

CONTRACT NO. 365

SUNGARD K-12 EDUCATION
MASTER SOFTWARE LICENSE, MAINTENANCE AND
SERVICES AGREEMENT

BETWEEN

SunGard Public Sector Inc.

a corporation with a business address at:

3 West Broad Street, Suite 1
Bethlehem, PA 18018
Phone #: (610) 691-3616
Fax #: (610) 691-1031

("SunGard K-12 Education")

AND

School Board of Clay County

900 Walnut Street
Green Cove Springs, FL 32043
Phone #: (904) 529-2604
Fax #: (904) 284-6525

("Client")

School Board of Clay County

SunGard Public Sector Inc.

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: Adam R. Eberle

PRINT TITLE: _____

PRINT TITLE: Chief Commercial Officer

DATE SIGNED: _____

DATE SIGNED: _____

This Agreement made between SunGard K-12 Education and Client as of the Execution Date. Throughout this Agreement, SunGard K-12 Education is referred to as “We,” “Us” and “Our”; and Client is referred to as “You” and “Your.”

Background

This Agreement is a master agreement under which We will provide You with a license to use software; We will provide You with ongoing maintenance services for that software; and We will provide You with implementation and consulting services for that software. Under this Agreement, We can also facilitate Your acquisition of certain third party-provided products and services.

Each time You acquire information technology products and services from Us, You and We will execute an Order Form that includes Exhibits and other attachments. These Exhibits and accompanying attachments will specify the products and services that You are acquiring, and will outline key business terms, such as prices and payment schedules for those products and services. Each Order Form will specify the particular type of license that You are granted for the Software identified in that Order Form – for instance, whether a particular product is licensed on a Perpetual or Term of Years basis – and will specify whether any additional terms apply to the licensing of the software identified in that Order Form. Each Order Form will be governed by the provisions of this Agreement, as amended by the terms of that Order Form.

Accordingly, You and We agree as follows:

1. Definitions.

“Appendix” means, a schedule attached to this Agreement that is marked as an “Appendix.” The Appendices to this Agreement are identified serially.

“Authorized User” means an employee of Client.

“Baseline” means the general release version of a Component System as updated to the particular time in question through both Our warranty services and Our Maintenance Program, but without any other modification whatsoever.

“Client Data” means data stored in, or processed by, the Component System; provided that aggregated data that is not personally identifiable data and not identifiable to Client shall not be deemed Client Data nor Client’s Confidential Information.

“Client Supplied Data” means any information or data introduced into the Component System by or on behalf of Client.

“Commencement Date” is the date identified in the Order Form as the “Commencement Date,” and is the date upon which You will begin to pay System Services fees to Us.

“Component System” means any one of the computer software programs that is identified in any Exhibit to an Order Form as a “Component System.” A Component System includes all copies of Source Code, Object Code and all related specifications, Documentation, technical information, and all corrections, modifications, additions, improvements, derivative works and enhancements to and all Intellectual Property Rights for that Component System.

“Concurrent User” means each open session for an applicable Component System, as specified in the Order Form in question. Concurrent Users are determined for each Component System on a Component System-by-Component System basis; for instance, if both Component System “X” and Component System “Y” are licensed for use on a Concurrent User basis, two open sessions in Component System “X” constitutes two Concurrent Users for Component System “X” only, and no Concurrent Users for Component System “Y.”

“Confidential Information” means Your non-public information that You maintain as “confidential,” or Our Confidential Information that We maintain as “Confidential.” For example, Our Confidential Information includes the Software, all software provided with the Software, and algorithms, methods, techniques and processes revealed by the Source Code of the Software and

any software provided with the Software. Your Confidential Information includes non-public student and employee records and data. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; or (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation.

“Consulting Services” means, to the extent applicable, the tasks and professional services to be provided to You by Us as specified in the applicable Order Form. By way of example, and not limitation, Consulting Services may include the following professional services: consulting services, managed services, installation services, training, value added services, custom programming assistance, and specialized support services.

“Contract Year” means, with respect to each Baseline Component System and Custom Modification, each one (1) year period beginning on the Execution Date of the applicable Order Form or the anniversary of that Execution Date, and ending one (1) year thereafter.

“Custom Modification” means a change that We make at Your request to any Component System in accordance with a specification that We create, but without any other changes whatsoever by any person or entity. Each Custom Modification for which We are going to provide You with Improvements will be identified in the applicable Order Form.

“Delivery Address” means Your address first identified in this Agreement, or an alternate address that is specified in a particular Order Form.

“Delivery Date” means, for each Component System, the date on which We first ship the Component System to the Delivery Address F.O.B. the place of shipment.

“Discloser” means You, when You provide Your Confidential Information to Us; or Us, when We provide Our Confidential Information to You.

“Defect” means a material deviation between the Baseline Component System and its

Documentation, for which Defect Client has given Us enough information to enable Us to replicate the deviation on a computer configuration that is both comparable to the Equipment and that is under Our control.

“Documentation” means the on-line and hard copy functional and technical specifications that We provide as part of a Baseline Component System. Documentation describes the functional and technical capabilities of that Baseline Component System.

“Enhancements” means general release changes to a Baseline Component System or Custom Modification which increase the functionality of that Baseline Component System or Custom Modification.

“Equipment” means a hardware and systems software configuration meeting the “Equipment” criteria set forth in an applicable Order Form.

“Execution Date” has two meanings: For this Agreement, the Execution Date is the latest date shown on the signature page of this Agreement; and for each Order Form, the Execution Date is the latest date shown on the signature page of that Order Form.

“Exhibit” means a schedule attached to an Order Form that is marked as an “Exhibit.” The Exhibits to an Order Form will be identified in serial form

“Expiration Date” means the date the System Services Term expires, as provided for in the applicable Order Form.

“Improvements” means, collectively, Maintenance, Enhancements and New Releases that We provide under an Order Form.

“Intellectual Property Rights” means all patents, patent rights, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks and Confidential Information.

“Maintenance” means using reasonable efforts to provide Client with avoidance procedures for or corrections of Defects. The hours during which Maintenance will be provided for each Component System, the targeted response times for certain defined categories of Maintenance calls

for each Component System and Custom Modification, and other details and procedures (collectively, the "Maintenance Standards") relating to the provision of Maintenance for each Component System and Custom Modification are described in the Exhibits.

"New Releases" means new editions of a Baseline Component System or Custom Modification, as applicable.

"Object Code" means computer programs assembled, compiled, or converted to magnetic or electronic binary form on software media, which are readable and usable by computer equipment.

"Order Form" means a document that You and We will sign in each instance in which We are providing you with a license, or Consulting Services, or System Services, or Improvements for a Component System. Each Order Form is entered into pursuant to the terms and conditions of this Agreement, and may contain additional legal terms, and will always contain business terms – such as fees and payment schedules – for each licensing and services engagement. Each Order Form shall be attached hereto as an Appendix identified in serial form.

"Perpetual License" means a license for use of Software that We grant to You for a term of perpetuity, subject to termination as provided for in this Agreement.

"Personnel" means: (i) Your employees with a need to know; and (ii) third party consultants that You have engaged *and* who have a need to know, who have been pre-approved by Us, and who, prior to obtaining access to the Software, have executed a non-disclosure agreement that has been approved by Us.

"Recipient" means You, when receiving Our Confidential Information; or Us, when receiving Your Confidential Information.

"Software" refers to those Component Systems in the aggregate that We have licensed to You.

"Software Supplement" is an attachment to an Order Form that contains additional licensing terms or restrictions related to a particular Component System licensed pursuant to that Order Form. The terms of any Software Supplement are controlling of those terms that

may conflict with any other provisions of this Agreement.

"Source Code" means computer programs written in higher-level programming languages, sometimes accompanied by English language comments and other programmer documentation.

"System Services" means the services to be provided to You by Us in connection with an Term License. The specific System Services will be provided for in the applicable Order Form.

"Term License" means a license for use of Software that We grant to You for a specified period. The duration of each Term License will be specified in the Order Form pursuant to which the Term License is granted.

"Third-Party Data and Services" means market data services or other data, services or software.

"Third-Party User" means any of Client's customers, or their customers, to the extent such persons are provided access to the Component System or Third-Party Data hereunder.

2. Right to Grant License and Ownership. We have the right to grant You each license that We provide to You pursuant to an Order Form. Except as otherwise provided for in a Software Supplement, We own all Component Systems to the exclusion of any other person or entity.

3. License. The Exhibits of each Order Form specify whether We are granting You a Perpetual License or a Term License for a particular Component System. For each Component System, any rights that We have not expressly granted to You in that Order Form are expressly reserved by Us.

(a) Terms of a Perpetual License. For each Component System for which We grant You a Perpetual License, as specified in the applicable Order Form, You have a non-exclusive, non-transferable license to use and copy for use those Component Systems on the Equipment within the United States of America for Your own, non-commercial computing operations.

(b) Terms of Term License. For each Component System for which We grant You a Term License, as specified in the applicable Order

Form, You have a non-exclusive, non-transferable license to access and use the Software in Object Code form within the United States of America for Client's own, non-commercial computing operations (subject to any Concurrent User limitations provided for in the applicable Order Form), while such Object Code resides in and is executed from a SunGard K-12 Education datacenter. Unless otherwise specified in a particular Order Form, the initial System Services Term will be for a period of three (3) years following the Commencement Date for that Order Form; and thereafter, the System Services Term will automatically renew for consecutive three (3) year periods, unless terminated by either party by providing written notice ninety (90) days prior to the upcoming System Services Term renewal date.

(c) Source Code Escrow – Perpetual Licenses. For Perpetual Licenses, We have deposited the Source Code for the Component Systems that We own (as opposed to those owned by third parties but for which We are providing the license for use) in an escrow account with Iron Mountain Intellectual Property Management (“Iron Mountain”, formerly “DSI Technology Escrow Services Inc.” or “DSI”) pursuant to a Source Code Escrow Agreement between Iron Mountain and Us (“Escrow Agreement”). We update those Source Code escrow deposits at least one a calendar year. That Source Code will only be made available to You on the release terms of the Escrow Agreement, and only if You have elected to be named “Preferred Beneficiary” under the Escrow Agreement. You can be named a Preferred Beneficiary by executing a Preferred Beneficiary Acceptance Form and SunGard K-12 Education agrees to pay Iron Mountain Your then-current beneficiary fee (approximately \$800 per year as of the Execution Date). At your request, We will provide You with a copy of the Preferred Beneficiary Acceptance Form.

If you become a Preferred Beneficiary, and the Source Code for Component Systems is released to You by Iron Mountain, then You will have a license to use that Source Code, subject to all of the terms of this Agreement and the Order Form under which You were granted the license to use the Component System in question.

(d) Object Code – Perpetual and Term Licenses. You have right to use the Object Code form of each Component System for which We

grant you a license. If you have a Perpetual License for a Component System, Your license includes the right to use the Component System for disaster recovery of Your computer operations.

(e) Documentation – Perpetual and Term Licenses. Unless the applicable Software Supplement provides otherwise, Your license (whether a Perpetual License or a Term License) includes the right to make a reasonable number of copies of the Documentation.

(f) Restrictions on Use of the Software. You are prohibited from causing or permitting the reverse engineering, disassembly or decompilation of any of the Software. You are also prohibited from using the Software to provide service bureau data processing services or to otherwise provide data processing services to third parties. You may not allow the Software to be used by, or disclose all or any part of the Software to, any person except Your Personnel; however, You can allow use of the input and/or output visual displays of or from the Software by third parties on a “need to know” basis, as You reasonably determine. You may not allow the Software, in whole or in part, to be exported outside of the United States of America, in any manner or by any means, without in each instance obtaining Our prior written consent and, if required, a validated export license from the Office of Export Administration within the U.S. Department of Commerce and such other appropriate United States governmental authorities.

(g) Intellectual Property Rights Notices. You may not remove or alter any of the Intellectual Property Rights notice(s) embedded in or that We otherwise include with the Software. You are required to reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that You make of the Software.

4. Services; Equipment

(a) Services, Generally. We will provide you with the Consulting Services and System Services identified in an Order Form, for the fees provided for in that Order Form.

(b) System Services. If We are providing You with System Services, the System Services will be described in the Exhibits to the applicable Order Form under which we are providing those System Services. That Order Form will also

specify the fee and payment terms for the System Services, and the Commencement Date for and the duration of the System Services.

(c) Improvements. During the period specified in an Order Form, We will provide You with Maintenance for, Enhancements of, and New Releases of each Baseline Component System and each Custom Modification licensed on a Perpetual License basis. All Improvements will be part of the applicable Baseline Component System/Custom Modification, and will be subject to all of the terms and conditions of this Agreement and the applicable Order Form. Our obligation to provide You with Improvements for Baseline Component Systems that We license to You but that are owned by third parties (as opposed to those that We own and license to You) is limited to providing You with the Improvements that the applicable third party owner provides to Us for that Baseline Component System. You must provide Us with such facilities, equipment and support as are reasonably necessary for Us to perform its obligations in connection with the Improvements, including providing Us with remote access to the Equipment.

(d) Workmanlike Skills. We promise that we will render all services to You in a professional and workmanlike manner. We will promptly replace any of Our personnel that are rendering services on-site at a Your facility if You reasonably conclude that Our personnel to be unacceptable, and You provide Us with notice to that effect; However, this provision does not obligate Us to violate any law or governmental regulation applicable to such personnel replacement.

(e) Conditions On Providing Services. In each instance in which We are providing You with services, We and You will develop a project plan that identifies each party's responsibilities for such services. The project plan will describe in detail the tentative schedule and the scope of services that We will provide. You will establish the overall project direction, including assigning and managing Your project personnel team. You must assign a project manager who will assume responsibility for management of the project. While We are providing You with services, You must provide Us with access to Your facilities and equipment, and must additionally provide Us with the support that is reasonably necessary in order

for Us to fulfill Our obligations in connection with the services.

(f) Equipment Sales and Pay Agency Procurement. We act as a reseller and maintenance provider for certain Equipment. We can also procure certain Equipment for You on a pay agency basis; that is, we can accept payment for the Equipment on behalf of a third party provider, but that third party provider will actually deliver the Equipment to You, and Our sole responsibility will be to accept payment for the Equipment and remit to the third party vendor in question appropriate fees for that Equipment. In any instance in which We are reselling Equipment, or obtaining Equipment for You on a pay agency basis, that transaction will be provided for in an Order Form. The Order Form will specify whether We are acting as a reseller or a pay agent, and will also specify the Equipment and the applicable fees.

5. Delivery. For each Perpetual License, unless a different address is specified in an Order Form, We will deliver all Component Systems to You at the Delivery Address. For each Term License, unless a different address is specified in an Order Form, We will deliver the appropriate access codes and keys for the Component Systems that are subject to the Term License to You at the Delivery Address.

6. Payment and Taxes

(a) Payment

(i) Fees, Generally. Fees will be due to SunGard K-12 Education as provided for in the applicable Order Form and are subject to the Local Governmental Prompt Payment Act of Florida.

(ii) Consulting Services Fees. Except as otherwise provided for in a particular Order Form, the fees for Our Consulting Services will be invoiced on a monthly basis in arrears and will be due within forty-five (45) days from the date of invoice. You will also reimburse Us for actual travel and living expenses that We incur in providing You with services. Such travel and living expenses will be governed by Our Corporate Travel and Expense Reimbursement Policy and will be invoiced on a monthly basis in arrears and due within forty-five (45) days from the date of invoice.

(iii) System Services Fees. The specific schedule for the payment of System Services fees will be provided for in a particular Order Form. Without limitation, time is of the essence with regard to Your payment of System Services fees.

(iv) Improvements Fees. For the Improvements, You will pay Us the amount provided for in the applicable Order Form as the "Payment Amount" for each Contract Year subsequent to the initial Contract Year. We reserve the right to increase the Improvements fees. Fees for Improvements for a Baseline Component System/Custom Modification are due on the first day of the first month of the Contract Year for that Baseline Component System/Custom Modification.

(v) Equipment Fees. The specific schedule for the payment of Equipment fees will be provided for in a particular Order Form. We reserve the right to increase the Equipment fees.

(vi) Late Charge. We reserve the right to charge You a late fee for any payment that we receive later than thirty (30) days from the date of invoice. Late fees will be calculated in accordance with the Local Prompt Payment Act of Florida.

(vii) Suspension of System Services and Improvements. If in any instance, You fail to pay to Us for System Services or Improvements (as applicable) within thirty (30) days after We make written demand for such amounts, and payment of the amount in question is not the subject of a *bona fide* dispute, then, in addition to preserving Our rights to collect payment of the past-due amount and all accompanying late fees, and all other rights and remedies that We may have at law or in equity, We may, in our sole discretion and without further notice to You, suspend or reduce Our performance of the System Services or provision of Improvements, as applicable.

(b) Taxes. You are responsible for paying all taxes (except for taxes based on Our net income or capital stock) relating to the Software, any services or Equipment provided, or any payments made pursuant to this Agreement. Applicable tax amounts (if any) are NOT included in the fees set forth in an Order Form. If You are exempt from the payment of any such taxes, You must provide Us with a valid tax exemption certificate; otherwise, absent proof of Your direct

payment of such tax amounts to the applicable taxing authority, We will invoice You for and You will pay to Us all such tax amounts.

7. Our Limited Warranty and Remedy for Breach; Disclaimer of Other Warranties.

(a) Our Limited Software Warranties.

(i) For Perpetual Licenses. For each Component System for which You are granted a Perpetual License, We warrant to You that, for a period of twelve (12) months after the Delivery Date, the Baseline Component System, as used by You on the Equipment for Your own, non-commercial computing operations, will operate without Defects.

(ii) For Term Licenses. For each Component System for which You are granted a Term License, We warrant to You that, throughout the licensing term specified in the applicable Order Form, the Baseline Component System, as used by You for your own, non-commercial computing operations, will operate without Defects.

(b) Your Remedy for Breach. For each Defect, We, as soon as reasonably practicable and at Our expense, will provide You with an avoidance procedure for or a correction of the Defect. If, despite Our reasonable efforts, We are unable to provide You with an avoidance procedure for or a correction of a Defect, then, subject to the limitations set forth in Section 16 of this Agreement, You can pursue Your remedy at law to recover direct damages resulting from the breach of this limited warranty. These remedies are exclusive and are in lieu of all other remedies, and Our sole obligations for breach of the limited warranties set forth in Section 7(a), are contained in this Section 7(b).

(c) For Equipment. To the extent permitted by the manufacturer, We will assign all manufacturer's warranties for Equipment to You. **WE MAKE NO INDEPENDENT REPRESENTATIONS OR WARRANTIES REGARDING ANY EQUIPMENT FOR WHICH WE ACT AS EITHER A RESELLER OR A PAY AGENT, AND YOU MUST ASSERT ANY CLAIMS FOR ANY BREACH OF ANY SUCH MANUFACTURER'S WARRANTIES DIRECTLY AGAINST THE MANUFACTURER OF THE EQUIPMENT IN QUESTION.**

(d) Our Disclaimer of Other Warranties. The limited warranties in Section 7(a) are made to

You exclusively and are in lieu of all other warranties. **WE MAKE NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO ANY SERVICES PROVIDED UNDER THIS AGREEMENT AND/OR THE SOFTWARE OR ANY EQUIPMENT, IN WHOLE OR IN PART. WE EXPLICITLY DISCLAIM ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. WE EXPRESSLY DO NOT WARRANT THAT THE SOFTWARE, IN WHOLE OR IN PART, WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE OTHER THAN THE EQUIPMENT. YOU WAIVE ANY CLAIM THAT THE LIMITED WARRANTY SET FORTH IN SECTION 7(a) OR THE REMEDY FOR BREACH OF SUCH LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.**

(e) When Your Limited Warranty is Abrogated. In each applicable instance, the limited warranty in Section 7(a) will be null and void if: (i) anyone (including You) other than Us modifies the Baseline Component System; or (ii) if You do not implement changes that We provide to correct or improve the Baseline Component System. If despite any modification of the Component System, We can replicate the reported problem in the Baseline Component System as if the problem were a Defect, then We will nonetheless provide You with an avoidance procedure for or a correction of that reported problem for use in the Baseline Component System as though the reported problem were a Defect.

(f) **FAILURE OF ESSENTIAL PURPOSE.** **THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 7 AND 16 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER YOU HAVE ACCEPTED ANY SOFTWARE OR SERVICE FROM US.**

8. Confidential Information. Except as otherwise permitted under this Agreement, the Recipient will not knowingly disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential

Information that it uses to maintain the confidentiality of its own Confidential Information of equal importance. The non-disclosure and non-use obligations that this Agreement imposes on You and on Us will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item; However, Your obligations to maintain both the Software and any software provided with the Software as confidential will survive until that Software no longer qualifies as "Confidential Information" under this Agreement.

a. **Security.** We will implement commercially reasonable administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of Client Data; (ii) protect against any anticipated threats or hazards to the security or integrity of Client Data; and (iii) protect against unauthorized access to or use of Client Data. We will review and test such safeguards on no less than an annual basis. If You make the Component System or data maintained by the Component System accessible through the Internet or other networked environment, You shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of the Component System, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication. To the extent that Third-Party Users are permitted to have access to the Component System, You shall maintain agreements with such Third-Party Users that adequately protect the confidentiality and intellectual property rights of SunGard K-12 Education in the Component System and Documentation, and disclaim any liability or responsibility of Us with respect to such Third-Party Users.

b. **Personal Data.** If We process or otherwise have access to any personal data or personal information on Your behalf when performing Our obligations under this Agreement, then: (i) You shall be the data controller (where "data controller" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and We shall be a data processor (where "data processor" means an entity which processes the data only on behalf of the data controller and not for any purposes of its

own); (ii) You shall ensure that You have obtained all necessary consents and are entitled to transfer the relevant personal data or personal information to Us so that We may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on Your behalf, which may include Us processing and transferring the relevant personal data or personal information outside the country where You and the Authorized Users are located in order for SunGard K-12 Education to provide the Component System and perform its other obligations under this Agreement; (iii) We shall process the personal data and personal information only in accordance with any lawful and reasonable instructions given by You from time to time as set out in and in accordance with the terms of this Agreement; and (iv) each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal information being protected. If necessary, the parties will cooperate to document these measures taken.

9. Our Obligations of Indemnity. We will defend, indemnify and hold You (that includes Your officers, directors, officials and employees) harmless from and against any loss, cost and expense that You incur because of a claim that Your use of a Baseline Component System infringes any United States copyright of others. Our obligations under this indemnification are expressly conditioned on the following: (i) You must promptly notify Us of any such claim; (ii) You must in writing grant Us sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if You choose to represent Your own interests in any such action, You may do so at Your own expense, but such representation must not prejudice Our right to control the defense of the claim and negotiate its settlement or compromise); (iii) You must cooperate with Us to facilitate the settlement or defense of the claim; (iv) the claim must not arise from modifications or (with the express exception of the other Component Systems and third party

hardware and software specified by Us in writing as necessary for use with the Software) from the use or combination of products provided by Us with items provided by You or by others.

If any Component System is, or in Our opinion is likely to become, the subject of a United States copyright infringement claim, then We, at our sole option and expense, will either: (A) obtain for You the right to continue using the Component System under the terms of this Agreement and the applicable Order Forms; (B) replace the Component System with products that are substantially equivalent in function, or modify the Component System so that it becomes non-infringing and substantially equivalent in function; or (C) refund to You the portion of the license fee that You paid to Us for the Component Systems giving rise to the infringement claim, less a charge for use by Client based on straight line depreciation assuming a useful life of five (5) years. If Your license is for a Term License, then We will refund the current annual subscription period's usage fee that You paid to Us. **THE FOREGOING IS OUR EXCLUSIVE OBLIGATION WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

10. Term and Termination.

(a) Right of Termination. Both You and We have the right to terminate this Agreement if the other party breaches a material provision of this Agreement. The aggrieved party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the aggrieved party must give the other party notice, and that notice must provide a reasonably detailed description of the events that constitute breach of this Agreement. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the aggrieved party. If the event or condition giving rise to the right of termination is not cured within that period, this Agreement will automatically be deemed terminated at the end of that period. However, notice to Us of a suspected Defect will not constitute a notice of termination of this Agreement.

(b) Effect of Termination.

(i) On Perpetual Licenses. Upon termination of this Agreement by either party, You will promptly return to Us or (at Our request) will destroy all copies of the Software, and will certify to Us in writing, over the signature of a duly authorized representative of Client, that it has done so.

(ii) On Term Licenses. Upon the expiration of the System Services Term, or upon any earlier termination of this Agreement by either party, Your right to receive the System Services and to use the Software licensed under an Term License terminates.

(c) Survival of Obligations. All obligations relating to non-use and non-disclosure of Confidential Information and indemnity will survive termination of this Agreement.

(d) Termination Without Prejudice to Other Rights and Remedies. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement; for instance, Your use of applicable Software after the System Services Term or after the termination of this Agreement is a violation of this Agreement, and further, may subject You to additional claims under applicable law, including without limitation claims for violation of Our copyright interest in and to the Software.

11. Notices. All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: Delivered personally; sent by United States registered or certified mail, return receipt requested; transmitted by facsimile confirmed by United States first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown on the first page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices. Notices to Us must be addressed to Our Sr. Vice President, Consulting Services. A copy of any notice of material breach must also be sent to SunGard Data Systems Inc., 680 East Swedesford Road, Wayne, PA 19087, Attn: General Counsel. Notices will not be deemed effective unless provided in accordance with the requirements of this Section 11.

12. Force Majeure. Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of

God, acts of war, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

13. Assignment. Neither party may assign any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of the other party. For purposes of this Agreement, "assignment" will include use of the Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with or of You, including any new or surviving entity that results from such merger, acquisition and/or other consolidation. However, the following will not be considered "assignments" for purposes of this Agreement: Our assignment of this Agreement or of any of Our rights under this Agreement to Our successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets; and Our assignment of this Agreement to any person or entity to which We transfer any of Our rights in the Software.

14. No Waiver. A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

15. Choice of Law; Severability. This Agreement will be governed by and construed under the laws of the State of Florida. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

16. LIMITATIONS OF LIABILITY.

(a) LIMITED LIABILITY OF SUNGARD K-12 EDUCATION.

(i) FOR PERPETUAL LICENSES. OUR LIABILITY IN CONNECTION WITH THE SOFTWARE, ANY SERVICES (OTHER THAN IN CONNECTION WITH MAINTENANCE, FOR WHICH OUR LIABILITY IS INSTEAD PROVIDED FOR BELOW), THIS LICENSE OR ANY OTHER MATTER RELATING TO A PERPETUAL LICENSE WILL NOT EXCEED THE FEE THAT YOU ACTUALLY PAID TO US (OR, IF NO DISCRETE FEE IS IDENTIFIED IN THE APPLICABLE EXHIBITS, THE FEE

REASONABLY ASCRIBED BY US) FOR THE COMPONENT SYSTEM OR SERVICES GIVING RISE TO THE LIABILITY.

(ii) FOR IMPROVEMENTS FOR PERPETUAL LICENSES. OUR LIABILITY IN CONNECTION WITH THE IMPROVEMENTS WILL NOT EXCEED THE FEES THAT YOU ACTUALLY PAID TO US IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

(iii) FOR CONSULTING SERVICES. OUR LIABILITY IN CONNECTION WITH CONSULTING SERVICES WILL NOT EXCEED THE FEES THAT YOU ACTUALLY PAID TO US FOR THE CONSULTING SERVICES GIVING RISE TO THE LIABILITY.

(iv) FOR TERM LICENSES. OUR LIABILITY IN CONNECTION WITH ANY TERM LICENSE WILL NOT EXCEED THE SYSTEM SERVICES FEES THAT YOU ACTUALLY PAID TO US IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

(v) FOR EQUIPMENT. IF WE HAVE ACTED AS PAY AGENT FOR THE PROCUREMENT OF EQUIPMENT, OUR ONLY LIABILITY WILL BE TO REMIT PAYMENT OF THE APPROPRIATE FEES TO THE THIRD PARTY VENDOR FOR THE EQUIPMENT IN QUESTION. IF WE HAVE ACTED AS A RESELLER FOR THE EQUIPMENT, OUR LIABILITY IN CONNECTION WITH THE EQUIPMENT WILL NOT EXCEED THE FEE THAT YOU ACTUALLY PAID TO US FOR THAT EQUIPMENT.

(b) EXCLUSION OF DAMAGES. REGARDLESS WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. FOR PURPOSES OF CLARIFICATION, THE FOLLOWING SHALL BE DEFINED AS BETWEEN CLIENT AND SUNGARD K-12 EDUCATION FOR THE PURPOSES OF THIS AGREEMENT ANY OF CLIENT'S OUT-OF-POCKET COSTS FOR BREACH INCLUDING TO NOTIFY AFFECTED

PERSONS AND/OR PAY FOR CREDIT MONITORING SERVICES FOR SUCH PERSONS FOR A ONE-YEAR PERIOD INCURRED AS A RESULT OF SUNGARD'S BREACH OF SECTION 8.

(d) BASIS OF THE BARGAIN. YOU ACKNOWLEDGE THAT WE HAVE SET OUR FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

17. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. While each Order Form amends this Agreement with regard to the products and services provided for in that Order Form, no purchase order or similar document which may be issued by You in connection with this Agreement acts to modify or alter any of the terms of this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.