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KEVIN V. RYAN (CSBN 118321)
United States Attorney

THOMAS O. BARNETT (DCBN 426840)
Acting Assistant Attorney General

FILED
FEB 22 2006
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 06-0086 CRB
)	
Plaintiff,)	VIOLATIONS: 15 U.S.C. §1 - Sherman
)	Antitrust Act; 18 U.S.C. §§1341 and 2 -
v.)	Mail Fraud and Aiding and Abetting
)	
PREMIO, INC., f/k/a PREMIO)	PLEA AGREEMENT
COMPUTER, INC.,)	
)	
Defendant.)	

PREMIO, INC., (formerly known as PREMIO COMPUTER, INC., and hereafter, "defendant"), a corporation organized and existing under the laws of Illinois, with its principal place of business in the City of Industry, California, and the United States Department of Justice, by and through the United States Attorney's Office for the Northern District of California and the Antitrust Division of the Department of Justice (hereafter "the government"), enter into this written plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. Pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure, the defendant agrees to waive Indictment and plead guilty to a two-count felony Information charging the defendant with a conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, and with mail fraud and aiding and abetting in violation of 18 U.S.C. §§ 1341 and 2. The defendant agrees that the elements of the offenses and the maximum penalties are as follows:

1 Elements of Count One – Sherman Act Antitrust Offense:

- 2 a. The conspiracy, agreement, or understanding described in the Information
3 was knowingly formed, and was existing at or about the time alleged;
- 4 b. The defendant knowingly became a member of the conspiracy, agreement,
5 or understanding, as charged;
- 6 c. The alleged conspiracy, agreement, or understanding constituted an
7 unreasonable restraint of interstate commerce; and
- 8 d. The offense was carried out, in part, in the Central District of California.

9 Maximum Penalties:

- 10 a. Five years probation;
- 11 b. A fine in the amount of \$10 million or twice the loss (or gain) from the
12 offense, whichever is greater;
- 13 c. Mandatory special assessment of \$400; and
- 14 d. Restitution.

15 Elements of Count Two – Mail Fraud:

- 16 a. Defendant participated in a scheme to defraud or a plan for obtaining
17 money or property by making false promises or statements;
- 18 b. Defendant knew that the promises or statements were false;
- 19 c. The promises or statements were material;
- 20 d. Defendant acted with the intent to defraud;
- 21 e. Defendant used or caused to be used the mails to carry out or attempt to
22 carry out an essential part of the scheme; and
- 23 f. The offense was carried out, in part, in the Central District of California.

24 Maximum Penalties:

- 25 a. Five years probation;
- 26 b. A fine in the amount of \$500,000 or twice the amount of loss (or gain)
27 from the offense, whichever is greater;
- 28 c. Mandatory special assessment of \$400;

1 d. Restitution.

2 2. The defendant agrees that it is guilty of the offenses to which it will plead guilty,
3 and it agrees that the following facts are true:

4 **FACTUAL BASIS FOR SHERMAN ACT OFFENSE CHARGED**

5 a. From at least December 1998 to approximately December 1999,
6 (hereafter, in this Agreement, “the relevant period”) the defendant sold and installed
7 telecommunication equipment, including servers to be used for Internet access. It also provided
8 maintenance and other services as needed for the equipment that it supplied.

9 b. During the relevant period, E-Rate, a program authorized by Congress in
10 the Telecommunications Act of 1996, operated under the auspices of the Federal
11 Communications Commission (“FCC”) to provide funding to better enable school districts and
12 libraries to connect to the Internet. The FCC designated the Universal Service Administrative
13 Company (“USAC”), a nonprofit corporation, to administer the E-Rate program. All
14 participating school districts were required to fund a percentage of the cost of the equipment and
15 services acquired under the E-Rate program. That percentage was determined based on the
16 number of students in the district qualifying for the United States Department of Agriculture’s
17 school lunch program, with the neediest school districts eligible for the highest percentage of
18 funding.

19 c. During the relevant period, applications for E-Rate funding far exceeded
20 the funding available. To ensure that E-Rate funding was distributed to the widest number of
21 applicants, USAC required all applicants to comply with various rules and procedures including:
22 (1) only certain equipment and services, would be eligible for funding; (2) school districts were
23 required to follow both competitive bidding procedures in accordance with local and state law
24 and FCC rules to ensure that the school districts received the lowest possible prices and most
25 cost-effective proposals from the responsive bidders; (3) service providers or their agents could
26 not participate in the vendor selection process or the completion of forms necessary for the
27 schools to receive E-Rate funding in order to avoid a conflict of interest or even the appearance
28 of a conflict of interest; and (4) school districts were required to enter into contracts with the

1 most cost-effective, responsive bidder prior to making application for funds from USAC.

2 d. In or about December 1998, the defendant had established a relationship
3 with a company that manufactured and installed video conferencing switches and related
4 equipment (hereafter "VX Company").

5 e. During the relevant period, VX Company contracted with two persons
6 (Consultant One and Consultant Two) to work as sales representatives. Consultants One and
7 Two specialized in marketing VX Company products to educational institutions, including
8 school districts. During the relevant period Consultants One and Two also acted as consultants
9 to school districts in designing computer networks, identifying potential government-sponsored
10 funding sources (including the E-Rate program), applying for those funds, and selecting vendors
11 to supply the specified equipment and services funded by those programs.

12 f. During the relevant period, the defendant knowingly participated in a
13 conspiracy with one or more vendors of equipment and services related to telecommunications,
14 Internet access, and/or internal connections, the purpose of which was to suppress and eliminate
15 competition for the E-Rate program project at the West Fresno Elementary School District in
16 Fresno, California by allocating contracts and submitting fraudulent and noncompetitive bids
17 (hereafter, as relates to this offense, "the project"). The defendant's knowledge of and
18 participation in the Count One conspiracy, agreement or understanding was through the activities
19 of a single former employee of the defendant, who was acting at all times within the course and
20 scope of his employment with defendant, and for defendant's benefit.

21 g. To carry out this conspiracy, the defendant discussed prospective bids for
22 the E-Rate project with its co-conspirators, agreed with those co-conspirators who would be the
23 lead contractor on the project and who would participate on the project as subcontractors to the
24 designated lead contractor, submitted a fraudulent and noncompetitive subcontract bid in
25 accordance with the conspiratorial agreement, and worked with Consultants One and Two.
26 These Consultants took steps to ensure the conspiracy's success by disqualifying a non-
27 conspirator's bid and either directly awarding the contract or using their best efforts to persuade
28 the school district officials to award the contracts to the designated lead contractor and

1 subcontractors.

2 h. As part of the conspiracy, Consultants One and Two caused the E-Rate
3 project's contract to be awarded to the designated lead contractor and caused a subcontract to be
4 awarded to the defendant. In return, pursuant to the conspiracy, the defendant agreed to purchase
5 and install, and did purchase and install, equipment from other companies at the E-Rate project.

6 i. During the relevant period, in accordance with the E-Rate project contract
7 obtained through the conspiracy, equipment and services were delivered and payments for those
8 equipment and services were received that traveled in interstate commerce. The business
9 activities of the defendant and its co-conspirators in connection with the sale of that equipment
10 and services affected by this conspiracy were within the flow of, and substantially affected,
11 interstate trade and commerce.

12 j. Acts in furtherance of this conspiracy were carried out within the Northern
13 District of California. The conspiratorial meetings and discussions described above took place in
14 the United States, and at least one of those communications originated or was received by a
15 conspirator in the Northern District of California.

16 **FACTUAL BASIS FOR MAIL FRAUD OFFENSE CHARGED**

17 k. From at least December 1998 to approximately December 2000,
18 (hereafter, for the Mail Fraud charge, "the relevant period") the defendant sold and installed
19 telecommunication equipment, including servers to be used for Internet access. It also provided
20 maintenance and other services as needed for the equipment that it supplied.

21 l. Paragraphs (b) through (e) are realleged as if full set forth here.

22 m. The defendant's knowledge of and participation in the Count Two offense
23 was through the activities of a single former employee of the defendant, who was acting at all
24 times within the course and scope of his employment with defendant, and for defendant's benefit.

25 n. In or before December 1998, Consultants One and Two began working
26 with the Highland Park School District (hereafter "Highland Park") to obtain E-Rate program
27 funds. Working with a Highland Park Official, Consultants One and Two put together a Request
28 for Proposal for equipment and services to be funded by E-Rate.

1 o. On or about February 23, 1999, the defendant submitted its bid on the
2 Highland Park E-Rate project. Consultant One ran the bid opening proceedings, and together
3 with a Highland Park Official, opened and reviewed the bids. Consultant One declared the
4 defendant the winner of the telecommunication server portion of the Highland Park bid.

5 p. On or about March 31, 1999, Consultant One prepared and submitted
6 Highland Park's Application Form 471 to USAC. The Form 471 is a school district's request for
7 E-Rate funding. It is supposed to set out the winning vendors' bid amounts for the equipment
8 and services called for in the district's Request for Proposal. The Highland Park 471 included a
9 request for \$1.4 million of telecommunication servers to be provided by the defendant under
10 defendant's Service Provider Information Number ("SPIN") 143008583.

11 q. After review of the Highland Park 471 application, on or about
12 November 2, 1999, USAC's Schools and Libraries Division ("SLD") approved approximately
13 \$1.2 million in funding to the defendant for the defendant's providing of telecommunication
14 servers and related installation and maintenance at Highland Park.

15 r. In furtherance of this scheme, Consultants One and Two directed a
16 Highland Park Official to write a letter to the defendant requesting the substitution of the
17 ineligible video conferencing equipment for the approved servers, when in fact the letter was
18 merely an attempt to hide the ineligible substitution from the SLD's scrutiny.

19 s. Defendant's former employee met with Consultant One and agreed to have
20 the defendant provide ineligible video conferencing equipment with the E-Rate funds that had
21 been appropriated for servers and provide that equipment to Highland Park instead of providing
22 telecommunication servers as approved by the SLD.

23 t. During the relevant period, the defendant purchased the ineligible video
24 conferencing equipment from VX Company and delivered that equipment, along with ineligible
25 equipment from defendant, to Highland Park in lieu of the servers for which funding had been
26 approved under the defendant's SPIN 143008583.

27 u. The defendant knowingly invoiced the SLD for approximately \$1.2
28 million for telecommunication servers despite having delivered the ineligible video conferencing

1 equipment to Highland Park.

2 v. At no time during the relevant period did the defendant disclose to the
3 SLD that it had impermissibly substituted ineligible video conferencing equipment for the
4 servers that had been approved under the defendant's SPIN 143008583.

5 w. During the relevant period, for the purpose of executing its scheme, the
6 defendant used or caused to be used the mails to send Invoice No. MI-041900, dated April 20,
7 2000, from California to the SLD in Kansas seeking payment of \$379,400 purportedly for
8 telecommunication servers delivered to Highland Park, when ineligible video conferencing
9 equipment had actually been delivered.

10 3. The defendant agrees to give up any defense based on venue in this District, and
11 agrees voluntarily to consent to the jurisdiction of the government to prosecute this case against it
12 in the United States District Court for the Northern District of California. The defendant further
13 gives up all other rights that it would have if it chose to proceed to trial, including the rights to a
14 jury trial with the assistance of an attorney; to confront and cross-examine government witnesses;
15 to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth
16 Amendment claims; to any further discovery from the government; and to pursue any affirmative
17 defenses and present evidence.

18 4. The defendant agrees to waive the running of any statute of limitations from
19 December 1999 through the filing of the attached Information in a separate letter found as
20 Exhibit E to this Plea Agreement.

21 5. The defendant agrees to give up its right to appeal its conviction, the judgment,
22 and orders of the Court. The defendant also agrees to waive any right it may have to appeal any
23 sentence consistent with this plea agreement.

24 6. The defendant agrees not to file any collateral attack on its conviction or sentence,
25 at any time in the future after it is sentenced. Nothing in paragraphs 5 and 6, however, shall act
26 as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or
27 collateral attack respecting claims of ineffective assistance of counsel or prosecutorial
28 misconduct.

1 7. The defendant agrees not to ask the Court to withdraw its guilty plea at any time
2 after it is entered, unless the Court declines to accept the sentence agreed to by the parties. Either
3 party may withdraw from this agreement if the Court does not accept the agreed-upon sentence
4 set out below.

5 8. The defendant understands that the Sentencing Guidelines are advisory, not
6 mandatory, and the Court must consider the Guidelines in effect on the day of sentencing, unless
7 the application of that version of the Guidelines would violate the *ex post facto* clause of the
8 Constitution. In that event, pursuant to U.S.S.G. § 1B1.11(b)(1), the version of the Guidelines in
9 effect on the date of the commission of the offense shall instead be considered, along with the
10 other factors set forth in 18 U.S.C. § 3553(a), in imposing sentence. The defendant understands
11 that the Guidelines determinations will be made by the Court by the preponderance-of-the-
12 evidence standard. The defendant understands that although the Court is not ultimately bound to
13 impose a sentence within the applicable Guidelines range, its sentence must be reasonable based
14 upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). If
15 acceptable to the Court, both parties agree to waive the presentence investigation and report
16 pursuant to Rule 32(c)(1)(A)(ii) of the Federal Rules of Criminal Procedure. The defendant
17 agrees that the advisory Sentencing Guidelines should be calculated as follows (utilizing the
18 Guidelines effective November 1, 1999):

19 For Count One:

20	a.	Base Offense Level (8C2.1, 8C2.3, and 2R1.1):	10
21	b.	Specific offense characteristics:	
22		Bid Rigging (2R1.1(b)(1)):	+1
23		Volume of Commerce (2R1.1(d)(3))	
24		West Fresno bid: \$1,934,000	<u>+2</u>
25	c.	Adjusted Offense Level:	13
26	d.	Base Fine (2R1.1(d)(1)) 20% Volume of Commerce:	\$386,800
27	e.	Culpability Score (8C2.5(a)(b)(3)(A)):	5+3 = 8
28		(>200 employees and an individual within high-level personnel participated in the offense)	

1	f.	Acceptance of Responsibility:	<u>-2</u>
2	g.	Total Culpability Score:	6
3	h.	Minimum/Maximum Multiplier (8C2.6):	1.20 – 2.40
4	i.	Fine Range (8C2.7):	\$464,160 – \$928,320

5 For Count Two:

6	a.	Base Offense Level (8C2.1, 8C2.3, and 2F1.1):	6
7	b.	Specific Offense Characteristics (Loss >\$800,000):	+11
8	c.	More than Minimal Planning:	<u>+2</u>
9	d.	Adjusted Offense Level:	19
10	e.	Base Fine (8C2.4)(a)(3) (pecuniary loss):	\$1,230,000
11	f.	Culpability Score (8C2.5)(a)(b)(3)(A):	5+3 = 8

12 (>200 employees and an individual within
13 high-level personnel participated in the offense)

14	g.	Acceptance of Responsibility:	<u>-2</u>
15	h.	Total Culpability Score:	6
16	i.	Minimum/Maximum Multiplier (8C2.6):	1.20 – 2.40
17	j.	Fine Range (8C2.7):	\$1,476,000 – \$2,952,000

18 Multiple Counts

19	a.	Grouping (3D1.1(a), 3D1.2, and 3D1.3)	
20		Group 1 – Mail Fraud offense level:	19
21		Group 2 – Sherman Act offense level:	13
22	b.	Combined Offense Levels (3D1.4)	
23		Highest Offense Level – Group 1:	19
24		Total Number of Units:	1½
25		Combined Offense Level:	20

26 Fine Determination

27	a.	Base Fine (8C2.4):	
28		The greatest of:	
		Offense Level Fine Table (8C2.4(a)(1))	\$650,000

Pecuniary Loss (8C2.4(a)(3)) and 8C2.4(b): \$1,616,800
Greatest: \$1,616,800

- b. Culpability Score (8C2.5(a)(b)(3)(A) and 8C2.4(b)): 5+3 = 8
(>200 employees and an individual within
high-level personnel participated in the offense)
- c. Acceptance of Responsibility: -2
- d. Total Culpability Score: 6
- e. Minimum/Maximum Multiplier (8C2.6): 1.20 – 2.40
- f. Fine Range (8C2.7): \$1,940,160 – \$3,880,320

9. The defendant understands that as part of its plea and the separate civil settlement that it will pay \$400,000 in criminal fines and \$1,300,000 in satisfaction of the civil settlement. The money paid in connection with the civil settlement shall satisfy any obligation to make restitution. (See U.S.S.G. § 8C2.9)

Criminal Fine	\$ 400,000
Civil Settlement and Restitution	\$1,300,000
Total	\$1,700,000

10. The parties agree that there exists no aggravating or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Guidelines Commission in formulating the Sentencing Guidelines that should result in a sentence outside the advisory Guidelines range under U.S.S.G. § 5K2.0. The parties agree not to seek or support any sentence outside the advisory Guidelines range for any reason not set forth in this Plea Agreement. In view of all facts and circumstances of this case, including the defendant's continuing cooperation with the government, the parties believe that the sentence recommended is reasonable, fair, and just in accordance with 18 U.S.C. §§ 3553, 3571, and 3572.

11. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that an appropriate disposition of this case is that the defendant receive the following criminal sentence:

- a. The defendant shall be placed on probation for a period of three (3) years

1 on conditions including that the defendant:

- 2 i. commit no violations of federal or state law;
- 3 ii. comply with the terms and conditions of the civil settlement
- 4 attached as Exhibit A;
- 5 iii. comply with the Special Conditions of Probation attached as
- 6 Exhibit B; and
- 7 iv. cooperate fully with the government as set forth below.

8 b. The government and the defendant agree that the applicable advisory
9 Sentencing Guidelines fine range exceeds the fine agreed to by the parties. The government and
10 the defendant further agree that the recommended fine is appropriate, due to the inability of the
11 defendant to pay a fine greater than that agreed to without substantially jeopardizing its continued
12 viability, pursuant to U.S.S.G. § 8C3.3(b). Therefore, in the interest of justice pursuant to 18
13 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b), the parties agree that the \$400,000 fine shall be
14 paid over five years (plus interest at 5%) in accordance with the criminal fine repayment schedule
15 attached to this Plea Agreement as Exhibit C. All installments of the criminal fine shall be paid
16 to the United States District Court for the Northern District of California, according to
17 instructions from the Clerk's Office.

18 c. The parties agree that the civil settlement (including restitution) of
19 \$1,300,000 shall be paid and distributed in accordance with the civil settlement attached as
20 Exhibit A.

21 d. The defendant shall comply with the Special Conditions of Probation
22 attached as Exhibit B to include, among other things, creating a Corporate Compliance Program
23 with an emphasis on public entity procurement requirements.

24 e. On the date of sentencing, the defendant will pay a special assessment of
25 \$800.

26 f. The defendant will cooperate fully and truthfully with the United States in
27 the prosecution of this case, including the ongoing federal investigation into allegations of fraud
28 and collusion related to the FCC's E-Rate program, any other federal criminal investigation

1 resulting therefrom, and any litigation or other proceedings arising or resulting from any such
2 investigation to which the government is a party (“federal proceeding”).

3 12. The ongoing full and truthful cooperation of the defendant shall include, but not
4 be limited to:

5 a. producing to the United States all documents, information, and other
6 materials, wherever located, in the possession, custody, or control of the defendant, requested by
7 the United States in connection with any federal proceeding; and

8 b. using its best efforts to secure the ongoing, full, and truthful cooperation,
9 as defined in Paragraph 13 of this Plea Agreement, of each current and former director, officer, or
10 employee of the defendant as may be requested by the United States, including making these
11 persons available, at the defendant’s expense, for interviews and the provision of testimony in
12 grand jury, trial, and other judicial proceedings in connection with any federal proceeding.

13 13. The ongoing full and truthful cooperation of each person described in Paragraph
14 12(b) above will be subject to the procedures and protections of this paragraph, and shall include,
15 but not be limited to:

16 a. producing all non-privileged documents, including claimed personal
17 documents, and other materials, wherever located, requested by attorneys and agents of the
18 United States;

19 b. making himself or herself available for interviews, not at the expense of
20 the United States, upon the request of attorneys and agents of the United States;

21 c. responding fully and truthfully to all inquiries of the United States in
22 connection with any federal proceeding, without falsely implicating any person or intentionally
23 withholding any information, subject to the penalties of making false statements (18 U.S.C. §
24 1001) and obstruction of justice (18 U.S.C. § 1503), and otherwise voluntarily providing the
25 United States with any material or information not requested in (a) – (c) of this paragraph that he
26 or she may have that is related to any federal proceeding; and

27 d. when called upon to do so by the United States in connection with any
28 federal proceeding, to testify fully, truthfully, and under oath before a grand jury, in trial, and in

1 connection with any other ancillary judicial proceedings pursuant to subpoena, subject to the
2 penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in front of the
3 grand jury or in court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and
4 obstruction of justice (18 U.S.C. § 1503).

5 14. The defendant understands and agrees that, should it or the government withdraw
6 from this Agreement in accordance with Paragraph 7, the defendant may thereafter be prosecuted
7 for any criminal violation of which the government has knowledge, notwithstanding the
8 expiration of any applicable statute of limitations following the signing of this Agreement.

9 15. The defendant agrees not to intentionally provide false information to the Court,
10 the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other
11 promises it has made in this Agreement. The defendant agrees not to commit or attempt to
12 commit any crimes before sentence is imposed. The defendant agrees that, if it fails to comply
13 with any promises it has made in this Agreement, then the government will be released from all
14 of its promises in this Agreement, including those set forth in paragraphs 17 through 19 below,
15 but the defendant will not be released from its guilty pleas.

16 16. The defendant agrees that this Agreement and the attached Exhibits A, B, C and E
17 contain all of the promises and agreements between it and the government, and it will not claim
18 otherwise in the future.

19 17. The defendant agrees that this Agreement binds the United States Department of
20 Justice, excepting the Tax Division, only, and does not bind any other federal, state, or local
21 agency.

22 The Government's Promises

23 18. The government agrees not to file or seek any additional charges against the
24 defendant that could be filed as a result of information known to the government that arises out
25 of the investigation into collusion and fraud that led to the captioned Information, or arose out of
26 the defendant's participation in the E-Rate program from 1998 to the date of sentencing in school
27 districts including, but not limited to, Highland Park, Michigan; West Fresno, California; and
28 Los Angeles, California.

1 forth in Paragraph 9 above, unless the defendant violates the terms and conditions of this
2 Agreement.


3 20. The government agrees that, if requested, it will advise the appropriate officials of
4 any governmental agency considering any administrative action of the fact, manner, and extent of
5 the cooperation of the defendant as a matter for that agency to consider before determining what
6 administrative action, if any, to take.

7 The Defendant's Affirmations

8 21. The defendant confirms that it has had adequate time to discuss this case, the
9 evidence, and this Agreement with its attorney, and that its attorney has provided it with all the
10 legal advice that it requested.

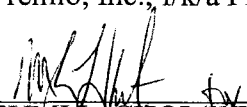
11 22. This Agreement has been authorized, following consultation with counsel, by the
12 Board of Directors of the defendant, by corporate resolution dated February 6, 2006. A certified
13 copy of the corporate resolution is attached to this Agreement as Exhibit D and is incorporated
14 herein. The defendant confirms that its decision to enter guilty pleas is made knowing the
15 charges that have been brought against it, any possible defenses, and the benefits and possible
16 detriments of proceeding to trial. The defendant also confirms that its decision to plead guilty is
17 made voluntarily. Except as set forth in this plea agreement, the defendant has received no
18 promises or inducements to enter its guilty plea, nor has anyone threatened it or any other person
19 to cause it to enter its guilty plea.

20
21 DATED: 2/22/06



TOM TSAO
Vice-President, Defendant
Premio, Inc., f/k/a Premio Computer, Inc.


22
23
24 DATED: 2/21/06



EUMI L. CHOI (WVBN 0722)
Chief, Criminal Division

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DATED: 2/22/06


MICHAEL F. WOOD
RICHARD B. COHEN
BRIAN J. STACK
VICTOR ALI
Attorneys, U.S. Department of Justice
Antitrust Division

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights it is giving up by pleading guilty, and, based on the information now known to me, its decision to plead guilty is knowing and voluntary.

DATED: 2/22/06

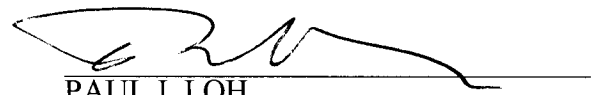

PAUL J. LOH
Willenken, Wilson, Loh and Lieb, LLP
Attorneys for Defendant
Premio, Inc., f/k/a Premio Computer, Inc.

EXHIBIT A TO PLEA AGREEMENT
CIVIL SETTLEMENT

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into by the United States of America, acting through the United States Department of Justice and on behalf of the Federal Communications Commission (FCC), including the Universal Service Administrative Company (USAC), the entity that administers the E-rate program for the FCC (collectively, the United States); and Premio, Inc., formerly Premio Computer, Inc., through their authorized representatives. Premio, Inc. and Premio Computer, Inc., together with their successors and assigns, are hereinafter referred to as Premio. The parties listed in this Paragraph are hereinafter collectively referred to as the Parties.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Premio is a corporation organized and existing under the laws of Illinois with its principal place of business in California. Prior to January 1, 2006, Premio was known as Premio Computer, Inc. Premio does business in California, among other states. Premio does not operate as a common carrier.

B. E-Rate is a program created by Congress in the Telecommunications Act of 1996 and administered by USAC for the FCC. Under E-Rate, the FCC typically reimburses providers of internet access, internal connections services, and telecommunications services for discounts that they provide to schools and libraries that purchase these services. The FCC utilizes USAC, a not for profit corporation incorporated in Delaware, to administer the E-Rate program.

C. Premio is entering a plea of guilty to a two-count felony Information charging Premio with participating in an agreement, understanding, or conspiracy to suppress and eliminate

competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, and mail fraud in violation of 18 U.S.C. §§ 1341 and 2, in connection with Premio's participation in the E-rate program.

The guilty plea is being entered in a matter captioned *United States of America v. Premio Computer, Inc.* No. CR 06-0086 (filed in the Northern District of California, February 8, 2006). A copy of the plea agreement in that matter is attached hereto as Exhibit A (hereinafter the Plea Agreement).

D. The United States contends that it has certain civil claims against Premio under the False Claims Act (FCA), 31 U.S.C. §§ 3729-33, and under the common law for Premio's conduct (while known as Premio Computer, Inc.) in submitting and causing to be submitted false claims for payment under the E-rate program from approximately July 1, 1998 to June 30, 2000 with respect to work at Highland Park School District, Michigan and West Fresno Elementary School District, California by: (1) engaging in non-competitive bidding practices; (2) claiming and receiving E-rate funds for goods and services that were ineligible for E-rate funding; (3) providing false information to the United States regarding the goods and services that were provided to schools and school districts under the E-rate program; and (4) inflating prices on invoices and other documents provided to the United States to conceal some or all of the practices listed in this Paragraph. The conduct described in this Paragraph is hereinafter referred to as the Covered Conduct.

E. This Agreement is not an admission of any liability by Premio.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the terms and conditions of this Agreement.

III. TERMS AND CONDITIONS

1. Premio agrees to pay to the United States \$1,300,000 (hereinafter referred to as the Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Northern District of California, as follows:

a. Within five calendar days of the date on which the United States District Court for the Northern District of California (District Court) imposes sentence on Premio in accordance with the Plea Agreement, Premio will pay the United States the amount of \$260,000; and

b. The balance of the Settlement Amount (\$1,040,000), together with accrued interest computed at the rate of five percent per annum on the unpaid balance hereof, from the date of this Settlement Agreement until the date the entire balance including accrued interest has been paid in full, will be paid in quarterly installments (Installment Payments). The Installment Payments will be made according to the following schedule:

- (i) \$59,093.21 on or before April 1, 2006;
- (ii) \$59,093.21 on or before July 1, 2006;
- (iii) \$59,093.21 on or before October 1, 2006;
- (iv) \$59,093.21 on or before January 1, 2007;
- (v) \$59,093.21 on or before April 1, 2007;
- (vi) \$59,093.21 on or before July 1, 2007;
- (vii) \$59,093.21 on or before October 1, 2007;
- (viii) \$59,093.21 on or before January 1, 2008;
- (ix) \$59,093.21 on or before April 1, 2008;
- (x) \$59,093.21 on or before July 1, 2008;

- (xi) \$59,093.21 on or before October 1, 2008;
- (xii) \$59,093.21 on or before January 1, 2009;
- (xiii) \$59,093.21 on or before April 1, 2009;
- (xiv) \$59,093.21 on or before July 1, 2009;
- (xv) \$59,093.21 on or before October 1, 2009;
- (xvi) \$59,093.21 on or before January 1, 2010;
- (xvii) \$59,093.21 on or before April 1, 2010;
- (xviii) \$59,093.21 on or before July 1, 2010;
- (xix) \$59,093.21 on or before October 1, 2010; and
- (xx) \$59,093.10 on or before January 1, 2011.

In the event that the balance of the Settlement Amount is accelerated as described in Paragraph 3 below, the entire unpaid balance shall bear interest at the rate of seven percent per annum until paid.

2. Premio's shareholders, Crystal Ai Lan Wu, Tom K. Tsao, and Fu Yin Szeto, have each executed a Guarantee to ensure payment of the Settlement Amount, together with interest as set forth in Paragraph 1. Copies of the executed Guarantees are attached hereto as Exhibits B, C, and D and are incorporated into this Agreement by reference.

3. If Premio fails to make any payment in the amount specified above in Paragraph 1 within five (5) calendar days of the date specified above in Paragraph 1, such failure is an event of default, the result of which is that the unpaid balance of the Settlement Amount, plus all unpaid interest accrued thereon, together with any late fee(s) and/or administrative charges (as permitted pursuant to federal law), plus the costs of collection, litigation, and attorney's fees, shall all become immediately due and payable, without notice, presentment, demand, protest, or

notice of protest of any kind, all of which are waived by Premio, and the United States may, at its option, (a) collect the entire unpaid balance of the Settlement Amount immediately, as well as interest and all other amounts due upon an event of default as specified in this Paragraph 3, including seven percent interest from the date of default, whether by suing Premio or collecting on the Guarantees (attached at Exhibits B, C, and/or D) or both; and/or (b) file a civil action against Premio for the Covered Conduct. In the event a complaint is filed pursuant to subsection b of this Paragraph, Premio agrees that it will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to the allegations in the complaint, except to the extent such defenses were available on June 20, 2005.

4. In the event that the District Court does not accept the Plea Agreement, and/or does not impose the sentence agreed to in the Plea Agreement, the United States or Premio may, each in its respective discretion, within five (5) calendar days of the Court's dispositive action on the Plea Agreement, declare this Agreement null and void by written notice to the other party.

5. Premio agrees to cooperate with the United States in any investigation or litigation related to the E-rate program.

6. Releases:

a. Premio fully and finally releases the United States, together with its respective agencies, employees, servants, and agents, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Premio has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct, the Information, the Plea Agreement, and the investigation and prosecution thereof.

b. Subject to the reservations and exclusions in Paragraph 7 below, in consideration of the obligations and promises of Premio set forth in this Agreement, and

conditioned upon Premio's full payment of the Settlement Amount, together with all accrued interest as provided herein:

(i) the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to fully and finally release Premio and any affiliates, subsidiaries, or parent corporations, and their predecessors, successors, and assigns; and any of their present or former directors, officers, and employees, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, disgorgement, restitution, recoupment, breach of contract, and fraud; and

(ii) the FCC (on behalf of itself, its officers, employees, and agents, and on behalf of USAC) agrees to release Premio and any affiliates, subsidiaries, or parent corporations, and their predecessors, successors, and assigns, and any of their present or former directors, officers, and employees, from any administrative monetary claims the FCC has or may have for the Covered Conduct.

7. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Premio) are the following claims: (a) any civil, criminal, or administrative liability to the United States arising under Title 26, U.S. Code (Internal Revenue Code); (b) any criminal liability; (c) any process or proceeding, administrative or judicial, for any agency suspension or debarment action; (d) any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; (e) any claims of the United States based upon such obligations as are created by this Agreement; (f) any liability for the delivery of any deficient or defective products/services

(including any products or services provided as part of the Covered Conduct), including liability under any express or implied product/service liability warranties not related to whether the products/services were eligible for E-Rate funding; and (g) any civil or administrative claims of the United States against individuals, including but not limited to present or former directors, officers, and employees of Premio and any affiliates, subsidiaries, and parent corporations, and their predecessors, successors, and assigns who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

8. Premio waives and shall not assert, in any criminal prosecution or administrative action relating to the Covered Conduct, any defenses that may be based in whole or in part on a contention that, under the *Double Jeopardy Clause in the Fifth Amendment of the Constitution*, or under the *Excessive Fines Clause in the Eighth Amendment of the Constitution*, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the *Internal Revenue Laws, Title 26 of the United States Code*.

9. Premio agrees that all costs (as defined by Federal Acquisition Regulation 31.205-47) incurred by or on behalf of Premio in connection with (a) the matters covered by this Agreement; (b) the Government's audits and investigations of the matters covered by this Agreement; (c) Premio's investigation, defense of the matters, and corrective actions relating to the Covered Conduct; (d) the negotiation of this Agreement; and (e) the payments made to the United States pursuant to this Agreement, shall be unallowable costs for government accounting purposes. Premio shall separately account for all costs that are unallowable under this Agreement.

10. This Agreement is intended to be for the benefit of the Parties only. Except as expressly stated in Paragraph 6 above, the Parties do not release any claims against any other person or entity.

11. Premio expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount. Premio further warrants that it has or will have access to sufficient assets to pay the Settlement Amount. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Premio within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Premio was or became indebted on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

12. Premio agrees that this Agreement satisfies the requirements of the citation provision under subsections 503(b)(5)(A)-(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(5)(A)-(B), such that the FCC may issue a Notice of Apparent Liability against Premio pursuant to 47 U.S.C. § 503(b)(4) if, after the Effective Date of this Agreement (as defined in Paragraph 20), Premio engages in conduct of the type described in Paragraph D of this Agreement.

13. The Parties shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. All Parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

15. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between the Parties under this Agreement shall be the United States District Court for the Northern District of California.

16. This Agreement constitutes the complete agreement between the Parties with respect to civil and administrative monetary liability for the Covered Conduct. This Agreement may not be amended except in writing signed by the Parties.

17. The individuals signing this Agreement on behalf of Premio represent and warrant that they are authorized by Premio to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

19. This Agreement is binding on Premio's successors, transferees, heirs, and assigns.

20. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

PETER D. KEISLER
Assistant Attorney General

DATED: Feb. 2, 2006

BY: Alicia J. Bentley

ALICIA J. BENTLEY
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

KEVIN V. RYAN
United States Attorney
Northern District of California

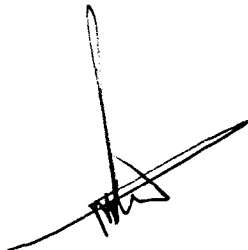
DATED: 2/22/06

BY: Sara M.

SARA WINSLOW
Assistant United States Attorney
On behalf of the United States and the
Federal Communications Commission

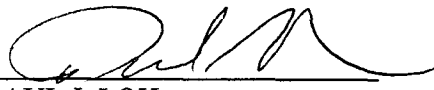
PREMIO, INC.

DATED: 7/10/06

BY: 
TOM K. TSAO, Vice President
On behalf of Premio, Inc.

WILLENKEN WILSON
LOH & LIEB LLP

DATED: 2/13/06

BY: 
PAUL J. LOH
Attorney for Premio, Inc.

***EXHIBIT A TO
SETTLEMENT AGREEMENT***

1 KEVIN V. RYAN (CSBN 118321)
United States Attorney

2 THOMAS O. BARNETT (DCBN 426840)
3 Acting Assistant Attorney General

4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN FRANCISCO DIVISION
7

8 UNITED STATES OF AMERICA,)
9 Plaintiff,)
10 v.)
11 PREMIO, INC., f/k/a PREMIO)
12 COMPUTER, INC.,)
13 Defendant.)

No. CR 06-0086 CRB
VIOLATIONS: 15 U.S.C. §1 - Sherman
Antitrust Act; 18 U.S.C. §§1341 and 2 -
Mail Fraud and Aiding and Abetting
PLEA AGREEMENT

14
15 PREMIO, INC., (formerly known as PREMIO COMPUTER, INC., and hereafter,
16 “defendant”), a corporation organized and existing under the laws of Illinois, with its principal
17 place of business in the City of Industry, California, and the United States Department of Justice,
18 by and through the United States Attorney’s Office for the Northern District of California and the
19 Antitrust Division of the Department of Justice (hereafter “the government”), enter into this
20 written plea agreement (the “Agreement”) pursuant to Rule 11(c)(1)(C) of the Federal Rules of
21 Criminal Procedure:

22 The Defendant’s Promises

23 1. Pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure, the defendant
24 agrees to waive Indictment and plead guilty to a two-count felony Information charging the
25 defendant with a conspiracy to suppress and eliminate competition in violation of the Sherman
26 Antitrust Act, 15 U.S.C. § 1, and with mail fraud and aiding and abetting in violation of 18
27 U.S.C. §§ 1341 and 2. The defendant agrees that the elements of the offenses and the maximum
28 penalties are as follows:

1 Elements of Count One – Sherman Act Antitrust Offense:

- 2 a. The conspiracy, agreement, or understanding described in the Information
3 was knowingly formed, and was existing at or about the time alleged;
4 b. The defendant knowingly became a member of the conspiracy, agreement,
5 or understanding, as charged;
6 c. The alleged conspiracy, agreement, or understanding constituted an
7 unreasonable restraint of interstate commerce; and
8 d. The offense was carried out, in part, in the Central District of California.

9 Maximum Penalties:

- 10 a. Five years probation;
11 b. A fine in the amount of \$10 million or twice the loss (or gain) from the
12 offense, whichever is greater;
13 c. Mandatory special assessment of \$400; and
14 d. Restitution.

15 Elements of Count Two – Mail Fraud:

- 16 a. Defendant participated in a scheme to defraud or a plan for obtaining
17 money or property by making false promises or statements;
18 b. Defendant knew that the promises or statements were false;
19 c. The promises or statements were material;
20 d. Defendant acted with the intent to defraud;
21 e. Defendant used or caused to be used the mails to carry out or attempt to
22 carry out an essential part of the scheme; and
23 f. The offense was carried out, in part, in the Central District of California.

24 Maximum Penalties:

- 25 a. Five years probation;
26 b. A fine in the amount of \$500,000 or twice the amount of loss (or gain)
27 from the offense, whichever is greater;
28 c. Mandatory special assessment of \$400;

1 d. Restitution.

2 2. The defendant agrees that it is guilty of the offenses to which it will plead guilty,
3 and it agrees that the following facts are true:

4 **FACTUAL BASIS FOR SHERMAN ACT OFFENSE CHARGED**

5 a. From at least December 1998 to approximately December 1999,
6 (hereafter, in this Agreement, "the relevant period") the defendant sold and installed
7 telecommunication equipment, including servers to be used for Internet access. It also provided
8 maintenance and other services as needed for the equipment that it supplied.

9 b. During the relevant period, E-Rate, a program authorized by Congress in
10 the Telecommunications Act of 1996, operated under the auspices of the Federal
11 Communications Commission ("FCC") to provide funding to better enable school districts and
12 libraries to connect to the Internet. The FCC designated the Universal Service Administrative
13 Company ("USAC"), a nonprofit corporation, to administer the E-Rate program. All
14 participating school districts were required to fund a percentage of the cost of the equipment and
15 services acquired under the E-Rate program. That percentage was determined based on the
16 number of students in the district qualifying for the United States Department of Agriculture's
17 school lunch program, with the neediest school districts eligible for the highest percentage of
18 funding.

19 c. During the relevant period, applications for E-Rate funding far exceeded
20 the funding available. To ensure that E-Rate funding was distributed to the widest number of
21 applicants, USAC required all applicants to comply with various rules and procedures including:
22 (1) only certain equipment and services, would be eligible for funding; (2) school districts were
23 required to follow both competitive bidding procedures in accordance with local and state law
24 and FCC rules to ensure that the school districts received the lowest possible prices and most
25 cost-effective proposals from the responsive bidders; (3) service providers or their agents could
26 not participate in the vendor selection process or the completion of forms necessary for the
27 schools to receive E-Rate funding in order to avoid a conflict of interest or even the appearance
28 of a conflict of interest; and (4) school districts were required to enter into contracts with the

1 most cost-effective, responsive bidder prior to making application for funds from USAC.

2 d. In or about December 1998, the defendant had established a relationship
3 with a company that manufactured and installed video conferencing switches and related
4 equipment (hereafter "VX Company").

5 e. During the relevant period, VX Company contracted with two persons
6 (Consultant One and Consultant Two) to work as sales representatives. Consultants One and
7 Two specialized in marketing VX Company products to educational institutions, including
8 school districts. During the relevant period Consultants One and Two also acted as consultants
9 to school districts in designing computer networks, identifying potential government-sponsored
10 funding sources (including the E-Rate program), applying for those funds, and selecting vendors
11 to supply the specified equipment and services funded by those programs.

12 f. During the relevant period, the defendant knowingly participated in a
13 conspiracy with one or more vendors of equipment and services related to telecommunications,
14 Internet access, and/or internal connections, the purpose of which was to suppress and eliminate
15 competition for the E-Rate program project at the West Fresno Elementary School District in
16 Fresno, California by allocating contracts and submitting fraudulent and noncompetitive bids
17 (hereafter, as relates to this offense, "the project"). The defendant's knowledge of and
18 participation in the Count One conspiracy, agreement or understanding was through the activities
19 of a single former employee of the defendant, who was acting at all times within the course and
20 scope of his employment with defendant, and for defendant's benefit.

21 g. To carry out this conspiracy, the defendant discussed prospective bids for
22 the E-Rate project with its co-conspirators, agreed with those co-conspirators who would be the
23 lead contractor on the project and who would participate on the project as subcontractors to the
24 designated lead contractor, submitted a fraudulent and noncompetitive subcontract bid in
25 accordance with the conspiratorial agreement, and worked with Consultants One and Two.
26 These Consultants took steps to ensure the conspiracy's success by disqualifying a non-
27 conspirator's bid and either directly awarding the contract or using their best efforts to persuade
28 the school district officials to award the contracts to the designated lead contractor and

1 subcontractors.

2 h. As part of the conspiracy, Consultants One and Two caused the E-Rate
3 project's contract to be awarded to the designated lead contractor and caused a subcontract to be
4 awarded to the defendant. In return, pursuant to the conspiracy, the defendant agreed to purchase
5 and install, and did purchase and install, equipment from other companies at the E-Rate project.

6 i. During the relevant period, in accordance with the E-Rate project contract
7 obtained through the conspiracy, equipment and services were delivered and payments for those
8 equipment and services were received that traveled in interstate commerce. The business
9 activities of the defendant and its co-conspirators in connection with the sale of that equipment
10 and services affected by this conspiracy were within the flow of, and substantially affected,
11 interstate trade and commerce.

12 j. Acts in furtherance of this conspiracy were carried out within the Northern
13 District of California. The conspiratorial meetings and discussions described above took place in
14 the United States, and at least one of those communications originated or was received by a
15 conspirator in the Northern District of California.

16 **FACTUAL BASIS FOR MAIL FRAUD OFFENSE CHARGED**

17 k. From at least December 1998 to approximately December 2000,
18 (hereafter, for the Mail Fraud charge, "the relevant period") the defendant sold and installed
19 telecommunication equipment, including servers to be used for Internet access. It also provided
20 maintenance and other services as needed for the equipment that it supplied.

21 l. Paragraphs (b) through (e) are realleged as if full set forth here.

22 m. The defendant's knowledge of and participation in the Count Two offense
23 was through the activities of a single former employee of the defendant, who was acting at all
24 times within the course and scope of his employment with defendant, and for defendant's benefit.

25 n. In or before December 1998, Consultants One and Two began working
26 with the Highland Park School District (hereafter "Highland Park") to obtain E-Rate program
27 funds. Working with a Highland Park Official, Consultants One and Two put together a Request
28 for Proposal for equipment and services to be funded by E-Rate.

1 o. On or about February 23, 1999, the defendant submitted its bid on the
2 Highland Park E-Rate project. Consultant One ran the bid opening proceedings, and together
3 with a Highland Park Official, opened and reviewed the bids. Consultant One declared the
4 defendant the winner of the telecommunication server portion of the Highland Park bid.

5 p. On or about March 31, 1999, Consultant One prepared and submitted
6 Highland Park's Application Form 471 to USAC. The Form 471 is a school district's request for
7 E-Rate funding. It is supposed to set out the winning vendors' bid amounts for the equipment
8 and services called for in the district's Request for Proposal. The Highland Park 471 included a
9 request for \$1.4 million of telecommunication servers to be provided by the defendant under
10 defendant's Service Provider Information Number ("SPIN") 143008583.

11 q. After review of the Highland Park 471 application, on or about
12 November 2, 1999, USAC's Schools and Libraries Division ("SLD") approved approximately
13 \$1.2 million in funding to the defendant for the defendant's providing of telecommunication
14 servers and related installation and maintenance at Highland Park.

15 r. In furtherance of this scheme, Consultants One and Two directed a
16 Highland Park Official to write a letter to the defendant requesting the substitution of the
17 ineligible video conferencing equipment for the approved servers, when in fact the letter was
18 merely an attempt to hide the ineligible substitution from the SLD's scrutiny.

19 s. Defendant's former employee met with Consultant One and agreed to have
20 the defendant provide ineligible video conferencing equipment with the E-Rate funds that had
21 been appropriated for servers and provide that equipment to Highland Park instead of providing
22 telecommunication servers as approved by the SLD.

23 t. During the relevant period, the defendant purchased the ineligible video
24 conferencing equipment from VX Company and delivered that equipment, along with ineligible
25 equipment from defendant, to Highland Park in lieu of the servers for which funding had been
26 approved under the defendant's SPIN 143008583.

27 u. The defendant knowingly invoiced the SLD for approximately \$1.2
28 million for telecommunication servers despite having delivered the ineligible video conferencing

1 equipment to Highland Park.

2 v. At no time during the relevant period did the defendant disclose to the
3 SLD that it had impermissibly substituted ineligible video conferencing equipment for the
4 servers that had been approved under the defendant's SPIN 143008583.

5 w. During the relevant period, for the purpose of executing its scheme, the
6 defendant used or caused to be used the mails to send Invoice No. MI-041900, dated April 20,
7 2000, from California to the SLD in Kansas seeking payment of \$379,400 purportedly for
8 telecommunication servers delivered to Highland Park, when ineligible video conferencing
9 equipment had actually been delivered.

10 3. The defendant agrees to give up any defense based on venue in this District, and
11 agrees voluntarily to consent to the jurisdiction of the government to prosecute this case against it
12 in the United States District Court for the Northern District of California. The defendant further
13 gives up all other rights that it would have if it chose to proceed to trial, including the rights to a
14 jury trial with the assistance of an attorney; to confront and cross-examine government witnesses;
15 to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth
16 Amendment claims; to any further discovery from the government; and to pursue any affirmative
17 defenses and present evidence.

18 4. The defendant agrees to waive the running of any statute of limitations from
19 December 1999 through the filing of the attached Information in a separate letter found as
20 Exhibit E to this Plea Agreement.

21 5. The defendant agrees to give up its right to appeal its conviction, the judgment,
22 and orders of the Court. The defendant also agrees to waive any right it may have to appeal any
23 sentence consistent with this plea agreement.

24 6. The defendant agrees not to file any collateral attack on its conviction or sentence,
25 at any time in the future after it is sentenced. Nothing in paragraphs 5 and 6, however, shall act
26 as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or
27 collateral attack respecting claims of ineffective assistance of counsel or prosecutorial
28 misconduct.

1 7. The defendant agrees not to ask the Court to withdraw its guilty plea at any time
2 after it is entered, unless the Court declines to accept the sentence agreed to by the parties. Either
3 party may withdraw from this agreement if the Court does not accept the agreed-upon sentence
4 set out below.

5 8. The defendant understands that the Sentencing Guidelines are advisory, not
6 mandatory, and the Court must consider the Guidelines in effect on the day of sentencing, unless
7 the application of that version of the Guidelines would violate the *ex post facto* clause of the
8 Constitution. In that event, pursuant to U.S.S.G. § 1B1.11(b)(1), the version of the Guidelines in
9 effect on the date of the commission of the offense shall instead be considered, along with the
10 other factors set forth in 18 U.S.C. § 3553(a), in imposing sentence. The defendant understands
11 that the Guidelines determinations will be made by the Court by the preponderance-of-the-
12 evidence standard. The defendant understands that although the Court is not ultimately bound to
13 impose a sentence within the applicable Guidelines range, its sentence must be reasonable based
14 upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). If
15 acceptable to the Court, both parties agree to waive the presentence investigation and report
16 pursuant to Rule 32(c)(1)(A)(ii) of the Federal Rules of Criminal Procedure. The defendant
17 agrees that the advisory Sentencing Guidelines should be calculated as follows (utilizing the
18 Guidelines effective November 1, 1999):

19 For Count One:

20	a.	Base Offense Level (8C2.1, 8C2.3, and 2R1.1):	10
21	b.	Specific offense characteristics:	
22		Bid Rigging (2R1.1(b)(1)):	+1
23		Volume of Commerce (2R1.1(d)(3))	
24		West Fresno bid: \$1,934,000	+2
25	c.	Adjusted Offense Level:	13
26	d.	Base Fine (2R1.1(d)(1)) 20% Volume of Commerce:	\$386,800
27	e.	Culpability Score (8C2.5(a)(b)(3)(A)):	5+3 = 8
28		(>200 employees and an individual within high-level personnel participated in the offense)	

1	f.	Acceptance of Responsibility:	-2
2	g.	Total Culpability Score:	6
3	h.	Minimum/Maximum Multiplier (8C2.6):	1.20 – 2.40
4	i.	Fine Range (8C2.7):	\$464,160 – \$928,320

5 For Count Two:

6	a.	Base Offense Level (8C2.1, 8C2.3, and 2F1.1):	6
7	b.	Specific Offense Characteristics (Loss >\$800,000):	+11
8	c.	More than Minimal Planning:	+2
9	d.	Adjusted Offense Level:	19
10	e.	Base Fine (8C2.4)(a)(3) (pecuniary loss):	\$1,230,000
11	f.	Culpability Score (8C2.5)(a)(b)(3)(A):	5+3 = 8

12 (>200 employees and an individual within
13 high-level personnel participated in the offense)

14	g.	Acceptance of Responsibility:	-2
15	h.	Total Culpability Score:	6
16	i.	Minimum/Maximum Multiplier (8C2.6):	1.20 – 2.40
17	j.	Fine Range (8C2.7):	\$1,476,000 – \$2,952,000

18 Multiple Counts

19	a.	Grouping (3D1.1(a), 3D1.2, and 3D1.3)	
20		Group 1 – Mail Fraud offense level:	19
21		Group 2 – Sherman Act offense level:	13
22	b.	Combined Offense Levels (3D1.4)	
23		Highest Offense Level – Group 1:	19
24		Total Number of Units:	1½
25		Combined Offense Level:	20

26 Fine Determination

27	a.	Base Fine (8C2.4):	
28		The greatest of:	
		Offense Level Fine Table (8C2.4(a)(1))	\$650,000

Pecuniary Loss (8C2.4(a)(3)) and 8C2.4(b): \$1,616,800
Greatest: \$1,616,800

b. Culpability Score (8C2.5(a)(b)(3)(A) and 8C2.4(b)): 5+3 = 8

(>200 employees and an individual within
high-level personnel participated in the offense)

c. Acceptance of Responsibility: -2

d. Total Culpability Score: 6

e. Minimum/Maximum Multiplier (8C2.6): 1.20 – 2.40

f. Fine Range (8C2.7): \$1,940,160 – \$3,880,320

9. The defendant understands that as part of its plea and the separate civil settlement that it will pay \$400,000 in criminal fines and \$1,300,000 in satisfaction of the civil settlement. The money paid in connection with the civil settlement shall satisfy any obligation to make restitution. (See U.S.S.G. § 8C2.9)

Criminal Fine	\$ 400,000
Civil Settlement and Restitution	\$1,300,000
Total	\$1,700,000

10. The parties agree that there exists no aggravating or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Guidelines Commission in formulating the Sentencing Guidelines that should result in a sentence outside the advisory Guidelines range under U.S.S.G. § 5K2.0. The parties agree not to seek or support any sentence outside the advisory Guidelines range for any reason not set forth in this Plea Agreement. In view of all facts and circumstances of this case, including the defendant's continuing cooperation with the government, the parties believe that the sentence recommended is reasonable, fair, and just in accordance with 18 U.S.C. §§ 3553, 3571, and 3572.

11. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that an appropriate disposition of this case is that the defendant receive the following criminal sentence:

a. The defendant shall be placed on probation for a period of three (3) years

1 on conditions including that the defendant:

- 2 i. commit no violations of federal or state law;
- 3 ii. comply with the terms and conditions of the civil settlement
- 4 attached as Exhibit A;
- 5 iii. comply with the Special Conditions of Probation attached as
- 6 Exhibit B; and
- 7 iv. cooperate fully with the government as set forth below.

8 b. The government and the defendant agree that the applicable advisory
9 Sentencing Guidelines fine range exceeds the fine agreed to by the parties. The government and
10 the defendant further agree that the recommended fine is appropriate, due to the inability of the
11 defendant to pay a fine greater than that agreed to without substantially jeopardizing its continued
12 viability, pursuant to U.S.S.G. § 8C3.3(b). Therefore, in the interest of justice pursuant to 18
13 U.S.C. § 3572(d)(1) and U.S.S.G. § 8C3.2(b), the parties agree that the \$400,000 fine shall be
14 paid over five years (plus interest at 5%) in accordance with the criminal fine repayment schedule
15 attached to this Plea Agreement as Exhibit C. All installments of the criminal fine shall be paid
16 to the United States District Court for the Northern District of California, according to
17 instructions from the Clerk's Office.

18 c. The parties agree that the civil settlement (including restitution) of
19 \$1,300,000 shall be paid and distributed in accordance with the civil settlement attached as
20 Exhibit A.

21 d. The defendant shall comply with the Special Conditions of Probation
22 attached as Exhibit B to include, among other things, creating a Corporate Compliance Program
23 with an emphasis on public entity procurement requirements.

24 e. On the date of sentencing, the defendant will pay a special assessment of
25 \$800.

26 f. The defendant will cooperate fully and truthfully with the United States in
27 the prosecution of this case, including the ongoing federal investigation into allegations of fraud
28 and collusion related to the FCC's E-Rate program, any other federal criminal investigation

1 resulting therefrom, and any litigation or other proceedings arising or resulting from any such
2 investigation to which the government is a party (“federal proceeding”).

3 12. The ongoing full and truthful cooperation of the defendant shall include, but not
4 be limited to:

5 a. producing to the United States all documents, information, and other
6 materials, wherever located, in the possession, custody, or control of the defendant, requested by
7 the United States in connection with any federal proceeding; and

8 b. using its best efforts to secure the ongoing, full, and truthful cooperation,
9 as defined in Paragraph 13 of this Plea Agreement, of each current and former director, officer, or
10 employee of the defendant as may be requested by the United States, including making these
11 persons available, at the defendant’s expense, for interviews and the provision of testimony in
12 grand jury, trial, and other judicial proceedings in connection with any federal proceeding.

13 13. The ongoing full and truthful cooperation of each person described in Paragraph
14 12(b) above will be subject to the procedures and protections of this paragraph, and shall include,
15 but not be limited to:

16 a. producing all non-privileged documents, including claimed personal
17 documents, and other materials, wherever located, requested by attorneys and agents of the
18 United States;

19 b. making himself or herself available for interviews, not at the expense of
20 the United States, upon the request of attorneys and agents of the United States;

21 c. responding fully and truthfully to all inquiries of the United States in
22 connection with any federal proceeding, without falsely implicating any person or intentionally
23 withholding any information, subject to the penalties of making false statements (18 U.S.C. §
24 1001) and obstruction of justice (18 U.S.C. § 1503), and otherwise voluntarily providing the
25 United States with any material or information not requested in (a) – (c) of this paragraph that he
26 or she may have that is related to any federal proceeding; and

27 d. when called upon to do so by the United States in connection with any
28 federal proceeding, to testify fully, truthfully, and under oath before a grand jury, in trial, and in

1 connection with any other ancillary judicial proceedings pursuant to subpoena, subject to the
2 penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in front of the
3 grand jury or in court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and
4 obstruction of justice (18 U.S.C. § 1503).

5 14. The defendant understands and agrees that, should it or the government withdraw
6 from this Agreement in accordance with Paragraph 7, the defendant may thereafter be prosecuted
7 for any criminal violation of which the government has knowledge, notwithstanding the
8 expiration of any applicable statute of limitations following the signing of this Agreement.

9 15. The defendant agrees not to intentionally provide false information to the Court,
10 the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other
11 promises it has made in this Agreement. The defendant agrees not to commit or attempt to
12 commit any crimes before sentence is imposed. The defendant agrees that, if it fails to comply
13 with any promises it has made in this Agreement, then the government will be released from all
14 of its promises in this Agreement, including those set forth in paragraphs 17 through 19 below,
15 but the defendant will not be released from its guilty pleas.

16 16. The defendant agrees that this Agreement and the attached Exhibits A, B, C and E
17 contain all of the promises and agreements between it and the government, and it will not claim
18 otherwise in the future.

19 17. The defendant agrees that this Agreement binds the United States Department of
20 Justice, excepting the Tax Division, only, and does not bind any other federal, state, or local
21 agency.

22 The Government's Promises

23 18. The government agrees not to file or seek any additional charges against the
24 defendant that could be filed as a result of information known to the government that arises out
25 of the investigation into collusion and fraud that led to the captioned Information, or arose out of
26 the defendant's participation in the E-Rate program from 1998 to the date of sentencing in school
27 districts including, but not limited to, Highland Park, Michigan; West Fresno, California; and
28 Los Angeles, California.

1 forth in Paragraph 9 above, unless the defendant violates the terms and conditions of this
2 Agreement.


3 20. The government agrees that, if requested, it will advise the appropriate officials of
4 any governmental agency considering any administrative action of the fact, manner, and extent of
5 the cooperation of the defendant as a matter for that agency to consider before determining what
6 administrative action, if any, to take.

7 The Defendant's Affirmations

8 21. The defendant confirms that it has had adequate time to discuss this case, the
9 evidence, and this Agreement with its attorney, and that its attorney has provided it with all the
10 legal advice that it requested.

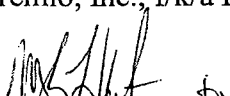
11 22. This Agreement has been authorized, following consultation with counsel, by the
12 Board of Directors of the defendant, by corporate resolution dated February 6, 2006. A certified
13 copy of the corporate resolution is attached to this Agreement as Exhibit D and is incorporated
14 herein. The defendant confirms that its decision to enter guilty pleas is made knowing the
15 charges that have been brought against it, any possible defenses, and the benefits and possible
16 detriments of proceeding to trial. The defendant also confirms that its decision to plead guilty is
17 made voluntarily. Except as set forth in this plea agreement, the defendant has received no
18 promises or inducements to enter its guilty plea, nor has anyone threatened it or any other person
19 to cause it to enter its guilty plea.

20
21 DATED: 2/22/06



TOM TSAO
Vice-President, Defendant
Premio, Inc., f/k/a Premio Computer, Inc.

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23
24 DATED: 2/21/06

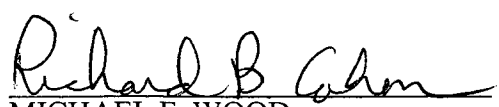


EUMI L. CHOI (WVBN 0722)
Chief, Criminal Division

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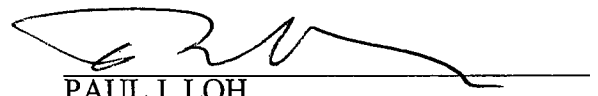
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DATED: 2/22/06


MICHAEL F. WOOD
RICHARD B. COHEN
BRIAN J. STACK
VICTOR ALI
Attorneys, U.S. Department of Justice
Antitrust Division

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights it is giving up by pleading guilty, and, based on the information now known to me, its decision to plead guilty is knowing and voluntary.

DATED: 2/22/06


PAUL J. LOH
Willenken, Wilson, Loh and Lieb, LLP
Attorneys for Defendant
Premio, Inc., f/k/a Premio Computer, Inc.

***EXHIBIT B TO
SETTLEMENT AGREEMENT***

GUARANTEE

I, Crystal Ai Lan Wu, a shareholder of Premio, Inc., formerly Premio Computer, Inc. (hereinafter Premio), hereby acknowledge Premio's indebtedness to the United States of America in the amount of \$1,300,000, together with interest as more fully set forth in the Settlement Agreement between the United States of America and Premio, a copy of which is attached hereto as Exhibit A (the Settlement Agreement). I recognize the benefits that Premio is obtaining from the Settlement Agreement, and that such benefits inure to me as a shareholder. Accordingly, I hereby unconditionally and irrevocably guarantee to the United States the prompt and complete payment and performance by Premio when due (by acceleration or otherwise) of the amount of \$1,300,000 plus accrued interest.

If I do not make payment of the full outstanding balance (including interest) due within ten (10) days of receipt of notice to me from the United States, the United States may proceed against me in my individual capacity to immediately enforce collection of the entire amount then due and owing to the United States, plus interest and the costs of collection (including reasonable attorney's fees), by filing a law suit or by any other legal methods available. In such event, I agree to be jointly and severally liable for the entire amount then due and owing, plus interest and costs thereof. I waive promptness, diligence, protest, presentment, notice of acceptance and, except as expressly provided herein, any and all notices of any kind and any requirement that the United States exhaust any right or take any action against any other person or entity or collateral.

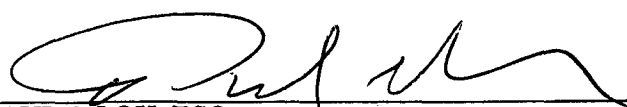
I agree that the exclusive jurisdiction and venue for any dispute arising between the United States and me with respect to this Guarantee or the Settlement Agreement shall be the United States District Court for the Northern District of California, and that any such dispute will be governed by and interpreted in accordance with the laws of the United States. I will indemnify the United States against all losses, costs and expenses incurred in connection with the enforcement of this Guarantee against me.

DATED: 2/10/06


BY: 
CRYSTAL AILAN WU

APPROVED:

WILLENKEN WILSON LOH & LIEB LLP

BY: 
PAUL J. LOH, ESQ.
Attorney for Premio, Inc.,
Crystal Ai Lan Wu, Tom K. Tsao, and Fu Yin Szeto

KEVIN V. RYAN
United States Attorney
Northern District of California

BY: 
SARA WINSLOW
Assistant United States Attorney

***EXHIBIT C TO
SETTLEMENT AGREEMENT***

GUARANTEE

I, Tom K. Tsao, a shareholder of Premio, Inc., formerly Premio Computer, Inc. (hereinafter Premio), hereby acknowledge Premio's indebtedness to the United States of America in the amount of \$1,300,000, together with interest as more fully set forth in the Settlement Agreement between the United States of America and Premio, a copy of which is attached hereto as Exhibit A (the Settlement Agreement). I recognize the benefits that Premio is obtaining from the Settlement Agreement, and that such benefits inure to me as a shareholder. Accordingly, I hereby unconditionally and irrevocably guarantee to the United States the prompt and complete payment and performance by Premio when due (by acceleration or otherwise) of the amount of \$1,300,000 plus accrued interest.

If I do not make payment of the full outstanding balance (including interest) due within ten (10) days of receipt of notice to me from the United States, the United States may proceed against me in my individual capacity to immediately enforce collection of the entire amount then due and owing to the United States, plus interest and the costs of collection (including reasonable attorney's fees), by filing a law suit or by any other legal methods available. In such event, I agree to be jointly and severally liable for the entire amount then due and owing, plus interest and costs thereof. I waive promptness, diligence, protest, presentment, notice of acceptance and, except as expressly provided herein, any and all notices of any kind and any requirement that the United States exhaust any right or take any action against any other person or entity or collateral.

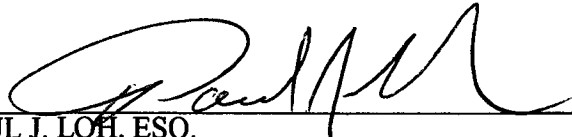
I agree that the exclusive jurisdiction and venue for any dispute arising between the United States and me with respect to this Guarantee or the Settlement Agreement shall be the United States District Court for the Northern District of California, and that any such dispute will be governed by and interpreted in accordance with the laws of the United States. I will indemnify the United States against all losses, costs and expenses incurred in connection with the enforcement of this Guarantee against me.

DATED: 2/10/06

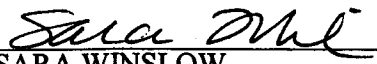
BY: 
TOM K. TSAO

APPROVED:

WILLENKEN WILSON LOH & LIEB LLP

BY: 
PAUL J. LOH, ESQ.
Attorney for Premio, Inc.,
Crystal Ai Lan Wu, Tom K. Tsao, and Fu Yin Szeto

KEVIN V. RYAN
United States Attorney
Northern District of California

BY: 
SARA WINSLOW
Assistant United States Attorney

***EXHIBIT D TO
SETTLEMENT AGREEMENT***

GUARANTEE

I, Fu Yin Szeto, a shareholder of Premio, Inc., formerly Premio Computer, Inc. (hereinafter Premio), hereby acknowledge Premio's indebtedness to the United States of America in the amount of \$1,300,000, together with interest as more fully set forth in the Settlement Agreement between the United States of America and Premio, a copy of which is attached hereto as Exhibit A (the Settlement Agreement). I recognize the benefits that Premio is obtaining from the Settlement Agreement, and that such benefits inure to me as a shareholder. Accordingly, I hereby unconditionally and irrevocably guarantee to the United States the prompt and complete payment and performance by Premio when due (by acceleration or otherwise) of the amount of \$1,300,000 plus accrued interest.

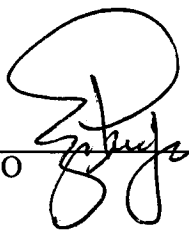
If I do not make payment of the full outstanding balance (including interest) due within ten (10) days of receipt of notice to me from the United States, the United States may proceed against me in my individual capacity to immediately enforce collection of the entire amount then due and owing to the United States, plus interest and the costs of collection (including reasonable attorney's fees), by filing a law suit or by any other legal methods available. In such event, I agree to be jointly and severally liable for the entire amount then due and owing, plus interest and costs thereof. I waive promptness, diligence, protest, presentment, notice of acceptance and, except as expressly provided herein, any and all notices of any kind and any requirement that the United States exhaust any right or take any action against any other person or entity or collateral.

I agree that the exclusive jurisdiction and venue for any dispute arising between the United States and me with respect to this Guarantee or the Settlement Agreement shall be the United States District Court for the Northern District of California, and that any such dispute will be governed by and interpreted in accordance with the laws of the United States. I will indemnify the United States against all losses, costs and expenses incurred in connection with the enforcement of this Guarantee against me.

DATED: 02/10/2006

BY:

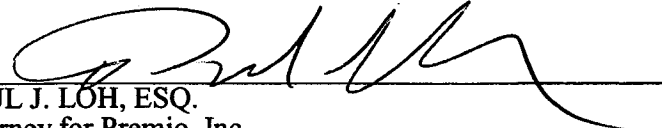
FU YIN SZETO



APPROVED:

WILLENKEN WILSON LOH & LIEB LLP

BY:


PAUL J. LOH, ESQ.
Attorney for Premio, Inc.,
Crystal Ai Lan Wu, Tom K. Tsao, and Fu Yin Szeto

KEVIN V. RYAN
United States Attorney
Northern District of California

BY:


SARA WINSLOW
Assistant United States Attorney

EXHIBIT B TO PLEA AGREEMENT
SPECIAL CONDITIONS OF PROBATION

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 UNITED STATES OF AMERICA,)

Case No.

6 Plaintiff,)

SPECIAL CONDITIONS OF PROBATION

7 v.)

8 PREMIO, INC., f/k/a PREMIO)
COMPUTER, INC.,)

9 Defendant.)
10

11 The defendant, Premio, Inc., (formerly known as Premio Computer, Inc., and hereafter,
12 "Premio" or "defendant"), a corporation organized under the laws of Illinois with its principal
13 place of business in City of Industry, California, makes and sells its computers, servers, software
14 and peripheral equipment to wholesale, commercial and government clients. Premio also
15 provides maintenance and other services as needed for the equipment it supplies. The defendant
16 offered and sold the products and services to schools within the United States pursuant to a
17 program operated under the auspices of the Federal Communications Commission (the "FCC")
18 and administered by the Universal Service Administrative Company ("USAC"). The program,
19 commonly referred to as the E-Rate program, was created by Congress to permit schools and
20 libraries to acquire the needed technology to access and utilize the Internet. The defendant
21 became the subject of a grand jury investigation arising out of doing business related to the E-
22 Rate program. After having cooperated in the investigation and seeking a mutually agreeable
23 settlement of all claims related thereto, the defendant has entered into a plea agreement with the
24 United States in which the defendant pleaded guilty to a two-count felony Information. Count
25 One charges the defendant with conspiracy to suppress and eliminate competition in violation of
26 the Sherman Antitrust Act, 15 U.S.C. § 1. Count Two charges the defendant with mail fraud and
27 aiding and abetting in violation of 18 U.S.C. § 1341 and 2. These charges result from the
28 defendant conspiring with others to frustrate the public bidding process under the E-Rate

Exhibit B - Special Terms of Probation

1 program and submitting false and misleading information to the Schools and Library Division of
2 USAC (“SLD”) in order to receive funding for products and services not authorized under the E-
3 Rate program. To address the issues raised in the plea agreement concerning its conduct, and
4 having determined that the following conditions will constitute reasonable and necessary steps to
5 avoid the reoccurrence of the conduct which was the subject of the plea agreement, the defendant
6 agrees, and the Court hereby imposes the following as a special condition of probation for the
7 entire three-year term of probation. In so doing, the Court is not in any way limiting the authority
8 of any agency of the United States to take any action permitted by law or regulation.

9 1. Within sixty (60) days of acceptance of the plea agreement by the Court, the
10 defendant shall formally adopt a comprehensive Anti-Fraud and Antitrust
11 Compliance Policy (the “Compliance Policy”) and shall provide copies of said
12 policy to the Probation Officer, FCC Enforcement Bureau and the FCC-OIG. At a
13 minimum, the Compliance Policy will address the following:

- 14 a. Creating an internal structure requiring high level management oversight
15 of all government and public entity business;
- 16 b. Creating an internal system of monitoring and audits to include steps to be
17 taken if any employee suspects that any bid, proposal or other company
18 conduct is not in accordance with the company’s Compliance Policy
19 and/or applicable law;
- 20 c. Educating and training all responsible employees about their obligations,
21 including government procurement law, regulations and procedures;
22 criminal and civil penalties for mail fraud, wire fraud, false statements,
23 obstruction of justice, and false claims and other related conduct; and the
24 requirements for adherence to the antitrust laws; and
- 25 d. Ensuring that there are regular reports to the CEO and Board of Directors
26 and, if Premio participates or attempts to participate in the E-Rate program
27 during the probation period, at least annual reports to the FCC
28 Enforcement Bureau and FCC-OIG of Compliance Policy activities.

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2. Within sixty (60) days of acceptance of the plea agreement by the Court, the defendant shall designate an officer of the defendant to be the Compliance Officer responsible for the enforcement of the Anti-Fraud and Antitrust Compliance Policy. This shall include:
- a. Creating and overseeing internal policies and procedures to ensure that all company activities involving government-sponsored or funded programs or any other business with any public entities is conducted in accordance with applicable law;
 - b. Ensuring that either the Compliance Officer personally or someone under his/her direct supervision is an experienced contract manager knowledgeable about governmental laws and regulations relating to public sector procurement;
 - c. Requiring the Compliance Officer and those under his/her direct supervision to oversee the enforcement of the Anti-Fraud and Antitrust Compliance Policy as it applies to all company activities involving government-sponsored or funded programs or any other business with any public entities;
 - d. Creating and overseeing an ongoing mandatory education and training program for all officers, directors, sales, technical staff and other employees directly involved in the preparation of bid and related contractual materials for any government-sponsored or funded programs or any other business with any public entities in order to apprise them of all governmental laws and regulations relating to public sector procurement and the requirements of the Compliance Policy. If Premio participates or attempts to participate in the E-Rate program during the probation period, the Compliance Officer shall ensure and certify under penalty of perjury that all affected individuals have received such training on at least a yearly basis and shall provide the certification to the Probation Officer, FCC

1 Enforcement Bureau and FCC-OIG.

2 e. If Premio participates or attempts to participate in the E-Rate program
3 during the probation period, the Compliance Officer shall be the central
4 *point of contact for (a) documenting and distributing E-Rate program*
5 *requirements throughout the company; (b) monitoring changes in the E-*
6 *Rate rules and regulations to ensure the documentation and distribution of*
7 *such changes; (c) ensuring that all employees who are involved with the E-*
8 *Rate program receive training; (d) arranging monthly meetings with key*
9 *company executives to ensure consistent implementation of the E-Rate*
10 *rules and regulations across the company.*

11 3. The Compliance Officer's salary and other compensation, as well as the salary and
12 other compensation of any employees under the Compliance Officer's
13 supervision, shall be independent of any contracts or other government-sponsored
14 or funded programs or other public entity business.

15 4. The Compliance Officer shall create and oversee an internal auditing program in
16 which all public sector contracts shall be audited to ensure compliance with the
17 Compliance Program to include that bids, prices and design specifications are
18 appropriate and that there are no hidden terms, side agreements or other
19 undisclosed arrangement; and that all bids and pricing have been done in
20 accordance with all applicable laws and procedures.

21 5. The Compliance Officer shall create, oversee and promote an internal voicemail
22 or email hotline system in which all employees are encouraged to report, on an
23 anonymous basis, any believed violation of law by any officer or employee.

24 6. The Compliance Officer shall be responsible for monitoring the internal hotline
25 system and undertaking all reasonable and necessary investigations arising from
26 any reported matter(s).

27 7. The Compliance Officer shall, on at least a quarterly basis, report to the
28 defendant's CEO and Audit Committee as to the enforcement of the Compliance

1 Policy and the various measures called for herein including the status of any
2 anonymous complaints or reports received from any employees.

3 8. On at least an annual basis, the Compliance Officer shall make a report to the full
4 Board of Directors as to the status of the Compliance Policy and the various
5 measures called for herein. If Premio participates or attempts to participate in the
6 E-Rate program during the probation period, the annual reports shall also be
7 provided to the Probation Officer, FCC Enforcement Bureau and FCC-OIG.

8 9. The Compliance Officer shall meet regularly (at least monthly) with key
9 executives in the following business units to ensure compliance with all
10 applicable internal company rules and regulations and all E-Rate or other
11 telecommunication program requirements: accounting, finance, installations (i.e.
12 service technicians), legal, marketing, and sales.

13 10. If Premio participates or attempts to participate in the E-Rate program during the
14 probation period, prior to submitting any bid or application for any E-Rate funded
15 project:

16 a. The Compliance Officer shall prepare and distribute a written training
17 program to be used in formal training of Premio's employees involved in
18 the E-Rate program, including employees involved in accounting, finance,
19 sales, marketing, and installations. Among other things, this training
20 program shall cover the following subject matters: the application
21 process, competitive bidding, eligible services, service provider role and
22 responsibilities, discounts, service substitutions and equipment transfers,
23 billing SLD for services, document retention requirements, and risk of
24 non-compliance. All employees who are involved in the E-Rate program
25 must certify their completion of the training program. All future
26 employees involved with the E-Rate program must certify their completion
27 of the training program. All future employees involved with the E-Rate
28 program shall receive such training and shall certify completion of the

1 training program within 14 days of the date on which such individuals are
2 appointed or hired to such positions. These employee certifications must
3 be collected and maintained by the Compliance Officer for a period of five
4 (5) years.

5 b. The Compliance Officer shall establish an E-Rate Code of Conduct
6 (“Code”), which will conform to this Corporate Compliance Plan and
7 which will be signed by all employees involved with the E-Rate program.
8 All subject employees shall reaffirm annually, in writing, that they have
9 reviewed, fully understand, and will adhere to the Code.

10 c. The Compliance Officer shall inform all employees involved with the E-
11 Rate program that any violation of the E-Rate Code shall be grounds for
12 disciplinary action to include warning, censure, reprimand, suspension,
13 loss of pay and firing depending on the severity of the violation and the
14 repetitive nature of the misconduct.

15 11. The Compliance Officer shall review all company bids in response to Form 471
16 Applications. For each bid, the Compliance Officer will certify that all E-Rate
17 rules and regulations were followed in preparing the bid and all related contractual
18 materials. Such certifications must be maintained by the Compliance Officer for a
19 period of five (5) years.

20 12. The Compliance Officer shall collect Form 471 Applications from each customer
21 or prospective customer. The Compliance Officer or his/her designee shall
22 perform a reconciliation for each Form 471 Application to the company’s
23 responsive bid and to the resulting contract or business agreement. The
24 Compliance Officer shall keep a copy of the resulting reconciliation worksheet for
25 each application and shall update it as necessary to show any exchanges,
26 substitutions, or cancellations. The Compliance Officer shall maintain these
27 reconciliation worksheets for a period of five (5) years.

28 13. The Company shall separate all E-Rate eligible and ineligible products and service

1 onto separate customer contracts per installation.

- 2 14. In addition to any applicable FCC regulation or program requirement, and as a
3 condition of any future participation in the E-Rate program or other government-
4 sponsored or funded telecommunication programs, the defendant agrees that the
5 FCC Enforcement Bureau and FCC-OIG, acting directly or through its agents,
6 may, on an annual basis, audit defendant's compliance with applicable laws and
7 regulations relating to the E-Rate or other government sponsored or funded
8 telecommunication programs to assure adherence to the terms and conditions of
9 those programs. Defendant shall bear all ordinary and reasonable costs of any
10 such audit(s).
- 11 15. On an at least annual basis, within thirty (30) days after the close of defendant's
12 fiscal year, the defendant shall file a report signed under the penalty of perjury by
13 the CEO with the FCC Enforcement Bureau and FCC-OIG concerning the
14 defendant's compliance with the Compliance Policy. This report shall certify that
15 all required oversight, training and educational activities have been undertaken in
16 accordance with the requirements of the Compliance Policy. In the alternative,
17 the report shall detail any shortcomings in following the Compliance Policy and
18 the steps taken, and those that will be taken, to ensure compliance. This report
19 shall also include a detailed description of any violations that were found during
20 the applicable period, the steps taken to cure the violations and any subsequent
21 steps taken to ensure future compliance.
- 22 16. The defendant agrees that should it fail to provide the reports required herein on a
23 timely basis, it shall be responsible for liquidated damages to the United States in
24 the amount of \$25,000 per day until the report is received by the FCC
25 Enforcement Bureau and FCC-OIG. The FCC Enforcement Bureau and FCC-
26 OIG may require the defendant to provide additional information as necessary
27 concerning any incidents or other activities contained in the annual report. If the
28 defendant materially fails to provide such information within the time requested

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or within ten (10) days of such request, whichever is longer, the defendant agrees that it will continue to be liable for liquidated damages in the amount of \$25,000 per day until such information is provided to the satisfaction of the FCC Enforcement Bureau and FCC-OIG.

17. If all or substantially all of the defendant's assets are transferred to a successor organization, that entity shall, as a condition of purchase and by operation of law, become subject to the terms of these special conditions of probation. Prior to any sale, dissolution, reorganization, assignment, merger, acquisition or other action that would result in a successor or assign for provision of the company's E-Rate-related services, the company will furnish a copy of this compliance plan to such prospective successor or assigns and advise same of their duties and obligations under the compliance plan.

IT IS SO ORDERED.

Dated: *February 22, 2006*



HONORABLE CHARLES R. BREYER
United States District Court Judge

EXHIBIT C TO PLEA AGREEMENT
CRIMINAL FINE REPAYMENT SCHEDULE

EXHIBIT C

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<u>Time</u>	<u>Criminal Amt Owing</u>	<u>Interest @ 5%</u>	<u>Total Payment</u>	<u>Balance</u>
Settlement Date	\$400,000.00	\$0.00	\$80,000.00	\$320,000.00
4/1/06	\$320,000.00	\$4,000.00	\$18,182.52	\$305,817.48
7/1/06	\$305,817.48	\$3,822.72	\$18,182.52	\$291,457.68
10/1/06	\$291,457.68	\$3,643.22	\$18,182.52	\$276,918.38
1/1/07	\$276,918.38	\$3,461.48	\$18,182.52	\$262,197.34
4/1/07	\$262,197.34	\$3,277.47	\$18,182.52	\$247,292.29
7/1/07	\$247,292.29	\$3,091.15	\$18,182.52	\$232,200.92
10/1/07	\$232,200.92	\$2,902.51	\$18,182.52	\$216,920.91
1/1/08	\$216,920.91	\$2,711.51	\$18,182.52	\$201,449.90
4/1/08	\$201,449.90	\$2,518.12	\$18,182.52	\$185,785.51
7/1/08	\$185,785.51	\$2,322.32	\$18,182.52	\$169,925.31
10/1/08	\$169,925.31	\$2,124.07	\$18,182.52	\$153,866.85
1/1/09	\$153,866.85	\$1,923.34	\$18,182.52	\$137,607.67
4/1/09	\$137,607.67	\$1,720.10	\$18,182.52	\$121,145.24
7/1/09	\$121,145.24	\$1,514.32	\$18,182.52	\$104,477.04
10/1/09	\$104,477.04	\$1,305.96	\$18,182.52	\$87,600.48
1/1/10	\$87,600.48	\$1,095.01	\$18,182.52	\$70,512.97
4/1/10	\$70,512.97	\$881.41	\$18,182.52	\$53,211.86
7/1/10	\$53,211.86	\$665.15	\$18,182.52	\$35,694.49
10/1/10	\$35,694.49	\$446.18	\$18,182.52	\$17,958.15
1/1/11	\$17,958.15	<u>\$224.48</u>	<u>\$18,182.63</u>	\$0.00
		\$43,650.51	\$443,650.51	
Interest Compounded Quarterly				

EXHIBIT D TO PLEA AGREEMENT
CORPORATE RESOLUTION

**UNANIMOUS WRITTEN CONSENT OF BOARD OF DIRECTORS
IN LIEU OF MEETING
OF
PREMIO, INC.
(formerly known as PREMIO COMPUTER, INC.),
An Illinois Corporation**

The undersigned, constituting all of the directors of Premio, Inc. (formerly known as "Premio Computer, Inc."), an Illinois corporation (the "Corporation"), do hereby consent to the adoption of the following resolutions:

Plea Agreement

WHEREAS, the Corporation is the defendant in a case filed, or to be filed, in United States District Court for the Northern District of California San Francisco Division by plaintiff The United States of America (the "Complaint").

WHEREAS, a settlement of the Complaint has been proposed pursuant to a plea agreement (the "Plea Agreement") substantially in the form attached hereto as Exhibit A, which provides for, among other things, the execution and delivery of a civil Settlement Agreement (the "Settlement Agreement") substantially in the form attached hereto as Exhibit B, which Settlement Agreement is to be guaranteed by certain shareholders of the Corporation who will execute Guarantees substantially in the forms attached hereto as Exhibits C, D and E (collectively, the "Shareholder Guarantees"). Each of the following shareholders will execute and deliver Shareholder Guarantees: Ai-Lan (Crystal) Wu, Tom K. Tsao, and Fu Yin Szeto (collectively, the "Guarantors"). The Plea Agreement, the Settlement Agreement and the Shareholder Guarantees are referred to collectively herein as the "Settlement Documents."

WHEREAS, the shareholders of the Corporation have approved, authorized and adopted the settlement as set forth in the Settlement Documents.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors determines that settlement of the Complaint on the terms set forth in the Settlement Documents is in the best interests of the Corporation and its shareholders.

RESOLVED, FURTHER, that the Plea Agreement in substantially the form attached hereto as Exhibit A be and hereby is approved, authorized and adopted.

RESOLVED, FURTHER, that the Settlement Agreement in substantially the form attached hereto as Exhibit B be and hereby is approved, authorized and adopted.

RESOLVED, FURTHER, that the Personal Guarantees in substantially the forms attached hereto as Exhibits C, D and E be and they hereby are approved, authorized and adopted.

RESOLVED, FURTHER, that the officers of the Corporation, and each of them, be and they hereby are authorized and directed to execute, deliver and perform the Settlement Documents, together with such other documents, agreements, instruments or documents to be

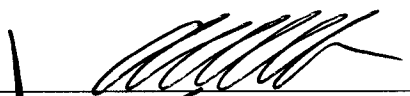
filed with the court as may be required to effect the settlement of the Complaint as described in the Settlement Documents.

RESOLVED, FURTHER, that Tom K. Tsao, be and hereby is, authorized and directed to execute and deliver the Settlement Documents, together with such other documents, agreements, or instruments as may be required to effect the settlement of the Complaint as described in the Settlement Documents, and is authorized, empowered and directed to take any other actions, including appearance in court on behalf of the Corporation, as may be necessary to carry out the purpose and intent of the Settlement Documents and the foregoing resolutions.

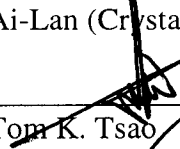
RESOLVED, FURTHER, that the officers and directors of the Corporation, and each of them, be and they hereby are authorized, empowered and directed to take any other actions necessary to carry out the purpose and intent of the Settlement Documents and the foregoing resolutions, including the execution, acknowledgment, and filings of any documents, certificates, writings, or book entries that may be required to carry out the terms of the foregoing resolutions.

This consent may be executed in counterparts, each of which shall be deemed an original, but all of which shall together shall constitute one and the same instrument.

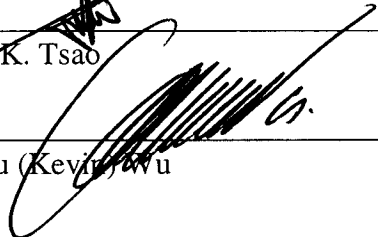
IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent of Board of Directors in Lieu of Meeting as of February 6, 2006, pursuant to the authority granted by Section 8.45 of the Illinois Business Corporation Act and the Bylaws of the Corporation.



Ai-Lan (Crystal) Wu



Tom K. Tsao



Ai-Lu (Kevin) Wu

Exhibit A
Plea Agreement

Exhibit B
Settlement Agreement

Exhibit C
Shareholder Guaranty – Ai-Lan Wu

Exhibit D

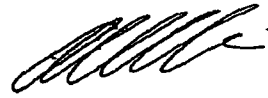
Shareholder Guaranty – Tom K. Tsao


Exhibit E
Shareholder Guaranty – Fu Yin Szeto

EXHIBIT E TO PLEA AGREEMENT
STATUTE WAIVER

1341 and 2, the period of time from December 31, 1999, through the filing of the attached
1 information, shall not be included for the purpose of determining the statute of limitations, the
2 doctrines of waiver, laches, or estoppel, the applicability of Federal Rule of Criminal Procedure 48,
3 or any statutory or constitutional right to a speedy trial or to the absence of pre-indictment delay.
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Crystal Wu
President, Defendant Premio Computer,
Inc.


Paul J. Loh
Willenken, Wilson, Loh and Stris, LLP,
Attorneys for Defendant Premio
Computer, Inc.

DATE: 11/21/05

ATTACHMENT TO PLEA AGREEMENT
SUMMARY ANALYSIS OF PREMIO'S
FINANCIAL CONDITION

SUMMARY OF DEPARTMENT OF JUSTICE'S
ANALYSIS OF PREMIO'S FINANCIAL CONDITION

In 2005, Department of Justice personnel reviewed Premio's financial situation, including sworn financial statements and tax returns provided by Premio. Based on this review, DOJ determined that Premio was able to pay a total amount of \$1.7 million over a five-year period. This amount represents about 25 percent of the company's net worth. The specific findings and conclusions of DOJ's review are summarized below.

Our review determined that in 2004, the company realized a net profit of only \$8,477, and that Premio has been marginally profitable for the past several years and has not been able to increase sales volume to make up for its low margins. Premio's financial condition has been hampered by its marginal level of profits. During March 2005, Premio increased its cash position to approximately \$850,000; however, most of this was accomplished by an additional drawdown on its line of credit, which increased by approximately \$700,000 to \$2,600,000. In addition, Premio has outstanding a standby letter of credit in the amount of \$1,000,000. This appears to serve as collateral for purchases made on credit from one of its major equipment suppliers, Intel of America. Premio has total borrowing capacity of \$8.0 million, all under a line of credit with Cathay Bank. However, the amount available is based on a formula tied to the level of accounts receivable. Key covenants in the lending arrangement include a minimum tangible net worth requirement of \$7.5 million, current ratio (current assets/current liabilities) of 1.2 and maximum debt to tangible net worth ratio of 3/1. During our review in 2005, we found that Premio was close to violating some of these debt covenants.

Premio's three shareholders (who are also part of the company's senior management) were paid a total salary of \$420,462 in 2004, or an average of \$140,154 per individual. Senior management as a whole, comprising 6 individuals, was paid a total of \$786,733. Our review determined that these amounts do not appear excessive and amounted to less than one half of one percent of sales.

Premio leases its headquarters and manufacturing facility in Industry, CA from an entity that is owned by the two majority shareholders. Annual lease payments are approximately \$697,000 for the 135,100 square foot facility. The lease was originally entered into in 1999 and was represented to be at market rate terms. The rate does not appear excessive, given current market conditions in the Southern California real estate market.

In 2005, Premio provided DOJ with a 3-year operating projection through 2007. The projections call for modest sales growth of about 6-8 percent. However, this is accompanied by higher wages for employees as well as added marketing costs. Total after-tax profit is projected to be approximately \$1.6 million for the 3-year period. Given Premio's lack of pricing power for its products, as well as its heavy reliance upon one customer for a bulk of its sales, achievement of these projections is uncertain. Premio has been able to fund its business and capital needs by increasing its borrowings rather than by profits. With borrowings of \$2.6 million versus cash of \$850,000, the company is vulnerable to a liquidity crisis if there is a slowdown in business. The increased amount of debt could also result in higher than expected borrowing costs as interest rates trend higher toward historical norms and violation of debt covenants could also trigger additional financial penalties.