SOFTWARE LICENSE AGREEMENT

Supplemental Services Tracker™ (SST) Software

THIS AGREEMENT is made by and between Cayen Systems, LLC ("CAYEN"), 6610 W. Lisbon Avenue, Milwaukee, Wisconsin 53210, and School Board of Palm Beach County, 3300 Forest Hill Boulevard, West Palm Beach, FL 33406 ("CUSTOMER").

WHEREAS, Milwaukee Board of School Directors ("MBSD") is the owner of a software program known as *SST (Supplemental Services Tracker)* which is useful for managing Supplemental Educational Services (SES) Programs;

WHEREAS, MBSD has granted an exclusive license to CAYEN with rights to sublicense *SST* to other states/school districts; and

WHEREAS, CUSTOMER desires to acquire a nontransferable and non-exclusive License to use *SST* for the management of the CUSTOMER'S SES program.

THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. DEFINITION OF *SST*.

1.1   *SST* is a software system database built with Active Server Pages (.asp) and Microsoft SQL 2000 technology. It is used to manage and evaluate student attendance at tutoring programs, including the development and district approval of tutoring plans and invoice management.

2. GRANT OF LICENSE.

2.1.   In consideration of the price set forth in Paragraph 4 below, CAYEN grants to CUSTOMER a non-transferable, non-exclusive and perpetual License to use *SST* for the purpose of management of the CUSTOMER'S SES program.

2.2.   CUSTOMER acquires only the right to use *SST* and does not acquire any rights of ownership of the underlying intellectual property (including, without limitation, patent, trademark, copyright or trade secrets). CUSTOMER owns its copies of any documents or materials/disks related to *SST*. CUSTOMER may not rent, lease, loan, sell, license, give away, transfer, distribute or create derivative works based upon, in whole or in part, *SST* or any documents or material related to *SST*.

2.3.   The License granted under this Software License Agreement is limited for use only for management of the CUSTOMER'S SES program.

3. SST SOFTWARE LICENSES COVERED BY THIS LICENSE.

3.1   The *SST* License granted under this Software License Agreement entitles CUSTOMER to one system license and forty-five (45) school licenses.

3.2   The *SST* License contains the following:

- Two (2) days on-site training by two (2) trainers. Part of the time on-site is spent with district administrators and part with providers.
- All travel and related expenses will be covered by Cayen Systems for on-site training days
- Unlimited providers serving district can have unlimited logins and passwords
- Fifteen (15) hours phone and/or email support for CUSTOMER'S staff per year
- Five (5) hours of programming time for custom reports or other CUSTOMER'S needs
- Two (2) hours of phone/email support per provider. Hours in excess of two hours will be billed to the district on a monthly basis. After these support hours are used, they are recorded in our helpdesk software system. Reports will be available to districts on a regular basis and they must approve support beyond the 2 hours.
- Up to five (5) hours for student record data importation, including eligible students data, test score data, assessment and/or IEP data
- On-line help screens and electronic user's guide.

3.3   Items NOT included in License, but required for CUSTOMER to provide in order to implement *SST*:

- License fees for additional schools as they are added to AYP list for CUSTOMER
- Any rental or other such fees for computer lab(s) for training
- Hosting of SST database per paragraph 11 below

- Data from CUSTOMER (where not available, data can be input into *SST* manually by CUSTOMER:
  o "Student Master" database table with student IDs and demographic data for all students that may ever participate in the SES program
  o "Tests Master" database table with correct Student IDs, school year, test names and scores, as well as Objective Performance Indicators if available
  o Supporting tables/data (i.e. schools list, ethnicity list, special education codes, etc.)

- Other Components:
  o Computer hardware, software and related equipment required/recommended for *SST* operation. **See Appendix A.**

  Other requirements from CUSTOMER:

  - Local technical resources/personnel for assistance with iLinc (support software) connectivity if required
  - Tax exempt identification number

4.   PRICE.

4.1   Price for *SST License*

For the purchase of one (1) *SST* system license at $5,000 and forty-five (45) school licenses at $1000 each, and set up and training costs of $3000, hosting costs of $2400, the total price is $55,400. **Appendix B** presents the forgoing prices in tabular form.

The price includes the items in paragraph 3.2. It does not include the items in paragraphs 3.3, 4.3 or 4.3.

4.2   Payment and delivery terms

Upon the approval of CUSTOMER's Board, CUSTOMER will provide a valid Purchase Order for the full amount given in **Appendix B**. Upon receipt of valid Purchase Order, the SST implementation process will begin. Full payment is due within 30 days after installation and training. CAYEN will provide CUSTOMER an invoice upon installation or immediately after initial visit.

4.3   Customization Costs

The prices listed in 4.1 above do not include customization or modifications to system functionality. CUSTOMER may request customization of *SST* by CAYEN for an agreed upon pre-determined not to exceed cost. CUSTOMER shall provide valid Purchase Order for up to the agreed upon cost. At the completion of customization services, CAYEN shall provide an invoice for actual hours worked which shall be paid upon receipt.

CUSTOMER acknowledges that if programmers other than CAYEN modify *SST*, the warranty per Paragraph 5 is void. In addition, CUSTOMER acknowledges that *SST* upgrades may not function if other programmers modify *SST*.

4.4   Ownership of the underlying intellectual property (including, without limitation, patent, trademark, copyright or trade secrets) embodied in the customizations as designed and paid for by CUSTOMER in accordance with paragraph 4.3 and developed by CAYEN. CUSTOMER owns its copies of any documents or materials/disks related to *SST* as customized for CUSTOMER. CUSTOMER may not rent, lease, loan, sell, license, give away, transfer, distribute or create derivative works based upon, in whole or in part, *SST* or any documents or material related to *SST* as customized for CUSTOMER.

4.5   CAYEN shall mail all invoices to CUSTOMER at the address listed at the beginning of this Agreement. CUSTOMER shall mail all payments to CAYEN at the address listed at the beginning of this Agreement.

5.   WARRANTY.

SST IS WARRANTED BY CAYEN TO WORK FOR PURPOSES INTENDED. IF ANY ERRORS ARE DISCOVERED, CAYEN AGREES TO CORRECT ANY *SST* ERRORS FREE OF CHARGE DURING FIRST YEAR AND DURING SUBSEQUENT YEARS IN WHICH MAINTENANCE AGREEMENT IS PAID IN FULL.

THIS WARRANTY IS VOID IF CUSTOMER MAKES ANY ALTERATIONS TO *SST*. CAYEN WILL FIX ALTERED *SST* COMPONENTS THROUGH STANDARD DESIGN AND/OR PROGRAMMING CHARGES PER PARAGRAPH 4.3 ABOVE.

6.   LIMITATION OF LIABILITY/DAMAGES.

CAYEN's liability arising out of this Agreement, and the CUSTOMER'S sole and exclusive remedy for any damages arising out of the CUSTOMER's use of *SST*, or of documents or materials, related to *SST* shall be limited to the CUSTOMER'S direct damages, but in no event, shall exceed the amount of payments made by the CUSTOMER to CAYEN pursuant to this Agreement not including price paid under Paragraph 4.3 above for customization services. CUSTOMER further agrees that CAYEN shall not be liable for any damages incurred by CUSTOMER or any other person as a result of the CUSTOMER's use or misuse of *SST*, or documents or materials, related to *SST* even if CAYEN had been advised of the possibility of such damages. CAYEN shall not be liable for any consequential, special or incidental damages, or for any other claim or demand by or against the CUSTOMER. The parties acknowledge that the foregoing limitation of liability shall control over any inconsistent provision of this Agreement. CAYEN will not be liable for delays or failures in performance due to causes beyond its control or for damages caused by the CUSTOMER's failure to perform its responsibilities.

7.   INTELLECTUAL PROPERTY PROVISIONS.

CUSTOMER agrees that *SST*, and all information in documents and materials, related to *SST*, constitute proprietary information and intellectual property of MBSD. CUSTOMER acknowledges that CAYEN is the exclusive licensee of MBSD. CUSTOMER further agrees that *SST* (a) shall be used only as required to exercise the license granted by this Agreement; and (b) shall be held in confidence and shall not be made available in any form to any person or entity outside of CUSTOMER without the express written consent of CAYEN. CAYEN agrees that CUSTOMER shall be permitted to disclose relevant aspects of *SST* and documents and materials, related to *SST* to its employees and its agents to the extent that such disclosure is directly related to the CUSTOMER's use of *SST*, provided that CUSTOMER shall take all reasonable steps to ensure that *SST*, and documents and materials, including User's Manuals, related to *SST* are not disclosed or duplicated in contravention of this Agreement. The provisions of this paragraph survive any termination of this Agreement. The parties understand that the provisions of this paragraph and the obligations contained herein are subject to the Florida Public Records Act ss. 112, Florida Statutes.

CUSTOMER agrees that it will not copy (or aid or permit others to copy) or in any way duplicate *SST* or any documents or materials, related to *SST*, in whole or in part, except as expressly authorized by this Agreement or with CAYEN's written consent. CUSTOMER shall not reverse assemble or decompile *SST*, in whole or in part, or otherwise attempt to create or generate any source code or source code version of any portion of *SST*.

If any alleged infringement of United States patent or copyright is asserted against CUSTOMER based upon its use of *SST*, or any documents or materials, related to *SST*, CAYEN will fully indemnify CUSTOMER in the investigation of, preparation and defense against, and/or settlement of such claims. In such event, CUSTOMER shall provide CAYEN notice of such claims within ten (10) days of the assertion. CUSTOMER agrees to cooperate with CAYEN in any investigation, defense, or settlement of such claim. In the event an infringement is determined or, if required by settlement, CAYEN may substitute, for *SST* or any documents or materials, related to *SST*, substantially equivalent programs and documentation or materials. Alternatively, CUSTOMER may, in such event and at its sole option, terminate this Agreement upon written notice (in which case neither party shall have any further obligation to the other regarding *SST*, under this Agreement or otherwise, except remaining confidentiality obligations under this Paragraph 7).

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8. BREACH OF AGREEMENT BY CUSTOMER.

In the event CUSTOMER fails to comply with any of the provisions of this Agreement, CAYEN, at its sole option, may inform CUSTOMER of the breach of Agreement and may terminate this Agreement upon written notice. Upon termination precipitated by breach of Agreement by CUSTOMER, CUSTOMER shall immediately discontinue all use of *SST* and any documents or materials, related to *SST*.

9. TERM OF AGREEMENT.

CUSTOMER acknowledges that one year after the date of this agreement, all support by CAYEN terminates unless CUSTOMER has signed Annual Maintenance Agreement per Paragraph 12.

10. SEVERABILITY.

If any provision of this Agreement is held illegal, unenforceable, or in conflict with any law governing this Agreement, the validity of the remaining provisions shall not be affected thereby.

11. DATABASE HOSTING.

Unless otherwise agreed, CUSTOMER will host SST on their own WWW server connected to the Internet. CAYEN shall assume no responsibility for the reliability of that server. CAYEN will assist in getting SST installed and operational as a part of initial training and set-up. CAYEN will also require FTP rights and VNC or other similar access to CUSTOMER server for upgrades and support issues.

CAYEN offers CUSTOMER the option of leasing space capable of hosting the *SST* database on a CAYEN WWW server connected to the Internet. The following explains the details of such a lease.

Network/Server/Security: Connectivity is delivered through a dedicated managed T1 connection by AT&T. Security and reliability are assured by the location of this substantial internet connection point at CAYEN facility. The connection is monitored 24 hours a day / 7 days a week by AT&T to ensure uptime. Servers are protected against power interruptions and power fluctuations by Uninterruptible Power Supplies. CAYEN does its best to provide full time 24-hour Internet presence for all its clients and has a record of 99.0% uptime. It is possible that the AT&T network can go down and other types of long-term power interruptions may occur. These situations are outside of the control of CAYEN. CUSTOMER understands that these situations may occur and CUSTOMER will hold CAYEN free and harmless from any damages or inconveniences incurred in the event that interruptions occur. Servers are protected with up-to-date firewall and intrusion detection software that uses IP, port, and protocol-sensitive detection and filtering. Network is monitored by AT&T 24 hours a day / 7 days a week.

CAYEN shall not be liable for non-performance caused by circumstances beyond its control including, but not limited to war, fires, disruptions in the overall performance of the Internet network, civil disobedience, civil commotions, riots, rebellions, insurrections, work stoppages of CAYEN employees or employees of others, acts of God and similar occurrences. To the extent possible, CAYEN shall provide advance notice to CUSTOMER of any major planned maintenance or upgrades to its Systems that may affect the delivery of services for more than a ten-minute period.

Server data drives are mirrored. Appropriate Licenses of required software including SQL 2000, Windows 2000 Server, ActivePDF Toolkit are installed on the server. A backup server is present and in the event of server failure, can be ready for use in less than 2 hours.

Academics Plus operates uses SSL (secure socket layering – https://) technology to encrypt data as it passes through the Internet. We use a physical 2-tier environment with data behind a firewall and web server and business logic (dll) in front of the firewall in the DMZ where it can be accessed from anywhere on the internet with a login and password.

While it is up to the CUSTOMER, we recommend that the users change passwords to APlus on a bi-monthly basis themselves. Logins that are not used in 45 days are disabled until the customer re-enables them.

Confidentiality	CAYEN warrants that CUSTOMER'S data stored on its servers will not be used, disclosed, or shared in any manner for any reason by CAYEN without the prior written consent of CUSTOMER. CAYEN shall never use CUSTOMER'S data for commercial purposes.
	CAYEN shall not edit nor engage in ongoing review or surveillance of CUSTOMER'S data. CUSTOMER'S data shall be reviewed by CAYEN only at the request of CUSTOMER, and such review shall be limited to matters related to support, report generation, and the like as specified by CUSTOMER.
	If CAYEN has a good-faith belief that a person whose personal information is included in CUSTOMER'S data is causing harm to, or may cause harm to, or is interfering with the rights or property of CAYEN or its customers, then CAYEN will request that CUSTOMER authorize CAYEN to release such personal information to competent legal authorities.
Backups:	Backup procedures will be the following: daily back-ups of SQL data on CD removable media and tape. They will be combined and stored in an off-site, secure location.
Price:	CUSTOMER agrees to pay $200 per month for CAYEN to host *SST* database.
Payment Terms:	After first year, quarterly invoices will be sent to CUSTOMER. Payments are required within 30 days of invoice or service may be discontinued.
Termination:	CUSTOMER, upon 30-day advance written notification to CAYEN, can terminate hosting agreement with CAYEN. CAYEN agrees to fully cooperate in the transfer of the hosting to another hosting service, including that of CUSTOMER itself.

12. ANNUAL MAINTENANCE AGREEMENT.

After one year from the date of this Agreement, CUSTOMER shall be provided with an opportunity to purchase an Annual Maintenance Agreement for continued support. The scope and price of that Agreement shall be determined by CAYEN on an annual basis, but will not exceed 15% of the License cost in paragraph 4.1 unless additional school licenses are purchased; in such case the license fees for the previous year would be used in calculating the Annual Maintenance Agreement price.

13. APPLICABLE LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida with venue in Palm Beach County.

14. MISCELLANEOUS.

14.1   Notice under Paragraph 8 above shall be given by Certified Mail and addressed to the CUSTOMER at address given above. All other notices or communications shall be given or sent to the parties at the addresses given above by first class mail, postage prepaid.

14.2   This Agreement, including any attachments hereto, constitutes the complete Agreement between the parties and supersedes all previous communications, representations, or agreements, with respect to the subject matter hereof.

14.3 CUSTOMER publications in which *SST* is implicitly or explicitly mentioned shall contain the notice: "*SST* is a proprietary software product licensed by MBSD and CAYEN."

14.4 No modification or amendment of this Agreement shall be binding on a party unless in writing and executed by the parties.

14.5 This Agreement shall be fully binding upon the parties including their respective departments, agencies, agents, officers and employees; and also upon their successors.

15. STATE AGREEMENT IMPLICATIONS.

The parties recognize that the Florida Department of Education (FLDOE) has acquired a State License of *SST*. Under the terms of that State License, FLDOE will host the *SST* web application and database for CUSTOMER. CUSTOMER recognizes that its SES Program data stored in *SST* will be accessible by FLDOE staff and designees.

ACCEPTED BY

SCHOOL BOARD OF PALM BEACH COUNTY
(CUSTOMER)

Signature: _____

Name: _____Thomas E. Lynch_____

Title: _____Board Chairman_____

Date: _____

Place: _____

Witness: _____

Tax Exempt Number: _____

ACCEPTED BY

CAYEN SYSTEMS, LLC
(CAYEN)

Signature: _____

Name: _____

Title: _____

Date: _____

Place: _____

Witness: _____

EIN: _____39-1934552_____

"Reviewed & Approved As To
Legal Form and Sufficiency"

Kimberly Hall 8/17/05

Appendix A

APlus/SST Technical Requirements

Users
Minimum computer requirements for System Users include:

PC Computer (preferred)
- 500 MHz Processor (preferably Intel Pentium processor)
- 20 MB available hard drive space
- 128 MB RAM
- Windows 98 or later (Windows 2000 or later preferred)
- Monitor capable of 1064x768 resolution
- Adobe Acrobat Reader 5.0 or later
- Internet Explorer 6.0 or later
- Microsoft Excel 2000 Professional or XP Professional for exporting data

Macintosh Computer
PowerPC processor
- Mac OS software version 9.0. or later
- 20 MB available hard drive space
- 128 MB RAM
- Monitor capable of 1064x768 resolution
- Adobe Acrobat Reader 5.0 or later
- Internet Explorer 5.0 or later (will not work with OS X Safari)
- Microsoft Excel for exporting data

Both Platforms
- Quality laser printer for printing bar coded rosters
- Bar code wand scanner (recommended)
- Internet connection (high speed preferred (DSL, Cable, etc.)

For Grantee/District Administrators
- PC with Microsoft Office 2000 Professional or XP Professional (including Access and Excel) for downloading data from web server (optional)
- Local technical resources/personnel for on-site troubleshooting as well as assistance with iLinc (support software) connectivity if issues arise

Hosting
If Customer wants to host APlus application, minimum database server requirements include:

- IBM Compatible Computer
- Pentium 4 Class Processor (2.0 GHz or higher)
- 2.0 GB RAM
- RAID-0 (mirrored 80 GB drives) or RAID-5 set
- 10/100 Mb Ethernet Adaptor
- Backup Device/Method (CD-R/DVD-R/Tape)
- T-1 or faster Internet Connection
- Microsoft Windows 2000 Server w/ licensing
- Microsoft SQL Server 2000 Standard w/ licensing
- ActivePDF ToolKit (for various reports and forms) *
- Adequate technical support
- SSL certificate *

* For additional security, a separate web server could be installed with a firewall placed between it and the database server. Items marked above with an * would be installed on the web server if this option is used. Minimum web server requirements include:

- IBM Compatible Computer
- Pentium 4 Class Processor (2.0 GHz or higher)
- 1.0 GB RAM
- 40 GB mirrored drives
- 10/100 Mb Ethernet Adaptor
- Microsoft Windows 2000 Server w/ licensing

Appendix B

CAYEN™ SYSTEMS
Database Solutions for
Non-Profits and Schools

6610 W. Lisbon Avenue
Milwaukee, WI 53210
Phone 414.871.8401 Fax 414.873.1676

QUOTE

QUOTE #: PalmBeach-02
DATE: August 15, 2005

To:
Celia Elrod
Palm Beach County School District
3300 Forest Hill Boulevard
West Palm Beach, FL 33406

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	SST System License Fee (one-time cost)	$5,000.00	$5,000.00
1	SST Set Up Fee (one-time cost)	$2,000.00	$2,000.00
45	SST School Licenses (one-time cost)	$1,000.00	$45,000.00
12	Monthly hosting fee for SST on Cayen Systems secure server	$200.00	$2,400.00
1	Training cost including all travel and expenses for 2 days of on-site training providers and district staff for 2 trainers	$1,000.00	$1,000.00
		TOTAL DUE	$55,400.00

Thanks for considering a solution from Cayen Systems!

Questions can be referred to Joe Cayen at 866.462.2936 or jcayen@cayen.net

ADDENDUM, Concerning Student Information, to the
Contract/Agreement ("the Contract") dated _____, between
The School Board of Palm Beach County and Cayen Systems LLC.

Pursuant to School Board Policy 5.50, receipt of which is acknowledged by the vendor's/partner's signature below, the School District hereby designates _____ [*vendor/partner*] ("the Party") as an "other school official" for purposes of receiving limited personally-identifiable student information under FLA. STAT. § 1002.22(3)(d)2 because the School District recognizes the Party has legitimate educational interests in receiving this information in order to carry out the Party's responsibilities for the school or District under the Contract. (All other terms of the Contract remain the same.)

As a condition precedent to receiving confidential student information, the Party warrants and agrees that the Party:

- will limit the use of, or access to, confidential student information to the limited scope of information actually needed to complete the services under contract. The District has determined that the Party has a legitimate educational interest in receiving only the following fields of student data [*for example: name, grade-level, school attending, etc.; add more spaces as necessary to cover the minimum scope of data actually deemed needed*]: _____, _____, _____, _____, _____, _____ ; and
- will limit the access to student information to its employees and/or agents who actually have a legitimate educational interest in the information (i.e., they legitimately need to access the information in order to carry out their responsibilities under the Contract); and
- shall avoid, and shall instruct applicable employees/agents to avoid, accessing personally-identifiable student information except for the legitimate purposes recognized under this Addendum, and shall require that all employees/agents accessing the data must be trained in, and sign an acknowledgement regarding, the confidentiality requirements; and
- will comply with the requirements of Fla. Admin. Code Rule 6A-1.0955(6)(g), that student information shall not be disclosed by the Party in any form to any party other than appropriate school officials or the Party's employees/agents to the extent allowed herein (even if the document is first redacted to remove personally-identifiable information), without the prior written consent of the adult student or the parent/guardian, as appropriate; and
- shall maintain any confidential student information in secure data processing facilities or in securely locked cabinets, and the Party shall monitor the security and safekeeping of the confidential data; and
- will dispose of all information disclosed to it by the School District (and any copies thereof), after the purpose for which the information is disclosed has been served, or five years after the receipt of the information (whichever is sooner), by shredding paper documents finely enough to prevent possible recovery of information, and by totally erasing and over-writing (or physically destroying) any electronic media such as computer files, tapes, or diskettes, or physically destroyed.

The parties acknowledge that the terms contained in this Addendum supersede any inconsistent terms in the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum:

CAYEN SYSTEMS LLC   THE SCHOOL BOARD OF PALM BEACH
                                       COUNTY

By: _____   By: _____

Date: _____   Date: _____