

## COMPANY'S GUARANTEE TO OWNER

Date: 7/25/2016

From: Jones Walbaum dba American Business Machines

To: William S. Hart Union High School District

RFP Package#: WSH16-06B

Description of Work: Multi-Function Device/Digital Copier (MFD) and Managed Print Services (MPS) Lease and Maintenance Services

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

**1. *Guaranty of the Agreement.*** Guarantor hereby irrevocably and unconditionally guarantees to OWNER the complete and timely performance, satisfaction and observation by COMPANY of each and every term and condition of the AGREEMENT which COMPANY is required to perform, satisfy or observe. In the event that COMPANY fails to perform, satisfy or observe any of the terms and conditions of the AGREEMENT, Guarantor will promptly and fully perform, satisfy or observe them in the place of the COMPANY. Guarantor hereby guarantees payment to OWNER of any damages, costs or expenses which might become recoverable by OWNER from COMPANY due to its breach of the AGREEMENT.

**2. *Guarantor's Obligations Are Absolute.*** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of COMPANY under the AGREEMENT, shall constitute a guarantee of payment and not of Collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the AGREEMENT. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the COMPANY in an action to enforce, or for damages for breach of, the AGREEMENT (other than discharge of, or stay of proceedings to enforce, obligations under the AGREEMENT under bankruptcy law).

**3. *Waivers.*** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the COMPANY; (2) the actual or purported rejection by a trustee in bankruptcy of the AGREEMENT, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the AGREEMENT; (3) any waiver with respect to any of the obligations of the AGREEMENT guaranteed hereunder or the impairment or suspension of any of OWNER's rights or remedies against the COMPANY; or (4) any merger or consolidation of the COMPANY with any other corporation, or any sale, lease or transfer of any or all the assets of the COMPANY. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819. The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require OWNER to (a) proceed against COMPANY, (b) proceed against or exhaust any security or collateral OWNER may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that OWNER may proceed against Guarantor for the obligations guaranteed herein without taking any action against COMPANY or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral OWNER may hold now or hereafter hold. OWNER may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against COMPANY or any other guarantor or pledgor without impairing OWNER's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of OWNER to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its AGREEMENT indemnification with respect to COMPANY's obligations under the AGREEMENT or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the AGREEMENT is effected which does not require OWNER's approval. The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from OWNER as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or COMPANY prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

**4. Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the AGREEMENT have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by OWNER of any performance bond or other collateral to assure the performance of COMPANY's obligations under the AGREEMENT. Guarantor shall not be released of its obligations hereunder so long as there is any claim by OWNER against COMPANY arising out of the AGREEMENT based on COMPANY's failure to perform which has not been settled or discharged.

**5. No Waivers.** No delay on the part of OWNER in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of OWNER to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by OWNER and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

**6. Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the OWNER in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

**7. Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be an AGREEMENT entered into in, and pursuant to the laws of, the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by OWNER to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agents for service of process in California:

Jones Walbaum dba American Business Machines  
26017 Huntington LN Unit E  
Valencia CA 91355

---

With a copy by certified mail to:

William S Hart Union High School District /Attn Contract Specialist

21380 Centre Point Parkway

Santa Clarita CA 91350

**8. Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

**9. Binding On Successors.** This Guaranty shall insure to the benefit of OWNER and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

**10. Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.

**11. Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To: William S. Hart Union High School District  
21380 Centre Pointe Parkway  
Santa Clarita, CA 91350  
Attention Contract Specialist

Jones Walbaum dba American Business Machines  
(Proper Name)

By Judith G Jones

Judith G. Jones  
Signature of Company

Representative to be contacted for service:

Name: Jones Walbaum dba American Business Machines

Address: PO Box 2737

Bakersfield CA 93303-2737

Telephone Number: 661-324-4741