

## Master Software and Services Agreement

This MASTER SOFTWARE AND SERVICES AGREEMENT (“Agreement”) is entered into as of the Effective Date by and between Toshiba America Business Solutions, Inc. a California corporation with an address of 25530 Commercentre Drive, Lake Forest, CA 92630 (“TABS”) including its division Toshiba Business Solutions (“TBS”), (collectively or individually TABS and TBS shall be referred to as the “Contractor”) and the Client specified below (“Client”).

### 1. Definitions.

1.1 “Confidential Information” means, with respect to a party hereto, all information or material which (i) the party identifies in writing as confidential; and (ii) which from all the relevant circumstances should reasonably be assumed to be confidential and proprietary, whether or not marked, designated, or otherwise identified as “confidential” or “proprietary.” Confidential Information of Contractor includes, but is not limited to, the Products and the terms of this Agreement. Neither party shall have any obligation with respect to information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously received by the receiving party without restriction or received by the receiving party from a third party who had a lawful right without restriction to disclose such information; or (iii) is independently developed by the receiving party without reference to Confidential Information.

1.2 “Data Management Services” or “DMS” means the Internet-based transactional application and database services provided by Contractor that are accessible to Client through the Internet for managing business processes and information.

1.3 “Documentation” means the documentation, including any Third Party Materials provided by or on behalf of Contractor with the Product at the time of delivery and any updates that Contractor may, in its discretion, provide from time-to-time. The Documentation will be included in the definition of “Product” under this Agreement and subject to all restrictions and limitations relating to the Product.

1.4 “Licensed Entities” means those Client entities specifically identified in a SOS as licensed to use a Product.

1.5 “SOS,” or “Statement of Services,” “Statement of Work,” of “Statement of Support” as applicable, is defined in Section 2.

1.6 “Product” refers to such Software, Third Party Materials, Subscription Services, and professional Services, including implementation services, consulting and software integration services, outsourced business processing services, and other DMS projects, as each may be licensed by Client under a SOS from time-to-time, including any Documentation.

1.7 “Software” means the object code version of any software that may be licensed by Contractor to Client under a SOS for installation on Client’s systems. To the extent any updates or enhancements are delivered to Client as part of Support, such

updates and enhancements will be deemed included in the definition of “Software.”

1.8 “Subscription Service” means an application or database product hosted by Contractor or its agents, including the DMS, and made available for remote access and use by Client and its Licensed Entities under a SOS.

1.9 “Support” means Contractor’s then current support and maintenance program for the relevant Product, as more fully described in the relevant SOS.

1.10 “Third Party Materials” means software and data licensed or provided by third parties. Applicable third-party license agreements and disclaimers, if any, will be provided with the relevant Products.

2. **SOS.** This is a master agreement under which Client may place an order for one or more Products under a Statement of Services or Statement of Work, as applicable. Each order will be set forth in a written SOS or other form provided by Contractor, which is only effective when signed by both parties. The SOS will (i) specifically reference and is governed by this Agreement and (ii) identify the relevant Product being licensed, the term of license or subscription, and any other relevant terms not otherwise set forth in this Agreement. The form of SOS is attached to and made a part of this Agreement as Schedule A-1 (Statement of Services), Schedule A-2 (Statement of Work), and Schedule A-3 (Statement of Support).

3. **Software License.** This Section applies only in the event Client licenses Software from Contractor pursuant to a SOS. Subject to the terms and conditions of this Agreement and Client’s payment of all relevant fees, Contractor hereby grants to Client a non-exclusive, perpetual, non-transferable (except pursuant to Section 22.1), limited license to use for its internal business purposes the Software at the Licensed Entities. Client may make one copy of the Software for backup and archival purposes.

4. **Subscription Services License.** This Section applies only in the event Client licenses Subscription Services as a Software as a Service (“Subscription Services”) from Contractor pursuant to a SOS. Subject to the terms and conditions of this Agreement and Client’s payment of all relevant fees, Contractor hereby grants to Client a non-exclusive, non-transferable (except as otherwise set forth herein), limited license to access and use for its internal business purposes the Subscription Services in connection with the Licensed Entities. The initial term of the foregoing license will be as set forth in the applicable SOS. Client shall be solely responsible for connection of Client’s systems to a telecommunications service that provides Internet access for purposes of Client’s access and use of the Subscription Services.

5. **Restrictions.** Client may only use the Products as described in the applicable Documentation, including operation of Software only on the hardware and software configurations specified in the SOS or associated Documentation. Client shall ensure the Licensed Entities comply with all applicable terms of this

Agreement. Any breach of this Agreement by any employee or agent of Client shall constitute a breach by Client. Except as expressly authorized by this Agreement, Client will not (and will not allow any third party to): (i) permit any unauthorized user or any third party to access and use the Products; (ii) decompile, disassemble, or reverse engineer the Products; (iii) use the Products or any Contractor Confidential Information to develop a competing product or service; (iv) use or allow others to use any Product for the benefit of any third party; (v) use any Product, or allow the transfer, transmission, export, or re-export of any Product or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (vi) remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of a Product (including any screen displays, etc.) or any other products or materials provided by Contractor hereunder. Under no circumstances, shall Contractor be liable or responsible for any use, or any results obtained by the use, of the Products in conjunction with any other software or third-party products. All such use shall be at Client's sole risk.

**6. Availability of Subscription Services.** The provisions of this Section apply only to Subscription Services. The Subscription Services will be available for access and use by Client in accordance with the terms set forth in the applicable SOS or Third-Party Materials. The Subscription Services will be available for access and use by Client an average of at least ninety-five percent (95%) of the time ("Availability Requirement"). Client shall provide notice to Contractor of any unavailability for access or use and document such disruption for review by Contractor. Time periods excluded from the ninety-five (95%) calculation are "Permitted Unavailability" and further defined below. "Permitted Unavailability" includes Planned Outages (as defined below) and any unavailability due to causes beyond the reasonable control of Contractor, including, without limitation: any software, hardware, or telecommunication failures; interruption or failure of telecommunication or digital transmission links; Internet slow-downs or failures; failures or default of third party software, vendors, or products; and unavailability resulting from the actions or inactions of Client or a failure of Client's communications link or systems. "Planned Outages" means the period during which Contractor conducts standard systems maintenance. Contractor shall use reasonable efforts to schedule Planned Outages during non-peak hours. In the event Contractor fails to achieve the Availability Requirement, Contractor shall use commercially reasonable efforts to correct the interruption as promptly as practicable. In the event Contractor fails to achieve the Availability Requirement in three consecutive months during the term of this Agreement, Client may terminate this Agreement without further obligation and receive a prorated refund of any pre-paid, unused recurring fees. Such refund shall constitute Client's sole and exclusive remedy and Contractor's sole and exclusive liability for failure to achieve the Availability Requirement.

**7. Information Security for Subscription Services.** Contractor has developed, implemented, and will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to (i) ensure the security and confidentiality of confidential information provided to it, (ii) protect against anticipated threats or hazards to the security or integrity of such confidential information, (iii) protect against unauthorized access or use of such confidential information, (iv) minimize accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of Client Data (as such term is defined in Section 8), and (v) ensure the proper disposal of confidential information. All personnel handling such confidential information have been appropriately trained in the implementation of its information security policies and procedures. Contractor regularly audits and reviews its information security policies and procedures to ensure their continued effectiveness and determine whether adjustments are necessary considering then-current circumstances including, without limitation, changes in technology, its or its vendors', contactors', and licensor's information systems or threats or hazards to confidential information. In the event of unauthorized access to confidential information or non-public personal information, each party shall cooperate with the other party, provide any notices and information regarding such unauthorized access to appropriate law enforcement agencies and government regulatory authorities, and affected individuals which are deemed necessary. Contractor shall promptly report to Client any compromise of security that it becomes aware of regarding Client Data and reasonably cooperate with Client in investigating the compromise. CLIENT ACKNOWLEDGES THAT SECURITY SAFEGUARDS, BY THEIR NATURE, ARE CAPABLE OF CIRCUMVENTION AND THAT CONTRACTOR DOES NOT AND CANNOT GUARANTEE THAT THE SUBSCRIPTION SERVICES, CONTRACTOR'S SYSTEMS, AND THE INFORMATION CONTAINED THEREIN (INCLUDING CONFIDENTIAL INFORMATION) CANNOT BE ACCESSED BY UNAUTHORIZED PERSONS CAPABLE OF OVERCOMING SUCH SAFEGUARDS. CONTRACTOR SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY SUCH UNAUTHORIZED ACCESS NOR SHALL ANY SUCH UNAUTHORIZED ACCESS CONSTITUTE A BREACH BY CONTRACTOR OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER.

### **8. Ownership; Client Data.**

**8.1 Ownership.** The Products are licensed, not sold. Except for the limited licenses granted in Sections 3 and 4, Contractor and its licensors reserve all right, title, and interest, express or implied, in and to the Products. Client acknowledges and agrees it shall not use any Confidential Information disclosed by Contractor to Client in connection with this Agreement to contest the validity of any Contractor intellectual property. Any such use of Contractor's information and data shall constitute a material, non-curable breach of this Agreement.

8.2 Client Data. Except for the limited license below, nothing contained in this Agreement shall be construed as granting Contractor any right, title, or interest in or to any Client provided data or other content input into the Products, including Personal Data (as defined in Section 8.3) (the “Client Data”). Client grants Contractor the perpetual, non-exclusive, irrevocable, royalty-free, worldwide, sublicensable right and license to collect, store, use, compile, modify, translate and disclose such Client Data: (i) as stated in Contractor’s Privacy Policy; (ii) as required by law; (iii) in the improvement or other development of Contractor’s product and services, including the Products; (iv) in aggregated form that does not identify Client; and (v) in connection with performing its obligations under this Agreement .

8.3 Personal Data. If Client or its users or any third parties acting on Client’s behalf, access or use a Product to collect, store, process, transmit, by any means any information from which a person (a data subject) can be reasonably identified (“Personal Data”), Client shall ensure that all such activities and use comply with applicable laws and data subject rights. Client shall provide legally adequate privacy notices to the required parties, and obtain all necessary consents from the data subjects of the Personal Data (and parental consents where applicable), including under the Children’s Online Privacy Protection Act (“COPPA”), the General Data Protection Regulation (“GDPR”), the UK General Data Protection Regulation (“UK GDPR”), California Consumer Privacy Act (“CCPA”) and similar laws. Client represents to Contractor that Client has provided all necessary privacy notices, obtained all necessary consents, and possesses lawful grounds to allow Client to access and use the Products in accordance with the terms of this Agreement and applicable laws. Client is responsible for notifying Contractor if any data collected or stored using the Products must be deleted under applicable laws.

8.4 Processing of Personal Data. The storage, processing, and transmission of Client Data is an essential feature of the Products. Client consents to Contractor and its contractors, and affiliates, collecting, storing, processing, and transmitting Client Data and Personal Data included therein. This Agreement incorporates Contractor’s Privacy Policy, as may be updated from time to time.

8.5 Sharing Personal Data. In addition, certain Products may provide the ability to share content with other users and third parties, which may include the ability to share and display information about an individual (e.g., name, email address, username) when such functionality. By choosing to use the applicable Products and sharing functionality, Client consents to the sharing of such information for this purpose.

8.6 Diagnostics and Telemetry Data. Contractor may store diagnostic and telemetry data about the operation of the Products, including performance, usage, configuration, and errors (“Telemetry Data”). Contractor may periodically transmit and receive the Telemetry Data from the Products. Client Data does not include Telemetry Data. Contractor does not access or transmit Client Data as part of the Telemetry Data. Contractor retains all rights, title, and interest to the Telemetry Data.

8.7 Client Data Warranties. Client represents and warrants that it has obtained all rights, consents, and permissions necessary to input the Client Data into the Products and to grant the foregoing rights and licenses to Contractor, and that: (i) Client either owns or has the right to authorize Contractor’s use of Client Data as set forth herein, (ii) the Client Data does not infringe, misappropriate, or otherwise violate any copyright, trademark, patents, trade secrets or other proprietary rights.

9. **Registration**. Contractor may request certain information in connection with the registration of Products, including contact name, email address, username, or password. By providing this information, Client consents to its collection and use by Contractor in accordance with Contractor’s Privacy Policy, to provide non-promotional communications regarding the Products, including notices related to Client’s account, transactions, update availability, Product recalls, safety concerns, or changes to our policies and terms. Client is responsible for maintaining the confidentiality of its username, password, and account information, and for all activities that occur in connection with Client’s account and or under any username and password or account associated with Client’s account. Client is also responsible for the accuracy of the information provided in connection with Client’s account and any user thereunder, and for keeping such account information up to date. Client assumes all responsibility for any loss, theft, or other destruction of any data resulting from any failure to comply with these obligations.

10. **Feedback**. Client may provide suggestions, comments, or other feedback (collectively, “Feedback”) to Contractor with respect to its products and services, including the Product. Feedback is voluntary and Contractor is not required to hold it in confidence. Contractor may use Feedback for any purpose without obligation of any kind. Client hereby grants Contractor an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Contractor’s business, including enhancement of the Product.

11. **Support**. To the extent purchased by Client, Contractor shall provide the Support described in the applicable SOS for the Product licensed. Support includes periodic releases, and upgrades and updates to the Products as may be made generally available by Contractor to its Clients for no additional charge from time to time. Any new or additional features or functions may be offered separately and may be subject to additional access or license fees, support or maintenance charges, or other fees and costs. Contractor reserves the right to charge separately for any new Products, databases, and functionality that are not generally released to Contractor’s Clients without charge

12. **Training**. To the extent applicable, Contractor will provide the training services set forth in the SOS. Client shall reimburse Contractor for all expenses and out-of-pocket costs related to onsite training.

13. **Term and Renewal**. This Agreement shall commence on the Effective Date and, subject to any earlier permitted termination in

accordance with this Agreement, shall remain in effect with respect to each Product until the expiration of both the initial license term set forth for such Product in the applicable SOS relating thereto and any renewal terms therefore as provided in this Section 13. Each SOS will specify an initial term for the license granted with respect to each such Product. Following the initial term, except as otherwise set forth on the SOS, the license term for each Product set forth on the SOS will automatically renew and be extended for additional successive one (1) year periods unless either party provides the other party of notice of its intent not to renew at least thirty (30) days prior to commencement of the next renewal term.

#### 14. Termination.

14.1 Termination for Cause. Either party may terminate this Agreement on written notice to the other party if the other party is in material breach of its obligations hereunder and fails to cure the breach within thirty (30) days of such written notice. In addition, either party may, in its sole discretion, elect to (i) terminate this Agreement on written notice to the other party upon the bankruptcy or insolvency of the other party or upon the commencement of any voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the other party, or (ii) terminate any relevant SOSs or this Agreement, as the case may be, as and when permitted by and in accordance with Sections 6, 15.1, or 20.

14.2 Termination for Convenience. Client may terminate any SOS or this Agreement upon sixty (60) days advance written notice to Contractor, without cause if Client pays Contractor a cancellation fee equal to one hundred percent (100%) of the average actual fees charged for the prior four (4) month period, multiplied by the remaining billable months in the then applicable SOS term ("Cancellation Fee"). Client agrees to pay any Cancellation Fee within fifteen (15) days of the effective date of termination. Client acknowledges that such Cancellation Fee is not a penalty, but is intended to be liquidated damages, the actual damages being too difficult to determine in advance. Payment of the Cancellation Fee is the sole remedy for Client's early termination.

14.3 Effect of Termination. Upon any termination or expiration of a SOS or this Agreement, all rights and licenses granted to the Products will automatically terminate and Client shall have no further right to possess, access, or use the Products. Any termination of the Agreement shall terminate all outstanding SOS(s). On Contractor's request, Client shall provide Contractor with a signed written statement confirming that any Software has been permanently removed from Client's systems, if applicable. If termination does not result from a breach of this Agreement by Client, subject to the terms for any Third-Party Materials, Client shall have the limited right for thirty (30) days after such license termination to export or print Client entered information from the Product and not to enter any new information into the Product or use it for any other purpose. Client may, at its option and subject to the terms for any Third-Party Materials, extend the foregoing thirty (30) day period for up to six (6) months at Contractor's then

current transition services rates; all access to the Product during this period shall be read-only. The following Sections shall survive any termination or expiration of this Agreement: 1, 5, 10, 13, 15 (to the extent of fees accrued prior to termination), 17, 19, 21, and 22.

#### 15. Fees.

15.1 In general. Client shall pay Contractor the fees set forth in the applicable SOSs. Following the initial year of the license term set forth in the SOS, Contractor, in its sole discretion, may increase the fees due for a renewal term on sixty (60) days written notice prior to the commencement of the renewal term, which adjustment shall be effective on the commencement of the renewal term. During the initial license term set forth in the SOS, any such annual increase shall not exceed five percent (5%) of the previous applicable annual fee.

15.2 Payment of Invoices. All invoices shall be paid by Client within thirty (30) days of invoice date. Payments not made within such period shall be subject to late charges equal to the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. In the event an invoice remains unpaid thirty (30) or more days from the invoice date, Contractor may, in its discretion, terminate the applicable SOS and suspend access to Subscription Services. Client agrees to pay all court costs, fees, expenses and reasonable attorneys' fees incurred by Contractor in collecting delinquent fees. The applicable SOS may specify certain fees to be paid by electronic funds transfer ("EFT"). Client hereby authorizes Contractor to initiate an EFT from Client's bank account indicated in Schedule B in an amount equal to the fees set forth in the applicable SOS in accordance with the payment terms set forth in the applicable SOS. All payments made by EFT will be paid in immediately available funds.

15.3 Taxes. All taxes, duties, fees and other governmental charges of any kind (including sales and use taxes, but excluding taxes based on the gross revenues or net income of Contractor) that are imposed by or under the authority of any government or any political subdivision thereof on the fees for the Products and Support provided by Contractor under this Agreement, shall be borne solely by Client, unless Client can evidence its tax exemption and shall not be considered a part of a deduction from or an offset against such fees. If Client loses tax exempt status, it shall pay any taxes due as part of any renewal or payment. Client shall promptly notify Contractor if its tax status changes.

15.4 Travel and other Expenses. Client will pay, or reimburse Contractor for, any out-of-pocket expenses, including, without limitation, travel and travel-related expenses, incurred by Contractor at the request of or with the approval of Client in connection with the performance of this Agreement. Reasonable and customary expenses incurred by Contractor, including without limitation expenses incurred for travel, local transportation, lodging and meals, will be billed to Client at Contractor's actual cost.

**15.5 Subpoenas and Other Legal Process.** In the event Contractor is requested or authorized by Client or is required by government regulation, summons, subpoena or other legal process to produce its documents, Client Data, or personnel as witnesses with respect to the Products and other services provided to Client under this Agreement, Client will, so long as Contractor is not the subject of the investigation or proceeding in which the information is sought, reimburse Contractor at its then current standard professional services rates for its time and materials services, as well as the fees and expenses of its counsel, incurred in responding to such requests.

**16. Suspension of Access to Subscription Services.** The provisions of this Section apply only to Subscription Services. Contractor may, in its sole discretion, suspend Client's access to a Subscription Service for any of the following reasons (i) to prevent damages to, or degradation of, the Subscription Service or Contractor's systems; (ii) to comply with any law, regulation, court order, or other governmental request; (iii) to otherwise protect Contractor from potential legal liability; or (iv) in the event an invoice remains unpaid for more than thirty (30) or more days from the invoice date. Contractor shall use reasonable efforts to provide Client with notice prior to or promptly following any suspension of access to a Subscription Service. Contractor will restore access to the Subscription Service as soon as the event giving rise to suspension has been resolved. This Section shall not be construed as imposing any obligation or duty on Contractor to monitor Client's use of the Subscription Service or the data and other content uploaded by Client to the Subscription Service.

### 17. Confidentiality.

17.1 Each party's Confidential Information shall remain the sole and exclusive property of that party. Each party recognizes the importance of the other's Confidential Information. In particular, each party recognizes and agrees that the Confidential Information of the other is critical to its respective businesses and that neither party would enter into this Agreement without assurance that the other party will take appropriate steps designed to preserve the confidentiality of such information and the value thereof as provided in this Section 17 and elsewhere in this Agreement. The foregoing and the other terms of this Section 17 are and will remain subject to the disclaimers set forth at the end of Sections 7 and 19. Accordingly, each party agrees as follows:

(a) Each party (i) will treat as confidential and use measures that are reasonable, and at least as protective as those it uses to safeguard the confidentiality of its own Confidential Information (but in no event less than reasonable care), to preserve the confidentiality of any and all Confidential Information that it obtains from the other party and (ii) will use or, subject to the disclaimers in Sections 7 and 19, disclose such Confidential Information solely as permitted under this Agreement;

(b) Each party may disclose the other party's Confidential Information or provide access to the same to its responsible employees and agents who reasonably need to know or access

such information in connection with the fulfillment of its obligations hereunder and may make copies of Confidential Information only to the extent permitted or contemplated under or pursuant to this Agreement; and

(c) To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the receiving party, the receiving party may disclose Confidential Information in accordance with such law or order or requirement, subject to the following conditions: (i) as soon as possible after becoming aware of such law, order or requirement, and (ii) prior to disclosing Confidential Information pursuant thereto, the receiving party will so notify the disclosing party in writing and, if possible, the receiving party will provide the disclosing party notice not less than five (5) business days prior to the required disclosure. The receiving party will use reasonable efforts not to release Confidential Information pending the outcome of any measures taken by the disclosing party to contest, otherwise oppose or seek to limit such disclosure by the receiving party and any subsequent disclosure or use of Confidential Information that may result from such disclosure. The receiving party will cooperate with and aid the disclosing party regarding such measures. Notwithstanding any such compelled disclosure by the receiving party, such compelled disclosure will not otherwise affect the receiving party's obligations hereunder with respect to Confidential Information so disclosed.

17.2 Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

17.3 On the expiration or termination of the Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and, if requested by the disclosing party, certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure regarding Confidential Information are effective as of the Effective Date and will expire three years from the date first disclosed to the receiving party.

**18. Limited Warranty.** Contractor warrants to Client that for a period of sixty (60) days from delivery or initial use by Client, the Product shall operate in substantial conformity with its Documentation. Third Party Materials are subject to the terms set forth in the applicable third-party license agreements and disclaimers, if any, will be provided with the relevant Products. If Client purchases or procures any third-party products or services as part of the Products that are not provided with their own agreement or terms, Contractor shall pass through or assign to the Client the rights Contractor obtains from the manufacturers, vendors or licensors of such products and services (including

warranty and indemnification rights), all to the extent that such rights are assignable. To the extent that such rights are not assignable by Contractor, Contractor agrees that Client may assert or enforce any right Contractor may have to enforce such representations, warranties and covenants, or if such can only be enforced by Contractor under its own name, upon written request by Client, Contractor shall take all reasonable action requested by Client to enforce such representations, warranties and covenants. Notwithstanding the foregoing, Client's sole and exclusive remedy, and Contractor's sole and exclusive liability, for a breach of the foregoing warranties shall be the provision of Support services, replacement of a Product if necessary, or a credit for the pre-paid portion of the applicable fee for the affected Product, as determined in Contractor's sole discretion.

**19. Disclaimer of Warranties.** EXCEPT AS PROVIDED IN SECTION 18 (LIMITED WARRANTY), THE PRODUCTS, SUPPORT, TRAINING, AND ANY OTHER SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. CONTRACTOR AND ITS VENDORS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE, AND NON-INFRINGEMENT. ALL THIRD-PARTY MATERIALS ARE PROVIDED AS-IS, WITHOUT WARRANTIES OF ANY KIND. CONTRACTOR MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO ANY PRESENT OR FUTURE METHODOLOGY EMPLOYED IN ITS GATHERING OR REPRODUCING OF ANY THIRD-PARTY MATERIAL, OR AS TO THE ACCURACY, CURRENCY OR COMPREHENSIVENESS OF THE SAME. CLIENT EXPRESSLY AGREES AND ACKNOWLEDGES THAT USE OF PRODUCTS IS AT CLIENT'S SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CONTRACTOR OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE ANY OTHER WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF CONTRACTOR'S OBLIGATIONS HEREUNDER. CONTRACTOR IS NOT ENGAGED IN RENDERING LEGAL OR OTHER PROFESSIONAL SERVICE. IF LEGAL OR OTHER EXPERT ASSISTANCE IS REQUIRED, THE SERVICES OF A COMPETENT PROFESSIONAL SHOULD BE SOUGHT. CLIENT ASSUMES ALL RESPONSIBILITY WITH RESPECT TO ANY DECISIONS OR ADVICE MADE OR GIVEN AS A RESULT OF THE USE OF THE PRODUCTS. CLIENT AGREES THAT THE PRODUCTS ARE NOT INTENDED TO REPLACE CLIENT'S PROFESSIONAL SKILL AND JUDGMENT AND ARE NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY OR OTHER PROFESSIONAL.

THE PRODUCTS MAY BE USED TO ACCESS AND TRANSFER INFORMATION, INCLUDING CONFIDENTIAL

INFORMATION, OVER THE INTERNET. CLIENT ACKNOWLEDGES AND AGREES THAT CONTRACTOR AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED THIRD PARTIES (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CLIENT'S DATA, WEB-SITES, COMPUTERS, OR NETWORKS. CONTRACTOR SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY SUCH ACTIVITIES NOR SHALL ANY SUCH ACTIVITIES CONSTITUTE A BREACH BY CONTRACTOR OF ITS OBLIGATIONS OF CONFIDENTIALITY HEREUNDER.

**20. Indemnity.** Contractor will indemnify and defend Client from any claim, demand, action, proceeding, judgment, or liability arising out of a claim by a third-party that Client's use of a Product in conformance with the terms of this Agreement infringes a United States patent issued as of the Effective Date or copyright of that third party. The foregoing indemnification obligation of Contractor is contingent upon Client promptly notifying Contractor in writing of such claim, permitting Contractor sole authority to control the defense or settlement of such claim, and providing Contractor reasonable assistance in connection therewith. If a claim of infringement under this Section 20 occurs, or if Contractor determines a claim is likely to occur, Contractor will have the right, in its sole discretion, to either: (i) procure for Client the right or license to continue to use the Product free of the infringement claim; or (ii) modify the Product to make it non-infringing, without loss of material functionality. If either of these remedies is not reasonably available to Contractor, Contractor may, in its sole discretion, immediately terminate the relevant SOS(s) and return the prorated portion of any prepaid, unused fees for future use of the infringing Product. Notwithstanding the foregoing, Contractor shall have no obligation with respect to any claim of infringement that is based upon or arises out of (the "Excluded Claims"): (xi) the use or combination of the Products with any hardware, software, products, data or other materials not provided by Contractor; (xii) modification or alteration of the Products by anyone other than Contractor; (xiii) Client's use of Products in excess of the rights granted in this Agreement; (xiv) any Third Party Materials; (xv) a breach of Client's representations or warranties; (xvi) the negligence or more culpable acts or omissions (including recklessness or willful misconduct) by Client or any third party on behalf of Client; or (xvii) a business method or process that is inherent to Client's business. The provisions of this Section 20 state the sole and exclusive obligations and liability of Contractor and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Products or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed. Client will indemnify and defend Contractor from any claim, demand, action, proceeding, judgment, or liability a third-party claim arising out of (xxi) an Excluded Claim; or (xxii) Contractor's authorized use of the Client Data.

## Master Software and Services Agreement

The foregoing indemnification obligation of Client is contingent upon Contractor promptly notifying Client in writing of such claim, permitting Client sole authority to control the defense or settlement of such claim, and providing Client reasonable assistance in connection therewith.

**21. Limitation of Liability and Damages.** NEITHER CONTRACTOR NOR ITS VENDORS AND LICENSORS SHALL HAVE ANY LIABILITY TO CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, THE PRODUCTS, AND ANY SERVICES RENDERED HEREUNDER. THE TOTAL LIABILITY OF CONTRACTOR AND ITS VENDORS AND LICENSORS TO CLIENT OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, THE PRODUCTS, AND ANY SERVICES RENDERED HEREUNDER FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES SHALL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE HEREUNDER BY CLIENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. SHIPPING TERMS ARE FOB SHIPPING POINT. TOSHIBA IS NOT RESPONSIBLE FOR DAMAGES INCURRED IN CONNECTION WITH THE PACKAGING, SHIPMENT OR DELIVERY OF DOCUMENTS, FILES OR BOXES FROM CLIENT LOCATION TO CONTRACTOR. The allocations of liability in this Section 21 represent the agreed, bargained-for understanding of the parties and Contractor's compensation hereunder reflects such allocations. The limitation of liability and types of damages stated in this Agreement are intended by the parties to apply regardless of the form of lawsuit or claim a party may bring, whether in tort, contract or otherwise, and regardless of whether any limited remedy provided for in this Agreement fails of its essential purpose.

### 22. General Provisions.

**22.1 Assignment.** Client may not assign this Agreement without Contractor's prior written authorization, which shall not be unreasonably withheld. Any such permitted assignment, however, shall not increase the scope (including any material change in the size of Client's organization) of the license granted hereunder without payment of Contractor's then-current fees for any increased scope. Any delegation or assignment in violation of the foregoing provisions shall be void and deemed a material breach of this Agreement. This Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

**22.2 Amendment and Waiver.** This Agreement may not be modified or amended except by a writing signed by both parties. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any breach of the same or any other provision hereof, and no waiver shall be effective unless made in

writing and signed by an authorized representative of the waiving party.

**22.3 Governing Law.** This Agreement will be governed by, and construed and interpreted according to, the substantive laws of the State of California. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal courts (if permitted by law and a party elects to file an action in federal court) located in Orange County, California. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of forum *non conveniens* or similar doctrine or theory or to object to venue with respect to any proceeding brought in accordance with this Section. EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.

**22.4 Severability.** In the event that any provision of this Agreement is held to be illegal, or otherwise unenforceable, such provision will be severed, stricken and replaced with a legal and enforceable provision which most closely reflects the intent of the parties with respect thereto and the remainder of this Agreement shall continue in full force and effect; provided, however, that if the severing and striking of such provision results in a material alteration of this Agreement not able to be appropriately addressed through a replacement provision as contemplated above, the remaining provisions of this Agreement shall be adjusted equitably so that no party benefits disproportionately.

**22.5 Entire Agreement; Purpose and Effect of Agreement.** This Agreement, together with the SOS(s) and any other exhibits and attachments hereto and thereto, constitutes the entire agreement between the parties regarding its subject matter and supersedes any and all prior or contemporaneous letters, memoranda, representations, discussions, negotiations, understandings and agreements, whether written or oral, with respect to such subject matter, all of the same being merged herein. No other terms and conditions or agreements, including any terms and conditions contained on Client's purchase orders ("Additional Terms") shall be binding on Contractor. All such Additional Terms shall be of no force or effect and shall be deemed rejected by Contractor in their entirety. In the event of a conflict between the body of this Agreement and any SOS, exhibit, or other attachment, the Agreement shall govern.

**22.6 Notices.** Any notice required or permitted to be given by either party under this Agreement will be made in writing and shall be deemed to have been received upon delivery by hand, by facsimile (followed by delivery of a hard copy thereof within five (5) business days of such facsimile) or via Federal Express, or an equivalent reputable courier service, expense prepaid, addressed

## Master Software and Services Agreement

to the party as set forth on the signature block hereof or to such other address as a party may designate in writing to the other party.

**22.7 Relationship of Parties.** The parties to this Agreement are independent contractors; there is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

**22.8 Force Majeure.** If either party is prevented from performing any of its obligations under this Agreement due to any cause beyond the party's reasonable control, including, without limitation, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, or hackers (a "force majeure event"), time for that party's performance will be extended for the period of the delay or inability to perform due to such occurrence without liability to the other party; provided, however, that Client will not be excused from the payment of any sums of money owed by Client to Contractor. In addition, neither party will have the right to claim damages or to terminate this Agreement because of a force majeure event.

**22.9 Limitation on Time to Bring Suit.** Any suit, cause of action, claim or demand which either party has against the other party for breach of any provision of this Agreement, or for failure to meet any obligation or indemnity provided in this Agreement, or otherwise arising under the Agreement, must be brought no later than one (1) year from the date it becomes known or should have been known by the asserting party.

**22.10 No Third-Party Beneficiaries.** Except for Contractor's suppliers and licensors, this Agreement shall not be construed to make Licensed Entities or any other person or entity, a third-party beneficiary hereof.

**22.11 Counterparts.** This Agreement may be signed in counterparts, all of which upon execution and delivery shall be considered an original and together shall constitute one agreement. Signed facsimile copies of this Agreement will legally bind the parties to the same extent as original documents.

**22.12 Export Control.** Client agrees that it will not in any form export, re-export, resell, ship, or divert or permit to be exported, re-exported, resold, shipped or diverted, directly or indirectly, any product or technical data or software furnished hereunder, or the direct product of such technical data or software, in violation of the laws, regulations, rules or orders or any jurisdiction, including applicable import and export laws. Client shall indemnify, defend, and hold harmless Contractor from any claim, demand, action, proceeding, judgment, or liability arising out of Client's or its Licensed Entities' breach of this Section.

**22.13 Government Restricted Rights.** The Products are provided with Restricted Rights. Use, duplication or disclosure by the Government is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software Restricted

Rights at FAR clause 52.227-19 or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 et seq. or its successor. The Products are proprietary data, all rights of which are reserved under the copyright laws of the United States.

**[End of Agreement; signature page follows]**



IN WITNESS WHEREOF, the parties have caused this Master Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

Client: **West Lafayette Community School Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Notice Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With Copy To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Toshiba America Business Solutions, Inc.**

By: Adam Green VP/GM- Toshiba IN  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Notice Address: Toshiba America Business Solutions, Inc.  
25530 Commercentre Drive  
Lake Forest, CA 92630

With Copy To: TABS Legal Department  
25530 Commercentre Drive  
Lake Forest, CA 92630