling code which is designed to delete, disable or otherwise harm the Service or Customer's Confidential Information. Notwithstanding anything to the contrary, nothing in the Agreement shall restrict Premio from including or requiring passwords and other security measures designed to restrict unauthorized use of the Service.
- 5.4 Limitation of Warranty. THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT ARE THE SOLE WARRANTIES PROVIDED BY PREMIO HEREUNDER. PREMIO SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICE OR ANY OTHER ITEMS OR SERVICES COVERED BY OR FURNISHED UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, OR (III) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. PREMIO DOES NOT WARRANT THAT ANY ITEMS OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.
- 5.5 Limitation of Liability. EXCEPT FOR LIABILITY ARISING UNDER SECTIONS 2.3, 6 OR 7 OF THIS EXHIBIT OR FOR PERSONAL INJURY, FRAUD, WILLFUL MISCONDUCT, OR AMOUNTS OWED HEREUNDER:
- (a) NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES IN CONNECTION WITH THE AGREEMENT, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND
- (b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY UNDER THE AGREEMENT, FOR WHATEVER CAUSE, WHETHER IN AN ACTION IN CONTRACT OR IN TORT OR OTHERWISE, WILL BE LIMITED TO GENERAL MONEY DAMAGES AND SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE OF ALL FEES ACTUALLY PAID OR OWING HEREUNDER BY CUSTOMER TO PREMIO DURING THE TWELVE MONTH PERIOD PRECEDING THE TIME THAT THE CLAIM AROSE (BUT NOT LESS THAN THE AMOUNT OF BASE TRANSACTION FEES DUE DURING THE FIRST YEAR AFTER THE EFFECTIVE DATE).

6. INDEMNIFICATION

- 6.1 By Premio. Subject to the terms of the Agreement, Premio shall indemnify and hold harmless Customer and its employees, agents, successors and assigns from and against any and all loss, damage, liability, and expense arising from any claim brought against any such indemnified party by a third party to the extent: (a) alleging that the Service, as provided by Premio and used in accordance with the terms of the Agreement, infringes upon any valid patent, copyright, trademark, trade secret, or other proprietary right of such third party; or (b) resulting from the failure of Premio to comply with its obligations under the Agreement or from the acts or omissions of Premio or its

CONTRACT REVIEWED
AND APPROVED: PAGE 5
Kd 4-26-10

employees, agents, successors or assigns. Notwithstanding the above, Premio shall have no liability for any infringement claim which: (i) pertains to any Premio Property that has been altered or modified without Premio's prior written approval; or (ii) is based on use of the Service in conjunction with any item not provided by Premio, unless such use is shown to constitute the infringement when not used in conjunction with the item not provided by Premio.

6.2 By Customer. Subject to the terms of the Agreement, Customer shall indemnify and hold harmless Premio and its employees, agents, successors and assigns from and against any and all loss, damage, liability, and expense arising from any claim brought against any such indemnified party by any third party to the extent: (a) alleging that the Customer Data, or Customer's use of the Service in violation of the terms of the Agreement, infringes upon any valid patent, copyright, trademark, trade secret, or other proprietary right of, or otherwise harms, such third party; (b) resulting from the failure of Customer to comply with its obligations under the Agreement or from the acts or omissions of Customer or its employees, agents, successors or assigns; or (c) resulting from the unauthorized access or use of any Customer Data or student data through no fault of Premio.

6.3 Defense; Procedure. For any indemnifiable claim described in this Section 6: (a) the indemnifying party shall have the sole responsibility, at its expense, to defend and, at its sole discretion, to settle any such claim, provided that, if any settlement requires a non-monetary obligation of an indemnified party (other than ceasing use of the Service), then such settlement shall require the indemnified party's prior written consent, which consent will not be unreasonably withheld; and (b) each indemnified party shall provide the indemnifying party with prompt written notice of any such claim brought against it, together with copies of all related court documents involving such claim. An indemnified party's failure to provide prompt notice to the indemnifying party of any such claim shall not relieve the indemnifying party from any liability under this Section 6 with respect to such claim, unless the indemnifying party is materially prejudiced by such failure, in which case the indemnifying party shall have no obligation under this Section 6 with respect to such claim. If any compromise or settlement is made with respect to such claim, the indemnifying party shall pay all amounts in settlement of such claim. The indemnified party shall provide the indemnifying party with such information and assistance for the defense of such claim as the indemnifying party reasonably requests.

7. CONFIDENTIALITY

7.1 Confidential Information. In connection with the Agreement, each party hereto (a "disclosing party") may disclose its confidential and proprietary information to the other party (a "receiving party"). Subject to the exceptions listed below, a disclosing party's "Confidential Information" shall be defined as information disclosed by the disclosing party to the receiving party under the Agreement that is either: (a) clearly marked or otherwise clearly designated as confidential or proprietary; or (b) should be reasonably understood by the receiving party to be the confidential or proprietary information of the disclosing party. For the avoidance of doubt, the Premio Property and all pricing under the Agreement is the Confidential Information of Premio, and Customer Data is the Confidential Information of Customer.

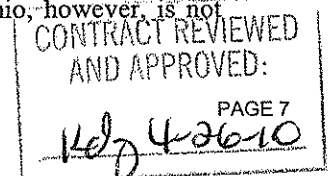
7.2 Confidential Treatment. During the term of the Agreement and for five (5) years after its expiration or termination, a receiving party shall not use, or otherwise disclose to any third party, a disclosing party's Confidential Information without the prior written consent of the disclosing party; provided, however, that Premio may use and disclose the Confidential Information of Customer as necessary for the limited purpose of performing the Service hereunder. In addition, each party agrees to take reasonable measures to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed, or used in violation of the provisions of the Agreement (which measures shall be no less than that which a reasonable person would take with respect to like confidential, proprietary, or trade secret information).

CONTRACT REVIEWED
AND APPROVED:
Kdy 4-26-10

- 7.3 Exceptions. Notwithstanding anything to the contrary, the obligations of the receiving party set forth in this Section 7 shall not apply to any information of the disclosing party that: (a) is or becomes a part of the public domain through no wrongful act of the receiving party; (b) was in the receiving party's possession free of any obligation of confidentiality at the time of the disclosing party's communication thereof to the receiving party; (c) is developed by the receiving party completely independent from the Confidential Information of the disclosing party; or (d) is required by law or regulation to be disclosed, but only to the extent and for the purpose of such required disclosure after providing the disclosing party with advance written notice, if reasonably possible, such that the disclosing party is afforded an opportunity to contest the disclosure or seek an appropriate protective order. In addition, the obligations of Premio set forth in this Section 7 shall not apply to any suggestions for product or service improvement or modification provided by Customer in connection with any present or future Premio product or service, and, accordingly, neither Premio nor any of its customers or business partners shall have any obligation or liability to Customer with respect to any use or disclosure of such suggestions.
- 7.4 Inadvertent Access to Education Record by Premio. Premio will not have access to any content constituting or deemed by Customer to be education records except as may be necessary for installation, maintenance, improvement, or troubleshooting the eSembler Software. In the event that Premio by accident, mistake, or otherwise receives or obtains access to any such education records, including but not limited to student grades or personal information, Premio will immediately notify Customer and will treat such education records as Confidential Information. Premio will endeavor to take all steps necessary to return such records to Customer and/or destroy or delete any duplicates.
- 7.5 Remedies. The parties recognize and agree that money damages are an inadequate remedy for breach of this Section 7 and further recognize that any such breach would result in irreparable harm to the non-breaching party. Therefore, in the event of any such breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to enjoin such activity in addition to any other remedies available to it.

8. TERM AND TERMINATION

- 8.1 Term. The term of the Agreement will commence on the Effective Date and will continue thereafter for an initial term as specified in the applicable Statement of Work executed by the parties contemporaneously with the Agreement (the "Initial Term"). This Agreement and the Service in the applicable Statement of Work will be renewed annually (the "Renewal Term") at the mutual agreement of the parties. If the Customer does not intend to renew, including for non-appropriation of funds, Customer will provide Premio with a written termination notice at least sixty (60) days prior to the expiration of the Initial Term or Renewal Term. All terms and conditions hereof shall remain in effect during any Renewal Term, except as the parties otherwise expressly agree to in writing. During the term of the Agreement and thereafter, Customer shall have the right to use the eSembler Software to view and manage archived Customer Data accumulated during the Initial Term and Renewal Term (if any).
- 8.2 Termination for Breach. In the event of a material breach of the Agreement by either party, except for payment defaults by the Customer, the non-breaching party may give written notice of such breach to the breaching party and, if the same is not cured within thirty (30) days after delivery of such notice, then, without limitation of any other remedy available hereunder, the non-breaching party may terminate the Agreement by delivery of a written notice of termination at any time thereafter to the breaching party. Such termination shall be effective as of the date of the notice of termination or such later date as set forth in such notice.
- 8.3 Termination due to Premio's Insolvency. Notwithstanding anything to the contrary, in the event that Premio is adjudicated as insolvent or has filed for bankruptcy protection, Customer will have a limited, perpetual and irrevocable license to use the eSembler Software. Premio, however, is not

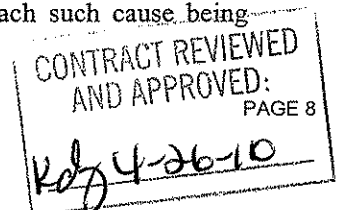


deemed to have transferred the ownership of Premio Property to Customer, and Customer shall not transfer or resell the Service to any third parties.

- 8.4 Duties Upon Termination; Return of Customer Data and Confidential Information; Survival. Upon termination of the Agreement: (a) all rights granted to Customer under the Agreement, except for those limited post-termination rights specifically set forth herein, shall immediately terminate; (b) upon Premio's request made within thirty (30) days after such termination, Customer will return to Premio or destroy all Premio Property that is in its possession or control; and (c) upon Customer's request made within thirty (30) days after such termination, Premio will return to Customer or destroy all Customer Data and Confidential Information of Customer that is in its possession or control, provided that Customer has paid all fees due to Premio under this Agreement and all Statements of Work hereunder. After such 30-day period, each party may destroy any such information of the other party in its possession or control. Termination of the Agreement shall not be construed to waive or release any claim that a party is entitled to assert at the time of such termination (including any claim for fees accrued or payable to Premio prior to the effective date of termination), and the applicable provisions of the Agreement shall continue to apply to such claim until it is resolved. The terms of Sections 1 and 2 of the Agreement and Sections 2.2, 2.4, 5.4, 5.5, 6, 7, 8.3, and 9 of this Exhibit shall survive the termination of the Agreement for any reason.

9. MISCELLANEOUS

- 9.1 Relationship of Parties. Premio and Customer are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Premio and Customer. Neither Premio nor Customer will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent, except as otherwise expressly provided in the Agreement.
- 9.2 Notices. All notices hereunder by either party shall be given by personal delivery (including reputable courier service), fees prepaid, or by sending such notice by registered or certified mail return receipt requested, postage prepaid, and addressed as set on the first page of this Agreement. Such notices shall be deemed to have been given and delivered upon receipt or attempted delivery (if receipt is refused), as the case may be, and the date of receipt identified by the applicable postal service on any return receipt card shall be conclusive evidence of receipt. Notices also may be sent by facsimile transmission, which shall be deemed received when transmitted if: (a) a document is electronically generated by the transmitting machine confirming that the transmission was received; and (b) the party transmitting the notice also sends such notice the same day by any of the other notice methods described above. Any party, by written notice to the other as above described, may alter the address for receipt by it of written notices hereunder.
- 9.3 Assignment. The Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which permission shall not be unreasonably withheld. Any attempted assignment without such consent will be void.
- 9.4 Waiver and Severability. Failure to enforce any term or condition of the Agreement shall not be deemed a waiver of the right to later enforce such term or condition or any other term or condition of the Agreement. If any provision of the Agreement is found to be void or unenforceable, that provision will be enforced to the maximum extent possible, and the remaining provisions of the Agreement will remain in full force and effect.
- 9.5 Force Majeure. No delay, failure or omission on the part of a Party to perform, fulfill or observe any of the terms or conditions of this Agreement shall give rise to any claim against or be deemed a breach of this Agreement by if such delay, failure or omission arises in whole from any cause or causes that are beyond the control of the party affected thereby and that prevent the Party from performing, fulfilling or observing, or unduly or unreasonably interfere with the Party's ability to perform, fulfill or observe, the terms and conditions of this Agreement (each such cause being



referred to herein as an "Event of Force Majeure"). Without limiting the generality of the foregoing, each of the following causes shall be deemed to be beyond the control of a Party: fires or explosions or other similar property casualties; lightning, storms, floods, washouts or other adverse meteorological conditions; landslides, earthquakes or other adverse geological conditions; acts of God; strikes, lockouts, boycotts or other concerted actions of workers or other labor or industrial strife or disturbances; sabotage; wars, acts of war or acts of an enemy; blockades; embargoes; insurrections, riots or other civil commotion or disturbances; epidemics; laws, acts, orders, proclamations, decrees, rules, regulations, ordinances, requirements, instructions or requests of governmental, military or other public authorities, agencies or powers; shortages of labor; shortages of or interruptions or curtailments in the supply of or other inability to obtain raw materials, other supplies, machinery, equipment or lines of pipe or power, fuel, water or other utilities; delays or failures of carriers, suppliers or contractors; inadequate transportation facilities; and any other events or circumstances, whether of the kind herein enumerated or otherwise, beyond the control of the Party affected thereby; in each case whether such events or circumstances exist on the date of this Agreement or arise thereafter.

- 9.6 Entire Agreement. The Agreement (together with any exhibits attached hereto and any Statements of Work and other documents that either incorporate this Agreement by reference or are incorporated herein by reference) contains the entire agreement and understanding between Premio and Customer with respect to the subject matter thereof and supersedes all prior agreements, negotiations, representations, and proposals, written and oral, relating to such subject matter.
- 9.7 Amendments. The Agreement shall not be deemed or construed to be modified, amended, or waived, in whole or in part, except as set forth herein or by a separate written agreement duly executed by the parties to the Agreement. No document, purchase order, or any handwritten or typewritten text which purports to alter or amend the printed text of the Agreement shall alter or amend any provision of the Agreement or otherwise control, unless Premio and Customer both specify in writing that such terms or conditions shall control.
- 9.8 Governing Law. The Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the State of Florida, without regard to conflict of laws principles. The parties hereby irrevocably consent to the nonexclusive jurisdiction of, and venue in, any court of competent jurisdiction located in Pasco County, Florida for the purposes of adjudicating any action or proceeding to enforce the terms of the Agreement. In the event any legal action is brought to enforce this Agreement, the successful party will be entitled to recover reasonable attorneys' fees and experts' fees and other related costs and expenses incurred, in addition to any compensation to which it may be entitled.
- 9.9 Interpretation. The Agreement will not be construed in favor of or against any party by reason of the extent to which any party participated in the preparation of the Agreement. The Agreement may be executed by facsimile copy and in any number of counterparts, all of which taken together will constitute one single agreement between the parties. Premio's obligation to perform Service under the Agreement is subject to the execution and delivery of the Agreement and an initial Statement of Work signed by a duly authorized representative of Customer and Premio.

CONTRACT REVIEWED
AND APPROVED:
Kdy 4-26-10

EXHIBIT B

**STATEMENT OF WORK
TO
ESEMBLER SOFTWARE SERVICES AGREEMENT**

This Statement of Work ("Statement of Work") is entered into pursuant to the eSembler Software Service Agreement (the "Agreement") by and between Premio, Inc. ("Premio") and DISTRICT SCHOOL BOARD of AASCO ("Customer") dated 5/4/10.
County

1. *Definitions.* Capitalized terms not otherwise defined in this Statement of Work will have the meanings given in the main body of the Agreement.
2. *Construction.* This Statement of Work is incorporated into the Agreement. In the event of any conflict between this Statement of Work and the main body of the Agreement, the Statement of Work will govern. The provisions of this Statement of Work govern only the subject matter hereof and not any other subject-matter covered by the Agreement.
3. *Services & Deliverables.* Provider will provide the following services:
Continued support of the eSembler Software with functionality limited to the definitions presented in the *Teacher User Manual, Implementation Information, and Integration Information* documents.
4. *Pricing.* The License fee indicated below is considered paid. Any future increase in peak student population beyond the Peak Students listed will result in additional License and Support fees pursuant to the requirements of Section 4 of the Agreement. The costs of Services & Deliverables are as follows:

Peak Students	License	Annual Support Fee
70,000	\$238,000	\$71,400

1. *Term.* Upon the payment of all fees by Customer, Premio shall provide the Services and Deliverables for an initial period of 1 year and pursuant to the requirements of Section 8.1 of the Agreement. The initial term relevant to the continuance of Annual Support is from the Effective Date until September 1, 2011 and renewed annually pursuant to the requirements of Section 4 and Section 8.1 of the Agreement.
2. *Customer Cooperation.* Customer will reasonably cooperate with Provider in the provision of services and will provide assistance to Provider as described in the *Implementation Information* and/or *Integration Information* documents.
3. *Payment.* Recipient will pay Provider for Services pursuant to the requirements of Section 4 of the Agreement.
4. *Additional Provisions.* In addition, the parties agree as follows:
 - a) *Annual Support.* Annual Support includes unlimited helpdesk services for a designated

CONTRACT REVIEWED
AND APPROVED: PAGE 10
4-26-10

client representative. eSembler helpdesk personnel are available through eSembler's toll free number and via e-mail from 8:00AM to 5:00PM PST, Monday through Friday. Extended, critical issue support is available 24 hours a day, seven days a week by contacting the eSembler Project Manager assigned to the Customer. Critical issues include those which cause cessation of eSembler functions. During normal business hours, eSembler engineers will respond to an initial support request within four working hours with an answer, solution, or an estimate of when a solution might be available. Services provided under Annual Support may not include services related integration with a new student information system purchased after the initial Customer implementation.

- b) *Training.* eSembler's *Train the Trainer* services are offered free of charge with every installation. Train the Trainer services are designed for providing instruction on how to train teachers how to use eSembler. For customers purchasing a License accommodating fewer than 20,000 students, up to eight hours of remote training is provided via WebEx. For customers purchasing eSembler licenses for more than 20,000 students, up to eight hours of free on-site training is provided. When a customer's location and/or airline flight schedules require more than a single night's hotel stay, the Customer agrees to pay for additional food, lodging, and transportation expenses resulting from the additional time spent on location. Additional concurrent on-site training can be purchased for \$1,200 per day plus instructor expenses. Supplemental on-site training may be purchased for \$1,600 per eight hour day plus all instructor expenses. Free WebEx training may be exchanged for an on-site training credit of \$1,200.
- c) *Integration.* eSembler's Integration Team will develop and maintain the Customer's data integration scripts for any established Student Information System vendor with more than fifteen (15) client installations. Data integration points include the minimum data elements specifically defined in the *Integration Information* document. The Customer will provide access to a test environment and the production environment of the Student Information System along with Customer subject matter experts to assist the eSembler Implementation team in the completion of the integration.
- d) *Project Management.* Information about project management roles and responsibilities, goals and requirements, installation, implementation, quality assurance, and support thresholds are defined in the *Integration Information* document.
- e) *Hardware and Server Software.* Cost estimates for infrastructure, hardware, database software, and operating systems are not included in this document. Additional information regarding the required hardware and network configuration is included in the eSembler document titled *Implementation Information*. Hardware and network requirements may change from time to time. It is the responsibility of the Customer to maintain and supply the appropriate hardware.
- f) *Onsite Support.* Onsite support is not included in the Annual Support service. For onsite support, one or more senior eSembler engineers can provide support for eSembler including application functionality, database training, templates configuration, and data integration with the Student Information Systems. Onsite support must be scheduled with advance notice to ensure engineer availability. Onsite support is provided on a time and materials basis, so all expenses including travel, meals, and accommodations will be expensed and billed to the Customer at cost. Copies of receipts will be provided. If Customer per diem policies exist, that policy information must be provided to the eSembler engineers prior to arrival onsite. Onsite support/technical training will be billed at a rate of \$225 per hour with an 8-hour day minimum required. Each hour beyond the

CONTRACT REVIEWED
AND APPROVED:
KDJ 4-26-10

standard 8-hour day will be billed at \$225 per hour. Travel time to and from the Customer location is split between Premio and the Customer.

- g) *State Standards.* Customer may purchase state standard data which provides teachers with the ability to associate standards with both assignment and lesson plans for a fee of \$2,300. Customer may thereafter purchase an annual support package exclusively for state standards maintenance at \$1,400 per year. Fees are subject to change without notice.
- h) *Additional Services.* Any services beyond those described in this applicable Statement of Work will be subject to Premio's published standard rates and fees at a rate of no less than \$200 per hour, or the then-current hourly rate.

This Statement of Work is effective as of the latest date of execution set forth below.

PREMIO, INC.

"Customer"

By _____

By _____

Rob Greer, VP of Product Management
Print Name and Title

Allen Altman, Board Chair
Print Name and Title

Date

Date

CONTRACT REVIEWED
AND APPROVED:
WJ 4-26-10