



Schedule 1

TO ASP LICENSE AGREEMENT

Licensee	School Board of Clay County, Florida
Address	900 Walnut Street Green Cove Springs, FL 32043 United States of America
Licensee Contact Name	Alisa B. Jones
Licensee Telephone	904-529-2612
Licensee E-mail	ajones@mail.clay.k12.fl.us
Wimba Contact Name	Lori Berman
Wimba Telephone	561-702-7413
Wimba E-mail	lberman@wimba.com

Product and Service Details

Product Name	Product Description
Network Optimization for Wimba	<p>Wimba’s Network Optimization Consultation Services are designed to develop an efficient technical implementation of Wimba on your campus. Our specialists work directly with you to identify and recommend the most effective infrastructure to maximize the performance of your Wimba environment.</p> <p>These Services consist of three elements:</p> <ul style="list-style-type: none"> · Onsite or Online Scope Meeting · Network Configuration Assessment and Analysis · Detailed Network Report
Standard Implementation Service for Pronto (1 – 400 FTE)- Year 2	<p>Implementing Wimba Pronto can represent a significant change in the way your organization communicates, delivers services and addresses student success. Beyond simple installation, the Wimba Implementation service is designed to help you positively affect the change management required to optimize your organization's investment in Pronto. A Wimba Professional services manager will work with clients to develop and deliver:</p> <ul style="list-style-type: none"> • Custom Set-up and Configuration of Wimba Pronto • Implementation Plan • Training and Configuration for Targeted Service Areas (up to 3 Days Onsite/Online) Wimba shall obtain approval from School Board of Clay County before booking travel. • Custom Training Agendas for Faculty and Students • Strategic Communication Plan • Analysis of Organizational Goals and Outcomes • Implementation Success Matrix <p>Let us put our expertise to work for you! Wimba created this implementation service working closely with clients who have adopted the Pronto enterprise messaging solution. Our goal is to help you maximize your investment by providing solutions that incorporate mentorship,</p>





	<p>education, and knowledge management - making your institution stronger and more competitive.</p> <p>* Price does not include Travel and Expenses as this is a Year 2 service.</p> <p>* The training and configuration sessions above allow for a maximum of 15 participants.</p>
<p>Standard Implementation Service for Wimba Collaboration Suite (WC and WV) (1 – 400 FTE)</p>	<p>Implementing Wimba Collaboration Suite can represent a significant change in your organization. Beyond simple installation, the Wimba Implementation service is designed to help you address issues that may impact your organization. A Wimba Professional services manager will work with clients to develop:</p> <ul style="list-style-type: none"> • Recommendations for building an implementation team • Set-up and Configuration of Wimba Services and CMS integrations • Core Team Workshop (up to 3 Days Onsite) • Implementation Project Plan • Custom Training Agendas for Faculty and Students • Strategic Communication Plan • Analysis of Organizational Goals and Outcomes • Implementation Success Matrix <p>Let us put our expertise to work for you! Wimba created this implementation service working closely with our clients. Our goal is to help you maximize your investment by providing solutions that incorporate mentorship, education, and knowledge management - making your institution stronger and more competitive.</p> <p>* Price includes Travel and Expenses as this service is delivered in Year 1. * All sessions above allow for a maximum of 15 participants.</p>
<p>WOW: Getting Started with Wimba Create (2 Hours)</p>	<p>This private online webinar is an introduction to the fundamentals of Wimba Create. Participants will learn how Word and Wimba Create work together to generate eLearning content. This course will also explore the various Wimba Create question types and interactive features like pop-ups, question building, and flash cards. Finally, participants will consider the range of Wimba Create export options.</p>
<p>Wimba Classroom (1 – 400 FTE)</p>	<p>Wimba Classroom enables learning by combining state-of-the-art interactive technologies such as voice, video, application sharing, polling, and whiteboarding, with traditional best practices of instruction.</p>
<p>Wimba Classroom (1 – 400 FTE) ASP</p>	<p>Leave the hosting to the experts. Wimba's professional ASP team delivers your Wimba Classroom, Wimba Voice and Wimba Pronto to your clients, from our managed datacenters. We offer fully redundant hosting facilities, complete backup solutions, and manage the entire application, from hardware and networking, through security, backup, and application maintenance.</p>
<p>Wimba Create (1 – 400 FTE)</p>	<p>Quickly and easily convert your Microsoft Word documents into content for your ANGEL, Blackboard, Moodle, and WebCT courses. From one Word document you can generate a set of webpages that include navigation and interactive features which can quickly be uploaded to your course.</p>



Wimba Pronto (1 – 400 FTE) Year 2 & 3	Wimba Pronto is an instant messaging and voice chat tool that allows students and instructors to spontaneously meet live online at any time to discuss their coursework. Wimba Pronto integrates with course management systems to automatically populate students’ contact lists with their classmates’ names, thereby making it easy for students to spontaneously collaborate live online. After all, not all learning can be scheduled – it’s often informal and unplanned.
Wimba Voice (1 – 400 FTE)	Give your online classes a voice! Increase the interaction and student engagement level of any online class by allowing faculty and students to easily embed vocal interactions into their online courses.
Wimba Voice (1 - 400) ASP	Leave the hosting to the experts. Wimba's professional ASP team delivers your Wimba Classroom, Wimba Voice and Wimba Pronto to your clients, from our managed datacenters. We offer fully redundant hosting facilities, complete backup solutions, and manage the entire application, from hardware and networking, through security, backup, and application maintenance.
Phone Bridge for Wimba Classroom	Wimba will provide an 800# call-in bridge number for your Wimba Classroom access. You will be billed monthly at \$.10 a minute/per user. The one-time setup fee for this number is \$500.

Software Version	Wimba Classroom version 5.2 or current, Wimba Voice version 5.2 or current, Wimba Create version 2.x or current, Wimba Pronto version 2.x or current.
License period	Year 1- 12/20/2008-12/19/2009 Year 2- 12/20/2009-12/19/2010 Year 3-12/20/2010- 12/19/2011
Number of Seats	Unlimited for FTE 1-400 For Year 1-Additional increments of 100 FTE can be added for \$4574 For Year 2-Additional increments of 100 FTE can be added for \$6550 For Year 3- Additional increments of 100 FTE can be added for \$7447 FTE assessment shall be conducted in March, June, September and December each year to see if FTE’s need to be added. Additional FTE’s shall be billed at the time of assessment.
License Fee	USD 75,678.00
Professional Services ***** Implementation & Training	3 days onsite for Year 1 Services (T&E for Year 1 is already included in cost). For any additional requested services and training during Year 1, Year 2 or Year 3, Wimba shall obtain approval from School Board of Clay County before booking travel as these cost are not included.
Standard Support Package Support Hours Support Email	Included 24x7 phone and email support for Faculty and Students technicalsupport@wimba.com





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Support Contact Number	866.350.4978 (US & Canada)
Total Cost	Year 1- 12/20/2008- 12/19/2009 – USD 19,566 (includes fixed T & E costs of \$770 for Year 1 services that are listed in this Schedule 1) Year 2- 12/20/2009-12/19/2010 – USD 26,201 Year 3-12/20/2010- 12/19/2011 – USD 29,911
Payment Terms	USD 19,566 Year One USD 26,201 Year Two USD 29,911 Year Three To be paid in accordance with the Florida Prompt Payment Act.
Schedule 1 Expiration Date	Quote valid for 15 Days from 12/9/2008

In the event sufficient budgeted funds are not available for a new fiscal period, the School Board of Clay County, Florida shall notify WIMBA of such an occurrence and this contract shall terminate on the last day of the current fiscal period without penalty or expense to the School Board of Clay County, Florida.

Wimba agrees to the conditions stated on the School Boards Purchase Orders.

By executing this Term Sheet, which is Schedule 1 to an ASP License Agreement, you acknowledge that you have read and understood the provisions of such License Agreement and that you are bound by the provisions of the License Agreement. In consideration of the mutual benefits set forth above and the covenants and agreements set forth in the License Agreement, the parties hereto have signed this Term Sheet and License Agreement this ___ day of _____, 2008.



ASP License Agreement

School Board of Clay County, Florida

Signed:

Signed:

For: Wimba, Inc.

For: School Board of Clay County, Florida

By: _____

By: _____

Title: _____

Title: _____

The recipient of this Quote agrees that it shall (i) hold the Quote in strict confidence and not disclose such confidential information to any third parties, including consultants to the extent allowed by Florida law; (ii) disclose the Confidential Information only to those employees and consultants of receiving party who need to know such information in order to carry out the purpose of this Quote and only to the extent necessary for such purpose; (iii) take all measures necessary to safeguard the confidential information in order to prevent it from falling into the public domain or into the possession of persons than those persons authorized hereunder to have any such information; such protective measures shall include but in no event be less than the highest degree of care that receiving party utilizes to protect its own confidential information of a similar nature. Nothing herein shall prevent recipient from complying with Florida public records laws.



ASP License Agreement

IMPORTANT – READ CAREFULLY: This License Agreement is a legal agreement between Wimba, Inc. and you for the Wimba, Inc. Service, including the Software in the version specified in Schedule 1. Capitalized terms not otherwise defined in this License Agreement have the meanings set forth in Section 3.

1. INTELLECTUAL PROPERTY RIGHTS.

(a) This is a License Agreement not an agreement for sale. Title, ownership rights and intellectual property rights in and to the Wimba, Inc. Service are owned by Wimba, Inc. and are protected by United States copyright law and international treaty provisions. Your rights to use the Wimba, Inc. Service are specified in this License Agreement and Wimba, Inc. retains all rights not expressly granted to you in this License Agreement and nothing in this License Agreement constitutes a waiver of Wimba, Inc.'s rights under U.S. or international copyright laws or any other federal or state law.

(b) You agree to undertake all reasonable measures to preserve the confidentiality of the Wimba, Inc. Service, including specifically the Software from unauthorized access by persons not bound by this License Agreement by exercising the same degree of care (but not less than reasonable care) as you exercise to protect the confidentiality of your own source code, software and other trade secrets and intellectual property. You agree to notify Wimba, Inc. within a reasonable timeframe of any unauthorized use of the Wimba, Inc. Service.

2. GRANT OF LICENSE.

(a) Grant. Subject to the provisions of this License Agreement, in consideration of payment of the License Fee and all other fees payable by you under this License Agreement, Wimba, Inc. hereby grants you for the License Period a non-exclusive, non-transferable, worldwide license, without the right to sublicense, to use the Wimba, Inc. Service, including the Software, in object code format only, and the accompanying Documentation, solely for the purposes of creating, presenting, hosting, analyzing, viewing and delivering Events to End Users, subject to any limitation of Seats specified in Schedule 1.

You acknowledge that this license is restricted to use only by your employees in connection with Events unless otherwise set forth on Schedule 1 or a subsequent agreement signed in writing by both parties; provided, that the foregoing shall not restrict use of the Wimba, Inc. Software by End Users and guest presenters of Events for the purpose of presenting, participating in or viewing an Event, but in

no case shall any non-employee have administrative access to the Wimba, Inc. Service.

(b) Restrictions on You.

(i) You may not: (x) remove, alter or conceal any Marks on the Wimba, Inc. Service or any component parts; (y) copy, modify, translate, reverse engineer, decrypt, decompile or disassemble (except to the extent expressly permitted by applicable law) or otherwise seek to discover the source code for the Wimba, Inc. Service or create derivative works based on the Wimba, Inc. Service, nor may you permit any third party to do any of the foregoing.

(ii) You may not use the Wimba, Inc. Service or any part thereof except as specifically provided and permitted by this License Agreement and, without limiting the generality of the foregoing, specifically, you may not: (v) sell, license or otherwise transfer, or permit any third party (including any subsidiary, parent, or affiliate not expressly licensed under this Agreement) to use (except as expressly permitted by this Agreement), sell, license or otherwise transfer, the Wimba, Inc. Service or any part thereof; (w) rebrand with Marks other than Wimba, Inc.'s Marks any part of the Wimba, Inc. Service; (x) resell or distribute the Wimba, Inc. Service, or use it on a timeshare or service bureau basis, or use it to operate a website; (y) attach any of your Marks in or to any part of the Wimba, Inc. Service other than in or on your Content files or as otherwise approved in advance by Wimba, Inc.; or (z) in any other way use the Wimba, Inc. Service to provide a service directly competitive with Wimba, Inc. or seek to gain economic advantage from the Non-permitted Use of the Wimba, Inc. Service.

(iii) You agree to permit Wimba, Inc. to audit compliance with this License Agreement, as Wimba, Inc. deems reasonably necessary.

3. DEFINITIONS.

For the purpose of this License Agreement, the following defined terms will mean:

“**Content**” means all material whether in text, aural, video, or pictorial form including, without limitation, design, text, images, animations, audio, music and interactive features loaded onto the Wimba, Inc. Service by you or persons authorized by you.

“**End User**” means any employee, client, customer, potential customer, contractor or recipient of an Event run by you.





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“Event” means a single live broadcast event transmitted over the Wimba, Inc. Service created and/or sponsored in whole or substantial part by you or your employees that is branded under your name. The term “Events” shall include both live and archived Events.

“Documentation” means all media and printed materials, and any additions, corrections, modifications relating to the Software including all copyrights, trademarks, patents, inventions, trade dress, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto, whether provided in physical form or received online in electronic form, all as components of the Wimba, Inc. Service.

“Wimba, Inc.” means Wimba, Inc., a Delaware Corporation, located at 520 8th Avenue, 23rd Floor, New York, N.Y. 10018 and, as the context may require, any or all of Wimba, Inc., its suppliers and/or licensors.

“Wimba, Inc. Service” means the current version of the Wimba, Inc. Software, the Documentation and the associated services.

“License Agreement” means this License Agreement by and between Wimba, Inc. and the licensee named in Schedule 1, Schedule 1 and all other schedules and appendixes, if any.

“License Period” means the period specified in Schedule 1.

“Limited Warranty” means the warranty described in Section 8 of this License Agreement.

“Marks” means a party’s icons, logos, trade marks, trade names, trade dress or other identifying materials used to promote or assert intellectual property rights in the products or business of that party.

“New Version” means any release, option or future product of the Software that Wimba, Inc. licenses separately.

“Non-permitted Use” means any use of the Wimba, Inc. Service prohibited by Section 2.

“Seat” means each End User served by a Stream in the Wimba, Inc. Service and shall include an End User’s access to live Events and archived Events but does not include an access to a downloaded archived Event. A limitation on a number of Seats limits the number of End Users who could be simultaneously served by Streams originating from the Wimba, Inc. Service.

“Software” means the Wimba, Inc. proprietary software program or programs, any software programs licensed by Wimba, Inc. from a third party and any modified, updated, or enhanced versions of such

programs that Wimba, Inc. may provide to you as a part of the Wimba, Inc. Service.

“Stream” means the stream of digitally encoded data that delivers an Event to an End User.

“Upgrades” means linear improvements in functionality, amendments, enhancements, or changes (but not New Versions) of the Software or the Documentation issued by Wimba, Inc. and made available to you during the License Period.

4. PAYMENT.

In consideration for the license granted by Wimba, Inc. under this Agreement, you shall pay to Wimba, Inc. the fees (the “Fees”) set forth in Schedule 1, along with any applicable tax, in accordance with the terms set forth therein. Fees for additional services requested by you after the date of this Agreement shall be billed and paid in accordance with the Florida Prompt Payment Act.

5. TRAINING AND SUPPORT.

Wimba, Inc. will provide training and support as set forth on Schedule 1 during the hours and at the rates specified in Schedule 1. Unless otherwise specified on Schedule 1, training will be online live training.

6. UPGRADES AND NEW VERSIONS.

Wimba, Inc. will make available to you for the Wimba, Inc. Service (i) free of charge (other than reasonable implementation fees), as they become available, all Upgrades and (ii) for the fee to be determined by Wimba, Inc. upon issue, any New Versions of the Wimba, Inc. Service. Nothing in this License Agreement will obligate Wimba, Inc. to maintain the Wimba, Inc. Service in the version covered by this License Agreement indefinitely. If during the License Period (i) Wimba, Inc. introduces a New Version and (ii) elects not to maintain the version covered by this License Agreement, Wimba, Inc. will make the New Version available to you free of charge for the balance of the License Period but not any renewals thereof.

7. THIRD PARTY SOFTWARE AND PUBLICITY.

(a) The Wimba, Inc. Service incorporates software, components and other intellectual property licensed from third party licensors. Wimba, Inc. is required to, and you agree that you will also, comply with the applicable terms of any Wimba, Inc. third party license of which you have been notified by Wimba, Inc..

(b) Wimba, Inc. may name you as a licensee of the Wimba, Inc. Service in its marketing materials, and may use your Marks in connection therewith.

8. LIMITED WARRANTY.

(a) Scope. Wimba, Inc. warrants for your benefit alone that, for the License Period, the Wimba, Inc. Service will perform substantially in accordance with the Documentation. All other hardware, software and



accompanying materials are provided “AS IS” without warranty of any kind, either express or implied; provided that Wimba, Inc. will indemnify you in connection with claims with respect to third party software to the extent Wimba, Inc. is indemnified under the relevant third party software license agreement for your claim. The complete risk as to quality and performance of any non-warranted hardware or software and accompanying material is on you. Wimba, Inc. will not be responsible for any defect that results from your Non-permitted Use, abuse or other misconduct or conditions outside the control of Wimba, Inc.. Wimba, Inc. makes no representations or warranty that the Wimba, Inc. Service or the information or functions contained therein will meet your requirements or that its operation will be uninterrupted, error-free or secure. The Limited Warranty shall not apply and shall immediately be terminated if (i) you engage in any Non-permitted Use; (ii) the Wimba, Inc. Service is subjected to abuse, accident or improper use; or (iii) the Software is used on or in conjunction with hardware or software other than the unmodified version of the Software with which the Software was designed to be used, as described in the Documentation; or (iv) you violate the terms of this License Agreement in any material respect.

(b) Disclaimer. THIS IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY WIMBA, INC. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WIMBA, INC. DISCLAIMS ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE WIMBA, INC. SERVICE. UNDER APPLICABLE LOCAL LAW, YOU MAY HAVE RIGHTS ADDITIONAL TO THE SPECIFIC LEGAL RIGHTS GIVEN HEREUNDER.

(c) Sole Remedy. Wimba, Inc.’s entire liability and your exclusive remedy for any breach of warranty shall be at Wimba, Inc.’s option: (i) to repair or replace any component of the Wimba, Inc. Service that does not meet the Limited Warranty or (ii) if Wimba, Inc. reasonably determines that it is unable or impracticable to provide the remedy in clause (i), terminate this Agreement and refund to you any fees paid in advance covering the period following termination. Wimba, Inc. will use commercially reasonable efforts to respond to operational problems within 5 hours of receiving notice of the problem during Technical Support business Hours. The above

remedies are available only if Wimba, Inc. is promptly notified in writing, during the License Period, upon discovery of the non-conformity by you and Wimba, Inc.’s examination of the Wimba, Inc. Service discloses that such non-conformity exists.

9. WIMBA, INC.’S REMEDIES.

You agree that any breach by you of your obligations under Sections 1 and 2 may cause Wimba, Inc. irreparable harm and damage and therefore agree that, in addition to any other rights or remedies that may be available to Wimba, Inc. at law or in equity and notwithstanding the arbitration provisions contained in Section 13, Wimba, Inc. shall be entitled to appropriate injunctive relief, without the posting of any bond or security. Further, in the event of any use of the Wimba, Inc. Service by an unauthorized person under this License, you agree that Wimba, Inc. shall be entitled, in addition to any other rights or remedies that may be available to Wimba, Inc. at law or in equity, to the fees Wimba, Inc. would have received had Wimba, Inc. contracted directly with such unauthorized person for the services received by such person for the full period of such Non-permitted Use, based on Wimba, Inc.’s list prices.

10. LIMITATION OF LIABILITY.

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL WIMBA, INC. BE LIABLE TO YOU, ANY END USER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER ARISING OUT OF THE USE OR INABILITY TO USE THE WIMBA, INC. SERVICE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF THE USE OF OR INABILITY TO USE THE WIMBA, INC. SERVICE EVEN IF WIMBA, INC. HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM BY ANY END USER OR ANOTHER PARTY. FURTHER IN NO EVENT SHALL WIMBA, INC.’S LIABILITY UNDER ANY PROVISION OF THIS LICENSE AGREEMENT EXCEED THE LICENSE FEE PAID TO WIMBA, INC. UNDER THIS AGREEMENT EXCLUSIVE OF ANY OTHER FEES OR CHARGES PAID BY YOU TO WIMBA, INC..

11. CONTENT AND INDEMNIFICATION.

(a) Wimba, Inc. does not routinely, and has no obligation to, monitor Content used on the Wimba, Inc. Service. However, Wimba, Inc. reserves the right to remove Content which it deems, in its sole discretion, will subject it to liability or to be dangerous, offensive, pornographic, or in violation of law or regulations currently



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in effect, Section 11(b) or any other provision of this License Agreement or of any on-line terms of service located on the Wimba, Inc. website.. Such removal may be immediate and without notice.

(b) You agree (i) only to use the Wimba, Inc. Service with properly licensed Content that does not violate any applicable law or third party right and (ii) to hold harmless, indemnify and defend Wimba, Inc., its officers, directors and employees (the "Wimba, Inc. Indemnitees"), from and against any losses, damages, fines and expenses (including reasonable attorneys fees and costs) arising out of or relating to any claims against the Wimba, Inc. Indemnitees in connection with your operation of the Wimba, Inc. Service in violation of any third party's intellectual property rights or other rights or in violation of any law.

(c) Wimba, Inc. agrees to hold harmless, indemnify and defend you, your officers, directors and employees (the "Licensee Indemnitees"), from and against any losses, damages, fines and expenses (including reasonable attorneys fees and costs) arising out of or relating to any claims against the Licensee Indemnitees (i) that the Wimba, Inc. Service infringes any United States patent, copyright, or trademark or otherwise violates any law or (ii) arising out of Wimba, Inc.'s breach of this Agreement; provided that Wimba, Inc. is promptly notified in writing of such claim. Should the Wimba, Inc. Service become, or in the reasonable opinion of Wimba, Inc. be likely to become, the subject of such an infringement claim, Wimba, Inc. may, at its option:(i) obtain the right for you to use the Wimba, Inc. Service at Wimba, Inc.'s expense; (ii) replace or modify the Wimba, Inc. Service to make it non-infringing, or (iii) if Wimba, Inc. determines neither (i) or (ii) are reasonably available, terminate this Agreement and refund to you any fees paid in advance covering the period following termination. **THIS SECTION 11(C) SETS FORTH WIMBA, INC.'S ENTIRE LIABILITY AND OBLIGATION AND YOUR SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OF PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS.** Nothing herein shall be construed to obligate recipient School Board to indemnify Indemnitees for any act other than the acts of recipient or its agents and employee. Nothing herein shall be construed to increase the scope or dollar limit of recipients liability beyond that set forth in F.S. 768.28.

12. TERM; TERMINATION.

(a) Unless this is a perpetual license, the License Period as specified in Schedule 1 will be automatically renewed for a further one (1) year term unless either party gives notice to the other in writing at least ninety (30) days prior to the end of the License Period.

(b) This License Agreement will terminate (i) immediately if you violate the provisions of Section 1 or engage in any Non-permitted Use and such breach remains unremedied for 72 hours after receipt of notice of the breach and (ii) within ten (10) business days of receiving a demand for payment or other notice from Wimba, Inc. if you fail to pay any and all amounts payable hereunder or fail to comply with any other term hereof.

(c) Upon any termination of this License Agreement, all Wimba, Inc. customer support and other services will immediately terminate and your use of the Wimba, Inc. Service shall immediately terminate (except for your use of the version licensed to you under a perpetual license). If you have a perpetual license and this License Agreement is terminated, you may request that Wimba, Inc. download, at your expense, the Software and Documentation for the Wimba, Inc. Service covered by this License Agreement and your Content to hardware provided by Wimba, Inc. at your expense. Wimba, Inc. will bill you at the rate specified in Schedule 1 for Licensee Support Hours for the estimated time to be spent by Wimba, Inc. personnel to download such Software, Documentation and Content, which amount will be paid by you prior to the download and, if there is a difference greater than fifteen minutes more or less you will pay, or Wimba, Inc. will reimburse, the difference within thirty days after such download. Your obligations under Sections 1, 2, 8, 9, 10, and 11 and to pay any accrued charges shall survive any termination of this License Agreement.

13. GOVERNING LAW.

This License Agreement shall be governed by the laws of the State of Florida without regard to conflict of law provisions and you consent to the exclusive jurisdiction of the state courts in Clay County, Florida. This License Agreement shall not be governed by the United Nations Conventions on Contracts for the International sale of Goods, the application of which is hereby expressly excluded.

14. EXPORT LAW ASSURANCES.

You may not use or otherwise export or re-export the Wimba, Inc. Service or any part thereof except as authorized by United States laws and regulations. In particular, but without limitation, the Wimba, Inc. Service may not be exported or re-exported (i) into (or to a national or resident of) any U.S. embargoed country or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of





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Commerce's Table of Denial Orders. You represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list.

15. GOVERNMENT END USERS.

If the Wimba, Inc. Service is supplied to the United States Government, the Wimba, Inc. Service is classified as "restricted computer software" as defined in clause 52.227-19 of the Federal Acquisition Regulations and its successors ("FAR"). The United States Government's rights to the Wimba, Inc. Service are as provided in clause 52.227-19 of the FAR.

16. MISCELLANEOUS.

(a) This Terms and Conditions of the School Boards Purchase Order and this License Agreement constitute the entire agreement between the parties concerning the subject matter hereof, supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and prevails over any conflicting or additional terms of any quote, acknowledgment, or other communication between the parties relating to its subject matter, whether formally rejected by Wimba, Inc. or not.

(b) This License Agreement may not be modified except in writing signed by a duly authorized representative of both parties.

(c) Neither party may assign all or any part of its rights under this License Agreement (by operation of law or otherwise) without the prior written consent of

the other unless in connection with the acquisition of a controlling interest in its stock or assets. Subject to the foregoing this License Agreement will be fully binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

(d) Any delay or failure to enforce a provision of this License Agreement shall not be deemed a waiver thereof. If any provision is held to be unenforceable for any reason, such provision shall be amended only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances.

(e) Neither party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials, power or telephone service shortages, interruptions or surges, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist activity or inability to obtain any export or import license or other approval or authorization of any government authority.

(f) Both parties are independent contracting parties. This License Agreement shall not constitute either party as principal and agent, partners, joint venturers, or employer and employee.

(g) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

In consideration of the mutual benefits set forth above and the covenants and agreements set forth in the License Agreement, the parties hereto have signed this License Agreement this ___ day of ____, 200_.

Signed:
For Wimba, Inc.

Signed:
For: School Board of Clay County, Florida

