

## Master Software and Services Agreement

This SOLUTIONS 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.

As used in this Agreement and in addition to any other terms defined herein, the following defined terms will have the following meanings:

- 1.1. "Client" means Wayne-Finger Lakes BOCES Educational Technology Service located at 131 Drumlin Court, Newark, NY 14513.
- 1.2 "Data Management Services" or "DMS" means the Internet-based transactional application and database services provided by Contractor or its subcontractors that are accessible to Client via a Web browser through the Internet for managing business processes and information.
- 1.3 "Effective Date" shall be the date the Client or Contractor executes the Agreement, whichever is later in time.
- 1.4. "Initial Term" means the initial 36-month term commencing on the later of the Effective Date or the date that Client is first granted access to the DMS.

### 2. SERVICES AND LICENSES.

2.1. Contractor, or its subcontractor, will provide to Client the following services, to the extent, and only to the extent, set forth on mutually agreed Statement of Services (each, a "Statement of Services" or "SOS"), according to the terms of this Agreement: (i) software licenses; (ii) access to a cloud-based and/or local server for data management ("Data Management Services" or "DMS"); (iii) implementation of the DMS by integrating Client's internal information systems with the DMS ("Implementation Services"); (iv) consulting and software integration services ("Consulting Services"); (v) Client care and support services ("Support Services"); (vi) outsourced business processing services ("BPO Services"); and (vii) other DMS projects ("Project Services"). The SOS is attached as Schedule A (the "Services"). Each SOS will include a description of each Service, the fee corresponding to each Service, and indicate whether the fee is recurring or nonrecurring. In the event of a conflict or inconsistency, this Agreement takes precedence over the SOS.

2.2. Contractor, or its subcontractor, may develop modifications to the DMS and/or new software programs (collectively, the "Developed Software"). Client waives any and all proprietary right or interest in any requested changes, modifications, suggestions, or comments communicated by Client to Contractor, or its subcontractor, and assigns to Contractor, or its subcontractor, any and all rights therein. Contractor, or its subcontractor, reserves all rights in the Developed Software, including, but not limited to, all intellectual property rights therein. Contractor, or its subcontractor, hereby grants to Client a non-exclusive, non-transferable, fully paid up license to use the Developed Software solely for use with the DMS and subject to the access limitations in Section 3.

### 3. ACCESS TO THE SERVICES AND/OR DMS AND PERMITTED USE.

3.1. Subject to the terms, conditions and limitations set forth in this Agreement, Contractor shall grant Client a non-exclusive, non-transferable (except as set forth herein), license, for the duration of the Term, to the Software and/or access and use the Services and/or DMS as set forth in Section 2.1. The Service and/or DMS offers access to the functionalities of the Software. The functionalities available as part of the Service may vary from time to time, provided however that removed functionality will be replaced with other functionality permitting performance of substantially the same fundamental activities. Client is responsible for using the License and materials therein in a manner that complies with the applicable requirements but shall not use the Services that would subject Contractor to additional regulatory requirements.

3.2. Client is responsible for ensuring that the Services and/or DMS shall only be accessed and used by individually named users who are employees of Client, Client Affiliates or Contractors and who are provided with a User ID by Contractor or its subcontractor. No more than one designated user shall have access to each User ID and Client shall ensure that User IDs are not shared. Client shall be responsible for all activities that occurs under each User ID and shall be liable for Contractor for any acts and omissions of each designated User. Contractor is not responsible for monitoring Client's internal access process or Client's internal access authorization outside the United States.

3.3. Client will not remove any proprietary notices of Contractor, or its subcontractor, or third parties found in or on the DMS or the Developed Software. Client shall not, and shall not allow third parties, to attempt to copy, modify, disassemble, or reverse engineer the DMS or the Developed Software. The DMS in object code and source code form, and all rights in the Services or DMS, including but not limited to all intellectual property rights therein, are and will remain the exclusive property of Contractor, or its subcontractor. Client will have no claim of ownership or any intellectual property rights in the Services or DMS. No rights other than those specifically stated herein are granted to Client, and Client will have no right to permit third-party access to the Services or DMS.

3.4. Client and Client Affiliates may use the Services and/or DMS to process its and their own data for its and their own internal and commercial business purposes, including data collection and reporting activities which Client or any Client Affiliate performs on behalf of its clients, provided, however, that Client shall not, and will ensure that Client Affiliates shall not directly or indirectly resell or sublicense the Licenses Services or purport to do so. Client shall not download, copy, decompile, revise, reverse engineer, modify or derive source code from the Services and/or DMS.



## Master Software and Services Agreement

### 4. PAYMENTS.

4.1. For the Services provided under this Agreement, Client will pay to Contractor the fees in the amount and manner set forth in the applicable SOS. All fees and expenses incurred by Contractor in the performance of the Services will be billed to Client in advance on a monthly basis unless stated otherwise in the applicable SOS, in which case the terms of the applicable SOS will control. Contractor may adjust the rates and charges applicable following the expiration of the Initial Term upon at least ninety (90) days prior written notice. All fees paid and expenses reimbursed under this Agreement will be in U.S. dollars.

4.2. The applicable SOS may specify certain fees to be paid by electronic funds transfer. For those fees to be paid by electronic funds transfer, Client hereby authorizes Contractor to initiate an electronic funds transfer 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 this Agreement and/or the applicable SOS. All payments made by electronic funds transfer will be paid in immediately available funds. For those fees payable to Contractor under this Agreement that are not paid by electronic funds transfer, Client will pay Contractor the invoiced amount within fifteen (15) days after Client's receipt of an invoice from Contractor.

4.3. Contractor may assess Client a late fee of 1½% per month (not to exceed the maximum allowed under state law) on all balances not paid when due. Client agrees to pay any and all costs incurred in the collection of charges due and payable, including but not limited to reasonable attorneys' fees, whether or not a lawsuit or other legal proceeding is instituted. Contractor, at its option, may suspend the Services, in whole or in part, if Contractor does not receive an amount due and owing under this Agreement within thirty (30) days after the due date. Contractor reserves the right to suspend all Services if Client is not current on all payment obligations to Contractor or its Subcontractors for the Services and all other obligations, including but not limited to equipment lease obligations.

4.4. 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.

### 5. TAXES.

Client will pay all sales, use, transfer, privilege, excise, charges, surcharges or other taxes, and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated hereby (collectively, the "Taxes"); excluding, however, income taxes on profits which may be levied against Contractor. In addition to the fees specified in the applicable SOS, the amount of any Taxes applicable to the transactions contemplated hereby will be paid by Client, or in lieu thereof, Client will provide Contractor with a tax exemption certificate acceptable to the applicable taxing authorities.

### 6. USE OF CLIENT'S DATA.

Client's information is proprietary to Client and Contractor, or its subcontractor, will not use for itself nor disclose to any third party any information that is identifiable to Client or to employees of Client without the express written consent of Client. Client shall permit Contractor, or its subcontractor, to use data obtained from Client and others to prepare statistical analyses, provided that Contractor, or its subcontractor, will not reveal information identifiable to any person or specific Client.

### 7. SERVICES AND DMS.

7.1. To the extent Contractor or its subcontractors provide DMS hosting services, such hosting services will be made available to Client twenty-four hours a day, seven days a week less (i) scheduled DMS, hardware or service maintenance; (ii) downtime resulting from the acts or omissions of Client or Client's employees, agents, contractors, or vendors, or anyone gaining access to the DMS by means of Client's passwords or equipment; (iii) a failure of the Internet and/or the public switched telephone DMS or other event described in section 15 herein; or (iv) the occurrence of any event that is beyond Contractor, or its subcontractor's, reasonable control (collectively, "Excusable Downtime"). Contractor, or its subcontractor, warrants that the Services and DMS will be available to Client at least 95% of the time during each month, excluding Excusable Downtime ("Uptime Warranty"); provided that Client satisfies the hardware and communication requirements set forth in the Services and/or DMS documentation and is otherwise current on all payment obligations to Contractor and its Subcontractors.

7.2. If the Services and/or DMS is down more than the Uptime Warranty during a month, then upon client request Contractor will credit to Client a pro-rated portion of the recurring fees set forth in the Initial SOS in the first month of the next succeeding calendar quarter following the failure. For purposes of this Section 7.2, "pro-rated portion of the recurring fee" means the product obtained by multiplying the applicable recurring fee during the month of the failure by a fraction, the numerator of which will be the number of hours that the Services and/or DMS did not satisfy the Uptime Warranty (i.e. the excess of actual downtime over Excusable Downtime in the applicable month), and the denominator of which will be the total number of hours of the Uptime Commitment during the month that such failure occurred. THE FOREGOING REFUND WILL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR CONTRACTOR'S FAILURE TO COMPLY WITH THE UPTIME COMMITMENT IN THIS SECTION 7.2 AND CLIENT HEREBY DISCLAIMS ALL OTHER REMEDIES AVAILABLE IN LAW AND EQUITY RELATED TO THE UPTIME WARRANTY.



## Master Software and Services Agreement

### 8. WARRANTIES AND INDEMNIFICATION.

8.1. Client represents and warrants (i) that Client either owns or has the right to authorize the reproduction of any hardcopy or electronic records provided to Contractor, or its subcontractor, (ii) the documents, materials or other records provided to Contractor, or its subcontractor, do not infringe any United States copyright, trademark, patents, trade secrets or other proprietary rights of any third-party. Client agrees to indemnify and hold Contractor harmless from any and all claims by any third-party that the documents, materials or records provided by Client pursuant to this Agreement infringe upon the third-party's intellectual property rights, proprietary rights or were otherwise reproduced or processed in an unauthorized manner and (iii) the Services do not violate a federal, state or municipal law or regulation. Client will indemnify and hold Contractor and its affiliates, officers, directors, shareholders, employees, agents and representatives harmless from and against all damages, costs, expenses, and liabilities, including without limitation, reasonable attorneys' fees and expenses, from any third party claim of any kind against Contractor arising from Client's breach of this Agreement or negligence or willful misconduct arising in whole or in part under this Agreement.

8.2. Contractor represents and warrants (i) that Contractor either owns or has the right to grant the access license set forth herein, and (ii) that the Services do not infringe any United States copyrights, trademarks, patents, trade secrets, or other proprietary rights (collectively, "IP Rights") of any third party. Contractor will indemnify and hold Client harmless from and against any damages, costs, expenses and liabilities, including reasonable attorneys' fees, from any third party claims against Client arising from the breach of the representations and warranties set forth in this Section 8.2. The indemnification obligations are contingent upon Contractor being promptly notified of such claim, having the sole authority to defend or settle such claim, and receiving the reasonable assistance of Client in connection therewith at Contractor's expense. Notwithstanding the foregoing, Contractor will have no indemnification obligation hereunder with respect to claims based on: (i) use of the Services and/or DMS except in accordance with this Agreement and Contractor's written instructions; (ii) the combination of the Services and/or DMS with any other software or hardware; (iii) modifications of the Services and/or DMS not made by Contractor, or its subcontractor; or (iv) Client's failure to implement changes recommended by Contractor, or its subcontractor, if the infringement would have been avoided in the absence of such combination, modifications or failure to implement recommended changes.

8.3. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY INDICATED IN THIS SECTION 8, THE SERVICES AND/OR DMS ARE PROVIDED "AS IS" AND NEITHER PARTY MAKES ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS TO THE OTHER PARTY WITH RESPECT TO THE DMS OR THE SERVICES PROVIDED HEREUNDER OR OTHERWISE, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

### 9. TERM AND TERMINATION.

9.1. Following the expiration of the Initial Term of this Agreement, this Agreement will automatically renew for additional successive terms of one (1) year (each a "Renewal Term"), unless either party provides written notice to the other party at least sixty (60) days prior to the end of the then current term of its intent not to renew the term of this Agreement.

9.2. In the event that either party hereto materially defaults in the performance of any of its duties or obligations under the Agreement and does not substantially cure such default within thirty (30) days after receiving written notice specifying the default, then the non-defaulting party may, by giving written notice thereof to the defaulting party, terminate this Agreement as of a date specified in such notice of termination. Termination of this Agreement for cause will terminate any SOS or SOS then in effect.

9.3. Termination of this Agreement by either party pursuant to the provisions of this Section 9 shall terminate each party's obligations under this Agreement except for the provisions of Sections 4, 5, 6, 8, 9.3, and 10 all of which shall survive termination of this Agreement.

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

### 10. LIMITED LIABILITY.

10.1. CLIENT AGREES THAT TOSHIBA, SUBCONTRACTORS AND ALL AFFILIATES' OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, LICENSORS, OR REPRESENTATIVES WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF SAVINGS, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS RESULTING FROM THE USE OR INABILITY TO USE THE DMS OR SERVICES, EVEN IF TOSHIBA HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR COSTS OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE..

10.2. EXCEPT FOR A DATA BREACH, IN NO EVENT WILL THE COLLECTIVE LIABILITY OF TOSHIBA, SUBCONTRACTORS, OR ITS AFFILIATES FOR ANY DAMAGES INCURRED BY CLIENT EVER EXCEED THE FEES RECEIVED BY TOSHIBA UNDER THIS AGREEMENT DURING THE



## Master Software and Services Agreement

TWELVE MONTHS PRIOR TO THE TIME AT WHICH THE DAMAGES AROSE REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. TO THE EXTENT TOSHIBA OR ITS SUBCONTRACTOR IS IN BREACH OF SECTION 13, TOSHIBA'S ENTIRE LIABILITY IS LIMITED TO DIRECT, PROVEN DAMAGES BUT IN NO EVENT MORE THAN ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) PER OCCURANCE AND TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) IN THE AGGREGATE.

10.3. 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 TOSHIBA, OR ITS SUBCONTRACTOR, FACILITIES.

### 11. NOTICES.

Any notice, approval, request, authorization, direction or other communication under this Agreement, except for billing and payment communication pursuant to section 4, shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the party to whom the same is directed; (ii) one business day after deposit with a commercial overnight carrier, with written verification of receipt, or (iii) five business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested postage and charges pre-paid or any other means of rapid mail delivery for which the receipt is available, to the address of the party set forth at the end of this document.

To Contractor: 25530 Commercentre Drive  
Lake Forest, CA 92630

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

To Client: Wayne-Finger Lakes BOCES/ EduTech  
131 Drumlin Court  
Newark, NY 14513

### 12. SCHEDULES AND EXHIBITS.

The following Schedule(s) and Exhibit(s) are attached to and made a part of this Agreement by this reference:

Schedule A: Statement of Services

### 13. DATA PROTECTION, SUBCONTRACTORS, DATA BREACH NOTIFICATION.

13.1 The Parties acknowledge and agree that (i) Client will be and remain the controller of the client material for purposes of the applicable laws relating to data privacy, personal data, transborder data flow and data protection; (ii) Client is the party instructing Contractor in relation to the use of the Client materials for activities including emailing, data collection, and reporting, and (iii) Contractor or its subcontractor will be processing Client materials on Client's behalf.

13.2 Pursuant to Section 13.1, Contractor (i) does not participate in Client's or Client's Affiliates selection of the individuals targeted by e-mails or questionnaires or individuals to whom data or access to reports is provided; (ii) does not influence or control the type of data and information gathered from individuals or the content of the material displayed to individuals, and (iii) does not influence or control the use and distribution of the data and information collected or inputted by Client or Client Affiliates.

13.3 Contractor shall maintain and shall ensure any third-party subcontractor maintains commercially reasonable technical and organizational processes to protect (i) against the unauthorized access to such Personal Data; and (ii) against accidental loss or destruction of or damage to such Personal Data held or processed by it all times in accordance with generally accepted industry practice.

13.4 Client hereby authorizes Contractor to use third party suppliers to manage the Services and/or DMS and the hosting environment therein as of the Effective Date.

### 14. INSURANCE.

During the Term, and for a period of three (3) years after its termination or expiration, the parties shall procure and maintain with a reputable insurance company, the following insurance coverage:

## Master Software and Services Agreement

14.1 During the Term, and for a period of three (3) years after its termination or expiration, Contractor shall procure and maintain the following insurance coverage: (i) for purposes of Contractor's obligations set forth in section 13.3, Contractor shall maintain cybersecurity coverage in an amount no less than as required under section 10 herein, and (ii) for purpose of Contractor's indemnity obligations set forth in section 8 herein, general liability coverage with limits as required under section 10 herein.

14.2 During the Term, and for a period of three (3) years after its termination or expiration, Client shall procure and maintain the following insurance coverage: for purpose of Client's indemnity obligations set forth in section 8 herein, general liability coverage with limits no less than \$100,000.00 per occurrence and \$250,000 aggregate.

14.3 Upon request by either party, either Contractor or Client, as the case may be, will provide proof of insurance coverage. In the event that any such insurance coverage is canceled, terminated or not renewed, Contractor or Client, as the case may be, shall immediately notify the other party of such action and shall procure replacement insurance coverage without delay.


### 15. MISCELLANEOUS.

In the event that either party's performance is delayed, prevented, obstructed or inhibited because of any act of God, fire, casualty, delay or disruption in transportation or utilities flood, war, strike, lockout, epidemic, destruction or shutdown of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer DMS or any cause beyond such party's reasonable control, the party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of default by either party. Client shall not assign or otherwise transfer all or any or of its rights, obligations or interest under this Agreement without the written consent of Contractor, which shall not be unreasonably withheld, and any attempt to do so shall be void and of no force or effect for any purpose whatsoever and shall constitute a breach of this Agreement. The failure of either party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder will not be construed as a waiver of such provision or any provisions herein, and the same will continue in full force. The various rights and remedies given to or reserved by either party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered an acceptance of any continuing or subsequent breach of the same provision. The Agreement and the Services will be governed by and interpreted in accordance with the internal laws of the state of California, excluding its conflict of law rules. Any action, suit, or other proceeding shall be brought by either party against the other party in a State or Superior court of competent jurisdiction in Orange County, California. Both Parties hereby submit to the exclusive jurisdiction of such courts and waive any objection to jurisdiction or venue in any such proceeding.

This Agreement, together with the exhibits attached hereto which are hereby incorporated herein, sets forth the entire agreement between the parties relating to the subject matter hereof, and supersedes any and all prior agreements of the parties with respect to the subject matter hereof. No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by the duly authorized representatives of both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all which together shall constitute one and the same document.

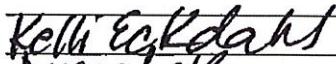
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives and made effective as of the Effective Date.

CLIENT NAME: Wayne-Finger Lake BOCES/EduTech

  
\_\_\_\_\_

BY:

NAME:

  
\_\_\_\_\_

TITLE:

Director  
\_\_\_\_\_

DATE:

12/28/21  
\_\_\_\_\_

TOSHIBA AMERICA BUSINESS SOLUTIONS, INC.:

  
\_\_\_\_\_

BY:

Timothy J. O'Neil

NAME:

\_\_\_\_\_

TITLE:

Executive Vice President

DATE:

1/6/2022  
\_\_\_\_\_