

AGREEMENT

This Agreement ("Agreement") is made this 26th day of April, 2005 ("Effective Date") by and between School Board of Palm County (SBPC) having its principal place of business at 3300 Forest Hill Blvd, West Palm Beach, FL 33406 ("SBPC") and MetaMetrics, Inc., a Carolina Corporation having its principal place of business at 1000 Park Forty Plaza Drive, Suite 120, Durham, NC 27713 (hereafter referred to as "MM"). SBPC and MM are sometimes referred to in the Agreement as a "Party" and collectively as the "Parties."

WHEREAS, SBPC wishes to receive a grant from MM to offset the salary and benefit related expenses of Dr. Kim Knutson, a research and evaluation specialist in the employ of SBPC,

WHEREAS, MM wishes to use Dr. Knutson's substantial expertise to set up an extensive Lexile-oriented program in one or more Palm Beach County schools to demonstrate the efficacy of MM's technologies and to gather additional research data for use by MM in marketing and product development. MM acknowledges that the School Board of Palm County will determine the employee's responsibilities and the employee's essential function is conducting School Board of Palm County business pursuant to the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **SERVICES AND DELIVERABLES.** SBPC, led by Dr. Knutson, will provide the services specified in Exhibit A and any others relating to the selection, development and analysis of one or more schools that will serve as the model demonstration site. In addition, Dr. Knutson would be available to present the results from the model school program to others in and outside of Palm Beach County as agreed upon by the Parties. During the Term of this Agreement, the Parties will define various Deliverables and delivery dates that will be mutually agreed upon.
2. **INTELLECTUAL PROPERTY.** SBPC's pre-existing materials, products, code and software, all materials, products, and modifications developed or prepared by SBPC under this Agreement, including without limitation any plans, proposals, diagrams, code, models, field test data, design elements, forms, images and text relating thereto, software, and any work product of any kind, including the Deliverables and any subsequent updates and modifications thereto ("Work Product"), shall be and will remain School Board of Palm County and/or public domain property. MM's pre-existing material, products, code and software shall be and will remain the property of MM.
3. **SCOPE OF AGREEMENT:** This Agreement is not a joint venture. There shall be no co-mingling of assets, employees, or materials by SBPC and MM. The Parties will operate as independent contractors.

4. **TERM OF AGREEMENT.** The term (“Term”) of this Agreement shall commence on the effective date and shall remain in force for three (3) years unless otherwise terminated pursuant to Section 5 of this Agreement.

5. **TERMINATION.** Either Party may terminate this Agreement upon not less than thirty (30) days written notice if the other Party materially breaches any of the terms of this Agreement, provided, however, that this Agreement will not terminate if the breaching party has cured the breach within this thirty (30) day period to the reasonable satisfaction of the non-breaching Party. In the event that MM terminates this Agreement, MM shall remain obligated to pay any outstanding travel or miscellaneous expenses approved prior to such termination;
 - a. **Termination for Cause.** During the course of SBPC’s performance of Services hereunder, MM shall have the right to terminate this Agreement immediately upon written notice to SBPC in the event that:
 - i. a Deliverable from SBPC falls more than twenty (20) business days past due providing that MM has met its obligations relating to this Deliverable and has provided SBPC with ten (10) days to cure; or
 - ii. MM rejects the same Deliverable three (3) times for failure to conform to the Specifications; or
 - iii. Dr. Knutson is unable or unwilling to perform the activities outlined herein in the manner consistent with typical practices in the industry; or
 - iv. MM, in the course of a regularly scheduled six-month review, in its sole discretion, deems that the project is yielding insufficient results or value to warrant continuance, providing MM notifies SBPC in writing and provides SBPC with ten (10) days to cure.In the event of a termination of this Agreement pursuant to this Section, MM shall remain obligated to pay any outstanding travel or miscellaneous expenses approved prior to such termination.

 - b. **Termination for Convenience.** At any time during the term of this Agreement, either Party shall have the right to terminate this Agreement without cause upon thirty (30) days written notice to the other party. In the event of a termination of this Agreement by MM pursuant to this Section, MM shall remain obligated to pay:
 - i. the balance of the current year’s grant; and
 - ii. any outstanding travel or miscellaneous expenses approved prior to such termination

 - c. **Obligations Upon Termination.** Upon termination of this Agreement for any reason, SBPC shall immediately return to MM all copies of MM Confidential Information, and full and complete copies of all Work Product, and MM shall return to SBPC all copies of SBPC Confidential

Information. Upon termination of this Agreement for any reason, all Work Product that is not public information shall remain the property of MM.

- d. Survival. Upon termination or expiration of this Agreement, the following provisions shall survive: 2, 6, 9, 10, and 11.
6. **USE OF MM's MARKS:** Whenever SBPC uses the Lexile, Quantile or other Marks in advertising or in any other manner in connection with the activities described herein, SBPC shall clearly indicate MM's ownership of the Marks. SBPC shall provide MM with samples of all literature, packages, labels, labeling and advertising using the Marks prepared by or for SBPC and intended to be used by SBPC and MM, in their sole discretion, shall approve or reject said use. SBPC undertakes, when using the Mark hereunder, to comply with all applicable laws pertaining to such use.
7. **EXPENSES:** SBPC will continue to provide office space, a desktop computer, printer, telephone and other supplies for Dr. Knutson's work with MM. MM will provide SBPC with other equipment as deemed necessary by MM to perform the activities described herein. Travel and miscellaneous expenses must be approved in writing by MM prior to incurring the expense.
8. **GRANT:** A Grant sufficient to offset SBPC's cost of Dr. Knutson's salary and benefits will be provided to SBPC as outlined in Exhibit B.
9. **PROPRIETARY INFORMATION:** During the term of this Agreement, it may be necessary for SBPC or MM to disclose proprietary information to the other. Such information must be clearly identified as proprietary information and mark with a notice stating any restriction to its use. Each party agrees not to disclose the other's proprietary information to unauthorized parties and each shall take the same precaution as it normally takes to safeguard its own proprietary information. However, MetaMetrics understands and agrees that any confidentiality is governed by Florida law and that Fla. Stat. §119.01 (2)(d) provides: "Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record." MetaMetrics further understands and agrees that Florida Public Records Act in Fla. Stat. Chapter 119 and Fla. Const. Art. 1, §24(a), is broadly construed in favor of public access, and any exemptions for proprietary business information such as trade secrets are narrowly construed, pursuant to *Krischer v. D'Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996) and *Southern Bell Telephone and Telegraph Co., v. Beard*, 597 So. 2d 873, 876 (FLA. 1st DCA 1992). If such disclosure occurs despite the exercise of these precautions, neither party shall use the other party's proprietary information for any purpose other than that required for the performance of the Agreement. Proprietary Information shall remain the property of the furnishing party and should be returned to it or destroyed promptly upon request. The obligations of the parties under this provision concerning proprietary information

shall terminate twenty-four (24) months after termination of the Agreement. In the event of a breach, or threatened breach, of the provision of this paragraph, the non-breaching party shall be entitled to an injunction restraining the breaching party from disclosing in whole or in part, the proprietary information.

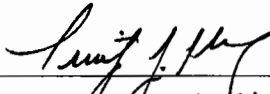
10. INDEPENDENT STATUS: In furnishing its services hereunder, SBPC may work as an independent contractor in relation to MM. Accordingly, SBPC shall have no authority to act for on behalf of MM in any manner to create obligations or otherwise bind MM without its express written consent. SBPC and MM agree that no employment relationship of any kind exists between them as a result of this Agreement, other than the express covenant set forth herein.

11. INDEMNIFICATION: “The School Board of Palm County recognizes its respective liability for certain tortuous acts of their agents, officers, employees and invitees to the extent and limits provided in Section 768.28, Florida Statutes, the State of Florida’s partial waiver of Sovereign Immunity; provided, however, that this provision shall not be construed as a waiver of any right or defense that the School District has under said statute.” MetaMetrics shall, in addition to any other obligation to indemnify the School Board of Palm County and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School District, their agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of MetaMetrics, or anyone directly or indirectly employed by them, or of anyone for whose acts any of them may be liable in the performance of the work; or violation of law, statute, ordinance, governmental administration order, rule or regulation in the performance of the work; claims or actions made my MetaMetrics or other party performing the work. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for MetaMetrics under workers’ compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any cost or expenses, including attorney’s fees, incurred by the School Board of Palm Beach County to enforce this agreement shall be borne by MetaMetrics. MetaMetrics recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by the School Board of Palm County in support of this indemnification in accordance with the laws of the State of Florida. This article will survive the termination of this Agreement.

12. ASSIGNMENT: SBPC may not assign this agreement without the express written approval of MM.

13. NOTICES: Notices given by any Party to the Agreement to the other Party hereunder shall be in writing and deemed to have been properly given if deposited with the United States Postal Service, registered or certified mail.
14. APPLICABLE LAW: This agreement shall be construed in accordance with the laws of the State of Florida. Any dispute with respect to this agreement is subject to the Laws of Florida, venue in Palm Beach County, Florida. Each party shall be responsible for its own attorney's fees and costs incurred as a result or any action or proceeding under this agreement.
15. ENTIRE AGREEMENT: This Agreement constitutes the entire understanding and agreement between SBPC and MM and supercedes any prior oral or written agreements with respect to the subject matter of the Agreement and Project. This Agreement shall not be modified unless such amendment or modification in writing and signed by authorized representatives of both SBPC and MM.

MetaMetrics, Inc.

By: 
Name: Timothy J. Klasson
Title: COO
Date: 3/7/05

**The School Board of Palm County of
Palm Beach County, Florida**

By: _____
Name: Tom Lynch
Title: Chair
Date: _____

By: _____
Name: Arthur C. Johnson
Title: Superintendent
Date: _____

"Reviewed & Approved As To
Legal Form and Sufficiency"

Cumbertbael 3-9-05

Exhibit A

Project Description

Goal of Initiative: The goal of the initiative is to improve the educational well being of students enrolled in the model school by improving the reading ability of all students. Educators, students, their parents or caregivers will attain this goal by fully and seamlessly integrating professional development programs, community outreach initiatives, instructional resources, technology, and research effort in the Lexile Framework for Reading. The outcomes of the initiative will be disseminated through a variety of means to interested educators across the United States.

Roles and Responsibilities for Dr. Kim Knutson, Testing and Evaluation Specialist

Primary Responsibilities: The School Board will determine the employee's responsibilities and the employee's essential function in conducting School Board business pursuant to the terms of this Agreement. The individual who assumes responsibility for the position of testing and evaluation specialist for this initiative to develop a nationally recognized model school will assume the following three broad responsibilities and activities and any others mutually agreed upon by the Parties:

1. **Coordinator of the Demonstration Site (65% FTE):** The primary responsibility for the person in this position is to collaborate with MetaMetrics staff to coordinate activities related to the demonstration site including, (a) developing and conducting on-going professional development programs related to The Lexile Framework for Reading, KRIS training, and Scholastic resources and materials; (b) providing on-going consultative services to the faculty and staff; (c) monitoring the implementation of Lexile-based assessment instruments and instructional resources, (d) observing faculty using Lexile products, and (e) aligning FCAT, SSS Diagnostic Tests, common assessments and the SRI to the Lexile Framework where feasible.
2. **Research Coordinator (30%):** This person will collaborate with MetaMetrics staff to design and conduct research and evaluation studies designed to (a) monitor implementation of the Lexile Framework for Reading in the classroom, (b) assess the impact of features of text demands of comprehension rates and reader ability, (c) evaluate the impact of the professional development programs on teachers' knowledge of and ability to use the Lexile Framework for Reading to inform day-to-day instructional decision-making and student's reading comprehension scores.

3. **Speaker (5%):** The person in this position will be asked to speak periodically at international, national, and state level conferences as well as conduct professional development programs for school districts or schools.

Exhibit B

Grant Schedule and Calculation

A Grant will be paid to PB each six (6) months as outlined below beginning within 10 days of the effective date of this agreement and every successive six month period thereafter pursuant to the other terms and conditions stated as part of this Agreement.

3-Year Grant Calculation

	Starting Annual	1/1/05 - 06/30/05	7/1/05 - 12/31/05	2005 Total	1/1/06 - 06/30/06	7/1/06 - 12/31/06	2006 Total	1/1/07 - 06/30/07	7/1/07 - 12/31/07	2007 Total	3-Year Total
Base Salary	61,779	30,890	32,125	63,015	32,125	33,410	65,535	33,410	34,746	68,157	196,706
Adv. Degree Supplement	2,500	1,250	1,250	2,500	1,250	1,250	2,500	1,250	1,250	2,500	7,500
Total Salary	64,279	32,140	33,375	65,515	33,375	34,660	68,035	34,660	35,996	70,657	204,206
Variable Benefits (18%)	11,570	5,785	6,008	11,793	6,008	6,239	12,246	6,239	6,479	12,718	36,757
Fixed Benefits (Health)	5,500	2,750	2,750	5,500	2,750	2,750	5,500	2,750	2,750	5,500	16,500
Total Benefits	17,070	8,535	8,758	17,293	8,758	8,989	17,746	8,989	9,229	18,218	53,257
Total Cost Salary & Benefits	81,349	40,675	42,133	82,807	42,133	43,649	85,781	43,649	45,226	88,875	257,463
Merit Increase %		4%									
Variable Benefit %		18%									