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**5. LIMITATION OF LIABILITY AND EXCLUSION OF REMEDIES**

**5.1. NO LIABILITY FOR INDIRECT DAMAGES -** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, INTERRUPTION OF ACTIVITIES, LOSS OF INFORMATION OR OF PROGRAMS OR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOURCE CODE OR IN ANY OTHER WAY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6. Intellectual Property Warranty and Indemnification**

**6.1. Warranty** – SBCC warrants that the Source Code delivered by SBCC do not infringe any patent, trademark or copyright enforceable and do not misappropriate any trade secrets.

**6.2. Indemnification** - SBCC agrees to defend, at its expense, all claims, suits, actions or proceedings containing any allegations which, if true, would constitute a breach of the warranties granted in section 6.1 (“Infringement Claim”) and shall pay any amount awarded to be paid in capital (or principal), interests and costs to the claimant in such Infringement Claim by final judgment or agreed to be paid by SBCC in writing in settlement thereof, provided SBCC is notified promptly in writing of such Infringement Claim and NEFEC has not prejudiced SBCC’s position in any way and provided SBCC is granted sole control over its defense or settlement and subject to NEFEC providing such assistance and information as SBCC may reasonably require to settle or oppose such claims, suits, actions or proceedings. NEFEC may participate in any such lawsuits at its expense by counsel of its choice. In the event any such Infringement Claim is brought or threatened, SBCC may, at its sole option and expense:

- a) procure for NEFEC the right to continue use of the Source Code or infringing part thereof;
- b) modify or amend the Source Code or infringing part thereof, or replace the Source Code or the modifications made by SBCC or infringing part thereof with other software having substantially the same or better functionality.

**6.3. Exceptions** - The foregoing obligations shall not apply to the extent the Infringement Claim arises as a result of any modifications made by NEFEC to the Source Code. This section 6 states the entire liability of SBCC with respect to infringement of any intellectual property or other third party rights.

**7. Confidentiality**

**7.1. Confidential Information** – Each party acknowledges that the Source Code and other non-public information of the parties, in information which each party knows or reasonably should know to be confidential or proprietary information of the other party (hereinafter collectively referred to as “Confidential Information”) are trade secrets of the party which have required substantial efforts to create and improve. Each party agrees to use the Confidential Information of the other party solely to perform its obligations under this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party except its employees and subcontractors who have a need to know and who are bound by a duty of confidentiality, without the other party’s prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. However, neither party bears any responsibility for safeguarding information that (i) is publicly available without restrictions, (ii) obtained by the other party from third parties without restrictions on disclosure, (iii) independently developed by the other party without reference to Confidential Information, or (iv) required to be disclosed by order of a court or other governmental entity.

**7.2. Notice to the other party** - Each party undertakes to notify the other party in writing without delay of the existence of any unauthorized knowledge, possession or use of the Confidential Information, in whole or in part, by any person, and of the circumstances surrounding such unauthorized knowledge, possession or use and to cooperate with the other party to stop such unauthorized knowledge, possession or use.

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- 7.3. **Relief** – Each party acknowledges that breach of this Section may result in irreparable harm and permanent injury to the other party for which monetary damages would be inadequate. Consequently, each party acknowledges that the other party shall be entitled, in addition to all its other remedies, at law or in equity, to immediate injunctive relief to prevent or stop any breach of this Section.

**8. Term and Termination**

- 8.1. **Term** - This Agreement shall come into force upon execution by both parties to be effective as of the Effective Date until terminated in accordance with its terms.
- 8.2. **Termination** -
- 8.2.1. **Default** - Either party may terminate this Agreement if the other party fails to abide by any of its provisions which failure continues for a period of thirty (30) days after receipt of written notice to remedy such failure.
- 8.2.2. **Effect of Termination.** Termination, expiration or cancellation of this Agreement for any reason whatsoever shall not result in loss or reversion of the assignment of the Source Code as provided for in this Agreement. The foregoing shall not, however, limit in any way either party's right to seek and obtain injunctive relief and/or damages for breach of this Agreement.
- 8.2.3. Either party may terminate this Agreement for any reason whatsoever by providing sixty (60) days written notice, which termination shall not result in loss or reversion of the source code as provided in this Agreement.

**9. Miscellaneous**

- 9.1. **Assignment** - Neither party shall assign this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement, without the other party's consent, to any Affiliate, or in the event of a merger, acquisition, or sale of all or substantially all of its assets.
- 9.2. **Headings** - Headings in this Agreement are included for ease of reference only and at no time shall affect the meaning or interpretation of the provisions of this Agreement.
- 9.3. **Severability** - If any provision of this Agreement is declared invalid, illegal or unenforceable, the other provisions of this Agreement shall continue in full force and effect.
- 9.4. **Force Majeure** - Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by event, occurrences, or causes beyond the control of such party. Such event, occurrences or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.
- 9.5. **Waivers** - The waiver of any breach of any provision of this Agreement shall not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- 9.6. **Entire Agreement** - This Agreement does not constitute an offer by SBCC and it shall not be effective until signed by both parties. Upon execution by both parties, this Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous agreements and communications.

- 9.7. **Arbitration** - Any controversy, dispute or claim arising out of or in connection with this Agreement, or the breach, termination or validity hereof, shall be settled by final and binding arbitration, in the State of Florida, administered by the American Arbitration Association under its then obtaining Commercial Arbitration Rules. Each party irrevocably consents to venue and jurisdiction of any proceeding involving any dispute concerning this Agreement in the State of Florida, and waives any objection to venue or jurisdiction in Florida, including the defense of lack of in personam jurisdiction. The decision or award of the arbitrator(s) shall be final, and judgment upon such decision or award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such decision or award and an order of enforcement. In the event of any procedural matter not covered by the aforesaid rules, the procedural law of the State of Florida shall govern. The parties shall continue performance of their obligations under this Agreement pending final resolution or disposition of the arbitration proceeding.
- 9.8. **Applicable Laws** - This Agreement shall be governed by the laws in force in the state of Florida.

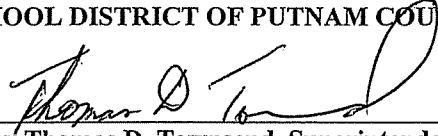
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their representatives duly authorized as they so declare.

**APPROVED AND RECOMMENDED FOR SIGNING**

**SCHOOL BOARD OF CLAY COUNTY**

**SCHOOL DISTRICT OF PUTNAM COUNTY**


\_\_\_\_\_  
by Ben Wortham, Superintendent

  
\_\_\_\_\_  
by Thomas D. Townsend, Superintendent

Dated: \_\_\_\_\_

Dated: 9-03-09

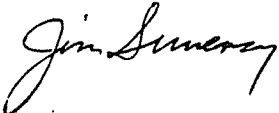
\_\_\_\_\_  
By Charles Van Zant, Jr., Chairperson

  
\_\_\_\_\_  
by Lisa Parsons, Chairperson

Dated: \_\_\_\_\_

Dated: 3 Nov 2009

**NORTH EAST FLORIDA EDUCATIONAL CONSORTIUM**

  
\_\_\_\_\_  
by James A. Surrency, Ed D, Executive Director

Dated: \_\_\_\_\_