



Board Office Use: **Legislative File Info.**

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Enactment Number	14-1969
Enactment Date	12-10-14 <i>at</i>

Memo

To Board of Education

From Antwan Wilson, Superintendent *MST*
Mia Settles-Tidwell, Chief Operations Officer
John Krull, IT Officer, Technology Services

Board Meeting Date December 10, 2014

Subject Approval by the Board of Education of Addendum No. 2014-D - Addendum to the Software License Agreement Application Support Provider Renewal between District and District and SunGard Public Sector Inc., Bethlehem, PA, for the latter to provide ASP Support services which includes providing the hardware to operate the Business Plus (formerly known as IFAS) software on behalf of OUSD in the ASP environment, system management, scheduled system back-ups, and routine maintenance and repairs, and other services specified in the Scope of Work, incorporated herein by reference as though fully set forth, for the period of July 1, 2014 through June 30, 2015 in an amount not to exceed \$245,169.60.

Action Requested Approval of Addendum 2014-D between Oakland Unified School District and SUNGARD PUBLIC SECTOR, INC with services to be primarily provided to TECHNOLOGY SERVICES for the period of 07/01/2014 through 06/30/2015

Background The Oakland Unified School District, on August 28, 2001, entered into the Application Support Provider (ASP) Addendum designating SunGard Bi Tech LLC to be the "Application Services Provider" providing software to the Oakland Unified School District remotely.

Discussion Addendum No. 2014-D, Application Support Provider Renewal to the Software License Agreement between the Oakland Unified School District and SunGard Public Sector Inc., Bethlehem, PA, for the latter to provide ASP Support Services which includes providing the hardware to operate the BusinessPlus



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

(formerly known as IFAS) software on behalf of OUSD in the ASP environment, system management, scheduled system back-ups, and routine maintenance and repairs, for the period commencing July 1, 2014 and concluding June 30, 2015, in an amount not-to-exceed \$245,169.60.

Recommendation	Approval of Addendum 2014-D between Oakland Unified School District and SUNGARD PUBLIC SECTOR, INC with services to be primarily provided to TECHNOLOGY SERVICES for the period of 07/01/2014 through 06/30/2015
Fiscal Impact	\$245,169.60
Attachments	Sungard Addendum No 2014-D

Addendum to the Software License Agreement Application Support Provider Renewal (Addendum No. 2014-D)

This Addendum to the Software License Agreement signed August 28, 2001, is by and between SunGard Public Sector Inc., hereinafter referred to as SunGard, and Oakland Unified School District, CA, hereinafter referred to as Customer.

Whereas SunGard is the Licensor of software known as BusinessPLUS, formerly known as Integrated Financial and Administrative Solution (IFAS), hereinafter, "Software"; and

Whereas Customer is a Licensee of Software (as described in the Software License Agreement between SunGard and Customer);

Whereas Customer previously signed an Application Support Provider Addendum Renewal addendum with SunGard on June 11, 2013; and

Whereas Customer has requested a new Application Support Provider addendum for the 2013/2014 fiscal year (July 1, 2014 through June 30, 2015);

Therefore, Customer and SunGard enter into this Addendum under which SunGard will provide Application Service Provider services as described herein. This addendum replaces and supersedes any previous Application Service Provider addendums between SunGard and Customer.

1. General Terms and Conditions

1.1 Term and Termination. This Addendum, with its associated terms and conditions, shall commence July 1, 2014 and remain in force until June 30, 2015.

Prior to the end of the Term or at any time, Customer may immediately terminate this ASP Addendum, by giving written notice of intention to terminate for convenience at least ninety 90 days prior to the date of termination. All other Termination provisions as specified in the Software License Agreement apply to this Addendum.

1.2 Limited Use. Customer may use Software operating on one production database and one test database limited to a combined limit of 200 Concurrent Users.

2. Scope of ASP Support.

2.1. ASP Support Provided by SunGard. SunGard will provide hardware (UNIX hardware, 7i Windows Server hardware and Employee Online hardware) and third party software (Informix licenses, MicroFocus licenses, Openlink licenses and a SSL certificate) to operate Software on behalf of Customer in the ASP environment. SunGard will provide a System Manager who will be responsible for computer server management, data storage, and backup. SunGard shall also appoint an Assistant to the System Manager who will serve the needs of Customer in the event that the System Manager is unavailable. System back-ups will be performed on a full-backup basis weekly, with partial-backups daily. SunGard will provide the System Manager formal System Administration training for the Database and Operating

System. SunGard will schedule routine maintenance and repairs with the Customer in advance. The Customer should expect SunGard to schedule short periods of downtime quarterly. Under normal circumstances, scheduled downtime will be during the Customer's non-working hours.

- a. **Network Responsibilities.** SunGard's responsibility for network communication terminates at the WAN connection on the router at SunGard's location, and excludes the leased line(s), Customer routers not connected to the leased line(s) and local computing infrastructure and Personal Computers at the Customer site.

SunGard assumes responsibility for the purchase, configuration, installation, maintenance, and management of the data communications equipment hosted at SunGard's facility and a router hosted at the Customer's facility, and will hold title to same. SunGard assumes responsibility to provide a back-up ISDN line. Customer understands that this ISDN line will support only emergency operations.

- b. **System Performance.** The Customer and SunGard will work together to isolate performance bottlenecks and to identify whether they are related to the data communications link, the computer server, or the Customer's local network. SunGard shall provide sufficient server capacity for the duration of this Addendum to meet the reasonable performance requirements of the number of concurrent system users provided for in this Addendum.

If the addition of users, unusually heavy use, or other factors require additional resources for support of the Customer (e.g. hardware, software, people, data communications link etc.) SunGard and the Customer will confer on the matter until a mutually agreeable solution is found. The Customer is aware that if additional resources are required for the support of the Customer, additional fees will apply.

- c. **Interfaces or Custom Reports.** Interfaces, custom reports, special formats, and other programming or set-up requests are not included in this Addendum, but can be provided by SunGard under separate Addendum.
- d. **Support Hours and Charges.** SunGard's standard ASP support hours are 5am – 5pm (PST) Monday through Friday, with the exception of SunGard holidays. SunGard responsibilities defined herein will be performed at SunGard's location. In the event that SunGard assists the Customer with activities outside the scope of responsibilities defined herein, the charge will be based on SunGard's rate then in effect.
- e. **Creation / Setup of New Users.** SunGard will set-up and create new users at the UNIX level. To effect UNIX level changes, the Licensee will submit a "Change of User" form provided by SunGard. Once received at SunGard, the change will be completed within two business days.
- f. **Data Processing Audits or Support for System Testing.** Four hours per year are allocated for Data Processing Audits at SunGard; or for any system testing required by the Customer. If additional hours are needed, they will be offered at SunGard's rates then in effect.

- g. On-Going Maintenance.** SunGard will be responsible for maintenance on the computer server(s) at SunGard, the respective operating system(s), Third Party Software, the data communications equipment at SunGard and the router at the Customer's facility. SunGard will update the computer server and operating system software as necessary to remain current with new releases of the Software. Operating system or computer server upgrades shall be performed only after consultation with the Customer.
- h. Customer's Network, Personal Computers.** The Customer's network and personal computers including configuration and set-up to use Software are not included in this Addendum.
- i. Accounts and Update Frequency.** SunGard will provide a **production** environment for Customer processing ("Production Account"). In addition, SunGard will provide a test environment, ("Test Account"). To provide the Test Account, SunGard will replicate the Production Account into the Test Account semi-annually. This replication shall be performed only after consultation with the Customer. Additional accounts or more frequent replication will be offered at rates then in effect.
- j. Creation/Setup of Remote Printers.** SunGard will make the necessary operating system changes to enable printing to remote **networked** printers. To effect these changes, the Licensee will submit a 'Change/Setup Network Printer' form provided by SunGard. Once received at SunGard, the change will be completed within two business days.
- k. Disaster Recovery.** In the event of a disaster which disables **SunGard's** data center, SunGard will make commercially reasonable efforts to recover the Customer's mission critical systems for continued processing at the recovery location.
- l. Restoration of Lost Data.** SunGard will use reasonable care in handling tapes or other materials which encode or contain data belonging to Customer. SunGard's only obligation for breach of this Section will be to use commercially reasonable efforts to replace or repair **the** tape or material lost or damaged, if such is replaceable or repairable, and to make commercially reasonable efforts to regenerate any lost data from backup copies maintained by SunGard or source data provided by Customer.
- m. Specific Periodic Tasks Performed by SunGard.** In addition to the general items referenced above, the specific items listed below **shall** be performed periodically.

Daily

- Monitor previous night's backups and continuous logs.
- Check Scripts on Unix box. (i.e. Disk statistics).
- Provide performance management as necessary.
- Perform Nightly Partial Backups.
- Process any Printer/User request forms.

Weekly

Perform Weekly Full Backups including delivery to off-site storage location.

Monthly

Re-evaluate database layout.
Check space in File Systems.
Check space in Swap file.
Check system time for Synchronization.
Check modem configuration on dialup.
Check network security for current status and possible re-design.
Save router configuration to paper.
Check ISDN utilization.
Perform data integrity checks via Informix Oncheck.
Gather daily history and compile "ASP Status Report".

Quarterly

Perform Operating System, Third Party Software, and Software upgrades.
Purge router statistics.
Update (Operation Manual).
Clean-up posted directory.
Clean-up unnecessary files on all file systems (i.e. logs, coredumps, export files).
Test Battery Backup System.
Provide Customer or its Agent with progress reports on the tasks performed.

Semi-Annually

Update Test Account if desired.

As Necessary

Test restore capacity.
Check on compatibility with current test environment.
Extract Tables or Rebuild tables.
Add UNIX users, printers, services.
Modify UNIX user printers, services.
Track programmer modifications that may effect future Software updates.
Build Imaging area inside database for Image product.
Benchmark system to determine where slowdown(s) may be occurring.
Build actual Communication Circuit.
Build and Maintain NT Server for the CDD.net module.
Write UNIX scripts to help manage UNIX.
Diagram and maintain layout of ASP Communication Network.

3. Additional Customer Obligations

3.1. Communications Equipment. Customer is solely responsible for the acquisition and maintenance of all terminals, personal computers, network equipment, printers, equipment and third party software necessary to operate the Software products at Customer's facility.

Customer is solely responsible for the costs associated with the data communication between SunGard's Data Center and Customer's facility, including the leased data line(s).

3.2. Accuracy and Control of Customer Data. Customer is exclusively responsible for (a) the accuracy and adequacy of all data input and the review of all output received from SunGard for accuracy before using it.

4. Other Provisions.

4.1 LIMITATIONS OF LIABILITY. SUNGARD WILL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE RESULTING FROM ANY APPLICATION BY CUSTOMER, OR ANY PERSON TAKING FROM CUSTOMER, OF THE RESULTS OBTAINED FROM THE USE OF THE SOFTWARE PRODUCTS OR THE STANDARD SOFTWARE SERVICES OR ANY OTHER SERVICES PROVIDED UNDER THIS AGREEMENT, OR FROM ANY UNINTENDED OR UNFORESEEN USE BY CUSTOMER OR ANY PERSON TAKING FROM CUSTOMER OF THE DATA PROVIDED IN CONNECTION WITH THE SOFTWARE PRODUCTS OR STANDARD SOFTWARE SERVICES OR OTHER SERVICES UNDER THIS AGREEMENT AND RESULTS THEREFROM.

SUNGARD'S TOTAL LIABILITY UNDER THIS ADDENDUM WILL UNDER NO CIRCUMSTANCES EXCEED THE EQUIVALENT OF THE FIRST SIX MONTHS' ASP SERVICES FEES ACTUALLY PAID BY CUSTOMER TO SUNGARD UNDER THIS ADDENDUM. UNDER NO CIRCUMSTANCES WILL SUNGARD BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER OR NOT FORESEEABLE.

4.2. Suspension of Services. SunGard's obligations and Customer's rights under this Addendum are conditioned upon Customer's payment of the Start-up Fees, and the Monthly Services Fees and other fees and charges set forth herein. SunGard may, without terminating this Addendum, and in its sole discretion and without further notice to Customer, suspend ASP Services in the instance of non-payment by the Customer until Customer resumes payment.

4.3 Modification, Amendment, Supplement or Waiver. No modification, amendment, supplement to or waiver of this Addendum or any of its provisions will be binding upon the parties hereto unless made in writing and duly signed by both parties. A failure or delay of either party to this Addendum to (a) insist upon the performance of any terms or conditions of this Addendum, (b) exercise any rights or privileges conferred in this Addendum, or (c) demand damages or a specified remedy provided for herein as a result of any breach of any terms or conditions of this Addendum, will not be construed as waiving any such terms, conditions, rights or privileges and the same will continue and remain in full force and effect.

4.5 Severability. In the event any one or more of the provisions of this Addendum will for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Addendum will be unimpaired, and the invalid, illegal or unenforceable provision will be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal, or unenforceable provision.

4.6 Entirety of Addendum. This Addendum and the Software License Agreement as it may be amended from time to time constitutes the entire Agreement between the parties and supersedes all previous or contemporaneous Addendums, promises, representations, whether written or oral, between the parties with respect to the subject matter hereof. If any provision of

this Addendum is inconsistent or in conflict with the Software License Agreement or previous addendum, such provision of this Addendum will be deemed to govern and supersede the Software License Agreement. Headings in this Addendum are for the purpose of assisting the reader and do not constitute a part hereof.

5. Payments and Payment Terms

5.1 Payments.

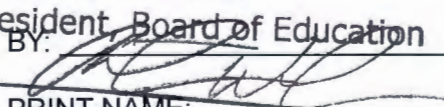
5.1.1 Startup Fee. No start-up fees are included in this Addendum.

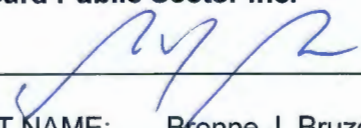
5.1.2 Monthly Fee (July 1, 2014 – June 30, 2015). Customer shall pay recurring monthly fees of **\$20,430.80** for ASP Support due on the first day of each month. The monthly fee listed herein shall be in effect between July 1, 2014 through June 30, 2015.

5.2 Taxes. The fees and other amounts payable by Customer to SunGard under this Addendum do not include any taxes of any jurisdiction that may be assessed or imposed upon the copies of the Software and Documentation delivered to Customer, the license granted under this Addendum or the services provided under this Addendum, or otherwise assessed or imposed in connection with the transactions contemplated by this Addendum, including sales, use, excise, value added, personal property, export, import and withholding taxes, excluding only taxes based upon SunGard's net income. Customer shall directly pay any such taxes assessed against it, and Customer shall promptly reimburse SunGard for any such taxes payable or collectable by SunGard.

5.3 Payment Terms. SunGard shall submit invoices to Customer on a monthly basis for monthly fees and routine expense reimbursements. SunGard shall submit invoices to Customer for any other fees or expense reimbursements as and when incurred. Customer's payments shall be due within thirty (30) days after receipt of invoice. Interest at the rate of eighteen percent (18%) per annum, (or, if lower, the maximum rate permitted by applicable law) shall accrue on any undisputed amount not paid by Customer to SunGard when due under this Addendum, and shall be payable by Customer to SunGard on demand. Interest on amounts, which are in dispute, shall be suspended until the issue in dispute is resolved as per Section 5.6 of the Software License Agreement. All fees and other amounts paid by Customer under this Addendum are non-refundable.

By the signatures of their duly authorized representatives below, SunGard and Customer, intending to be legally bound, agree to all of the provisions of this Addendum.

~~Oakland Unified School District, CA~~
~~David Rakistida~~
President, Board of Education
BY: 
PRINT NAME: Antwan Wilson
Secretary, Board of Education

SunGard Public Sector Inc.
BY: 
PRINT NAME: Bronne J. Bruzgo
PRINT TITLE: Vice President, Sales

DATE SIGNED: OAKLAND UNIFIED SCHOOL DISTRICT DATE SIGNED: October 23, 2014

Office of General Counsel
APPROVED FOR FORM & SUBSTANCE

By: 
Franon McWilliams
Assistant General Counsel

SOFTWARE LICENSE AGREEMENT

BETWEEN

SunGard/BI-Tech Inc.
a Delaware Corporation
with Headquarters at
890 Fortress Street
Chico, CA 95973

("SunGard")

SANDY SNOW



ORIGINAL

Legislative File

AND

File ID No. 00-1167
Introduction Date 07-05-00
Enactment No 01-0607
Enactment Date 08-27-01
By BC

Oakland Unified School District *Brian Boley*
1025 2nd Ave
Oakland, CA 94606
("Customer")

By the signatures of their duly authorized representatives below, SunGard and Customer, intending to be legally bound, agree to all of the provisions of this Agreement and all Schedules and Addenda to this Agreement.

[SunGard] BY: *Bruce E. Langston* [Customer] BY: *Jason Hodge*
PRINT NAME: Bruce E. Langston PRINT NAME: Jason Hodge *8/28/01*
PRINT TITLE: V.P. Finance PRINT TITLE: President, Board of Education
DATE SIGNED: 8/7/01 DATE SIGNED: 8/28/01

Edgar Rakestraw, Jr.
Edgar Rakestraw, Jr.
Deputy Secretary, Board of Education
8/28/01

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: *[Signature]*
ROYA. COMBS, Attorney at Law
General Counsel

1. DEFINITION OF TERMS

As used in this Agreement, the following terms have the following meanings:

- (a) "Account" means a single and unique combination of database and Software.
- (b) "Affiliate" means, with respect to a specified person, any person which directly or indirectly controls, is controlled by, or is under common control with the specified person as of the date of this Agreement, for as long as such relationship remains in effect.
- (c) "Confidential Information" means all business information disclosed by one party to the other in connection with this Agreement unless it is or later becomes publicly available through no fault of the other party or it was or later is rightfully developed or obtained by the other party from independent sources free from any duty of confidentiality. Without limiting the generality of the foregoing, Confidential Information shall include Customer's data and the details of Customer's computer operations and shall include SunGard's Proprietary Items. Confidential Information shall include the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of the products licensed under a Software Schedule.
- (d) "Concurrent User" means the highest total number of users making simultaneous use of the Software at any time during a calendar year period, whether use is via modem, direct connection, LAN connection, or via the Web.
- (e) "Copy" means any paper, disk, tape, film, memory device, or other material or object on or in which any words, object code, source code or other symbols are written, recorded or encoded, whether permanent or transitory.
- (f) "Documentation" means technical manuals, training manuals, user guides, and workbooks provided by SunGard to assist Customer with the use of Software.
- (g) "Execution Date" means the latest date shown on the signature line of this Agreement.
- (h) "Export Laws" means all laws, administrative regulations, and executive orders of any Applicable Jurisdiction relating to the control of imports and exports of commodities and technical data, software and related property, use or remote use of software and related property, or registration of this Agreement, including the Export Administration Regulations of the U.S. Department of Commerce, and the International Traffic in Arms Regulations of the U.S. Department of State. "Applicable Jurisdiction" means the U.S., and any other jurisdiction where any Proprietary Items will be located or from where any Proprietary Items will be accessed under this Agreement.
- (i) "including" means including but not limited to.
- (j) "Latest Software Update" means those Software Updates which SunGard has made generally available to its Customer's within the preceding twelve months.
- (k) "New Module" means a set of functionality available to be licensed to Customer by SunGard which was not previously licensed to Customer.

- (l) "Person" means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, cooperative, trust, estate, government, governmental agency, regulatory authority, or other entity of any nature.
- (m) "Proprietary Items" means, collectively, the Software and Documentation, the object code and the source code for the Software, the visual expressions, screen formats, report formats and other design features of the Software, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Software or Documentation, all future modifications, revisions, updates, refinements, improvements and enhancements of the Software or Documentation, all derivative works based upon any of the foregoing, and all copies of the foregoing.
- (n) "Software Update" means Software modifications, revisions and updates to the Software which SunGard, in its sole discretion, incorporates into the Software as a Software Update per Schedule E as part of Annual Support Agreement.

2. LIMITED LICENSE

- 2.1. **Grant.** SunGard grants to Customer a non-transferable, non-exclusive, limited-scope, license to use SunGard's proprietary application software identified in Schedule A of this Agreement, known as IFAS, hereinafter referred to as ("Software"). SunGard further grants the right to use the documentation associated to the Software, hereinafter referred to as ("Documentation"), as the Software and Documentation may be modified, revised and updated in accordance with this Agreement.
- 2.2. **Scope.** Customer may use the Software as provided in this Agreement, only in the ordinary course of its own business operations and for its own business purposes and within the limitations identified in Schedule C. Customer may copy and use the Software for inactive back-up or archival purposes, for disaster recovery purposes and for parallel testing. Customer may copy the Documentation to the extent reasonably necessary for use of the Software under the terms of this Agreement.
- 2.3. **Source Code.** Customer shall receive one copy of the source code which shall reside with the Customer for the Term of this Agreement for the sole purpose of aiding SunGard in performing its maintenance and support obligations as set forth herein. Customer is strictly prohibited from copying, distributing, modifying or using the source code for any purpose.

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3. SOFTWARE ACCEPTANCE

- 3.1. **Acceptance.** SunGard shall give written notice to Customer certifying that installation of the Software at the Initial Installation Site(s) is completed. Customer shall be deemed to have accepted the Software thirty (30) days after receiving SunGard's notice, unless, during that period, the Software fails to perform in accordance with the Documentation in some material respect that precludes acceptance of the Software by Customer, and, by the end of that thirty (30) day period, Customer gives written notice of non-acceptance to SunGard describing the material failure in reasonable detail and explaining why the failure precludes acceptance of the Software by Customer. If Customer gives a proper notice of non-acceptance to SunGard, then:

- (a) SunGard shall investigate the reported failure. Customer shall provide to SunGard reasonably detailed documentation and explanation, together with underlying data, to substantiate the failure and to assist SunGard in its efforts to diagnose, reproduce and if necessary correct the failure.
- (b) If there was no material failure to perform or the failure to perform was not attributable to a defect in the Software or an act or omission of SunGard, then SunGard shall give written notice to Customer explaining its determination in reasonable detail, and Customer shall be deemed to have accepted the Software as of the date of SunGard's notice. In the event SunGard determines, that the reported error did not, in fact, exist or was not attributable to a defect in the Software or an act or omission of SunGard, then Customer shall pay for SunGard's investigation and related services at the then current professional service rates in effect.
- (c) If there was a material failure to perform that was attributable to a defect in the Software or an act or omission of SunGard, and if SunGard cannot correct the failure within thirty (30) days (or such longer period as may be reasonable under the circumstances) after receipt of Customer's notice of non-acceptance, then Customer shall promptly return to SunGard all copies of the Software and Documentation and any other items delivered to Customer by SunGard, and SunGard shall then refund to Customer the license fees paid by Customer. If, within such period, SunGard does correct the failure, then SunGard shall give written notice to Customer certifying that the failure has been corrected, and another thirty (30) day acceptance period shall begin in accordance with this Section 3.1.

4. WARRANTIES AND LIMITATIONS

- 4.1. **Performance.** SunGard warrants to Customer that the Software will perform as described in the Documentation in all material respects for a period of one year from the date of initial installation.
- 4.2. **Right to License; No Infringement.** SunGard warrants to Customer that it has the full legal right to grant to Customer the license granted under this Agreement, and that the Software and Documentation, as and when delivered to Customer by SunGard and when properly used for the purpose and in the manner specifically authorized by this Agreement, do not infringe upon any United States patent, copyright, trade secret or other proprietary right of any person. SunGard shall defend and indemnify Customer against any third party claim to the extent attributable to a violation of the foregoing warranty. SunGard shall have no liability or obligation under this Section 4.2 unless Customer gives written notice to SunGard promptly (within ten (10) days, provided that later notice shall relieve SunGard of its liability under this Section 4.2 only to the extent that SunGard is prejudiced by such later notice) after any applicable infringement claim is initiated against Customer and allows SunGard to have sole control of the defense or settlement of the claim. If any applicable infringement claim is initiated, or in SunGard's sole opinion is likely to be initiated, then SunGard shall have the option, at its expense, to:

- (a) modify or replace all or the infringing part of the Software or Documentation so that it is no longer infringing, provided that the Software functionality does not change in any material adverse respect; or
 - (b) procure for Customer the right to continue using the infringing part of the Software or Documentation; or
 - (c) remove all or the infringing part of the Software or Documentation, and refund to Customer the corresponding portion of the initial license fee paid by Customer to SunGard under Schedule B.
- 4.3. **Customer Infringement.** Customer warrants to SunGard that Customer has the full legal right to grant to SunGard the right to use the ideas, methods, formulas, concepts, designs, plans, specifications and other materials provided by or on behalf of Customer for use in developing and/or incorporated into the Software or the Documentation ("Customer Material") and that the Customer Material does not infringe upon any United States patent, copyright, trade secret or other proprietary right of any Person. Customer shall indemnify and defend SunGard against any third party claims to the extent attributable to a violation of the foregoing warranty or any third party infringement of a United States patent, copyright, trade secret or other proprietary right of any Person to the extent resulting from a modification of the Software or Documentation by Customer or any third party which gains access to the Proprietary Items of SunGard through Customer.
- 4.4. **Exclusion for Unauthorized Actions.** SunGard shall have no liability under any provision of this Agreement with respect to any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Software, any unauthorized combination of the Software with other software, any use of any version of the Software other than the Latest Software Update that is then generally available to SunGard's customer base, or any breach of this Agreement by Customer.
- 4.5. **Force Majeure.** Except with respect to breach of confidentiality and except with respect to Customer's payment obligations hereunder, neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications, power or other utility, labor problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.
- 4.6. **Disclaimer.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SUNGARD MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTY OF TITLE, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE SOFTWARE OR ANY OTHER MATTER PERTAINING TO THIS AGREEMENT.
- 4.7. **Limitation of Liability.**
- (a) EXCEPT FOR INDEMNIFICATION UNDER SECTION 4.2, SUNGARD'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL UNDER NO

CIRCUMSTANCES EXCEED THE INITIAL LICENSE FEES ACTUALLY PAID BY CUSTOMER TO SUNGARD UNDER THIS AGREEMENT.

- (b) UNDER NO CIRCUMSTANCES SHALL SUNGARD BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE, WHETHER OR NOT FORESEEABLE.
- (c) CUSTOMER AND SUNGARD HAVE FREELY AND OPENLY NEGOTIATED THIS AGREEMENT INCLUDING THE PRICING TERMS IN THE KNOWLEDGE THAT THE LIABILITY OF THE PARTIES IS TO BE LIMITED IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT.

4.8. Other Limitations. The warranties made by SunGard in this Agreement, and the obligations of SunGard under this Agreement, run only to Customer and not to its affiliates, its customers or any other persons. Under no circumstances shall any other person be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement. Customer shall have no rights or remedies against SunGard except as specifically provided in this Agreement. No action or claim of any type relating to this Agreement may be brought or made by Customer more than one (1) year after Customer first has knowledge of the basis for the action or claim.

5. CONFIDENTIALITY, OWNERSHIP AND RESTRICTIVE COVENANT

- 5.1. Disclosure Restrictions. All Confidential Information as defined in Section 1, of one party ("Disclosing Party") in the possession of the other ("Receiving Party"), whether or not authorized, shall be held in strict confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality thereof. One party's Confidential Information shall not be used or disclosed by the other party for any purpose except as necessary to implement or perform this Agreement, or except as required by law, provided that the other party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees whose responsibilities require such use or access. The Receiving Party shall advise all such employees, before they receive access to or possession of any of the Disclosing Party's Confidential Information, of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. The Receiving Party shall be liable for any breach of this Agreement by any of its employees or any other person who obtains access to or possession of any of the Disclosing Party's Confidential Information from or through the Receiving Party.
- 5.2. SunGard's Proprietary Items, Ownership Rights. The Proprietary Items, as defined in Section 1, are trade secrets and proprietary property of SunGard, having great commercial value to SunGard. All Proprietary Items provided to Customer under this Agreement are being provided on a strictly confidential and limited use basis. Customer shall not, directly or indirectly, communicate, publish, display, loan, give or otherwise disclose any Proprietary Item to any person, or permit any person to have access to or possession of any Proprietary Item. Title to all Proprietary Items and all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights shall

remain exclusively with SunGard, even with respect to such items that were created by SunGard specifically for or on behalf of Customer. This Agreement is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property or other ownership rights to any Proprietary Items are transferred to Customer by virtue of this Agreement. All copies of Proprietary Items in Customer's possession shall remain the exclusive property of SunGard and shall be deemed to be on loan to Customer during the term of this Agreement.

5.3. Proprietary Restrictions. Customer shall not do, attempt to do, nor permit any other person to do, any of the following:

- (a) use any Proprietary Item for any purpose, or in any manner not specifically authorized by this Agreement; or
- (b) make or retain any copy of any Proprietary Item except as specifically authorized by this Agreement; or
- (c) create or recreate the source code for the Software, or re-engineer, reverse engineer, decompile or disassemble the Software; or
- (d) modify, adapt, translate or create derivative works based upon the Software or Documentation, or combine or merge any part of the Software or Documentation with or into any other software or documentation; or
- (e) refer to or otherwise use any Proprietary Item as part of any effort to develop a program having any functional attributes, visual expressions or other features similar to those of the Software to compete with SunGard; or
- (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Item, or fail to preserve all copyright and other proprietary notices in any copy of any Proprietary Item made by Customer; or
- (g) sell, market, license, sublicense, distribute or otherwise grant to any person, including any outsourcer, vendor, consultant or partner, any right to use any Proprietary Item, whether on Customer's behalf or otherwise.

5.4. Notice and Remedy of Breaches. Each party shall promptly give written notice to the other of any actual or suspected breach by it of any of the provisions of this Section 5, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.

5.5. Enforcement. Each party acknowledges that the restrictions in this Agreement are reasonable and necessary to protect the other's legitimate business interests. Each party acknowledges that any breach of any of the provisions of this Section 5 shall result in irreparable injury to the other for which money damages could not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have at law or in equity, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach. The existence of any claim or cause of action which a party or any other person may have against the other shall not constitute a defense or bar to the enforcement of any of the provisions of this Section 5.

5.6. Dispute Resolution Language

- (a) Either party may, upon notice to the other party, declare a dispute. Within ten (10) days after a dispute is declared, senior management of the parties not involved in day to day operations related to this Agreement shall meet and attempt to resolve the dispute. If, after using diligent efforts, the parties are unable to resolve the dispute within ten (10) days, either party, upon notice to the other party, may declare an impasse.
- (b) **Arbitration.** Ten (10) days after declaration of an impasse, either party may file a demand for arbitration under the rules then prevailing of the American Arbitration Association, upon written notice of demand for arbitration by the party seeking arbitration, setting forth the specifics of the matter in controversy or the claim being made. The arbitration shall be heard before an arbitrator mutually agreeable to the parties; provided, that if the parties cannot agree on the choice of arbitrator within ten (10) days after the first party seeking arbitration has given written notice, then the arbitration shall be heard by three (3) arbitrators, one chosen by each party, and the third chosen by those two arbitrators. A hearing on the merits of all claims for which arbitration is sought by either party shall be commenced not later than sixty (60) days from the date demand for arbitration is made by the first party seeking arbitration. The arbitrator (s) must render a decision within ten (10) days after the conclusion of such hearing. Any award in such arbitration shall be final and binding upon the parties and judgement thereon may be entered in any court of competent jurisdiction.
- (c) **Applicable Law.** The arbitration shall be governed by the United States Arbitration Act. The arbitrators shall apply the substantive law of the State of California. The arbitrators shall have the authority to grant any legal remedy available had the parties submitted the dispute to a judicial proceeding.
- (d) **Situs.** If arbitration is required to resolve any disputes between the parties, the proceedings to resolve the dispute shall be held in a neutral County in California.
- (e) This provision shall not be construed to prevent a party from instituting and a party is authorized to institute formal proceedings to avoid the expiration of any applicable limitation periods.

6. TERMINATION

6.1. Termination by Customer. Customer may immediately terminate this Agreement, by giving written notice of termination to SunGard, upon the occurrence of any of the following events:

- (a) SunGard breaches any of its material obligations under this Agreement and does not cure the breach within thirty (30) days (or such other time period as may be reasonable under the circumstances) after Customer gives written notice to SunGard describing the breach in reasonable detail.
- (b) SunGard (or a surviving company in the event of a merger or sale of SunGard) dissolves or liquidates or otherwise discontinues substantially all of its business operations. Notwithstanding the foregoing, SunGard reserves the right to outsource professional services which will not be deemed grounds for Customer termination hereunder.

6.2. Termination by SunGard. SunGard may immediately terminate this Agreement, by giving written notice of termination to Customer, upon the occurrence of any of the following events:

- (a) Customer fails to pay to SunGard, within thirty (30) days after SunGard makes written demand therefor, any past-due amount payable under this Agreement (including interest thereon) that is not the subject of a good faith dispute.
- (b) Customer breaches any of its material obligations under this Agreement and does not cure the breach within thirty (30) days (or such other time period as may be reasonable) after SunGard gives written notice to Customer describing the breach in reasonable detail.
- (c) Customer dissolves or liquidates or otherwise discontinues substantially all of its business operations.

6.3. Certain Remedies for Nonpayment. If Customer fails to pay to SunGard, within ten (10) days after SunGard makes written demand therefor, any past-due amount payable under this Agreement (including interest thereon) that is not the subject of a good faith dispute in addition to all other rights and remedies which SunGard may have at law or in equity, SunGard may, in its sole discretion and without further notice to Customer, suspend performance or revoke the License granted under this Agreement until all past due amounts are paid in full.

6.4. Effect of Termination. Upon a termination of this Agreement, whether under this Section 6 or otherwise, Customer shall: (a) discontinue all use of all Software and Documentation, (b) promptly return to SunGard all copies of the Software, the Documentation and any other Proprietary Items then in Customer's possession, and (c) give written notice to SunGard certifying that all copies of the Software have been permanently deleted from its computers. Customer shall remain liable for all payments due to SunGard with respect to the period ending on the date of termination. The provisions of Schedule B, and Sections 4 (excluding 4.1), 5, and 7 shall survive any termination of this Agreement, whether under this Section 6 or otherwise.

7. GENERAL PROVISIONS

- 7.1. **Notice.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt, the third business day after being mailed by first class certified air mail, or the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, provided that a signed written original is sent by one of the foregoing methods within twenty-four (24) hours thereafter. Customer's address for notices is 1025 2nd Ave, Oakland, CA 94606, attention Phil White. SunGard's address for notices is SunGard Software Inc., 890 Fortress Street, Chico, CA 95973, Attention: Vice President of Finance. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section.
- 7.2. **Parties in Interest.**
- (a) This Agreement shall bind, benefit and be enforceable by and against SunGard and Customer and, to the extent permitted hereby, their respective successors and assigns.
- (b) Neither party shall assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without the other party's prior written consent, except that such other party's consent shall not be required in the case of an assignment to a purchaser or successor to substantially all of such party's business or to an affiliate of such party, provided that the scope of any license granted hereunder does not change and the assignor guarantees the obligations of the assignee. Any assignment by a party in breach of this Section shall be void.
- (c) Any express assignment of this Agreement, any change in control of Customer, any acquisition of additional business by Customer shall constitute an assignment of this Agreement by Customer for purposes of this Section 7.2 ("Customer Assignment"). Customer shall give written notice to SunGard thirty (30) days prior to an Assignment certifying the expected use of the Software to process any additional business related to such Customer Assignment ("Additional Business"). If any Customer Assignment occurs, Customer may continue to process the business to the extent it existed prior to any such Customer Assignment, but Customer may not use the Software to process any Additional Business until and unless Customer has paid SunGard an Additional Business fee, to be mutually agreed to, and any use to process any Additional Business prior to the payment of such fee shall be deemed a material breach of this Agreement. Customer shall promptly complete and return to SunGard periodic certifications which SunGard, in its sole discretion, may from time to time send to Customer, certifying the actual use of the Software to process any Additional Business.
- 7.3. **Export Laws and Use Outside of the United States.** Customer shall comply with the Export Laws. Customer shall not export or re-export directly or indirectly (including via remote access) any part of the Software or Confidential Information to any country to which a license is required under the Export Laws without first obtaining a license.
- 7.4. **Relationship.** The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint ventures or agents.

- 7.5. **Entire Understanding.** This Agreement, which includes and incorporates the Schedules referred to herein, states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement. Any written, printed or other materials which SunGard provides to Customer that are not included in the Documentation are provided on an "as is" basis, without warranty, and solely as an accommodation to Customer.
- 7.6. **Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.
- 7.7. **Severability.** A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.
- 7.8. **Headings.** Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 7.9. **Construction of Agreement.** The terms and conditions of this Agreement are the result of negotiations between the parties. No provision of this Agreement shall be construed in favor of or against any party because one party or its professional advisors participated in the preparation of this Agreement.
- 7.10. **Personnel.** Neither party shall, directly or through one or more subsidiaries or other controlled entities, hire or offer to hire any programmer, trainer, or member of a data processing, customer support or conversion team of the other at any time when such person is employed or engaged by such party or during the six (6) months after such employment or engagement ends. For purposes of this provision, "hire" means to employ as an employee or to engage as an independent contractor, whether on a full-time, part-time or temporary basis. This provision will remain in effect during the term of this Agreement and for a period of one (1) year after expiration or termination of this Agreement.
- 7.11. **Jurisdiction and Process.** In any action relating to this Agreement, (a) each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in the State of California, (b) each of the parties irrevocably waives the right to trial by jury, (c) each of the parties irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which the party is to receive notice in accordance with Section 7.1, and (d) the prevailing party shall be entitled to recover its reasonable attorney's fees (including, if applicable, charges for in-house counsel), court costs and other legal expenses from the other party.
- 7.12. **Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF STATE OF CALIFORNIA, EXCLUDING CHOICE OF LAW.
- 7.13. **Piggy Back Clause.** Whereas Customer has conducted a competitive evaluation and has concluded such efforts with this negotiated Agreement; therefore this Agreement may serve as the basis for similar Agreements whereby other governmental entities may contract separately with SunGard.

SCHEDULE A
TO SOFTWARE LICENSE AGREEMENT
Itemized list of Software and associated Professional Services

SUMMARY PAGE

One-Time Fees			
IPAS Application Software	\$470,928		\$470,928
Third Party Software	Included in ASP	Included in ASP	Included in ASP
Standard Training, Data Conversion, Task Flows and Forms		286,200	286,200
Standard Hi-Tech - Custom Project Services		631,830	631,830
Schnier and Associates - Custom Project Services (M/WBE)		97,300	97,300
ABKO Consulting - Custom Project Services (Local DBA Vendor)		116,250	116,250
Total One-Time Fees	\$470,928	\$1,131,800	\$1,621,728

Recurring Fees (Annual Support / Maintenance Fees)	
IPAS Application Software	\$108,121
Third Party Software	Included in ASP
Total Recurring Fees	\$108,121

**SCHEDULE A
TO SOFTWARE LICENSE AGREEMENT**
Itemized list of Software and associated Professional Services

LICENSE FEES, TRAINING AND CONVERSION

200 Concurrent User License		License, Support, Training, & Conversion Fees				Training, Conversion, and Test Hours					
QTY	Description	License Fee	First Year Support Fee	Training & Conversion Subtotal	Total Fees	Distance Learning	Class Hours @ 50/Day	Class Hours @ 10/Day	Conversion Hours	Test Hours	Total Hours
1	IFAS Module Pricing Integrated Finance & Administrative Modules	\$60,396	\$12,798	\$36,800	\$110,000	64	32	40	64	40	240
1	NUCLEUS Security	9,758	1,758	4,800	16,314	8	0	24	0	0	32
1	Accounts Payable/Insurance	17,564	3,162	13,500	34,226	24	6	4	36	0	64
1	Accounts Receivable/Cash Receipts	17,564	3,162	9,600	30,326	16	4	4	40	0	64
1	Bank Reconciliation	9,758	1,756	10,800	22,314	8	0	16	16	32	72
1	Personal/Utility Database (Vendor Database)	9,758	1,756	8,700	20,214	16	6	4	32	0	58
1	Job/Project Ledger	31,714	5,709	4,800	42,223	16	8	8	0	0	32
1	Budget Item Detail	16,296	2,933	4,800	24,029	0	0	16	16	0	32
1	Purchasing	43,223	4,549	13,500	61,272	24	6	4	36	0	64
1	Fixed Assets	15,905	2,863	2,400	21,168	16	0	0	20	0	36
1	Stores Inventory (Warehouse)	31,714	5,709	12,000	49,423	32	0	9	32	16	89
1	Web, Mail, & Drill (Repeat Wilery)	24,393	4,391	9,600	38,384	0	32	32	0	0	64
1	Easy Laser Forms (ELF)	7,319	1,317	7,200	15,836	0	0	0	0	48	48
1	Clipboard User Interface	4,959	7,553	3,600	16,112	0	0	24	0	0	24
2	Payroll (includes web-based interface)	42,447	7,649	34,700	84,836	133	24	24	48	24	245
2	Human Resources and Position Control	48,447	7,648	34,950	91,045	85	24	24	80	20	233
2	Position Budgeting	12,000	2,160	14,400	28,560	0	0	72	0	24	96
1	Project Allocation	25,773	4,549	7,200	37,522	0	0	48	0	0	48
3	Contract Management	13,986	2,509	2,400	18,900	0	0	16	0	0	16
3	Bid & Quote Management	13,908	2,563	2,400	18,871	0	0	16	0	0	16
3	Employees Online	20,492	3,689	12,000	36,181	0	0	32	0	32	64
3	Applicant Tracking	20,492	3,689	0	24,181	0	0	0	0	0	0
3	Grants Management	20,449	3,689	8,400	32,538	0	0	36	0	0	36
3	Work Order Management	21,956	3,953	1,000	26,909	0	0	24	0	0	24
1	CDM (web-based reporting)	15,905	2,863	2,400	21,168	0	0	16	0	0	16
3	Image Builder (R/R not included)	Included	2,163	6,000	8,163	0	0	48	0	0	48
1	Workflow Engine	Included	Included	6,000	6,000	0	0	48	0	0	48
2	Substitutes Time Module	8,700	1,400	4,800	14,900	0	0	32	0	0	32
	Subtotal	\$588,668	\$108,131	\$388,280	\$1,085,079	472	142	415	492	296	1,365
	Educational / AEP Discount (10%)	-\$58,867	-\$10,813	-\$38,828	-\$108,508						
	Net Total	\$529,801	\$97,318	\$349,452	\$976,571						

**SCHEDULE A
TO SOFTWARE LICENSE AGREEMENT**

Itemized list of Software and associated Professional Services

CUSTOM PROFESSIONAL SERVICES

SUNGARD BI-TECH - CUSTOM PROJECT SERVICES	Hourly Rate	Hours	Total	M/DBE Vendor
Account Manager @ SunGard BI-Tech	N/A	Fixed Fee	10,000	
On-Site Accounting Consultant	150	500	75,000	
On-Site Financial/Disbursements Consultant #1	150	800	120,000	
HR / Payroll Consultant(s)	150	1920	288,000	
Reporting Consultant (custom report development)	150	160	24,000	
Interface Development (Estimated)	150	200	30,000	
Software Installation & Technical Training / System Level Setup	150	88	13,200	
Undefined Special Needs Consulting	150	200	30,000	
Live Assistance and Post-Implementation Support	150	175	26,250	
Potential Software Modifications (Estimated)	150	236	35,400	
Total SunGard BI-Tech - Custom Project Services		4,279	651,850	

SCHAFER AND ASSOCIATES - CUSTOM PROJECT SERVICES	Hourly Rate	Hours	Total	M/DBE Vendor
On-Site Financial/Disbursements Consultant #2	150	350	52,500	Y
End-User Training Assistance	150	300	45,000	Y
Total Schafel and Associates - Custom Project Services		650	97,500	

AERCO - CUSTOM PROJECT SERVICES	Hourly Rate	Hours	Total	Local M/DBE Vendor
Custom Documentation/Procedures Development	150	225	33,750	Y
Report Development / Workflow Evaluation	150	250	37,500	Y
End-User Training Assistance / Post Live Assistance	150	300	45,000	Y
Total AERCO - Custom Project Services		775	116,250	

**SCHEDULE B
TO SOFTWARE LICENSE AGREEMENT
Payment Schedule and Terms**

B-1. PAYMENT SCHEDULE

B-1.1. Due upon execution of the IFAS Software License Agreement and the delivery of the Software and reference manuals.

30% of all applicable IFAS License Fees	\$ 141,278.40
100% of Fixed Fee Services for Account Management	10,000.00

If applicable, 100% of the sales/use tax due on the taxable amount for the entire Agreement.

B-1.2. Due on November 1, 2001.

40% of all applicable IFAS License Fees	\$ 188,371.20
100% IFAS Maintenance	108,121.00

B-1.3 Due on December 31, 2001

30% of all applicable IFAS License Fees	\$ 141,278.40
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B-1.4 Due monthly as services are performed.

100% of Professional Services Fees (excluding Fixed Fee Services)	\$ 1,141,800.00
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B-2. PAYMENT TERMS

B-2.1 License Fees. Customer shall pay to SunGard license fees in the amount stated in Schedule A, in accordance with the Payment Schedule and Terms stated herein.

B-2.2 Annual Support Agreement. Upon the initial Software installation, Customer shall pay annual Software support fees (as described in Schedule E herein) in the amount stated on Schedule A (which fees shall not be reduced or increased based on the extent of use or lack of use of any module) as increased from year to year as follows: Support fees will be subject to increase annually in accordance with the increases in the percentage of the San Francisco Regional Office CPI Adjustment published by the U.S. Department of Labor and Statistics with the prior year as the baseline plus two percent (2%).

B-2.3 Professional Services.

- (a) Fixed Fee Services for Account Management as per D-3.1(e). SunGard's Account Manager services shall be provided by SunGard on a one-time fee basis and not on a charge-by-the-hour basis. Payment of the one-time Account Manager fee shall be paid as provided in B-1.1.
- (b) Other Professional Services. SunGard will deliver those services identified in Schedule A and further described in Schedule D. If the Customer desires services from SunGard or its Subcontractors, which are not identified in Schedules A or D, then the Customer shall have the option of purchasing additional services from SunGard at SunGard's professional services fee rates which are in effect at that time. Professional services shall be invoiced monthly as services are rendered.

B-2.4. Expense Reimbursements. Whenever any services are provided by SunGard or its Subcontractors at a Customer location or any other location requested by Customer other than one of SunGard's locations, Customer shall reimburse SunGard for its reasonable travel (including travel from origination points other than SunGard's headquarters location), lodging, meal and related expenses incurred by SunGard personnel in providing such services. Airfares shall be coach or economy. Meals (including tips) will average no more than \$35.00 per day. Ground transportation may include rental cars (intermediate or economy), bus, taxi/shuttle (including tips) and/or personal car mileage (at current IRS rate). Lodging arrangements will be made with safety, cost, proximity to the Customer, and reputation of the facility in mind. Items of a personal nature will not be charged to the Customer, such as, but not limited to; alcoholic beverages, medications, personal entertainment, health club facilities, spouse/companion travel, traffic violations, and telephone calls not related to the Customer.

The Customer will be provided with a copy of the Traveler's expense report; however copies of receipts will not be provided without an additional handling charge.

B-2.5. Additional Concurrent Users. If Customer elects to increase the number of Concurrent Users of the Software, then Customer shall pay to SunGard the then current rates in effect for such additional Software use and the associated software support.

B-2.6. Taxes. The fees and other amounts payable by Customer to SunGard under this Agreement do not include any taxes of any jurisdiction that may be assessed or imposed upon the copies of the Software and Documentation delivered to Customer, the license granted under this Agreement or the services provided under this Agreement, or otherwise assessed or imposed in connection with the transactions contemplated by this Agreement, including sales, use, excise, value added, personal property, export, import and withholding taxes, excluding only taxes based upon SunGard's net income. Customer shall directly pay any such taxes assessed against it, and Customer shall promptly reimburse SunGard for any such taxes payable or collectable by SunGard.

B-2.7. Amounts Due. Initial payments under this Agreement are due as per this Schedule B Section B-1. Future annual maintenance fees shall be invoiced by SunGard annually in advance. All other fees and all expense reimbursements shall be invoiced by SunGard as and when incurred. Customer's payments shall be due within thirty (30) days after receipt of invoice. Interest at the rate of eighteen percent (18%) per annum (or, if lower, the maximum rate permitted by applicable law) shall accrue on any undisputed amount not paid by Customer to SunGard when due under this Agreement, and shall be payable by Customer to SunGard on demand. Interest on amounts, which are in dispute, shall be suspended until the issue in dispute is resolved as per Section 5.6 of this Agreement. Except as provided in Section 4.2(e), all fees and other amounts paid by Customer under this Agreement are non-refundable, including license fees paid for third party products.

SCHEDULE C
TO SOFTWARE LICENSE AGREEMENT
Scope of Software Use, Limitations, and Notices

C-1. LIMITED CONCURRENT USERS

Software use is limited by the number of Concurrent Users named in Schedule A and defined in Section 1, as amended from time to time.

C-2. LIMITED TO CUSTOMER'S OWN USE

The Software licensed under this Agreement is for use by the Customer on the Customer's computers for its own internal processing. Customer shall not use the Software to conduct any type of service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any person, whether on a fee basis or otherwise.

C-3. TERM OF SOFTWARE LICENSE

The Software License granted herein shall continue from year to year so long as Customer is paying Annual Support fees as per Schedule B.

C-4. NOTICES AND CERTIFICATIONS

Customer shall promptly complete and return to SunGard periodic certifications which SunGard, in its sole discretion, may from time to time send to Customer, certifying that Customer has complied and is then in compliance with the Software Use Limitations of this Agreement. Customer shall give written notice to SunGard (and pay added user fees as applicable) if Customer exceeds the authorized number of Concurrent Users.

(a) SunGard may, at its expense and by giving reasonable advance written notice to Customer, enter Customer locations during normal business hours and audit the number of Concurrent Users of the Software, and other information pertaining to Customer's compliance with the provisions of Section 2 and Section 5 and this Schedule C. If SunGard discovers that there is an unauthorized number of Concurrent Users or that Customer is not in compliance with the provisions of Sections 2 and 5 and Schedule C in any material respect, then Customer shall reimburse SunGard for the expenses incurred by SunGard in conducting the audit.

(b) If the Customer violates the terms of Section 2 or Section 5 or this Schedule C, SunGard shall have the right, in addition to any other remedies available to them, to injunctive relief enjoining use of the Software and termination of this Agreement.

C-5. CUSTOMER INITIATED PROCUREMENT

Should the Customer enter a new procurement cycle, which requires a proposal and/or demonstration of Software licensed by this Agreement, Customer agrees to pay re-licensing fees if Customer's evaluation results in the continuing use of Software.

SCHEDULE D
TO SOFTWARE LICENSE AGREEMENT
Timeline, Scope of Work, and Specific Obligations

D-1 TIMELINE

Both SunGard and the Customer will participate in the creation of a detailed implementation plan during the first eight weeks after the execution of this Agreement. This jointly created implementation timeline shall establish goal dates for live use of the Software and the staff resources to be provided by Customer and SunGard. The Parties acknowledge that substantial implementation effort from Customer and from SunGard are required to complete the implementation. The quantity of implementation staff resources provided by SunGard are dependent upon the amount of staff resources provided by Customer. To assist with this implementation, SunGard will provide Professional Services beyond those listed in Schedule A at a fixed rate of \$150.00 per hour (excluding Project Management services) and \$188.00 per hour for Project Management services, for the first 18 months after the execution of this Agreement.

D-2 SCOPE OF WORK (General Obligations)

The implementation of Software is to be completed by shared effort from SunGard and from the Customer, which includes but is not limited to the following:

D-2.1. SunGard's primary roles are to:

- (a) Provide the Software and install the Software on the Customer's computer server;
- (b) To provide data conversion programming as identified in Schedule A (no programming for software modification is included);
- (c) To provide consulting and training services as identified in Schedule A to assist the Customer in its configuration and use of the Software;
- (d) Provide on-going Issue Resolution and Software Update Support as per Schedule E.

D-2.2. The Customer's primary roles are to:

- (a) Provide the infrastructure to support the Software (e.g. Client PCs and Network);
- (b) Provide specifications to enable SunGard to fulfill its duties for data conversion programming, or consulting support identified in Schedule A;
- (c) Provide adequate training facilities during the implementation;
- (d) Configure the Software to the Customer's own specification;
- (e) Test the Software configuration for accuracy;
- (f) Operate the Software for its own business practices within the parameters of this Agreement.

D-3. SCOPE OF WORK (Specific Obligations)

D-3.1. SunGard's Specific Obligations.

- (a) **Delivery of Software and Services.** SunGard shall deliver the Software and Documentation, and the Customer shall accept such delivery, FOB shipping point, within thirty (30) days of the execution of this Agreement.
- (b) **Software Installation.** SunGard will provide installation of the Software on the Customer's ASP UNIX Server located at SunGard's facility in Chico, CA. SunGard will install Software, including Third Party software listed on Schedule A on one UNIX server, one NT server, and two client PCs. The Customer will do Software installation on other PCs.

(c) **Training and Consulting.**

1. **Distance Learning.** SunGard will deliver training and consulting by Distance Learning, or by classes held at SunGard (Class Hours) or by consulting at the Customer's location (On-Site Hours). Schedule A identifies the allocation of training and consulting among the three delivery methods. Schedule A also identifies the Conversion Hours, and Task Hours which are included in this Agreement.

Distance Learning sessions shall be delivered remotely via teleconferencing. Each Distance Learning session shall consist of a two (2) hour remote training (plus approximately 45 minutes set-up/follow-up) beginning with a call from the Customer. Classes held at SunGard (except the Accounting Consultation and the Payroll/Human Resource Overview) are limited to three attendees. Additional students may attend classes at SunGard on a space-available basis at the then current training rate. Students from at least two other customers will be present in class at SunGard. Classes held at Customer's location should be limited to 10 students, and each should have a training workstation.

2. **Training Through Certified Subcontractors.** SunGard, at its option may provide training or consulting personnel through certified sub-contractors. SunGard will assume responsibility to assure the same level of competency is available to Customer whether training or consulting is provided by SunGard or by a certified sub-contractor. If Customer is not satisfied with the technical competence of SunGard's assigned trainers, they may request a different trainer.
3. The allocation of training between Distance Learning, Training at SunGard, Task Hours, and Training at the Customer location may be adjusted from one category to another, by SunGard as may be in the best interest of a successful implementation.

- (d) The initial implementation includes only those services listed in Schedule A. If software modifications or other direct labor outside the scope of Schedule A are needed they shall be provided at SunGard's rates then in effect. However, the Agreement does include SunGard services to develop two report definition files: one for the Balance Sheet and one for the Income Statement. The allocation of time to provide forms for purchasing, accounts payable, payroll, cash receipts, and accounts receivable assumes that the forms used will be standard forms selected from SunGard's standard book of forms.

- (e) **Account Management.** An Account Manager stationed at SunGard shall be assigned to coordinate all SunGard related implementation activities.

- (f) **Consulting and Other Services.** At Customer's reasonable request and subject to the availability of SunGard's personnel, SunGard shall provide to Customer consulting services, custom modification programming, support services relating to custom modifications, assistance with data transfers, system restarts and re-installations, and other specialized support services with respect to the Software. These services shall be provided by SunGard at SunGard or at Customer location(s) if and when SunGard and Customer agree that on-site services are necessary. Such services shall be offered at the then current professional services rates in effect.

D-3.2. Customer's Specific Obligations

- (a) **Procurement of Hardware.** Customer intends to contract with SunGard for ASP Services (Application Hosting Services). If Customer does not contract with SunGard for ASP Services, then Customer shall be responsible, at its expense, for procuring and maintaining adequate hardware and system software and for updating the hardware and system software as may be needed from time to time.
- (b) **Access to Facilities and Employees.** Customer shall provide to SunGard access to Customer's equipment and employees, and shall otherwise cooperate with SunGard, as reasonably necessary for SunGard to perform its installation, training, support and other obligations under this Agreement. Customer shall devote all equipment, facilities, personnel and other resources reasonably necessary to (a) implement the Software, (b) be trained in the use of the Software and (c) begin using the Software in production on a timely basis as contemplated by this Agreement.
- (c) **Customer Staff Roles and Responsibilities.** Customer will provide competent staff as identified by the titles below:

- 1. Project Manager
- 2. Accountant—General Ledger
- 3. Accountant—Subsystems
- 4. Payroll Specialist
- 5. HR Specialist
- 6. Programmer/Analyst—Specifications for conversion
- 7. Network Administrator—Network Management
- 8. Data Entry—for historical data not programmatically converted.

Primary tasks for that Customer staff identified in this Section are listed below:

- 1. Manage installation and operation of hardware and network
 - 2. Perform third party software and SunGard provided Software configuration
 - 3. Document software configuration
 - 4. Test software configuration
 - 5. Provide written specifications (e.g. Data Conversion, etc.)
 - 6. Provide flat files of any data to be converted by SunGard
 - 7. Validate and test any converted data
 - 8. Core implementation team to become functional experts
 - 9. Core implementation team to train all end users
 - 10. Test all system processing before live operation
- (d) **Customer Facility.** Customer shall provide a suitable training environment for system training classes held at Customer's location including Distance Learning training. Customer shall provide an Internet connection (at least 128 kilobytes of bandwidth) and a conference phone which will be dedicated to Distance Learning.

SCHEDULE E
TO SOFTWARE LICENSE AGREEMENT
Annual Support Agreement
(Remote Assistance, and Software Updates)

E-1. CUSTOMER ASSISTANCE

- E-1.1. Remote Assistance.** SunGard shall provide to Customer, from 9a.m. to 5p.m. PT, Monday through Friday (SunGard Holidays excepted), telephone, fax, and e-mail supported assistance regarding Customer's authorized use of the Latest Software Update. Customer agrees to attempt to locate information provided in Documentation prior to use of Remote Assistance. In addition, SunGard shall provide self service-based assistance via SunGard's Technical Support Web Page.
- E-1.2. Resolution Assistance.** Customer shall provide to SunGard reasonably detailed documentation and explanation of issues to be resolved, together with underlying data, to substantiate any problem or failure and to assist SunGard in its efforts to diagnose, reproduce and correct the problem or failure.
- E-1.3. Non Software Assistance.** Non Software Assistance requests (e.g. requests for assistance with hardware, operating systems, database management systems, networks, printer configuration, etc.) are outside the scope of this Annual Support Agreement. However, at Customer's request, Non Software Assistance may be provided on a time and materials basis, as available, at the sole discretion of SunGard.

E-2. SOFTWARE UPDATES

- E-2.1. Software Updates.** SunGard shall provide to the Customer Software Updates for UNIX server based Software via Hassle Free Support™ (HFS). HFS means that SunGard will log-on to Customer's designated UNIX server, with authorization from Customer, and load the UNIX server-based Software Update into a single Account for the Customer. If Customer utilizes SunGard's ASP Service, then SunGard will log-on to Customer's ASP Server, with authorization from Customer, and load the UNIX server-based Software Update into two Accounts (Production Account and Test Account) for the Customer. HFS is strictly Internet delivered. Therefore, the exchange of magnetic/optical media for UNIX server-based Software Updates is not available. If SunGard, in its sole discretion, determines that delivery of the UNIX server based Software Update via Internet is not practical, then Customer will receive magnetic/optical media along with instructions on assisting SunGard in applying the UNIX server based Software Update. For Software Updates for Windows™ based Software, media will be sent to Customer, including Customer loading instructions. Software Updates shall be accompanied by updates to the Documentation on optical media whenever SunGard determines, in its sole discretion, that such updates are necessary. Customer agrees to accept Software Updates as they become available and to remain current on the Latest Software Update. In addition, between Software Updates, service packs may be available for Customer download and installation. For those Customer's that choose not to utilize the HFS method of Software Update delivery, the Software Updates are available for download by the Customer from SunGard's FTP site.
- E-2.2.** From time to time new optional features may be added to the Software as a result of a Software Update. Optional features may require the use of third party software or hardware. Customer shall have the option to procure or not to procure such third party products to enable such optional features.

E-2.3. The Customer agrees to maintain, for the duration of this Agreement, an Internet connection (consisting of FTP and TELNET allowing SunGard access to Customer's server system) to facilitate Software Updates and remote support of the UNIX server based Software and to maintain remote control software (as specified by SunGard) to support the Windows™ based Software. Security will be based upon SunGard's unique IP address. If, after a good faith effort, Customer cannot maintain an Internet connection, then SunGard will provide Software Updates to Customer on magnetic/optical media. Customer agrees to maintain at least a 33600 baud modem connection and to make available competent personnel to assist SunGard in transferring the Software Updates to the server. Customer assistance may be required during non-standard work hours, such as evenings, weekends and/or holidays. A nominal handling charge will apply to cover the cost of the media and shipping charges.

E-2.5. SunGard shall provide Customer with Software Updates to maintain the compatibility of the Software with new releases of the operating system under which the Software is licensed.

E-2.6. This Agreement specifically does not include any custom modifications to the Software.

E-2.7. Any modifications not made by SunGard, and the results caused thereby to the Software shall be the sole responsibility of the Customer.

E-2.8. SunGard will use commercially reasonable efforts to provide Software Updates to cause the Software to continue to conform to GASB and GAAP requirements, and to maintain accurate Federal and State payroll tax tables (as published by the taxing authorities) and their related calculation processes. In the event that original programming is required to meet any other mandated Software change (including State, Federal, or Local mandated changes), the development costs will be borne by all Customers who utilize that Software change.

APPLICATION SOFTWARE MAINTENANCE AND SUPPORT SERVICES

SunGard K-12 Education's Application Software Maintenance and Support Services provide you with the comprehensive support services to meet your ongoing needs as you use our application software. Under the terms of our Maintenance and Support Agreement, the following services are provided:

- Customer Support Center
- Customer Relationship Management
- Enhancements To The Software
- Customer Web Site
- Sharing User Community

CUSTOMER SUPPORT CENTER

Our success as an organization is dependent on how well our support staff services our customers every day – taking care of our customers is the most important thing we do. We work diligently to provide talented staff that are knowledgeable in the applications, strong communicators, empathetic to our customers' needs and experienced in school district operations. The tenure of our support staff is over 10 years, and a number of our staff has previous experience working in a school district. We are committed to partnering with you over the long term to ensure that your organization meets the goals and expectations that come with the implementation of our solution.

- **Hours of Service**
Application software support is available 8:00 am to 5:00 pm customer local time, Monday through Friday, excluding holidays, to respond to any question or problem you may have with the use of our products. Service needs outside of our normal business hours can be arranged in advance for a nominal fee.
- **Customer Support Case Tracking**
All customer support inquiries are recorded and managed in a customer relationship management (CRM) system. Support cases can be initiated by calling our toll free telephone number or entering the case via our support internet portal at <https://support.sungardps.com/k12>. SunGard K-12 Education's online case tracking system allows a collaborative environment for problem solving, and all communication between you and our support staff is available on-line, real time. Besides being a powerful tool for tracking support requests, the system includes a full-featured knowledge base to assist you and our support staff in finding answers to your questions quickly. These tools have proved invaluable in enhancing service levels, measuring service quality, and improving customer satisfaction.
- **Response Times/Priorities**
When a support case is initiated, we establish, along with the customer, the priority of the case. Priority levels define the severity level and impact a problem has on the customers' operations. This enables us to be sure we are addressing your needs in the proper sequence.
- **On-Line Problem Diagnosis**
Our support staff utilizes diagnostic tools that enable remote system access to aid in problem resolution. Our staff can immediately see exactly what you are seeing such as data, reports, error messages, etc. and can bring this information back to our data center as necessary to facilitate problem resolution. We are in the process of implementing a new connectivity tool, SecureLink, which will provide improved security and connection reliability. This tool meets the rigorous SAS70 audit requirements. More information at <http://www.securelink.com/>.
- **Users/Client Access to Support**
It's important to balance the need for customer staff to access our support staff with the need to coordinate issue resolution between our organizations. For security audit reasons, we ask that you identify a few key contact names that can contact our staff for issue resolution. We want to ensure that we are providing support services to individuals that you have authorized to represent your organization.

CUSTOMER RELATIONSHIP MANAGEMENT

Your Customer Relationship Manager is your main contact for our ongoing relationship. Customer Relationship Managers are responsible for helping all clients achieve excellence in their use of the PLUS 360 application software solutions. Customer Relationship Managers contact each client on a regular basis with the following goals:

- Consistently measure the satisfaction level of all clients.
- Provide regular and personal communication to all clients.
- Help clients to improve the usefulness of the PLUS 360 solutions at their sites.
- Coordinate additional product sales, training and professional services.

The purpose of the Customer Relationship Manager is to build positive relationships and enhance client satisfaction through on-going communication with our clients and SunGard employees. The Customer Relationship Managers explore viable solutions for user issues, facilitate client awareness of services, products and new technologies, and bring client issues forward to management for consideration in resource re-allocation.

ENHANCEMENTS TO THE SOFTWARE

SunGard K-12 Education continually commits funds to research and development for on-going product enhancement projects. SunGard K-12 Education has an on-going commitment to our existing customers and will continue to focus on product enhancements that provide benefit and value to our customers.

Enhancements occur in one of the following ways:

- **Updates for Federal and State Reporting:** SunGard K-12 Education understands that state and federal reporting is vitally important to school districts. Our PLUS 360 solutions regulatory software includes reports and programs that help districts fulfill state and federal reporting requirements. SunGard K-12 Education assumes responsibility for providing and maintaining accurate federal and state reporting. A complete listing of provided regulatory reports can be provided upon request.

SunGard K-12 Education takes seriously its responsibility to identify and understand all on-going changes to regulatory reporting requirements. For every state, we have dedicated teams who are responsible for delivering software modifications. These specialists maintain direct communication with regulatory officials, attend meetings, and monitor all published legislation and documentation to stay up to date. As state and federal reporting regulations continue to evolve, our Product Support Specialists provide direct support to customers through every transition.

- **Client Enhancements:** Customer input into the software development cycle comes from many sources (customer support, user groups, email database, demonstrations, RFPs, etc.). The Product Manager reviews all these suggestions on a regular basis. First, the client defines a specification for the desired enhancement. SunGard K-12 Education then reviews the specifications and provides a quote to develop the enhancement. Once approved by the customer, SunGard will then develop the enhancement. If the enhancement would benefit other customers, it will be incorporated into the core software and released on a future software update.

CUSTOMER WEB SITE

SunGard K-12 Education offers a central place for customers to gather information on upcoming releases, user group meetings, software updates and other topics relevant to those using the PLUS 360 solutions. Our customer services website was designed to provide a central reference area for our clients.



- **Company**
Information about our company, contact information, hours of support are available on our website.
- **News**
Announcements and articles are available and updated frequently with current information from SunGard K-12 Education. Users can access information on client conferences such as registration and conference information. News Archives will contain past information from these areas.
- **Support**
Users can search for open cases or closed cases, or you can list all open cases. When you access cases, you are accessing the same system as our Product Support Specialists.
- **Knowledge Base**
Our customer website provides a robust knowledge base for customers to review prior to reporting a case. Our customer support website allows a collaborative environment for problem solving and all communication between client and support staff is on-line, real time. If you have a question about your PLUS 360 solution, chances are someone else has asked the same question before and many customer questions can be answered with a quick web search.
- **Documentation**
All user manuals are available on-line in PDF format. Revisions to manuals are posted and users can receive notification when new or revised documentation is available for download.
- **Software Updates**
All software updates, service packs and release notes are accessible via our customer website.
- **Customer Forum**
An online discussion site hosted by SunGard where customers can hold conversations in the form of posted messages. Many discussion threads are available to accommodate many areas of interest. For example, there is a thread where customers can share Cognos report specifications to help all customers benefit from reports that have been previously developed by other customers.

SHARING USER COMMUNITY

Each year SunGard K-12 Education jointly hosts along with the SunGard National User Group (SNUG) annual client conferences for the PLUS 360 solutions which bring together customers from all across the country. SunGard provides staff to these user group meetings. Location and frequency of user conferences vary based on products and region. In addition to annual conferences, local user groups meet in more than 25 states. Customers in states without local user groups are welcome to join the groups in neighboring states. Most groups hold regular meetings where peers and officers from SunGard come together.

SUPPORT SERVICE LIMITATIONS

We occasionally experience situations where a customer requires an extraordinary amount of customer support service for an extended period of time. This occurs infrequently, but when it does occur it's most often for reasons of inadequate staffing in the customer's internal support group or inadequately trained customer staff. When this occurs, we find ourselves providing an inordinately large amount of support resource to one customer at the expense of being able to provide responsive service to other customers. We monitor service usage to help prevent situations like this from developing. However, if we determine that your service usage over a period of time exceeds 1.5 the median average of all customers of comparable size, we will contact you to recommend remediation activities intended to lower the reliance on our support service. If the remediation activities do not resolve the problem we will apply a monthly support service surcharge until the service levels return to a normal level. We will be proactive about such situations if they develop by making you aware that a problem exists in advance, and we'll work with you to resolve the problem to help get your support usage back to a normal level.