

ManageSoft Professional Services Agreement

Customer: The School Board of Palm Beach County, Florida

Billing Address 3344 Forest Hills Blvd. West Palm Beach, FL 33406

Installation Address _____

This Professional Services Agreement including its exhibits (the "Agreement"), is entered into as of the _____ day of _____, 200 by and between **ManageSoft Corporation**, of 101 Federal Street, 25th Floor, Boston, MA 02110, USA ("MANAGESOFT") and Customer identified above.

1. **Scope of Services:** During the term of this Agreement, MANAGESOFT will provide to Customer those computer software and information management consulting and technical services ("Services") more fully described in a Statement of Work, a copy of which is attached hereto as **Exhibit A**, or which may be added by agreement of the parties from time to time.
2. **Term of Agreement:** Unless earlier terminated as set forth below, this Agreement shall commence on the date set forth above and shall remain in effect for twelve (12) months and, thereafter, shall remain in effect until either party provides 60 days notice of termination to the other.
3. **Charges**
 - 3.1 Charges shall accrue as of the date the Services commence and shall be invoiced upon completion of the Services or at specified intervals as scheduled in the Statement of Work. Any applicable annual charges are invoiced in advance. All invoices are payable upon receipt.
 - 3.2 MANAGESOFT shall notify Customer at least thirty (30) days in advance of any increase in fees for Services, provided however that no increase shall apply to any Statement of Work which has been agreed and signed by both parties prior to such increase.
 - 3.3 In addition to MANAGESOFT's fees for Services, Customer shall be responsible for the payment of:
 - a. all taxes arising out of the Services provided, other than taxes on MANAGESOFT's income;
 - b. all expenses reasonably incurred by MANAGESOFT in providing the Services, such as travel and living expenses, and any expenses incurred by MANAGESOFT as a result of making changes requested by Customer, or required to be made due to Customer errors, and
 - c. a late payment charge of 1.5% per month (but not in excess of the lawful maximum) on any past due balance.
4. **Customer Responsibilities**
 - 4.1 **Equipment Installation:** If the Services include equipment installation by MANAGESOFT, Customer agrees to prepare the installation site in accordance with MANAGESOFT's or the manufacturer's specifications.
 - 4.2 **Customer Liaison and Personnel:** Customer shall designate an individual to serve on a dedicated basis as the project leader. That individual shall be available to MANAGESOFT personnel as MANAGESOFT reasonably requires and shall act as the liaison between Customer, MANAGESOFT and all other Customer assigned personnel.

All personnel assigned by Customer to participate on the project with MANAGESOFT will be knowledgeable in their assigned areas and will be responsive to MANAGESOFT's requests for information required by MANAGESOFT to perform Services including, but not limited to, Customer programs, specific business and documentation requirements, and Customer operating procedures.
- 4.3 **Customer Documentation:** Customer shall retain and provide to MANAGESOFT adequate documentation of all modifications to, or tools used in the development of, any software which is the subject of MANAGESOFT's services.
- 4.4 **Supervision and Responsibility for Customer Tasks:** Except as otherwise specifically set forth in the Statement of Work, tasks on which MANAGESOFT personnel assist Customer personnel remain the responsibility of Customer and under the supervision, management and control of Customer.
5. **Confidential Information:** Each party agrees to keep confidential all proprietary and trade secret information disclosed to it by the other party ("Confidential Information") and not to use for its own account, or disclose to any third party, any such Confidential Information. The foregoing shall not apply to information which:
 - i) was previously known to the receiving party, or
 - ii) becomes publicly available (other than as a result of an unauthorized disclosure by the receiving party or its employees or its agents), or
 - iii) is rightfully obtained by the receiving party from a third party without an obligation of non-disclosure, or
 - iv) is required to be disclosed by law, government regulation or court order, providing however, that the receiving party shall give notice to the disclosing party of such requirement as far in advance as is practicable so that the disclosing party may seek an appropriate protective order at its own expense. Notwithstanding the foregoing provisions, either party may reveal Confidential Information to such party's sub-contractors that have been retained to fulfill the obligations of this contract, provided that the sub-contractors are under confidentiality provisions comparable to those specified in this contract.
6. **Exclusions:** Any Services provided for Software Products of MANAGESOFT are provided for the then current release. MANAGESOFT is not responsible for the reimplementation of such Services for any prior or future release, unless agreed in writing.
7. **Personnel Assignment:** MANAGESOFT has the right to determine the assignment of personnel to a particular Service, to replace or reassign such personnel or to subcontract to qualified third parties part or all of the performance of such Services.
8. **Proprietary Rights:** All programs, specifications, works of authorship, inventions, techniques, documentation, concepts and ideas developed or provided by MANAGESOFT in providing Services ("Basic Intellectual Property") are and remain the property of MANAGESOFT. The foregoing notwithstanding, Basic Intellectual Property does not include the Implementation Plan uniquely designed for Customer as set out in Exhibit A, or any Confidential Information of Customer, which shall be and remain the property of Customer.
9. **Ordering**
 - 9.1 Customer may order services under a Customer order form authorized by MANAGESOFT which at a minimum contains reference to the terms and conditions of this Agreement. Any other terms and conditions on the order form or otherwise are not binding on MANAGESOFT even if Customer fails to reference this Agreement which shall be deemed automatically incorporated in Customer's order.

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9.2 All orders are subject to MANAGESOFT's acceptance and MANAGESOFT's credit requirements.

10. Warranty and Limitations on Liability.

MANAGESOFT will perform the Services hereunder in a good and workmanlike manner and according to standards generally accepted in the industry. Customer's exclusive remedy and MANAGESOFT's entire liability in contract, tort, or otherwise for any material, documentation, product or service provided by MANAGESOFT under this Agreement is that MANAGESOFT shall, at MANAGESOFT's sole election, reperform such Service or exchange such material, documentation or product, as applicable. The foregoing notwithstanding, in the event MANAGESOFT cannot, in its sole judgment and at its sole election, adequately reperform the applicable Services, or exchange the applicable material, documentation or product, then MANAGESOFT may elect to refund that portion of the fees attributable to the Services, materials, documentation, or product, not complying with MANAGESOFT's warranty and such refund shall be Customer's sole and exclusive remedy.

11. **INDEMNITY.** In addition to the foregoing warranties, MANAGESOFT warrants that the work product of the Services will not infringe or violate any United States patent, trademark, trade secret, or other proprietary right of any third party. MANAGESOFT agrees to indemnify Customer and hold Customer harmless from and against any claim, loss, damage, expense, or liability from or to any third party that may result from any breach by MANAGESOFT of the foregoing warranty, provided that (i) the work product has not been amended by anyone other than MANAGESOFT; (ii) you give MANAGESOFT prompt notice of any such claim; (iii) you permit MANAGESOFT to conduct all negotiations, defense, and litigation in relation to any such claim; (iv) you provide all information and assistance which MANAGESOFT may reasonably require; and (v) you make no admissions or settlements without MANAGESOFT's prior written consent. You may, at your option and your own expense, retain your own counsel to assist MANAGESOFT in any such defense. Should the work product become, or in MANAGESOFT's opinion be likely to become, the subject of a claim of infringement, MANAGESOFT may at its option and expense either (i) procure for you the right to continue to use the work product, or (ii) modify or replace the work product without substantially impairing its functionality so that it is non-infringing, or (iii) refund the portion of the services fees paid for the infringing work product. You agree to replace your version of the work product with the modified or replacement version upon MANAGESOFT's request.

12. Limitations of Warranty

EXCEPT AS EXPRESSLY SET FORTH HEREIN, MANAGESOFT AND ITS SUPPLIERS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING (WITHOUT LIMITATION) THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RESPECTING THIS AGREEMENT AND THE MATERIALS, DOCUMENTATION, PRODUCTS AND SERVICES PROVIDED HEREUNDER. MANAGESOFT DOES NOT WARRANT THAT ANY SOFTWARE PRODUCTS OR SERVICES PROVIDED BY IT OR ITS SUPPLIERS WILL BE UNINTERRUPTED OR ERROR-FREE, AND MANAGESOFT MAKES NO WARRANTIES OF ANY KIND AS TO THE RESULTS THAT THE CUSTOMER WILL OBTAIN FROM USING OR RELYING UPON THE PRODUCTS OR SERVICES OF MANAGESOFT OR ITS SUPPLIERS.

Under no circumstances will MANAGESOFT be liable for any damages other than as expressly set forth in Articles 10 and 11 including any direct, indirect, special, incidental or consequential

damages or lost profits, whether or not advised of the possibility of such damages.

13. **Termination:** This Agreement may be terminated with immediate effect upon the happening of any of the following:

- a) by MANAGESOFT upon the failure of Customer to pay any fees for Services for more than thirty (30) days beyond the date payment of such fees is due.
- b) by either party immediately and without further notice in the event the other party:
 - (i) ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or commits any act of bankruptcy; or
 - (ii) breaches its obligations to maintain the confidentiality of the other party's Confidential Information as set forth in Article 4, above.

14. General

14.1 Any written notice or other communication permitted or required to be given by a party shall be sent by registered mail, postage prepaid, to the address of the party set forth above.

14.2 Customer shall not export directly or indirectly any technical data, information or items acquired under this Agreement to any country for which the United States Government (or any agency thereof) requires an export license or other approval without first obtaining such license or approval and shall incorporate in all export shipping documents the applicable destination control statements.

14.3 MANAGESOFT is not liable for any failure or delay in performance due to any cause beyond its reasonable control, including site conditions not conforming to MANAGESOFT's specifications, or any other external causes, including Acts of God or other events of force majeure.

14.4 Customer may assign this Agreement in whole or in part only with the prior written consent of MANAGESOFT. MANAGESOFT may assign its obligations pursuant to this Agreement in whole or in part.

14.5 No delay or failure of either party to exercise any right or remedy available to it as a result of a breach by the other party of its obligations under this Agreement constitutes a waiver with respect to any other or continuing breach.

14.6 This Agreement and any associated Statements of Work are the complete and exclusive statement of agreement between the parties concerning the services. It may be amended only by a written agreement executed by both parties. If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, such provision shall be enforced to the maximum extent permissible, and the remainder of this Agreement shall nonetheless remain in full force and effect. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles, and the courts of which shall have exclusive jurisdiction over any dispute arising hereunder. This Agreement shall inure to the benefit of MANAGESOFT, its affiliates, distributors, successors, administrators, heirs and assigns.

14.7 Both parties shall comply with all applicable government requirements (including without limitation the UK Data Protection Act 1998 and the European Union Data Privacy Directive).

The Agreement shall be construed in accordance with the laws of the state of Florida.

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CUSTOMER ACKNOWLEDGES READING THIS AGREEMENT AND AGREES TO EACH OF ITS TERMS

ManageSoft Corporation

The School Board of Palm Beach County, Florida

By

By

(Authorized Signature)

(Date)

(Authorized Signature)

(Acceptance Date)

(Print Name and Title)

(Print Name and Title)

**Reviewed and Approved
as to Legal Sufficiency**

Kalish 5-24-07

ManageSoft Professional Services Agreement

Exhibit A

Statement of Work

<u>ITEM</u>	<u>Fee</u>	<u>Terms</u>
days training for three people	\$	Net 30
days implementation consulting	\$	Net 30