

## **AMENDMENT # 1 TO AIMS MAINTENANCE CONTRACT**

**THIS AMENDMENT #1 TO THE AIMS MAINTENANCE CONTRACT MAS-3.0.0** ("Amendment"), is entered into upon the date of the last party to sign below ("Effective Date") and is by and between Boone County Board of Education ("Customer") having a location at 5946 N Orient St, Burlington, KY 41005 and Toshiba Business Solutions, a division of Toshiba America Business Solutions, Inc. ("Toshiba" or "TBS") having a location at 523 Wellington Way, Suite 120, Lexington, KY 40513 (Customer and Toshiba collectively referred to as "Parties").

**WHEREAS**, the Parties desire to enter into the AIMS MAINTENANCE CONTRACT MAS-3.0.0 (the "Agreement" or "Contract"); and

**WHEREAS**, the Parties desire to amend and modify certain terms of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises of the Parties contained herein and other good and valuable consideration, it is understood and agreed upon by the Parties as follows:

All capitalized terms not otherwise defined herein will have the same meanings as those set forth in the Agreement.

1. Section 2, Term, is hereby modified to read as follows:

"This Contract will remain in force for 60 months from the Effective Date (Renewal Date) and will then be automatically renewed for month-to-month period(s) unless either party provides notice of termination not less than thirty (30) days prior to the Renewal Date. For each piece of equipment under this Contract there will be a Start Date & Start Meter. Service for each piece of equipment will be provided from the Start Date & Start Meter until this Contract is terminated or the equipment is withdrawn from the service. Customer may withdraw individual equipment by providing thirty (30) day written notice prior to the Renewal Date. Customer is responsible for all remaining Minimum Payments if Customer is in default or if equipment is withdrawn prior to Renewal Date."

2. Section 14, Indemnity and Disclaimer, is hereby modified to read as follows:

"To the extent permissible by Kentucky law, TBS shall not be responsible for any injuries, damages, penalties, claims or losses including legal expenses incurred by Customer or any other person caused by the installation, selection, ownership, possession, maintenance, condition or use of the Equipment. Customer agrees to reimburse TBS for and to defend TBS against any claims for such losses, damages, penalties, claims, injuries or expenses. This indemnity shall continue even after this Contract has expired.

IN NO EVENT WILL TBS BE LIABLE FOR LOST PROFITS, CONSEQUENTIAL, EXPECTANCY OR INDIRECT DAMAGES EVEN IF TBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT AS OTHERWISE SET FORTH HEREIN, TBS DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, REPRESENTATION OR WARRANTY ARISING OUT OF USAGE AND TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT AS PROVIDED HEREIN, THE PARTS AND SERVICES ARE PROVIDED "AS IS."

3. A new Section is hereby inserted into the Contract as "Section 16, Non-Appropriation or Renewal" as follows:

"16. NON-APPROPRIATION OR RENEWAL: If either sufficient funds are not appropriated to make contracted payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and Customer shall not be obligated to make contracted payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, Customer shall, no later than the end of the fiscal year for which contracted payments have been appropriated, deliver possession of the Equipment to TBS. If Customer fails to deliver possession of the Equipment to TBS, the termination shall nevertheless be effective but Customer shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of contracted payments thereafter coming due that is attributable to the number of days after the termination during which Customer fails to deliver possession and for any other loss suffered by TBS as a result of Customer's failure to deliver possession as required. Customer shall notify TBS in writing within seven days after its failure to appropriate funds sufficient for the payment of the contracted payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to Customer unless otherwise set forth herein."

Except as herein modified, the Parties hereby ratify and reaffirm their respective obligations under the Agreement. All other terms of the Agreement shall remain in full force and effect. If the terms of the Agreement in any way conflict with or are otherwise inconsistent with the terms of this Amendment, this Amendment shall govern and control.

This Amendment may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument. If this Amendment is executed in counterparts, no signatory will be bound until both the Parties named below have duly executed or caused to be duly executed a counterpart. Each party may rely upon the facsimile signature of the other and each party expressly agrees to the use and acceptance of signatures by digital or other electronic means. Parties agree that a digital or other electronic signature will be accorded the full legal force and effect of a handwritten signature under the law governing the

Agreement. Execution of this Amendment at different times and places by the Parties shall not affect the validity thereof.

**IN WITNESS WHEREOF**, each person signing below represents and warrants that he or she is fully authorized to execute and deliver this Amendment in the capacity set forth beneath his or her signature and the Parties hereto have executed this Amendment as of the Effective Date.

**BOONE COUNTY BOARD OF EDUCATION:**

**TOSHIBA BUSINESS SOLUTIONS:**

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_