# Participating Addendum
## PSX # 23PSX0022

This Participating Addendum is made by and between the State of Connecticut acting by its Department of Administrative Services ("DAS" or "Participating Entity"), in accordance with sections 4a-2, 4d-2 and 4a-53 of the Connecticut General Statutes, and Toshiba America Business Solutions, Inc. ("Contractor").

The Contractor and DAS agree as follows:

1. DAS and the Contractor shall be bound by the terms of a certain National Association of State Procurement Officials ("NASPO") Master Agreement Number 188037, including all Exhibits and Attachments, entered into between the Contractor and State of Colorado, dated August 1, 2024 (the "Master Agreement") for the purchase of Multi-Function Devices and Related Software, Services and Cloud Solutions.

2. The Master Agreement, attached to this Participating Addendum as Exhibit 1 and as modified by this Participating Addendum, binds DAS and Contractor, but only for purposes of enabling DAS to contract for Multi-Function Devices and Related Software, Services and Cloud Solutions from Contractor.

3. The Contractor and DAS are not bound to any modifications to the Master Agreement dated after the date of this Participating Addendum.

   For purposes of this Participating Addendum, references to the Lead State in the Master Agreement that are intended to be obligations of the Participating Entity, shall be interpreted to mean DAS. To the extent references to the Lead State in the Master Agreement are obligations of the State of Colorado, said references shall not be interpreted to mean DAS.

4. Order of Precedence:

   A. This Contract and the Master Agreement shall be read to be consistent and complementary. Any ambiguity, conflict or inconsistency between them shall be resolved by giving priority to this Contract.

   B. To the extent that any provisions in the Master Agreement inclusive of its exhibits and attachments and this Contract address the same or substantially the same subject matter, the provisions in this Contract, inclusive of its exhibits (other than Exhibit 1 (Master Agreement or any of its exhibits, schedules or attachments) and Exhibit 3 (Toshiba Attachments)), shall prevail and replace, in their entirety, the provisions in the Master Agreement addressing the same or substantially the same subject matter. To the extent any provisions in the Master Agreement are

titled the same or similarly titled as a provision in this Contract, the provisions in this Contract replace, in their entirety, the same or similarly titled provisions in the Master Agreement.

C. All terms listed or referenced in any solicitation documents or in the Contractor's response to any solicitation documents are excluded from this Contract.

D. All other terms in the Master Agreement not specifically deleted or modified remain in full force and effect as to the Contractor, DAS and the Client Agency.

5. Administrative Fees

A. Each quarter, Contractor shall submit a check payable to "Treasurer, State of Connecticut" to Participating State primary contact address for the calculated amount equal to one percent (1%) of the total sales for the quarterly period ("Administrative Fee"). Contractor shall include Participating State contract number, 23PSX0022, the calendar quarter for which each check is written and reference NASPO ValuePoint Master Agreement Number, 188037, on each check for identification.

B. Payment of the Administrative Fee is due irrespective of payment status on orders or service contracts for a Purchasing Entity. Failure to submit quarterly Administrative Fee on a timely basis will constitute a breach of contract. Payments are due by the end of the following months for each quarter:

| | | |
|---|---|---|
| Quarter 1: | January 1st to March 31st | due April 30th |
| Quarter 2: | April 1st to June 30th | due July 31st |
| Quarter 3: | July 1st to September 3oth | due October 31st |
| Quarter 4: | October 1st to December 31st | due January 31st |

6. Quarterly Usage Reporting

A. Contractor shall submit quarterly reports to the DAS contract administrator for all Purchasing Entity purchases or service contracts executed for the quarterly period including the following information: Date, ordering agency name, Purchasing Entity name, invoice no., purchase order no., Contract line item(s) no., Manufacturer, item description, unit of measure, quantity, Contractor unit price, Contract discount (if applicable), extended Contract price paid.

B. Quarterly reports are due even when there are no sales or purchase orders. Any quarterly report that does not include the information above will be deemed incomplete. Quarterly reports are due by the end of the following months for each quarter:

| | | |
|---|---|---|
| Quarter 1: | January 1st to March 31st | due April 30th |
| Quarter 2: | April 1st to June 30th | due July 31st |
| Quarter 3: | July 1st to September 30th | due October 31st |
| Quarter 4: | October 1st to December 31st | due January 31st |

7. Installation shall include all Equipment, software, network connections and Accessories. The Equipment, inclusive of software, network connections and Accessories, shall be fully operational within 24 hours of Participating Entity's receipt of delivery of all Equipment.

8. Click rate charges for scanning are not permitted.

9. **Authorized Dealers:** All Authorized Dealers authorized in the State of Connecticut, as shown in Exhibit D to the Master Agreement are approved to accept orders and provide sales, service support and invoicing to participants in the Master Agreement. The Contractor shall make its best efforts to provide the State of Connecticut certified small business Authorized Dealers. The Participating Entity may limit the number of Authorized Dealers they use, and/or request that the Contractor approve additional Authorized Dealers.

10. **Attachments 1 through 18 of** the **Master Agreement** are deleted in their entirety and replaced with the Toshiba Documents (attached to Exhibit 3 as Attachments 1 through 8).

11. **Assignment**: Contractor may assign on a one-time basis, solely for financing purposes, upon written notification to DAS, the right title and interest in and to: (i) the Products subject to Attachment 1 of Exhibit 4 of the Participating Addendum (Toshiba Master Lease Agreement); (ii) all payments and other amounts due and to become due thereunder with respect to the Products; and (iii) all rights and remedies under this Participating Addendum with respect to the Products, such payments and other amounts due. Any such assignment, however, does not excuse Contractor from bearing any obligation, terms and conditions as set forth in either the Master Agreement or this Participating Addendum. The Contractor will assign, solely for financing purposes, rights as set forth immediately above and this paragraph constitutes a one-time written notification to DAS. Contractor shall not make any future assignments without the prior written approval of DAS.

12. The following sections and attachments of the Master Agreement are deleted or modified as follows:

A. Subsection **6.2. Payment** of Section **VI. Pricing, Payment & Leasing**, is deleted in its entirety and the following is substituted in its place:

"**6.2. Payment**. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within forty-five (45) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge."

B. Subsections **7.11.** and **7.14.** of Section **VII. Ordering** are deleted in their entirety.

C. Subsection **A.6. Remanufactured and Refurbished Equipment** of Section **II. Master Agreement Deliverables** of **Exhibit A (Statement of Work)** is deleted in its entirety.

D. Subsection **A.7.6.c** of Section **II** of **Exhibit A (Statement of Work)** is deleted in its entirety and the following is substituted in its place: "All Equipment shall be updated to contain the most current versions of software available for the applicable Device(s) and all updates shall be made with charges that are agreed to by the Client Agency."

E. The sentence "Contractor may elect to include property tax in their lease rates, or they may bill the Purchasing Entity separately for property tax." In Subsection **C.1** of Section **III. Purchase and Lease Programs** of **Exhibit A (Statement of Work)** is deleted in its entirety and the following substituted in its place: "Contractor may elect to include property tax in their lease rates."

F. The sentence "If a Purchasing Entity wants to cancel their 12-month Renewal Term early, then early termination fees shall apply, and will be equivalent to the remaining stream of equipment payments only (i.e., less maintenance)," in Subsection **D.14** of Section **III** of **Exhibit A (Statement of Work)**, is deleted in its entirety.

G. **Subsection A.2.1.a. of Section IV of Exhibit A (Statement of Work),** the sentence "The delivery method selected for each Device will be at Contractor's sole discretion is deleted in its entirety and the following is substituted in its place: "The delivery method selected for each Device will be mutually agreed upon by the Purchasing Entity and the Contractor."

H. Subsection **A.2.6.b.i)** of Section **IV of Exhibit A (Statement of Work)** is deleted in its entirety and the following is substituted in its place: ”If Contractor is drop-shipping a new Device to replace a defective Device, then Purchasing Entity must receive a loaner Device within two (2) Business Days and a new Device within five (5) Business Days.”

I. Subsection **D.3** of Section **IV** of **Exhibit A (Statement of Work)**, inclusive of **3.1** through **3.3**, is deleted in its entirety.

J. Subsection **F.5.1** of Section **IV** of **Exhibit A (Statement of Work)** is deleted in its entirety and the following is substituted in its place: “Contractor shall ensure that all hard drive data is cleansed and purged from the device at the end of its Useful Life, or when any hard drive is repossessed by Contractor, or”.

13. The Contractor shall comply with the Connecticut Standard Terms, which are attached as Exhibit 2. As used in this Participating Addendum, the capitalized word “Contract” is deemed to refer to this Participating Addendum and its Exhibits.

14. The Contractor shall comply with the Service Level Agreement attached as Attachment 2 to Exhibit 3.

15. To the extent that DAS or the Client Agency fails to meet its obligations under this Participating Addendum, the Contractor’s exclusive remedies will be to seek redress in accordance with applicable Connecticut law, including the claims commissioner process set forth in Chapter 53 of the Connecticut General Statutes concerning claims against the State.

16. Nothing in the Master Agreement as modified by this Participating Addendum shall be construed as a modification, compromise or waiver by DAS or the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State of Connecticut or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Master Agreement as modified by this Participating Addendum . To the extent that this section conflicts with any other section in the Master Agreement, this section shall govern.

17. Any Purchasing Entity or Client Agency may issue purchase orders against this Participating Addendum. “Purchasing Entity” or “Client Agency” means any department, commission, board, bureau, agency, institution, public authority, office, council, association, instrumentality or political subdivision of the State of Connecticut, non-profit organization organized in the State of

Connecticut and any entity identified in Conn. Gen. Stat. Sec. 4a-54, as applicable, who is authorized and chooses to make purchases under, and pursuant to the terms and conditions of, this Participating Addendum.

18. Primary Contacts

Participating Entity

Name: State of Connecticut, Department of Administrative Services, Procurement Division
Address: 450 Columbus Boulevard, Suite 1202, Hartford, CT 06103
Contact: Nora Sinkfield
Telephone: 860-713-5080
Email: nora.sinkfield@ct.gov

Contractor:

Name: Toshiba America Business Solutions, Inc.
Address: 25530 Commercentre Drive, Lake Forest, CA 92630
Contact: Jeff Ballard
Telephone: 949-462-6327
Email: jeff.ballard@tabs.toshiba.com

19. Orders

Any order placed by a Client Agency shall be deemed to be a sale under and governed by the prices and terms of Exhibit 1, Master Agreement and this Participating Addendum.

Client Agencies shall include the references to “Master Agreement No.188037” and “DAS Contract No.23PSX0022” in all Purchase Orders.

# Participating Addendum
**PSX # 23PSX0022**

The parties are executing this Participating Addendum on the date below their respective signatures.

TOSHIBA AMERICA BUSINESS SOLUTIONS, INC.

By: Michael Torcaso

Printed Name: Michael Torcaso

Title: Sr. VP & CFO

Date: November 7, 2024

STATE OF CONNECTICUT
DEPARTMENT OF ADMINISTRATIVE SERVICES

By: Patrick DeConti

Printed Name: Patrick DeConti

Title: Contract Team Leader

Date: November 8, 2024

APPROVED AS TO FORM
STATE OF CONNECTICUT
Office of the Attorney General

BY: Jeffrey Zeman Digitally signed by Jeffrey Zeman Date: 2024.11.08 11:18:25 -05'00'

Name: Jeffrey Zeman
Title: Assistant Attorney General
Date:

# NASPO ValuePoint Master Agreement Terms and Conditions

## For Multi-Function Devices and Related Software, Services and Cloud Solutions

A Contract for the NASPO ValuePoint Cooperative Purchasing Program
Acting by and through the **State of Colorado** (Lead State)

**Department of Personnel & Administration**
**State Purchasing & Contracts Office**
**1525 Sherman Street, 5th Floor**
**Denver, Co 80203**

And

**Toshiba America Business Solutions, Inc.**
**25530 Commercentre Drive**
**Lake Forest, CA 92630**

**Master Agreement Number: 188037**

# Contents

MASTER AGREEMENT TERMS AND CONDITIONS ..... 4
I. Definitions ..... 4
II. Parties and Term of the Master Agreement ..... 8
III. Order of Precedence ..... 9
IV. Participants and Scope ..... 9
V. NASPO ValuePoint Provisions ..... 11
VI. Pricing, Payment & Leasing ..... 14
VII. Ordering ..... 15
VIII. Shipping and Delivery ..... 18
IX. Inspection and Acceptance ..... 19
X. Warranty ..... 20
XI. Equipment Title ..... 22
XII. Indemnification ..... 22
XIII. Insurance ..... 23
XIV. General Provisions ..... 25
SIGNATURE PAGE ..... 31
EXHIBIT A – STATEMENT OF WORK ..... 32
I. Product Overview ..... 32
II. Master Agreement Deliverables ..... 33
III. Purchase and Lease Programs ..... 43
IV. Contractor Responsibilities and Tasks ..... 49
EXHIBIT B – SAMPLE D&A CERTIFICATE ..... 58
EXHIBIT C – AUTHORIZED DEALER FORM ..... 59
EXHIBIT D – AUTHORIZED DEALERS BY STATE ..... 60
ATTACHMENT 1 – TOSHIBA LEASE AGREEMENT TERMS AND CONDITIONS ..... 61
ATTACHMENT 2 – TOSHIBA SERVICE LEVEL AGREEMENT ..... 65
ATTACHMENT 3 – TOSHIBA MAINTENANCE AGREEMENT ..... 67
ATTACHMENT 4 – TOSHIBA $1 BUYOUT LEASE ADDENDUM ..... 69
ATTACHMENT 5 – TOSHIBA LEASE ORDER FORM ..... 70
ATTACHMENT 6 – TOSHIBA LEASE ORDER FORM SCHEDULE ..... 71
ATTACHMENT 7 – TOSHIBA AMENDMENT TO OPT OUT ..... 72
ATTACHMENT 8 – TOSHIBA OPINION OF COUNSEL ..... 73
ATTACHMENT 9 – TOSHIBA M&S ACTIVATION FOR PURCHASED EQUIPMENT ..... 74
ATTACHMENT 10 – TOSHIBA SAMPLE MPS STATEMENT OF WORK ..... 76
ATTACHMENT 11 – TOSHIBA ASSET RELOCATION REQUEST FORM ..... 80
ATTACHMENT 12 – TOSHIBA FLEET MONITORING TOOL SITE SURVEY ..... 81

DocuSign Envelope ID: C764E410-020D-4DE5-99C8-4C5B8EF55B29



ATTACHMENT 13 – TOSHIBA EMETERS ONLINE INFORMATION AND INSTRUCTIONS ..... 84
ATTACHMENT 14 – TOSHIBA STATEMENT OF SERVICES ..... 85
ATTACHMENT 15 – TOSHIBA SAAS STATEMENT OF SERVICES ..... 90
ATTACHMENT 16 – TOSHIBA ON-PREMISES STATEMENT OF SERVICES ..... 92
ATTACHMENT 17 – TOSHIBA HYBRID STATEMENT OF SERVICES ..... 95
ATTACHMENT 18 – TOSHIBA MASTER SOFTWARE AND SERVICES AGREEMENT ..... 97

# MASTER AGREEMENT TERMS AND CONDITIONS

## I. Definitions

**1.1** **A3 MFD** - A Multi-function Device which is designed to handle letter, legal, ledger and some smaller paper sizes, such as postcards and envelopes.

**1.2** **A4 MFD –** A Multi-function Device which is designed to handle letter, legal and some smaller paper sizes, such as postcards and envelopes. Ledger size paper is NOT an option on this Device.

**1.3** **Acceptance** - A written notice from a Purchasing Entity to Contractor advising Contractor that the Device has passed its Acceptance Testing. Acceptance of a Product for which Acceptance Testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor, as set forth in **section IX** of this Master Agreement.

**1.4** **Accessory –** A compatible item that is added to the Base Unit to enhance its capabilities and functions.

**1.5** **Attachment –** Contractor's Supplemental Documents which consist of the following:

**1.5.1** Attachment 1 – Toshiba Lease Agreement Terms and Conditions

**1.5.2** Attachment 2 – Toshiba Service Level Agreement

**1.5.3** Attachment 3 – Toshiba Maintenance Agreement

**1.5.4** Attachment 4 – Toshiba $1 Buyout Lease Addendum

**1.5.5** Attachment 5 – Toshiba Lease Order Form

**1.5.6** Attachment 6 – Toshiba Lease Order Form Schedule

**1.5.7** Attachment 7 – Toshiba Amendment to Opt Out

**1.5.8** Attachment 8 – Toshiba Opinion of Counsel

**1.5.9** Attachment 9 – Toshiba M&S Activation for Purchased Equipment

**1.5.10** Attachment 10 – Toshiba Sample MPS Statement of Work

**1.5.11** Attachment 11 – Toshiba Asset Relocation Request Form

**1.5.12** Attachment 12 – Toshiba Fleet Monitoring Tool Site Survey

**1.5.13** Attachment 13 – Toshiba eMeters Online Information and Instructions

**1.5.14** Attachment 14 – Toshiba Statement of Services

**1.5.15** Attachment 15 – Toshiba SaaS Statement of Services

**1.5.16** Attachment 16 – Toshiba On-Premises Statement of Services

**1.5.17** Attachment 17 – Toshiba Hybrid Statement of Services

**1.5.18** Attachment 18 – Toshiba Master Software and Services Agreement

**1.6** **Authorized Dealer –** The Manufacturer's authorized sales and Service center (also known as a Dealer, Distributor, or Partner) that must be certified by the Manufacturer to sell the Manufacturer's Products and perform machine installation and maintenance on Devices offered by the Manufacturer. A Purchasing Entity must be able to, at a minimum, visit the

sales and service center to view and test Device.

**1.7** **Base Unit** - The copier, printer, Scanner, Large/Wide Format and Production Devices that include all standard Accessories and parts and excludes optional Accessories and/or software.

**1.8** **Blended Rate** - A rate that is derived by taking the b&w and color cost per click rates on one or more Devices and calculating one rate that a customer will be billed for all copies, regardless of Device type and b&w or color output. Allows for simplicity when billing copies run.

**1.9** **Bronze Standard** - Devices which meet less than 50% of the 28 optional EPEAT criteria.

**1.10** **Business Day –** Any day other than Saturday, Sunday, or a legal holiday.

**1.11** **Buyout to Keep** - The early termination option on an FMV or Capital Lease that involves the acquisition of the Device by the Purchasing Entity, and consists of any current and past due amount, plus the remaining stream of Device Payments.

**1.12** **Buyout to Return** - The early termination option on an FMV, Capital or Straight Lease that involves the return of the Device by the Purchasing Entity to Contractor, in good working condition (ordinary wear and tear excepted), and consists of any current and past due amounts, plus the remaining stream of Device Payments.

**1.13** **Capital Lease** - For the purposes of this Master Agreement, a Capital Lease shall also be referred to as a $1 Buyout Lease and title of the Device will automatically pass from the Contractor to the Purchasing Entity at the end of the Initial Lease Term, and the Purchasing Entity will not be subject to additional payments in order to assume ownership. However, it will be at the discretion of the Participating State or Entity as to whether other criteria will also be considered, such as a bargain purchase option, a lease term longer than 75% of the estimated economic life of the Device, or the present value of the lease payments is greater than 90% of the fair market value of the Device at the beginning of the Initial Lease Term, or any other legal requirements relating to a Capital Lease.

**1.14** **Ceiling Pricing** - Pricing that is established as a “not-to-exceed” amount; the maximum price Contractor may charge for Products, Services, and Supplies.

**1.15** **Contractor** - A party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.

**1.16** **Coterminous** - Two or more leases that end at the same time. The original lease payment is modified to reflect the addition of a new Device or Accessory. The original term of the lease is not modified as a result of a Coterminous addition.

**1.17** **Deliverable** - A Product, Service, solution, result, labor, or other effort being sought through this RFP.

**1.18** **Device** - The Base Unit, either with or without optional Accessories and/or software. May also be referred to as “Equipment.”

**1.19** **Device Downtime** - The period of time that a Device is not operational and is waiting for Service to be completed.

**1.20** **Device Payment** - The Device portion of the payment, less any Service, Supplies, and maintenance.

**1.21** **Device Trade-In** - An agreed upon transaction between the Purchasing Entity and Contractor, in which Contractor takes ownership of Purchasing Entity’s owned Device, often for a discounted amount.

**1.22** **Device Upgrade or Downgrade** - A replacement of the Purchasing Entity's existing leased Device, with a different Device, of either greater or lesser value. A new lease is then originated for the new Device, with the remaining lease payments on the old Device wrapped into it. The old lease is closed out, and the Device is returned to Contractor.

**1.23** **Electronic Product Environmental Assessment Tool (EPEAT)** - A tool which evaluates and selects Device according to a list of preferred environmental attributes. EPEAT registered means Devices meet the 1680.2 IEEE Standard for Environmental Assessment of Imaging Device, as amended.

**1.24** **Embedded Software** - One or more software applications which permanently reside on a computing Device.

**1.25** **Energy Star** - The U.S. Environmental Protection Agency's standard for energy efficiency.

**1.26** **Fair Market Value (FMV) Lease** - A lease in which the Purchasing Entity can either 1) Take title to the Device at the end of the Initial Lease Term by paying the residual value to Contractor, 2) Enter into a Renewal Term for the Device, or 3) Return the Device to Contractor at the end of the Initial Lease Term.

**1.27** **Free on Board (FOB) Destination** - Contractor is responsible for transportation and handling charges and the sale does not occur until the Products arrive at the Purchasing Entity's specified location.

**1.28** **Group** - The classification for the different types of Devices solicited in this RFP. Groups are determined by the Devices primary functions and/or capabilities.

**1.29** **Initial Lease Term** - The length of time (i.e. 12, 18, 24, 36, 48, or 60 months) that a Purchasing Entity enters into a lease agreement.

**1.30** **Intellectual Property** - Any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**1.31** **Large/Wide Format Equipment** - A Device that prints on a large paper via a variety of output options.

**1.32** **Lead State -** The State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

**1.33** **Legacy Device –** A Device that was purchased or leased, either under a prior NASPO ValuePoint or WSCA Master Agreement, another program, or via any other means.

**1.34** **Maintenance Agreement** - An agreement in which the Contractor provides monthly Service, parts, Supplies, and Preventative Maintenance on purchased or leased Devices.

**1.35** **Managed Print Services (MPS)** - The management, service, and support of the Purchasing Entity's entire enterprise and output infrastructure of printed materials, with the objective of creating a solution that improves the print process and reduces the expense of printed material.

**1.36** **Manufacturer** - A company that, as its primary business function, designs, assembles, and owns the trademark/patent and markets a Device. Also referred to as Contractor.

**1.37** **Manufacturer's Suggested Retail Price (MSRP)** - The list price or recommended retail price of a Product in which the Manufacturer recommends that the retailer sell the Product.

**1.38** **Master Agreement** - The underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

**1.39** **Multi-function Device (MFD)** - A Device which incorporates the functionality of multiple Devices into one, such as print, fax, copy and scan. Each feature can work independently of the other.

**1.40** **NASPO ValuePoint** - A division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

**1.41** **Newly Manufactured** - Devices that have not been Refurbished, Remanufactured, rented, leased, sold, or used in a demonstration, and are currently being marketed by the Manufacturer.

**1.42** **Normal Business Hours –** Defined as the hours between 8AM and 5PM, Monday through Friday, holidays excluded.

**1.43** **Not Specifically Priced (NSP)** - NSP items enhance or compliment the Device but are not listed in the Master Agreement Price List(s). NSP's may include Coin-Op Equipment, empowering software etc.

**1.44** **OEM –** The Original Equipment Manufacturer.

**1.45** **Order** - Any type of encumbrance document or commitment voucher, including, but not limited to, a purchase order, contract, MPS statement of work, Maintenance Agreement, lease agreement, etc. used by a Purchasing Entity to order the Products and Services.

**1.46** **Participating Addendum –** A bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

**1.47** **Participating Entity -** A state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

**1.48** **Participating State** - A state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

**1.49** **Power Filter** - An electronic filter which is placed between an external power line and a Device for the purpose of removing frequencies or electromagnetic interference.

**1.50** **Preventative Maintenance** - The servicing of a Device for the purpose of maintaining a satisfactory operating condition by providing systematic inspection, detection, and correction of failures either before they occur or before they develop into major defects.

**1.51** **Private Label** - Devices that are manufactured by one company and sold under a retailer's brand name.

**1.52** **Product –** Devices, Accessories, parts, software, and/or Supplies provided by Contractor pursuant to the Master Agreement.

**1.53** **Published Price –** The price that is posted on the Manufacturer's website or in their pricing literature (e.g. not the Master Agreement contract price).

**1.54** **Purchasing Entity** - A state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

**1.55** **Refurbished** - A Device which has received extensive maintenance and/or minor repair, including the replacement of all standard parts subject to wear during the normal course of use. For the purpose of this RFP and resulting Master Agreement(s), Refurbished Device shall not have more than 750,000 original copies on it. In addition, Refurbished Device must only contain OEM parts. Refurbished Device must be certified by the Manufacturer.

**1.56** **Remanufactured** - The process of disassembling Devices known to be worn or defective that can be reused or brought up to OEM specification by cleaning, repairing or replacing it in a manufacturing environment and then reassembling and testing it, so that it will operate like a new Device. Remanufactured Device must be certified by the Manufacturer.

**1.57** **Renewal Term** - A lease term that supersedes the Initial Lease Term, and which a Purchasing Entity may enter into upon thirty (30) days prior written notice to Contractor. Each Renewal Term shall not exceed 12 months, the residual value of the Device, or the Useful Life of the Device. Capital Leases are excluded from going into renewal.

**1.58** **Response Time** - The time from when the original Service Call is placed with the Contractor or Authorized Dealer, to when the Service technician arrives at the Purchasing Entity's location.

**1.59** **Segment** - The various speeds that Devices are categorized by.

**1.60** **Services –** The labor required to be performed by Contractor pursuant to the Master Agreement or an Order. Services may include, but are not limited to, maintenance, MPS and software installation.

**1.61** **Service Base Location** - The place of business where the Contractor or Authorized Dealer stores parts and provides training for service technicians.

**1.62** **Service Call** - An on-site Service technician visit due to Device error or malfunction.

**1.63** **Single-function Printer** - An inkjet or laser Device that only prints and is not capable of other functions such as copying, faxing or scanning.

**1.64** **Straight Lease** - A type of agreement in which ownership is not an option and the Total Monthly Payment amount remains firm throughout the Initial Term.

**1.65** **Supplemental Documents –** With the exception of software, end-user and click-wrap agreements, Contractor's Supplemental Documents are the only authorized documents under this Master Agreement and are attached hereto as Attachments.

**1.66** **Supplies** - Consumable items that gets used up or are discarded once used, such as ink cartridges.

**1.67** **Third Party –** A person or entity that may be directly involved, but is not a principal to an arrangement, contract, deal, lawsuit, or transaction.

**1.68** **Total Monthly Payment** - The Device portion of the payment, as well as any Service, Supplies or maintenance, and less any applicable taxes.

**1.69** **Useful Life** - Period during which a Device is expected to be usable for the purpose in which it was manufactured.

## II. Parties and Term of the Master Agreement

**2.1 Parties.** This Master Agreement is entered into by and between the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing & Contracts Office (hereinafter called the "Lead State"), and Toshiba America Business Solutions, Inc. (hereinafter called "Contractor"), for the procurement of A3 MFD's, A4 MFD's, Single-function Printers, Large/Wide Format Equipment, Software, Consumable Supplies, Managed Print Services, Software Related Services (including cloud-based offerings and web-based fleet management tools), and Specialty Printers as approved per this Master Agreement, for the benefit of Participating States, Entity's, and Purchasing Entities. The Contractor and the Lead State agree to the terms and conditions contained herein.

**2.2 Initial Term.** The initial term of this Master Agreement is for two (2) years, with an effective date of August 1, 2024. The term of this Master Agreement may be amended beyond the initial term for up to three (3) consecutive one (1) year additional terms, upon the mutual agreement of the Lead State and Contractor, by written Amendment. The total duration of the Master Agreement, including any extensions, shall not exceed five (5) years.

**2.3 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

## III. Order of Precedence

**3.1 Order.** This Master Agreement will consist of the following documents:

**3.1.1** A Participating Entity's Participating Addendum ("PA"), including its Attachments and Exhibits;

**3.1.2** NASPO ValuePoint Master Agreement, including all Exhibits;

**3.1.3** An Order issued against the Master Agreement;

**3.1.4** The Solicitation, RFP-NP-23-001, Multi-Function Devices and Related Software, Services and Cloud Solutions;

**3.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and

**3.1.6** Contractor's Supplemental Documents, which are included as Attachments.

**3.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

**3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement, nor will it include Products and Services not awarded under the Master Agreement.

## IV. Participants and Scope

**4.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

**4.2 Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to **section III**. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

**4.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

**4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

**4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

**4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

**4.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property for non-leased Equipment; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

**4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as

the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

**4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

**4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

## V. NASPO ValuePoint Provisions

**5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in **section V** are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

### 5.2 Administrative Fees

**5.2.1 NASPO ValuePoint Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

**5.2.1.1** Contractor will report on all Usage Based Equipment sales, and on Usage Based or Life Cycle Service and Supply sales. This method will no longer require the Contractor to capture the actual Service and Supply revenues that are billed to the customer each month.

**5.2.1.2** Industry research has shown close to a 1:1 ratio between sales price on a piece of Equipment and the actual amount of Service and Supply costs required to operate that Equipment over its Useful Life. Therefore, to simplify the reporting process and remove the burden to capture the actual Service and Supply costs, the Contractor may report as follows:

**5.2.1.2.1 Purchased Equipment:** Contractor shall report the actual amount invoiced (less any taxes) for all Equipment sold under the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount equal to the invoice amount and identified as "Life Cycle Service and Supplies," or an actual amount and identified as "Usage Based Service and Supplies," providing the customer elects to enter into a Maintenance Agreement. Thus, in the Contractor's Detailed Sales Report, for each item sold, there will be two-line items: one for the piece of Equipment, and one for the Life Cycle or

Usage Based Service and Supplies. The amount reflected for the Life Cycle Service and Supplies must be equal to the amount of the Equipment.

**5.2.1.2.2 Leased Equipment:** Contractor may report sales according to the Purchased Equipment methodology described above, or they may report the actual amount invoiced (less any taxes) for the lease during the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount equal to the invoice amount and identified as "Life Cycle Service and Supplies," or an actual amount and identified as "Usage Based Service and Supplies." Thus, in the Contractor's Detailed Sales Report, for each item leased, there will be two-line items: one for the invoice amount to the customer for the Equipment, and one for the Life Cycle or Usage Based Service and Supplies. The amount reflected for the Life Cycle Service and Supplies must be equal to the amount of the invoiced Equipment.

**5.2.2 State Imposed Fees.** Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

## 5.3 NASPO ValuePoint Summary and Detailed Usage Reports

**5.3.1 Sales Data Reporting.** In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

**5.3.2 Summary Sales Data.** "Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

**5.3.3 Detailed Sales Data.** "Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint,

including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

**5.3.4 Sales Data Crosswalks.** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data ("Crosswalks"). Customer Crosswalks must include a list of existing Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor's part number or SKU for each Product in Contractor's catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor's customer lists and product catalog change.

**5.3.5 Executive Summary.** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

## 5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

**5.4.1 Staff Education.** Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

**5.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

**5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

**5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

**5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

**5.5 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

**5.6 Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

**5.7 Additional Agreement with NASPO.** Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

## VI. Pricing, Payment & Leasing

**6.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed ("celling") price to any Purchasing Entity.

**6.1.1** MSRP/List Price discount percentages must be guaranteed throughout the term of the Master Agreement, including any renewal terms, however; Contractor may increase its discount percentage at any time. The Lead State must be notified of any such discount percentage increase, and provided with a copy of the new Price List(s).

**6.1.2** With the exception of Group C and Sub-Group C1 and C2 Devices, pricing must include all shipping, delivery, and installation costs associated with the Products. Excess installation charges however, may be billable. Refer to **section IV.E.5** of Exhibit A, Statement of Work, for more information.

**6.1.3** Price Lists received after the 1st day of the new quarter may not be approved for up to thirty (30) days following submission. In addition, errors in Contractor Price Lists may delay the approval process further.

**6.1.4** Contractor may update their lease rates once per quarter by providing the Lead State with documentation regarding said rate changes. Updates to lease rates will not be permitted until 8/1/2025.

**6.1.5** Pricing shall remain firm during the first twelve (12) months of the Master Agreement (e.g. 8/1/2024 – 7/31/2025). Contractor may then update their pricing **once per calendar year**. All requested price increases must be sent to the Lead State and include documentation from Contractor which provides a detailed explanation for the increase. While there will not be any restrictions regarding direct and indirect cost increases, it will be at the Lead State's sole discretion to determine if the requested increase has a direct correlation to the Deliverables being offered under the Master Agreement. Price increases shall be allowed for all Products and all Services, including rate and fee structures on maintenance plans.

**6.1.6** All approved Price Lists will be submitted by the Lead State to NASPO ValuePoint. Contractor shall then update all applicable websites with the new Price Lists after the NASPO ValuePoint website has been updated. Contractor is not permitted to send Price List updates directly to NASPO ValuePoint.

**6.1.7** All inclusive Cost Per Copy (CPC) programs may be offered upon request by the Participating State or Entity, but pricing must not exceed Master Agreement pricing. Contractor must provide the Participating State or Entity with their pricing breakdown which enables the Participating State or Entity to easily compare the pricing in the CPC structure against the pricing in the Master Agreement.

**6.1.8** Contractor may offer state-wide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. Contractor must notify the Participating State or Entity of special state-wide promotional discounts.

**6.1.9** No retroactive adjustments to prices or rates will be allowed.

**6.2** **Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

**6.3** **Leasing or Alternative Financing Methods**. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. **Exhibit A, Statement of Work**, contains leasing provisions; however, it shall be at the discretion of each Participating State or Entity to accept these terms, reject these terms, or further negotiate the terms with the Contractor, as long as those negotiations don't fall outside the original scope of the RFP or the Master Agreement.

***For example:*** *The maximum lease term on Group A Devices is 60 months; Contractor is not permitted to offer a lease term in excess of this.*

## VII. Ordering

**7.1 Order Numbers.** Purchase Order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

**7.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

**7.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

**7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

**7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

**7.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

**7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

**7.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

**7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

**7.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

**7.6 Ordering and Invoicing Specifications.** At the discretion of the Participating State or Entity, all Orders pursuant to this Master Agreement, may contain the following:

**7.6.1** Name of Purchasing Entity;

**7.6.2** The name, phone number, and address of Purchasing Entity representative;

**7.6.3** Order date;

**7.6.4** Description of the Product and/or Service ordered;

**7.6.5** Model number;

**7.6.6** Price;

**7.6.7** The Master Agreement number; and

**7.6.8** Any additional information required by the Participating State or Entity.

**7.7** Contractor shall have the ability to accept procurement credit cards, and will not assess any additional charges or fees for processing payments via this method.

**7.8** At the discretion of the Participating State or Entity, Contractor shall have the ability to provide a centralized billing option.

**7.9** Authorized Dealers shall have the ability to accept Orders from a Purchasing Entity and to invoice a Purchasing Entity directly, unless otherwise specified by a Participating State or Entity.

**7.10** With the exception of drop-shipped items, Contractor and/or Authorized Dealers shall not issue an invoice until the Purchasing Entity has confirmed Acceptance, per **section IX.**

**7.11** Contractor and/or Authorized Dealers may charge the Purchasing Entity a re-stocking fee for any Products that are not accepted. The amount of the fee shall be the lesser of 10% of the purchase price, or $200.00, unless otherwise specified in a Participating Addendum.

**7.12** Contractor and/or Authorized Dealers may estimate meter reads if a Purchasing Entity fails to submit the required information within the specified time-frame.

**7.13** All software Orders shall reference the Manufacturer's most recent release or version of the Product, unless the Purchasing Entity specifically requests a different version.

**7.14** Contractor, Third-Party leasing companies, and/or Authorized Dealers may bill property tax separately or as otherwise indicated in a Participating Addendum or an Order.

**7.15** Contractor and/or Authorized Dealers shall have a process in place for resolving disputed invoices, including escalation procedures. In addition, Contractor and/or Authorized Dealers shall have a process in place for issuing refunds or credits due to invoicing errors, as well as over-payments and Product returns.

**7.16** Internet-based Portal and Electronic Catalogs. If Contractor provides the ability to place an Order through an internet-based portal or electronic catalog, then Contractor shall maintain all necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog. In addition, Contractor shall adhere to the following requirements:

**7.16.1** The internet-based portal or electronic catalog shall clearly designate that the Products are part of the NASPO ValuePoint Master Agreement, and shall link to the Participating State or Entity's designated web location;

**7.16.2** All Environmentally Preferable Products (EPP) shall be clearly listed;

**7.16.3** If Contractor's electronic catalog will either be hosted on or accessed through the Participating State's eCommerce system, then Contractor shall comply with all policies, procedures and directions from the Participating State or Entity in relation to hosting its catalog on or making its catalog accessible through that system;

**7.16.4** All information made available through the Participating State or Entity's eCommerce system is accurate and complies with the Master Agreement and the

Participating Addendum; and

**7.16.5** Paper catalogs or other digital media catalogs must be supplied to the Participating State or Entity upon request.

**7.17 Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

**7.18 Substitutions.** If an ordered Product is out-of-stock, Contractor shall notify the Purchasing Entity and request approval before substituting for the out-of-stock item. Contractor's request to substitute shall explain how the substituted Product compares with the out-of-stock item. Any substitute Product offered must be on the Contractor's Master Agreement Price List.

**7.19 Contract Provisions for Orders Utilizing Federal Funds**. Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

**7.20 Supplemental Documents**. All Attachments to this Master Agreement have been reviewed and negotiated by the Lead State only to the extent that they comply with the terms and conditions of RFP-NP-23-001 as well as this Master Agreement. Participating States and Entities are still advised however, to review each Supplemental Document and negotiate the terms and conditions further with Contractor if necessary. It shall be at the discretion of Contractor and Purchasing Entity to determine which Supplemental Documents are appropriate for each Order type. With the exception of End User License Agreements (EULA's), clickwrap agreements, and any third party software agreements, which have not been reviewed or negotiated by the Lead State, nor are they attached to this Master Agreement, only the Supplemental Documents attached to this Master Agreement are permitted to be used for any Order placed.

## VIII. Shipping and Delivery

**8.1 Shipping Terms.** All Products must be shipped F.O.B. destination, standard freight pre-paid by the Contractor, to the Purchasing Entity's specified location, unless otherwise indicated in a Participating Addendum.

**8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and Acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

**8.2 Available Products**. Devices that are in-stock or otherwise not subject to supply-chain shortages or issues, shall be delivered within thirty (30) calendar days after receipt of Order, unless otherwise specified by the Purchasing Entity.

**8.3 Required Updates**. Contractor shall provide a minimum of semi-monthly updates to the Purchasing Entity regarding the status of all Devices that are, or will be expected to go, on backorder.

**8.4 Software Installation**. Software related to the Device must be installed within five (5)

Business Days of the Device installation, or as otherwise stated in an Order.

**8.5** **Delivery Days and Receiving Hours.** All deliveries shall be made during Normal Business Hours, which may vary for each Purchasing Entity of each Participating State. The Purchasing Entity shall not be responsible for any additional charges should the Contractor fail to observe specific delivery days and receiving hours. The delivery days and delivery hours shall be established by each individual Purchasing Entity upon Order placement.

**8.6** **Inside Deliveries.** All deliveries, with the exception of drop-shipped or desktop Devices, shall be made to the interior location specified by the Purchasing Entity. Specific delivery instructions will be noted on the Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

**8.7** **Packaging.** Products shall be packaged and labeled so as to satisfy all legal and commercial requirements applicable for use by any Purchasing Entity, and shall include, without limitation and if applicable, OSHA material safety data sheets, and shall conform to all statements made on the label. Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.

## IX. Inspection and Acceptance

**9.1** **Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

**9.2** **Applicability.** Unless otherwise specified in the Participating Addendum, or ordering document, the terms of this **section IX** will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

**9.3** With the exception of drop-shipped Devices, Purchasing Entity shall confirm delivery, installation and Acceptance of all Devices covered by each purchase or lease Order, by signing a Delivery and Acceptance Certificate (D&A), as referenced in **Exhibit B, Sample D&A Certificate**, which shows Acceptance of the Device(s) and allows Contractor to invoice for the Device(s).

**9.4** Purchasing Entity agrees to sign and return the D&A to Contractor (which, at mutual agreement, may be done electronically) within five (5) Business Days after any Device is installed, or as otherwise stated in a Participating Addendum.

**9.5** Failure to sign the D&A or reject the Device(s) within the foregoing five (5) day period shall be deemed as Acceptance by the Purchasing Entity; however, it does not relieve the Contractor of liability for material (nonconformity that substantially impairs value) defects subsequently revealed when Devices are put to use. Acceptance of such Devices may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor shall be liable for any resulting expense incurred by the Purchasing Entity in relation to the preparation and shipping of Devices(s) rejected and returned, or for which Acceptance is revoked.

**9.6** **Inspection.** All Devices are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

**9.6.1** Devices that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

**9.6.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Device rejected and returned, or for which Acceptance is revoked.

**9.7** **Failure to Conform.** If any Services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the Services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of Services performed.

**9.8** **Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Device meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

**9.8.1** The Acceptance Testing period will be five (5) Business Days, unless otherwise specified, starting from the day after the Device is delivered or, if installed by Contractor, the day after the Device is installed and Contractor certifies that the Device is ready for Acceptance Testing.

**9.8.2** If the Device does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing for a maximum of ten (10) Business Days, until the standard of performance is met.

**9.8.3** Upon rejection, the Contractor will have thirty (30) calendar days to cure. If after the cure period, the Device still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Device from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

**9.8.4** Contractor shall pay all costs related to the preparation and shipping of Device returned pursuant to the section.

**9.8.5** No Device will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

## X. Warranty

**10.1** **Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this **section X** will apply.

**10.2** The warranty period shall begin upon Acceptance of the Device, and shall be for a minimum of ninety (90) days for purchase or leased Devices. This warranty shall be extended to all Devices acquired under the Master Agreement, including Remanufactured and/or Refurbished Devices.

**10.3** Devices that are sold under the resulting Master Agreement will come with the standard features as published on the Manufacturers website, and will not deviate from the stated

specifications.

**10.4** Devices shall be in good working order, free from any defects in material and workmanship, and fit for the ordinary purposes they are intended to serve.

**10.5** If defects are identified, per mutual agreement of Contractor and the Purchasing Entity, Contractor obligations shall be limited solely to the repair or replacement of Devices proven to be defective upon inspection.

**10.6** Replacement of Devices shall be on a like-for-like basis and shall be at no cost to the Purchasing Entity.

**10.7** Repair of defective parts and/or Devices shall be at no cost to the Purchasing Entity.

**10.8** Upon significant failure of a Device, the warranty period shall commence again for a minimum of ninety (90) days. Significant failure shall be determined by the Participating State.

**10.9** Contractor warranty obligations shall not apply if:

**10.9.1** The Device is installed, wired, modified, altered, or serviced by anyone other than Contractor and/or their Authorized Dealer;

**10.9.2** If a defective or non-authorized Accessory, Supply, software, or part is attached to, or used in the Device; and

**10.9.3** The Device is relocated to any place where Contractor Services are not available.

**10.10** Contractor agrees to perform its Services in a professional manner, consistent with applicable industry standards.

**10.11** It will be at the discretion of each Participating State or Entity to negotiate additional warranty requirements with the Contractor.

**10.12 Lemon Clause**

**10.12.1** This clause shall apply to all Devices that are purchased or leased under the Contractor's Master Agreement. Contractor will utilize its Total Quality Commitment to meet its requirements.

**10.12.2** This clause shall not apply if Supplies are used in the Devices that were not manufactured, provided, or authorized by the Contractor.

**10.12.3** The application period is thirty-six (36) months from the date of Acceptance.

**10.12.4** This clause shall take precedence over any other warranty or Services clauses associated with the Contractor's Master Agreement, or as specified by a Participating State or Entity in their Participating Addendum.

**10.12.5** A Purchasing Entity must maintain an uninterrupted Maintenance Agreement with Contractor or their Authorized Dealer, on all purchased Devices in order for this clause to apply past the initial ninety (90) day warranty.

**10.12.6** Any Device that fails (except due to operator error) to function in accordance with the Manufacturer's published performance specifications, four (4) times in any four (4) week period due to the same functional issue and/or is subject to recurring related problems, shall be replaced with a new Device that meets or exceeds the requirements of the original Device, at no cost to the Purchasing Entity.

**10.13 Rights Reserved.** The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

## XI. Equipment Title

**11.1 Conveyance of Title.** Contractor shall have exclusive title to the Devices being delivered and the Devices shall be free and clear of all liens, encumbrances, and security interests. Title to the Device shall only pass to the Purchasing Entity upon:

**11.1.1** Purchasing Entity up-front purchase of the Device;

**11.1.2** Purchasing Entity exercising the purchase option at the end of an FMV Lease;

**11.1.3** Expiration of a Purchasing Entity's Capital Lease; or

**11.1.4** Purchasing Entity has secured Third Party financing and payment is being made directly to the Contractor by the Purchasing Entity.

**11.2 Embedded Software.** Transfer of title to the Device must include an irrevocable and perpetual license to use any Embedded Software in the Device. If Purchasing Entity subsequently transfers title of the Device to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Device title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

**11.3 License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement solely for Purchasing Entity, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

## XII. Indemnification

**12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any negligent act, error, or willful omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement, except to the extent such death, injury, or damage to property is arising out of or caused by the negligence or willful misconduct of NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, or their officers, agents, and employees.

**12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim"), except to the extent such

Intellectual Property Claim is arising out of or caused by the actions, modifications or alterations to the Product made by NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, or their officers, agents, and employees, without the express written consent of the Contractor.

**12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

**12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;

**12.2.1.2** specified by the Contractor to work with the Product;

**12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

**12.2.1.4** reasonably expected to be used in combination with the Product, system or method.

**12.2.2** The Indemnified Party shall promptly notify the Contractor after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

**12.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

**12.2.4** Unless otherwise set forth herein, **section 12.2** is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

## XIII. Insurance

**13.1** Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option; result in termination of its Participating Addendum.

**13.2** Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be

as indicated below, with no deductible for each of the following categories:

**13.2.1** **Commercial General Liability** covering premises operations, Independent Contractors, Products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence, $2 million general aggregate, $2 million Products and completed operations aggregate and $50,000 and any one fire. If any aggregate limit is reduced below $2,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Participating Entity, a certificate or other document satisfactory to the Participating Entity, showing compliance with this provision.

**13.2.2** **Cyber Liability** covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorized access/use of information, and identity theft) with minimum limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate.

**13.2.3** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

**13.2.4** **Automobile Liability** covering any auto (including owned, hired and non-owned), with a minimum limit of $1,000,000 each accident combined single limit.

**13.3** Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that the insurer not revoke them until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.

**13.4** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that:

**13.4.1** Includes the Participating States identified in the Request for Proposal as additional insured's, and;

**13.4.2** Provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

**13.5** Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within seven (7) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation.

Copies of renewal certificates of all required insurance shall be furnished within fifteen (15) days after any renewal date. These certificates of insurance must expressly indicate compliance with each insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

**13.6** Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Order.

**13.7 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

**13.8 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in **section XIII**, except the endorsement is provided to the applicable Participating State or Participating Entity.

**13.9 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

**13.10 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

## XIV. General Provisions

### 14.1 Records Administration and Audit

**14.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

**14.1.2** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or

Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

**14.1.3** The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

## 14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

**14.2.1** **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

**14.2.1.1** Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

**14.2.1.2** Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

**14.2.1.3** Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

**14.2.2** **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, other than its employees, agents or Authorized Dealers, or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

**14.2.2.1** Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

**14.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise

Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

**14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

**14.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

**14.2.3** **Injunctive Relief.** Contractor acknowledges that Contractor's breach of **section 14.2** would cause irreparable injury to the Purchasing Entity that cannot be adequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

**14.2.4** **Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

**14.2.5** **NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

**14.2.6** **Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

**14.3 Assignment/Subcontracts**

**14.3.1** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State, which shall not be unreasonably withheld.

**14.3.2** The Lead State reserves the right to assign any rights or duties, including written

assignment of contract administration duties, to NASPO ValuePoint and other third parties, upon written notice to Contractor.

**14.4 Changes in Contractor Representation.** The Contractor must, within thirty (30) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

**14.5 Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

**14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

**14.7 Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, acts of war which are beyond that party's reasonable control, pandemics, or epidemics that would negatively impact supply chain distribution. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement. This clause does not absolve Purchasing Entity of their payment obligations for goods or services received. Past due account charges will not accrue until the conclusion of the Force Majeure event, at which point Contractor shall also be expected to resume their Service obligations.

**14.8 Defaults and Remedies**

**14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:

**14.8.1.1** Nonperformance of contractual requirements;

**14.8.1.2** A material breach of any term or condition of this Master Agreement;

**14.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

**14.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar

days after the institution or occurrence thereof; or

**14.8.1.5** Any default specified in another section of this Master Agreement.

**14.8.2** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of thirty (30) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages to the extent provided for under this Master Agreement.

**14.8.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

**14.8.3.1** Any remedy provided by law;

**14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;

**14.8.3.3** Intentionally Deleted;

**14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations; and

**14.8.3.5** Suspension of Contractor's performance.

**14.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

**14.9 Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

**14.10 Debarment.** The Contractor certifies that neither it nor its principals are presently debarred,

suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

**14.11 No Waiver of Sovereign Immunity**

**14.11.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

**14.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**14.12 Governing Law and Venue**

**14.12.1** The laws of the Lead State shall govern the construction and effect of this Master Agreement. Venue for any administrative or judicial action relating to this Master Agreement shall be in the City and County of Denver, Colorado.

**14.12.2** The construction and effect of any Participating Addendum or Order against this Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

**14.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): The Lead State for claims relating to the procurement, evaluation, award, or Contract performance or administration if the Lead State is a party; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

**14.13 Assignment of Antitrust Rights.** Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**14.14 Survivability.** Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

# SIGNATURE PAGE

## THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT

*** Individual signing for Contractor hereby swears and affirms that they are authorized to act on Contractor's behalf and acknowledge that the Lead State is relying on their representations to that effect.**

| CONTRACTOR<br>**Toshiba America Business Solutions, Inc.** | STATE OF COLORADO<br>**Jared S. Polis, Governor**<br>Department of Personnel & Administration<br>State Purchasing & Contracts Office<br>Tony Gherardini, Executive Director |
|---|---|
| By: Larry White<br>Title: President & CEO<br>By: DocuSigned by: Larry White A6B11EC...C8740D... *Signature<br>Date: 12/20/2023 | By: DocuSigned by: John Chapman EF45AFDEB51E414... John Chapman, State Purchasing Manager<br>Date: 12/20/2023 |

## ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Master Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.**

**STATE CONTROLLER**
**Robert Jaros, CPA, MBA, JD**

By: DocuSigned by: Nathan Stanley 00850890CC1A43A...

Date: 12/20/2023

# EXHIBIT A – STATEMENT OF WORK

## I. Product Overview

**A.** Contractor is authorized to provide Products and Services in the following Groups and Sub-Groups:

### 1. Primary Products and Services:

| Group | Products and Services |
|---|---|
| **A** | A3 MFD – *OEM only* |
| **B** | A4 MFD – *OEM and Non-OEM* |
| **D** | Single-function Printers – *OEM and Non-OEM* |
| **E** | Large/Wide Format Equipment – *OEM and Non-OEM* |
| **G** | Software – *OEM and Non-OEM* |
| **H** | Supplies (consumable) – *OEM and Non-OEM* |
| **I** | Managed Print Services |

### 2. Ancillary Products and Services:

| Sub-Group | Products and Services |
|---|---|
| **G1** | Software Related Services |
| **D1** | Specialty Printers (3D, receipt, barcode label, card, cable) – *OEM and Non-OEM* |

**B.** Contractor may not provide Products that have not been approved by the Lead State, with the exception of NSP items, as referenced in **section II.B.3**.

**C.** Contractor may only offer Devices that meet the minimum requirements as outlined in **section II.A.**

**D.** Any Products added to the Master Agreement throughout the term of the Contract must be discounted according to the proposed discount for the appropriate Segment or as specified in **section II.A.4.**

**E.** Contractor may provide MPS under any Group they offer under this Contract. However, MPS may not be provided on any Devices that are being leased to a Purchasing Entity by another Manufacturer, unless Contractor has a written agreement with the Manufacturer to do so. Further, Contractor is not permitted to provide (e.g. sell, lease, rent) Devices under any Group they have NOT been awarded.

**F.** Contractor may add, remove or modify Products and Services on their Price Lists **once per calendar month**, beginning in September 2024. Modifications do NOT include price increases. Refer to **section 6.1 of the Master Agreement Terms and Conditions** for information regarding pricing.

**G.** Any Device additions must be updated with Buyer's Lab within ninety (90) days of submission to the Lead State. Failure to adhere to this requirement will result in the Device(s) being removed from the Master Agreement Price List(s) until such time they can be verified on Buyer's Lab. In addition, if a Device is acquired by a Purchasing Entity that is not listed on Buyer's Lab within 90 days of it being added to the Price List, then Contractor shall remove the Device from the Purchasing Entity location and substitute it with a Device of equal or greater value, at no charge to the Purchasing Entity. This substituted Device must be on the Price List, AND listed on Buyer's Lab.

## II. Master Agreement Deliverables

### A. Primary Product and Service Offerings

1. **Group Categories.** Segments shall be utilized to distinguish the various speeds of the Devices within Groups. The speeds are denoted in Page per Minute (PPM). The Segments for each Group are as follows:

| Group A – MFD, A3 | |
|---|---|
| **Segment** | **PPM** |
| 2 | 20 – 30 |
| 3 | 31 – 40 |
| 4 | 41 – 50 |
| 5 | 51 – 60 |
| 6 | 61 – 70 |
| 7 | 71 – 90 |

| Group B – MFD, A4 | |
|---|---|
| **Segment** | **PPM** |
| 1 | Up to 20 |
| 2 | 21 - 30 |
| 3 | 31 - 40 |
| 4 | 41 - 50 |
| 5 | 51 - 60 |
| 6 | 61+ |

| Group D – Single-function Printers | |
|---|---|
| **Segment** | **PPM** |
| 1 | Up to 20 |
| 2 | 21 – 40 |
| 3 | 41 – 60 |
| 4 | 61+ |

| Group E – Large/Wide Format Equipment | | | |
|---|---|---|---|
| **Segment** | **A1 or D Size PPM*** | **Width – Office** | **Width - Industry** |
| Low | 0 – 3 | 24" – 44" | 46" and higher |
| Medium Low | 4 - 9 | 24" – 44" | 46" and higher |
| Medium High | 10 - 19 | 24" – 44" | 46" and higher |
| High | 20+ | 24" – 44" | 46" and higher |

*Speeds denoted above are based on b&w output

2. **Device Configurations.** Devices must be equipped, at a minimum, with the following Accessories/capabilities:

**2.1 Group A – MFD, A3**

- **a.** New power filter;
- **b.** Duplex for Segment 3 and above;
- **c.** Standard paper drawer(s) equal to or greater than:
  - **i)** One (1) paper supply for Segment 2;
  - **ii)** Two (2) paper drawers for Segments 3 and 4; and/or
  - **iii)** 2,000 sheet paper capacity for Segments 5 and above.
  - **iv)** Paper size capacity up to 11” x 17”; and
  - **v)** Bypass paper supply, if applicable for Segment.

**2.2 Group B – MFD, A4**

- **a.** New power filter;
- **b.** Bypass paper supply;
- **c.** Standard paper drawer(s) equal to or greater than:
  - **i)** One (1) paper supply for Segments 1 and 2;
  - **ii)** Two (2) paper drawers for Segments 3 and 4; and/or
  - **iii)** 1,000 sheet capacity for Segments 5 and above.
- **d.** Paper size capacity up to 8 1/2” x 14”; and
- **e.** Envelope adjustment capability.
- **a.** Network connectivity.

**2.3 Group D – Single-function Printers**

- **a.** Must include an inkjet, light emitting diode (LED), or laser print engine;
- **b.** Standard paper drawer(s);
- **c.** Standard paper capacity; and
- **d.** Network connectivity.

**2.4 Group E – Large/Wide Format Equipment**

- **a.** Hard-Disk drive;
- **b.** Network connectivity;
- **c.** Touch screen control panel; and
- **d.** Automatic Media Selection – a built-on sensor detects the size of the original and the proper media size is then selected.

3. **Device Standards.** Devices must meet the following requirements:

**3.1** Group A Base Units are OEM only.

**3.2** Group A and Group B must be EPEAT registered to a minimum of Bronze Standard within one (1) year of being added to the Master Agreement Price List.

**3.3** Group D must be Energy Star compliant or EPEAT registered to a minimum of Bronze Standard within one (1) year of being added to the Master Agreement Price List.

**3.4** Group E must be Energy Star compliant and registered within one (1) year of being added to the Master Agreement Price List.

**3.5** If Contractor Devices fail to meet the EPEAT Bronze Standard, or be Energy Star compliant (applicable to Group D and E Devices only) within one (1) year, then they will be removed from the Price List. If said Devices have already been placed at a Purchasing Entity's location, then Contractor must replace the Devices with a comparable, qualified model, at no cost to the Purchasing Entity.

**3.6** All Devices must be Newly Manufactured, current, Remanufactured, or Refurbished, except as specified in a Participating Addendum. Discontinued Devices are not permitted to be offered under the Master Agreement.

**3.7** Devices, when installed, and if available, must be set-up to receive automatic software updates and patches.

**3.8** Device specifications must be published on the Contractor website.

**3.9** MSRP must not exceed what is listed with Buyers Laboratory Inc., or List Price must not exceed what is published on the Manufacturer's website.

**3.10** Devices must maintain a PPM speed, according to Segment classification.

**3.11** Devices must be compatible with using recycled paper, up to and including, 100% Post-Consumer Waste (PCW) paper. Contractor may not fault the use of recycled paper for Device failures, as long as the recycled paper in use meets the standard paper specifications (e.g., multi-purpose, copy, or laser paper).

## 4. Device Exceptions

**4.1** Group B, Group D, Sub-Group D1, and Group E, will not be restricted to OEM, and do not have to be Private Labeled.

**4.2** Digital Duplicators may be offered by Contractor under Group A, and must be priced based on the minimum discount offered in the Segment to which they most closely relate.

**4.3** Under Group E, Contractor may offer Large/Wide Format Equipment that accommodates **all** paper sizes. Pricing shall be based on the discount offered for the Segment in which the Device belongs.

## 5. Accessories

**5.1** Contractor shall provide OEM and/or Third Party compatible Accessories that compliment or enhance the features of the Device.

**5.2** Contractor may also maintain a separate price list for Accessories for Base Units that have been discontinued. The pricing must be based on the same discount offered, per the 'Discount from MSRP' tab, on the applicable Group Price List.

**5.3** Purchasing Entities may add Accessories to Devices that have been purchased, leased or rented under prior NASPO ValuePoint Master Agreements, as well as via any other means. If the Device is currently being leased, Purchasing Entity must obtain Contractor approval to add Accessories. Purchasing Entities shall also be advised that obtaining Accessories from a Third Party and not the Contractor or their Dealer may void certain warranty or maintenance agreement provisions.

## 6. Remanufactured and Refurbished Equipment

**6.1** Contractor may offer Remanufactured and/or Refurbished Equipment under any Group.

**6.2** Remanufactured and Refurbished Equipment is not required to be EPEAT registered or Energy Star compliant.

**6.3** Equipment can be acquired via a purchase or lease agreement.

**6.4** Contractor must notify the Purchasing Entity in writing, when Remanufactured or Refurbished Equipment is being offered.

**6.5** All Remanufactured or Refurbished Equipment must be clearly labeled as such, and must be certified by the Manufacturer.

**6.6** Remanufactured Equipment must be priced according to the minimum discount offered for similar Equipment in the same Group and Segment of the resulting Master Agreement.

**6.7** Refurbished Equipment shall be offered at a minimum discount of 10% less than the lowest priced Device of the Group and Segment to which the Refurbished Equipment belongs.

**6.8** Service and Supplies for Remanufactured and Refurbished Equipment will receive the same pricing as the Published Price for the Group and Segment to which it belongs.

## 7. Group G - Software

**7.1** May be provided by Contractor to enhance the capabilities of the Devices, or may be provided as a standalone option on any owned or leased Device.

**7.2** Software pricing for unique designs or complex configurations will be quoted on a case by case basis.

**7.3** Contractor may provide OEM and/or Third Party software.

**7.4** All software drivers shall be, at a minimum, Windows 10 compliant, and all Devices must have universal software drivers.

**7.5** Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software, provided such terms do not contradict

the language in the Master Agreement, and unless otherwise stated in a Participating Addendum.

### 7.6 Software Subscriptions

**a.** Software pricing shall be inclusive of available software patches and any updates.

**b.** Purchasing Entities shall have the option to finance software subscriptions by utilizing the proposed lease rates.

**c.** Any new releases of software versions (upgrades) shall be chargeable to the Purchasing Entity; however, Contractor may not charge for the installation of the software upgrade, unless installation is excessive, and charges are agreed to by Purchasing Entity.

**d.** License fees and support fees shall remain firm throughout the term of the agreement.

**e.** Software subscriptions shall not be subject to automatic renewals, unless otherwise agreed to in an Order.

**f.** Contractor shall be responsible for communicating all updates, patches, and new releases/versions to Purchasing Entities.

**g.** Contractor shall provide a web-based or toll-free hotline during Normal Business Hours for Purchasing Entities to report software problems or answer software related questions.

## 8. Group H – Supplies (consumable)

**8.1** Contractor may offer OEM or compatible Ink and Roll paper for Group E Devices. The Ink and/or paper may be purchased as standalone items, and will not be included as part of a Maintenance Agreement, nor will it be wrapped into the Total Monthly Payment on a lease agreement.

**8.2** Contractor may offer OEM or compatible consumable Supplies for Groups A, B, and D, as well as Sub-Group D1. These Supplies may be purchased as standalone items or included as part of a Maintenance Agreement. Under no circumstances may the Supplies, regardless of quantity, be financed, unless they are start-up Supplies. All compatible Supplies must meet OEM standards for performance and quality. The Supplies that may be offered are:

**a.** Toner;

**b.** Staples;

**c.** Ink;

**d.** Print Cartridges;

**e.** Imaging Drums;

**f.** Fuser Kits;

**g.** Cleaning Kits;

**h.** Transfer Kits;

i. Waste Toner Bottles;

j. Fuser Oil;

k. Ozone Filters;

l. Ribbon;

m. Developer;

n. Rollers and Pads; and

o. Maintenance Kits.

**8.3** Toner must be free of carcinogenic, mutagenic, or teratogenic substances, and should avoid petroleum inks and inks with high volatile compounds. Toner cartridges should also be remanufactured, contain recycled content, **or** be bio-based.

**8.4** Contractor shall provide the Purchasing Entity with a method to return the empty toner cartridges at no additional charge.

## 9. Service Offerings

### 9.1 Group I - Managed Print Services

**a.** The main components of an MPS engagement are needs assessment, selective or general replacement of Devices, and the Service, parts and Supplies needed to operate the new and/or existing Devices, including existing Third Party Devices as owned by the Purchasing Entity. The Contractor tracks how the Device fleet is being used, the problems associated with that use, and customer satisfaction in regards to meeting statement of work objectives.

**b.** In addition to the ongoing monitoring and management of a fleet of Devices, Contractor must also offer project implementation Services, and customer help-desk support and training.

**c.** Contractor may also offer hourly Services for consulting purposes, project management, change management plans, and other staffed Services which meet customer needs such as to operate copy centers or complete back file scanning projects.

**d.** MPS may also include enterprise content management Services and workflow optimization components, such as scanning and document capture solutions, developing custom applications for smart MFDs that automate paper-intensive document workflows and route scanned pages to document management systems. It can also be extended to include the restructuring of document workflows. Some MPS engagements may be designed to improve document security or to reduce print volumes and power consumption for environmental reasons.

**e.** All MPS engagements shall require the Contractor and Purchasing Entity to complete a detailed statement of work, similar to the format referenced in **Attachment 10, Toshiba Sample MPS Statement of Work**, and it must be

approved by both parties prior to the initiation of any engagement.

**f.** Any MPS engagement shall include the following:

- **i)** **Free Initial Assessment** (includes, but is not limited to: document workflow; identification of Service, Supplies, and parts; current output; total cost of ownership; employee to Device ratio; preliminary estimated cost savings);
- **ii)** **Implementation** (e.g. plan development; hardware and software installation and set-up);
- **iii)** **Remote Device Monitoring** (e.g. job accounting; automated meter reads; automated toner replenishment);
- **iv)** **End-user Support** (e.g. training; Help Desk); and
- **v)** **Account management** (e.g. reporting; invoicing; customer business reviews).

**g.** The MPS engagement may include, but is not limited to, the following:

- **i)** **Professional Services** (e.g. consulting; project management; record management; network and data security; document workflow consulting; document scanning; back-file conversion; mail-room Services);
- **ii)** **Cost-based Assessment** (e.g. asset mapping; end-user survey; detailed recommendation; analysis and plan design);
- **iii)** **Change Management;**
- **iv)** **Maintenance** (e.g. Preventative Maintenance; Service and repair; on-site break/fix; parts management; warranty management);
- **v)** **Ongoing Fleet Management and Optimization** (e.g. consumable spend; continual assessments; green initiatives; add/move/change Services; disaster recovery).
- **vi)** **Software and Cloud Solutions** (e.g. mobile print, pull-print, enterprise content management; automated workflow; capture and route; security); and
- **vii)** **Cartridge Recycling.**

**h.** The free initial assessment shall not constitute a commitment on behalf of the Purchasing Entity. Upon request from a Purchasing Entity, Contractor must provide the assessment with the understanding that the Purchasing Entity is under no obligation to enter into an MPS engagement.

**i.** MPS pricing and billing options shall be flexible and the Purchasing Entity will drive the complexity of the solution required with a staged approach to implementation.

**9.2 Maintenance Agreements.** No Maintenance Agreement shall be subject to automatic renewals.

**a. Pricing**

**i)** Pricing must include a zero base, cost per click rate for b&w and/or color for Groups A, B, and D.

**ii)** Pricing for a monthly base charge, a set copy allowance and an overage rate for b&w and/or color may also be provided.

**iii)** Pricing for a monthly base charge, a set copy allowance, an overage rate for b&w and/or color, and Supplies may also be provided.

**iv)** Flat Rate Fee pricing must be provided that includes all parts, labor, Preventative Maintenance, and Service Calls for Groups A, B, and D. Supplies may or may not be included.

**v)** Pricing for ALL Groups may also be provided that includes all parts, labor, Preventative Maintenance (if applicable), and Service Calls, but excludes Supplies.

**vi)** Paper and ink for Group E Devices shall not be included as part of the Service and Supply pricing.

**vii)** Contractor may increase their Service and Supply pricing to include staples (if applicable to the Device).

**viii)** Contractor may provide a flat rate fee without staples, and a flat rate fee with staples. All flat rate fees shall allow for an annual increase of up to 5%.

**ix)** Contractor may charge flat rate fees for Services performed on any Accessories.

**x)** Service Calls due to misuse, neglect or abuse shall not be covered by the Maintenance Agreement, and Contractor and Authorized Dealers may bill the Purchasing Entity at an hourly rate for Services rendered.

**xi)** 11"x17" impressions may be counted as one (1) click or two (2) clicks on Group A Devices.

**xii)** A two-sided document shall be counted as two (2) clicks.

**xiii)** Contractor must not charge for scans on any MFD.

**b. Initial Term**

**i)** Pricing shall remain firm for the initial term of the Maintenance Agreement (e.g. 12, 24, 36 months etc.). Upon renewal of the Maintenance Agreement, Contractor may adjust the pricing, as long as the pricing does not exceed Master Agreement rates.

**ii)** For leased Devices, the total Maintenance Agreement term shall be equal to the term of the lease (e.g. 24, 36, 48 months etc.).

**iii)** For purchased Devices, the initial term is determined by the Purchasing Entity, as long as it does not exceed 60 months.

**c. Renewal Term**

If a Purchasing Entity wishes to renew a Maintenance Agreement for Devices

that were acquired under prior Master Agreement (RFP-NP-18-001) or Master Agreement (3091), then **section II.A (9.2)(h)** shall apply.

**d. Blended Rates**

**i)** Contractor must have the ability to blend the Service and Supply costs over a large Device fleet, and the Blended Rate must cover all units in the fleet.

**ii)** The Blended Rate must be divided between b&w and color.

**iii)** Contractor shall provide the Purchasing Entity with the Blended Rate calculation prior to Order placement.

**iv)** Utilizing a Blended Rate shall be at the discretion of the Participating State or Entity, and/or the Purchasing Entity.

**e. Manual Meter Reads**

**i)** Contractor must have an electronic method for collecting meter reads from a Purchasing Entity.

**ii)** Meter reads may be submitted via the Contractor's online portal, or through email, or facsimile.

**iii)** A Participating State or Entity may also elect, at their discretion, to submit meter reads through the Device.

**f. Customer Owned Devices**

**i)** Purchasing Entities may elect to enter into a Maintenance Agreement for Devices they already own, or Devices they acquire through an up-front purchase.

**ii)** The Maintenance Agreement may be priced on a flat rate fee, which shall include parts, labor, Preventative Maintenance (if applicable) and Service calls. Supplies may or may not be included.

**g. Leased Devices**

**i)** Contractor shall be required to provide a Maintenance Agreement on all Devices that are leased by a Purchasing Entity.

**ii)** The Maintenance Agreement shall be priced based on a cost per click rate, or a monthly base charge.

**h. Legacy Devices**

**i)** Upon request from the Purchasing Entity, Contractor may provide a Maintenance Agreement on any Device that is owned or was leased or rented through Master Agreement (RFP-NP-18-001), Master Agreement (3091), or via any other means, providing the following conditions are met:

**1)** The Device has not reached the end of its Useful Life;

**2)** The maximum term of the Maintenance Agreement does not exceed the Useful Life of the Device, unless otherwise specified in a Participating Addendum; and

3) The Maintenance Agreement adheres to the same requirements as outlined in **sections II.A (9.2)(f)** and **II.A (9.2)(g)**.

ii) Devices that were previously serviced by another Dealer or Manufacturer must be inspected and repaired, if necessary. Upon mutual agreement, Contractor may charge Purchasing Entity for any parts and/or labor required to bring the Device up to acceptable maintenance levels.

iii) If the Device has been at the Purchasing Entity's location for less than five (5) years, then Maintenance Agreement pricing shall not exceed the new Master Agreement pricing, until the Purchasing Entity reaches the five (5) year mark. Refer to **section II.A (9.2)(h)(iv)** below for additional information.

iv) If the Device has been at the Purchasing Entity's location for more than five (5) years, then Maintenance Agreement pricing shall not exceed 120% of the Service and Supply pricing in the new Master Agreement.

## B. Ancillary Product and Service Offerings

1. **Sub-Group Categories.** The following Products and Services are sub-groups of the Primary Product and Service Offering Groups.

**1.1 Sub-Group G1 – Software Related Services.** This is a sub-group of Group G – Software. This sub-group shall include, but not be limited to, the following Services:

**a.** Cloud-based scanning (software as a service, enterprise content management); and

**b.** Industrial Print solutions (back-file conversion, enterprise content management).

**1.2 Sub-Group D1 – Specialty Printers.** This is a sub-group of Group D – Single-Function Printers. Products offered under this sub-group are not restricted to OEM, and may include, but not be limited to, the following:

**a.** Barcode labels;

**b.** High Volume Inkjet;

**c.** 3D Printers;

**d.** Receipt printers;

**e.** Card printers; and

**f.** Cable printers.

2. **Sub-Group Category Discounts.** Products in Sub-Group D1 must be discounted at a minimum of 5% for OEM and a minimum of 2% for Non-OEM, unless such discounts would exceed the discount amount offered for OEM and Non-OEM within Group D.

3. **Open Market Items**

**3.1** Contractor may offer Not Specifically Priced (NSP) items that compliment or enhance the Devices and/or Services offered under the Master Agreement. NSP items will **not** include:

**a.** Interactive White boards;

**b.** Computers, monitors, or other related hardware items;

**c.** Fax machines;

**d.** Kiosk machines;

**e.** Overhead Projectors; and

**f.** Cameras.

**3.2** NSP items may only be acquired through the Contractor or their Authorized Dealer and must be reported quarterly with all other sales under the Master Agreement.

**3.3** NSP items must be priced at a minimum discount of 15% from MSRP or List Price.

**3.4** NSP items may be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all NSP items in a single Order shall be determined by the Participating State or Entity.

**3.5** It shall be at the discretion of the Participating State or Entity to allow Open Market Items in their Participating Addendum.

**4. Emerging Technologies**

**4.1** Upon approval from the Lead State, Contractor may add new, related technology to the resulting Master Agreement.

**4.2** Technology is not restricted to OEM, nor is it required to be Private Labeled.

**4.3** Any new technology that a Contractor requests to add to their Price List must contain a full description of the Product, the MSRP and pricing information, and an explanation/justification as to how the Product conforms to the requirements of the RFP and Master Agreement.

**4.4** Any new technology must be priced according to the lowest discount offered for any Product under the Master Agreement. No discount or a 0% discount does not qualify as a "lowest" discount.

## III. Purchase and Lease Programs

**A. Acquisition Methods.** Contractor may offer the following:

| Financial Vehicle | Standard Terms Offered |
|---|---|
| Purchase | N/A |
| Fair Market Value Lease | 12,18, 24, 36, 48 and 60 months |
| Capital Lease | |
| Straight Lease | |

**1.** All Devices on Contractor's Price List may be purchased or leased, either as a packaged-deal, or stand-alone item.

**B. Device Trade-In**

**1.** A Purchasing Entity shall have the option, at the Contractors sole discretion, and based upon Participating State or Entity regulations and laws, and Purchasing Entity policies, to

do a Device Trade-In, when placing a purchase or lease Order.

2. The value for the Device Trade-In shall be negotiated by the Purchasing Entity and the Contractor, and shall not include any disposal or shipping fees.

## C. Lease Rates

1. Contractor may elect to include property tax in their lease rates, or they may bill the Purchasing Entity separately for property tax.

2. Once a Purchasing Entity enters into a lease agreement, the lease rate must remain fixed throughout the Initial Lease Term, regardless of whether the Contractor had increased their lease rates in the Master Agreement Price Lists. If Contractor has decreased their lease rates in their Price Lists, then they may extend that lower rate to the Purchasing Entity for new orders.

3. Device Payments for Renewal Terms must never exceed Master Agreement pricing.

4. If a Purchasing Entity enters into a Renewal Term, then the Device Payment will be subject to the lease rates listed in the most recent Price Lists posted on the NASPO ValuePoint website.

5. Contractor may update lease rates on a quarterly basis to allow for changes in the financial market. The rates must be indexed against the US Daily Treasury Yield Curve Rates, or a comparable index, and must be the rate in effect at the end of each calendar quarter.

6. Lease rates must be proposed as a decimal multiplying factor in such a manner that the purchase price of the Device may be multiplied by the lease rate to arrive at the resulting monthly Device Payment. Proposed rates must include the following information:

   **6.1** The Daily Treasury Yield Curve (or comparable index) Rate;

   **6.2** The date used for the Daily Treasury Yield Curve (or comparable index) Rate;

   **a.** The fixed margin for each lease type being proposed, and how that margin is determined; and

   **b.** The methodology for determining the 48 month base rate if a 4-year rate is not published.

   **6.3** Contractor must offer Coterminous lease rates to any Purchasing Entity wishing to add Products to an existing lease agreement. The calculation for the Coterminous lease rates must adhere to the following methodology:

   ***For example**: A customer enters into a 36 month FMV Lease, and 12 months into that lease, they decide to add an Accessory to the Base Unit. The Contractor shall divide the 36 month cumulative Device Payment by 24 months to arrive at the monthly Coterminous payment for that Accessory. That payment will then be added to the existing Device Payment. The new Total Monthly Payment must then be disclosed to the Purchasing Entity.*

## D. Leasing Overview

1. All lease programs shall remain with the Contractor or Authorized Dealer through an in-house leasing program, or through the financial branch or subsidiary of Contractor. In

addition, Contractor and their Authorized Dealer may use Third Party leasing companies, however; all Third Party leasing company documents must be reviewed and approved by the Lead State and said documents must be incorporated into the Master Agreement before any Participating State, Participating Entity, or Purchasing Entity can use them. It will be at the discretion of the Participating State, Participating Entity, or the Purchasing Entity as to whether billing shall be in the name of Contractor, Authorized Dealer or Third Party leasing company. All contractual obligations however, will still be the responsibility of the Contractor.

2. A Purchasing Entity may lease Devices pursuant to the terms and conditions in this Master Agreement, and according to the requirements listed in their states' Participating Addendum.

3. Lease agreements shall not be subject to automatic renewals. This is non-negotiable in any Participating Addendum or Order.

4. A lease agreement issued prior to the termination of the Master Agreement and Participating Addendum, shall survive the termination of the Master Agreement and the Participating Addendum, and all terms and conditions of the Master Agreement and Participating Addendum shall continue to apply.

5. With the exception of a $1 Buyout Lease arrangement, or unless exercising the purchase option on an FMV Lease, a Purchasing Entity shall return the Device at the end of the Initial Lease Term, or at the end of the Renewal Lease Term, or the Contractor may pick the Device up, without any further financial obligations to the Purchasing Entity.

6. Device pickups must be performed within thirty (30) calendar days of the end of the Initial or Renewal Term.

7. Device returns must be performed within thirty (30) calendar days after the Contractor or Authorized Dealer provides return shipping instructions to the Purchasing Entity.

8. If Purchasing Entity fails to make Device available for pickup after thirty (30) calendar days, then Contractor or Authorized Dealer may bill the Purchasing Entity, at the total monthly payment amount for such Device, for each month that the Device remains at Purchasing Entity's location. Contractor or Authorized Dealer is not permitted to bill the Purchasing Entity for failure of Contractor or Authorized Dealer to pickup the Device when Purchasing Entity has made it available.

9. Contractor and/or Authorized Dealers shall be responsible for all Device pickup and return costs.

10. The maximum term on any Initial Lease Term shall be 60 months.

11. The length of a Renewal Term shall be at the discretion of the Participating State or Entity, but at no time shall the Renewal Term exceed the Useful Life of the Device.

12. All Renewal Terms shall be billed on a monthly basis.

13. If a Purchasing Entity elects to enter into a month to month Renewal Term, they may cancel at anytime, without penalty, by giving Contractor thirty (30) days advance, written notice.

**14.** If a Purchasing Entity elects to enter into a 12-month Renewal Term, the Renewal Term will automatically terminate at the end of the 12-month period, unless the Purchasing Entity has notified the Contractor that they wish to enter into a new Renewal Term. If a Purchasing Entity wants to cancel their 12-month Renewal Term early, then early termination fees shall apply, and will be equivalent to the remaining stream of Equipment payments only (i.e. less maintenance).

## E. Leasing Options

### 1. FMV Lease

**1.1** A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12,18, 24, 36, 48, or 60 months for Group A, Group B, Group D, Sub-Group D1, and Group E, based upon the Contractor's available options, and at the discretion of the Participating State or Entity.

**1.2** Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:

**a.** Exercise their purchase option;

**b.** Renew the lease on a month to month basis, or a 12 month basis, at the discretion of the Participating State or Entity; or

**c.** Return the Device to the Contractor, or have the Contractor pick the Device up.

### 2. Capital Lease ($1 Buyout Lease)

**2.1** A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48, or 60 months for Group A, Group B, Group D, Sub-Group D1, and Group E, based upon the Contractor's available options, and at the discretion of the Participating State or Entity.

**2.2** Upon the expiration of the Initial Lease Term, the Contractor shall provide title to the Device to the Purchasing Entity, or as otherwise determined in a Participating Addendum or an Order, and the Purchasing Entity shall not be subject to any additional expense in order to assume possession of the Device.

### 3. Straight Lease

**3.1** A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48, or 60 months for Group A, Group B, Group D, Sub-Group D1, and Group E, based upon the Contractor's available options, and at the discretion of the Participating State or Entity.

**3.2** Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:

**a.** Renew the lease on a month to month basis, or a 12 month basis, at the discretion of the Participating State or Entity; or

**b.** Return the Device to the Contractor, or have the Contractor pick the Device up.

## F. Leasing Terms and Conditions

1. **Possession and Return of Leased Devices**

   **1.1** The Purchasing Entity is responsible for risk of loss to the Devices while the Devices are in Purchasing Entity's possession. Purchasing Entity shall be relieved of all risks of loss or damage to the Devices during periods of transportation and de-installation.

   **1.2** Contractor or Authorized Dealer must notify a Purchasing Entity, in writing, of their End of Term (EOT) options at least sixty (60) days prior to the end of any Initial Lease Term. Such notification may include, but not be limited to, the following:

   **a.** Any acquisition or return options, based on the type of lease agreement;

   **b.** Any renewal options, if applicable; and/or

   **c.** Hard drive removal and surrender cost, if applicable.

   **1.3** If a Purchasing Entity desires to exercise a purchase, renewal, or return of the Device, it shall give Contractor at least thirty (30) days written notice prior to the expiration of such lease term. Notwithstanding anything to the contrary, if Purchasing Entity fails to notify Contractor of its intent with respect to the exercise of a purchase, renewal, or return of the Device, the Initial Lease Term shall be terminated on the date as stated in the Order and removal of the Device will be mutually arranged, unless otherwise specified in an Order.

   **1.4** If the Purchasing Entity does not exercise the purchase or renewal option, it will immediately make the Device available to Contractor in as good of condition as when Purchasing Entity received it, except for ordinary wear and tear.

2. **Payment.** The first scheduled payment (as specified in the applicable Order), will be due following the Acceptance of the Device(s), or such later date as Contractor may designate. The remaining payments will be due on the same day of each subsequent month, unless otherwise specified in the applicable Order.

3. **Buyout to Keep Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Keep option on an FMV or Capital Lease. A Buyout to Keep option is not available on a Straight Lease.

4. **Buyout to Return Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Return option on an FMV or Straight Lease, and return the Device to the Contractor in good working condition (ordinary wear and tear excepted).

5. **Device Upgrade or Downgrade.** A Purchasing Entity may do a Device Upgrade or Downgrade on a lease at anytime throughout the term of the lease agreement. The Purchasing Entity and the Contractor shall negotiate the price of the Device Upgrade or Downgrade, but at no time shall the total cost of the Device Upgrade or Downgrade be less than the remaining stream of Device Payments.

6. **Non-appropriation of Funds.** The continuation of any lease agreement will be subject to, and contingent upon, sufficient funds being made available by the Participating State Legislature and/or federal sources. The Purchasing Entity may terminate any such lease

agreement, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Purchasing Entity's funding sources are not available.

7. **Assignment.** Purchasing Entity has no right to sell, transfer, encumber, sublet or assign the Device or any lease agreement without Contractor's prior written consent (which consent shall not be unreasonably withheld).

   **7.1** Purchasing Entity agrees that Contractor may not sell or assign any portion of Contractor's interests in the Device and/or these Lease Terms or any Order for leases, without notice to Purchasing Entity even if less than all the payments have been assigned. In that event, the assignee (the "Assignee") will have such rights as Contractor assigns to them, but none of Contractor's obligations (Contractor will keep those obligations) and the rights of the Assignee will not be subject to any claims, defenses or set offs that Purchasing Entity may have against Contractor.

   **7.2** No assignment to an Assignee will release Contractor from any obligations Contractor may have to Purchasing Entity.

8. **Early Termination Charges**

   Except in the case of Non-appropriation of funds, FMV, $1 Buyout, and Straight Leases shall be subject to an early termination charge, and shall involve the return of the Device (in good working condition; ordinary wear and tear excepted) by the Purchasing Entity to the Contractor. With respect to the Device, the termination charge shall not exceed the balance of remaining Device Payments (including any current and past due amounts), and with respect to Service or maintenance obligations, the termination charge shall not exceed four (4) months of the Service and Supply base charge or twenty-five percent (25%) of the remaining Maintenance Agreement term, whichever is less.

9. **Default.** Each of the following is a "default" under these lease terms:

   **9.1** Purchasing Entity fails to pay any payment or any other amount within forty-five (45) days (or as otherwise agreed to in a Participating Addendum) of its due date;

   **9.2** Any representation or warranty made by Purchasing Entity in these lease terms is false or incorrect and Purchasing Entity does not perform any of its obligations under these lease terms, and this failure continues for forty-five (45) days (or as otherwise agreed to in a Participating Addendum) after Contractor has notified Purchasing Entity;

   **9.3** Purchasing Entity or any guarantor makes an assignment for the benefit of creditors;

   **9.4** Any guarantor dies, stops doing business as a going concern, or transfers all or substantially all of such guarantor's assets; or

   **9.5** Purchasing Entity stops doing business as a going concern or transfers all or substantially all of Purchasing Entity's assets.

10. **Remedies.** If a Purchasing Entity defaults on a lease agreement, then Contractor, in addition to, or in lieu of, the remedies set forth in the Master Agreement, and Participating Addendum, may do one or more of the following, at the discretion of the Participating

State or Entity:

**10.1** Cancel or terminate any or all Orders, and/or any or all other agreements that Contractor has entered into with Purchasing Entity;

**10.2** Require Purchasing Entity to immediately pay to Contractor, as compensation for loss of Contractor's bargain and not as a penalty, a sum equal to:

**a.** All past due payments and all other amounts payable under the lease agreement;

**b.** All unpaid payments for the remainder of the lease term, discounted at a rate equal to three percent (3%) per year to the date of default; and

**c.** Require Purchasing Entity to deliver the Device to Contractor per mutual arrangements.

## IV. Contractor Responsibilities and Tasks

### A. Service Requirements

**1. Technicians.** All technicians must be factory trained by the OEM and certified to Service the Devices.

**2. Standard Service Levels.** Participating States and/or Entities may negotiate their own Service Level Agreement (SLA) with the Contractor. The SLA, must, at a minimum, adhere to the following requirements:

#### 2.1 End-User Training

**a.** Purchasing Entity may request an initial one-hour training session for each Device ordered under the Contract. Contractor shall provide this initial training, free of charge, via one of the following delivery methods: On-site, web-based, or on-line. The delivery method selected for each Device will be at Contractor's sole discretion. Purchasing Entity should be advised that while this initial one-hour of free training shall be provided by Contractor at Purchasing Entity's request, Contractor will not provide substitutions (e.g. free supplies, deeper discounts, etc.) in lieu of this training.

**b.** Purchasing Entity may also request an additional one-hour training session for technical support, which shall include network connectivity and print driver installation. This additional training shall be provided via a delivery method mutually agreed upon by Contractor and Purchasing Entity, and at a mutually agreed upon price.

**c.** If Purchasing Entity elects to exercise the training option, then Contractor shall provide the training within ten (10) Business Days of Purchasing Entity's request.

**d.** Contractor may offer additional on-site, one-hour training sessions for a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity, and mutually agreed upon, prior to Order placement.

**e.** Contractor must provide on-site or off-site operational training to designated Purchasing Entity personnel, until the personnel are able to operate the

Device independently. Pricing for operational training shall be based on a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity, and mutually agree upon, prior to Order placement.

**f.** Contractor shall provide Device literature, user-manuals, and access to on-line resources, if available, at no charge to the Purchasing Entity.

**g.** For Groups A, B, D, E, and Sub-Group D1, Contractor shall provide a no charge, toll-free end-user technical support number that Purchasing Entities can utilize for everyday minor troubleshooting (i.e. this does not include network connectivity or print driver installation). A Purchasing Entity must be able to obtain assistance during Normal Business Hours.

**h.** Contractor shall provide phone/technical support within two (2) hours of Purchasing Entity's request for assistance, providing such request, and subsequent support, falls within normal business hours.

**2.2 Preventative Maintenance.** Contractor must perform all Preventative Maintenance Services at the Manufacturer's suggested intervals, or as specified in an Order. Preventative Maintenance shall not be a requirement on desktop Devices.

**2.3 Device Performance**

**a.** Device Downtime shall be computed from the time the Contractor is notified of Device failure until the time in which the Device is fully operational.

**b.** Device Downtime due to lack of consumable Supplies is not acceptable.

**c.** Contractor must provide daily communication to the Purchasing Entity regarding inoperable Devices, including updates regarding resolution timeframe, and any parts, Accessories, or Devices on back-order.

**2.4 Loaner Device.** If any Device in Group A or Group B is inoperable for two (2) Business Days, due to Device malfunction, as reasonably determined by Contractor, then Contractor shall provide the Purchasing Entity with:

**a.** A loaner Device of similar speed and capabilities until such time as the inoperable Device is now operable; or

**b.** Upon mutual agreement in Urban areas, provide the Purchasing Entity with off-site manned production capabilities, at the sole cost to the Contractor, to accomplish the work of the Device that is inoperable.

**2.5 Repair Parts**

**a.** Contractor shall guarantee the availability of repair parts for a minimum of five (5) years after the Purchasing Entity's Acceptance of any Device.

**b.** All Device components, spare parts, application software, and ancillary Devices that are supplied under any resulting Master Agreement, must conform to Manufacturer specifications.

**c.** Contractor shall be responsible for ensuring that any repair parts are operable and installed in accordance with Manufacturer specifications.

**d.** Repair parts may be new, reconditioned, reprocessed or recovered.

## 2.6 Service Zones

**a.** Unless otherwise specified in a Participating Addendum, Contractor shall adhere to the following Service Call Response Times based on the distance that their Service Base Location is from the Purchasing Entity:

| Service Zone | Definition | Response Time |
|---|---|---|
| Urban | Within 60 miles | 4 - 6 Hours, and next Business Day for Group D |
| Rural | 60 – 120 miles | 1 - 2 Business Days |
| Remote* | 120+ miles, or only accessible by plane or by boat | 4 – 5 Business Days |

*Additional fees may apply

**b.** Repair or replacement of parts and/or Devices shall occur within four (4) Business Days of Contractor arriving at Purchasing Entity's location, with the following exception:

**i)** If Contractor is drop-shipping a new Device to replace a defective Device, then Purchasing Entity must receive the new Device within five (5) Business Days.

**c.** Contractor(s) may charge different rates according to each Service Zone.

## 2.7 Service Logs

**a.** Contractor shall maintain a Service log which describes the maintenance and repair Services provided for each Device.

**b.** A no-cost copy of Service logs/reports must be provided to the Purchasing Entity or Participating State or Entity, within five (5) Business Days of the request.

## 2.8 Device Relocation

**a.** Device relocation Services include dismantling, packing, transporting, and re-installing Device.

**b.** Contractor may charge for this Service based on the following table:

| Service Zone | Distance from current placement of Device | Charge |
|---|---|---|
| 1 | Within the same building | No Charge Allowed* |
| 2 | Up to 50 miles from building in which Device is currently placed | Flat Rate Fee, plus Per Mile or Hourly Fee |
| 3 | More than 50 miles from building in which Device is currently placed | Flat Rate Fee, plus Per Mile or Hourly Fee |

*Contractor may charge Purchasing Entities a mutually agreed upon price for special rigging in the event a Purchasing Entity's demographics require such rigging for Zone 1 relocations. The price shall be agreed upon in writing by Contractor and Purchasing Entity prior to any Device relocation in Zone 1.

**c.** Contractor may not charge for any fees incurred due to fuel or tolls.

**d.** Moves must be performed within thirty (30) calendar days of the Purchasing Entity request. Request may be verbal or written, but Contractor must confirm the request in writing and provide a date that the move will occur. Written confirmation must be sent to the Purchasing Entity within three (3) Business Days of request. In the event that there will be a delay in these Services, Contractor shall communicate with Purchasing Entity and agree on a mutually beneficial time-frame.

**e.** Contractor is required to offer Device relocation services for all leased Equipment.

## 3. Meter Read Invoicing

**3.1** In order for Contractor to generate accurate invoices, Purchasing Entities shall provide meter reads within the Contractor's requested time-frame.

**3.2** Invoices that are generated without receiving the proper meter read information from the Purchasing Entity will not be considered inaccurate.

**3.3** The Purchasing Entity shall provide written notice of any such alleged invoicing issue and the Contractor will be allowed a thirty (30) day cure period to address any such issue. During the thirty (30) day cure period, the Purchasing Entity will not be assessed any late fees for failure to submit payment by the invoice due date.

**3.4** Failure on the Contractor's part to maintain accurate invoicing shall result in a $25.00 per instance credit on the following month's invoice from Contractor.

## 4. Reporting

### 4.1 Service Level Calculations

**a.** At the discretion of the Participating State or Entity, Contractor shall produce reports that can be measured against the required SLA components.

**b.** The Participating State or Entity shall determine how the reports will be utilized and whether liquidated damages will be assessed for failure to meet the SLA requirements. Any liquidated damages or penalty structure shall be defined in the Participating State or Entity's Participating Addendum.

**4.2 Periodic Reporting.** Contractor shall provide periodic reporting to all Purchasing Entities upon request. The reports shall be provided on a quarterly basis, or at the discretion of the Participating State or Entity.

**a.** The report shall include the following:

**i)** Number of Service Calls placed;

**ii)** Response Time per Device;

iii) Dates that Preventative Maintenance was performed, if applicable; and

iv) Estimated end of Useful Life per Device.

b. The report may include, but not be limited to, the following:

i) Location of Devices;

ii) Click usage per Device; and

iii) EPEAT certification level of each Device.

## B. Customer Service

1. **Key Personnel.** Contractor shall ensure that staff has been allocated appropriately to ensure compliance with the resulting Master Agreement and subsequent Participating State or Entity requirements and that the individuals occupying the Key Personnel positions have adequate experience and knowledge with successful implementation and management of a national cooperative contract. Contractor shall provide a single point of contact for the following:

1.1 **Master Agreement Contract Administrator –** shall be the Lead State's primary contact in regards to Contract negotiations, amendments, Product and Price List updates, and any other information or documentation relating to the Master Agreement;

1.2 **NASPO ValuePoint Reporting Contact –** shall be responsible for submitting quarterly reports and the quarterly Administrative Fee to the appropriate personnel;

1.3 **Master Agreement Marketing Manager –** shall be responsible for marketing the resulting Master Agreement, as well as creating Participating State websites, and ensuring that all uploaded data and content is current; and

1.4 **National Service Manager –** shall be responsible for overseeing the Regional Service Managers, Field Service Technicians, training, and inside Service operations. This position will work with the Lead State Contract Administrator to ensure contractual obligations are met, while providing leadership for the Contractor's operations, as well as strategic planning of the Service department.

2. **Single Point of Contact.** Contractor shall provide a single point of contact for each Participating State, who will handle any questions regarding the Products provided, as well as pricing, delivery, billing, reporting, status of Orders, customer complaints and escalated issues.

3. **Service and Support Hours.** Contractor must provide full Service and support for Products during Normal Business Hours.

4. **Customer Service Team.** Contractor shall also have a designated customer service team who shall be available by phone (via local or toll free number), fax, or email during Normal Business Hours.

5. **Additional Coverage.** Contractor may offer additional coverage beyond Normal Business Hours for any Device that needs to be serviced. Such coverage shall be billed to the Purchasing Entity at an hourly rate.

6. **Online Access**. Customer service representatives shall have online access to account information and be able to respond to inquiries concerning the status of Orders (shipped or pending), delivery, back-orders, pricing, Product availability, Product information, and account and billing questions.

## C. Authorized Dealers

1. Contractor can engage Authorized Dealers to provide Products and/or Services.

2. In the event a Contractor elects to use Authorized Dealers in the performance of the specifications, the Contractor shall serve as the primary Contractor, and shall be fully accountable for assuring that their Authorized Dealers comply with the terms and conditions of the resulting Master Agreement, and any Participating Addendum, and shall be liable in the event Authorized Dealers fail to comply with such terms and conditions.

3. Authorized Dealers shall be expected to stay current with Contractor Products, pricing, Master Agreement, and Participating Addendum requirements, and Contractor shall provide training to all of their Authorized Dealers at least once per calendar year, or as otherwise determined by the Lead State.

4. Authorized Dealers shall have the ability to accept Orders from a Purchasing Entity and invoice them directly, unless otherwise stated in a Participating Addendum.

5. Contractor shall send notice to the Lead State, utilizing **Exhibit C, Authorized Dealer Form** and **Exhibit D, Authorized Dealers by State,** within three (3) calendar days of engaging or removing a Dealer.

6. The Lead State reserves the right to deny the addition of any Authorized Dealer and will provide notification to the Contractor with justification as to why the decision was reached. In addition, it will be at the discretion of each Participating State or Entity as to whether they will utilize the Authorized Dealers as approved by the Lead State. Under no circumstances is a Participating State or Entity permitted to use a Dealer that has not been approved by the Lead State.

7. If an Authorized Dealer is performing unsatisfactorily, or is not in compliance with the Master Agreement, then it shall be at the discretion of the Lead State, upon recommendation from the Participating State, to:

   **7.1** Require the Dealer to attend remedial training with either the Contractor or the Lead State or;

   **7.2** Remove the Dealer from the Contract, or in the case of multiple branch locations in one state, or multiple states, remove them as a Dealer from the location in which they are not in compliance.

## D. Device Demonstration Requirements

1. Contractor may offer trial or demonstration Devices for Group A, Group B, Group D, Sub-Group D1, and Group E.

2. Trial or demonstration Devices may be new or used; however, no used, Remanufactured, or Refurbished Devices shall be converted to a purchase or lease.

3. At the discretion of the Participating State or Entity, and upon request by a Purchasing Entity, showroom Devices for Groups A and B may be converted to a purchase or lease, providing the following conditions are met:
   - **3.1** The meter count on Group A and Group B Devices does not exceed 10,000 copies total (i.e. b&w and color combined);
   - **3.2** The Device must be discounted by at least 5% off of the Master Agreement pricing for that same Device; and
   - **3.3** The Purchasing Entity and the Contractor indicate on the Order that the Device is a showroom model.
4. Any trial or demonstration period shall be free to the Purchasing Entity and shall not exceed thirty (30) calendar days.
5. If Purchasing Entity does not make the demonstration Device available for pickup after thirty (30) calendar days, then Contractor may bill the Purchasing Entity for use of Device for each day that it remains at Purchasing Entity's location. Such rates shall not exceed current market standards.

## E. Device Installation Requirements

1. Prior to Order Acceptance, Contractor must advise Purchasing Entity of any specialized installation and site requirements for the delivery and installation of Device. This information should include, but is not limited to, the following:
   - **1.1** Air conditioning;
   - **1.2** Electrical;
   - **1.3** Special grounding;
   - **1.4** Cabling;
   - **1.5** Space;
   - **1.6** Humidity and temperature limits; and
   - **1.7** Other considerations critical to the installation.
2. The Purchasing Entity shall be responsible for furnishing and installing any special wiring or dedicated lines.
3. Network installation shall include configuration of the Device for the proper network protocols, and installation of the appropriate print drivers on up to five (5) computers per Device, or as otherwise specified in a Participating Addendum.
4. If applicable, all Devices must be set-up with Preventative Maintenance notifications turned on, and with the most environmentally responsible defaults enabled, including Energy Star saving settings.
5. Contractor may charge for excessive installation requirements, including rigging, access alterations, and access to non-ground floors via stairs. Any such excessive installation charges must be quoted to the Purchasing Entity prior to the signature of any Order, and shall be based on the actual expenditures of Contractor or Authorized Dealer.

6. Contractor or Authorized Dealers shall affix a label or a decal to the Device at the time of installation which shows the name, address, and telephone number of Contractor or Authorized Dealer responsible for warranty Service of the Device.

7. Contractor shall clean-up and remove all debris and rubbish resulting from their work as required by the Purchasing Entity. Upon completion of the work, the premises shall be left in good repair and in an orderly, neat, clean, and unobstructed condition.

## F. Security Requirements

### 1. Network and Data Security

**1.1** Devices may be configured to include a variety of data security features. The set-up of such features shall be at the discretion of the Purchasing Entity, and all costs associated with their implementation must be conveyed by Contractor prior to Order placement.

**1.2** Contractor will not be permitted to download, transfer, or access print data stored on the Device in either hard drive or chip memory. Only system management accessibility will be allowed.

**1.3** Contractor shall ensure that delivery and performance of all Services shall adhere to the requirements and standards as outlined in each Participating State or Entity's Participating Addendum.

2. **Sensitive Information**. Sensitive information that is contained in any Legacy Devices or applications shall be encrypted if practical. In addition, sensitive data will be encrypted in all newly developed applications. Since sensitive information is subjective, it shall be defined by each Participating State or Entity in their Participating Addendum.

3. **Data Breach.** Contractor shall have an incident response process that follows National Institute of Standards and Technology (NIST) standards as referenced in the NIST Computer Security Incident Handling Guide, which can be downloaded at https://www.nest.gov/publications/computer-security-incident-handling-guide, and it shall include, at a minimum, breach detection, breach notification, and breach response. Further, Contractor shall notify the impacted Purchasing Entity within 72 hours of learning of such breach.

### 4. Authentication and Access

**4.1** Any network connected Device must offer authentication for all features via LDAP and/or Windows AD, as well as the ability to disable authentication for any or all features.

**4.2** Any network connected Device must have the ability to connect via Dynamic Host Configuration Protocol (DHCP) or Static IP address.

**4.3** The credential information for any remote authentication method may not be maintained within the Device's memory.

**4.4** Access to the Device's administrative functions must be password protected per the Participating State or Entity requirements, and the default settings must be changed at the time of Device installation.

**5. Hard Drive Removal and Surrender**

**5.1** Contractor shall ensure that all hard drive data is cleansed and purged (if capable) from the Device at the end of its Useful Life, or when any hard drive is repossessed by Contractor; or

**5.2** At the Participating State or Entity's discretion, Contractor shall remove the hard drive from the applicable Device and provide the Purchasing Entity with custody of the hard drive before the Device is removed from the Purchasing Entity's location, moved to another location, or any other disposition of the Device. The Purchasing Entity shall then be responsible for securely erasing or destroying the hard drive.

**5.3** If Contractor takes possession of any Device at a Purchasing Entity's location, then they shall also remove any ink, toner, and associated Supplies (drum, fuser, etc.) and dispose of them in accordance with applicable law, as well as environmental, and health considerations, or as otherwise specified in a Participating Addendum.

**5.4** Hard drive sanitation shall be at no expense to the Purchasing Entity, however; Contractor may charge the Purchasing Entity a fee if the Purchasing Entity elects to keep the hard drive in their possession. Contractor must disclose the price for removal and surrender of the hard drive, prior to Order placement.

**5.5** If the hard drive is not removable, or the Device does not contain a hard drive, then Contractor must convey this to the Purchasing Entity at the time of Order placement. In the case of a non-removable hard drive, **section IV.I (5.1)** shall apply.

**5.6** If Contractor is removing another Manufacturer's Device, they are not permitted to remove the hard drive. Only the Manufacturer or their Authorized Dealer shall remove hard drives in their own Devices. Contractor shall work with the Manufacturer to ensure the requirements pursuant to this section are met.

**G. Contractor Notices.** Contractor shall notify the Lead State, Participating States, Participating Entities and all Purchasing Entities of any recall notices, warranty replacements, safety notices, or any applicable notice regarding the Products being sold. This notice must be received in writing (via postal mail or email) within thirty (30) calendar days of Contractor learning of such issues.

# EXHIBIT B – SAMPLE D&A CERTIFICATE

## Certificate of Acceptance

Re: Account Schedule Number ("Contract")
Financial Services Provider: Toshiba America Business Solutions, Inc. ("**FS Provide**r")
Lessee/ Customer: ("Customer")

This Certificate of Acceptance to the lease, loan or other form of financial services contract described above ("**Contract**") is by and between the FS Provider identified above and the Customer identified above.

Customer, through its authorized representative, hereby certifies to FS Provider and any assignee of FS Provider with respect to the Contract that:

1. All of the Equipment has been inspected and is (a) complete, (b) properly installed, (c) fully functioning, and (d) in good working order.

2. Customer is not in default under the Contract and all of Customer's statements and promises set forth in the Contract are true and correct.

**IN WITNESS WHEREOF**, Customer's duly authorized representatives has executed this Acceptance Certificate as of the Acceptance Date.

Customer:

By: _____

Title:

Acceptance Date:

# EXHIBIT C – AUTHORIZED DEALER FORM

**Manufacturer Name:** _____

(Check one)

☐ The Dealer listed below is authorized to provide Products and Services in accordance with the NASPO ValuePoint Multi-Function Devices and Related Software, Services and Cloud Solutions Master Agreement.

☐ The Dealer listed below will no longer provide Products and Services under the NASPO ValuePoint Multi-Function Devices and Related Software, Services and Cloud Solutions Master Agreement for the following reason (required):

_____

_____

_____

| | |
|---|---|
| State(s) Serviced by Dealer: | |
| Dealer Name: | |
| Address: | |
| Phone (include Toll-Free, if available): | |
| Contact Person(s): | |
| Email Address: | |
| FEIN: | |

Signed: _____ Date: _____
(Contractor Representative)

Signed: _____ Date: _____
(Authorized Dealer Representative)

_____
(Print First and Last Name of Authorized Dealer Representative)

# EXHIBIT D – AUTHORIZED DEALERS BY STATE

Exhibit D -
Authorized Dealers by

# ATTACHMENT 1 – TOSHIBA LEASE AGREEMENT TERMS AND CONDITIONS

**AGREEMENT FOR LEASE OF EQUIPMENT**
a Contract Between

"Lessee"
(NAME, ADDRESS, PHONE OF LESSEE)
and
Toshiba America Business Solutions, Inc.

WHEREAS, Lessee is authorized to lease under the NASPO-ValuePoint Master Agreement ("Master Agreement") and the State of Participating Addendum thereto; and

WHEREAS, it is deemed that the lease of this equipment is both necessary and for the good of Lessee;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. LEASE TERM. This Agreement shall be effective from the date of delivery and acceptance of Leased Equipment for the term set forth on the (i) Attachment 5, Toshiba Lease Order Form and if applicable Attachment 6, Toshiba Lease Order Form Schedule B (collectively an "Order Form"); or (ii) the Lessee's Purchase Order (PO) to which this Agreement is attached, unless sooner terminated by either party as set forth in Section 6 of this Agreement.

2. DEFINITIONS. "**Lease Term**" means the term of this Agreement as set forth in Section 1. "**Leased Equipment**" means the (i) equipment described in the Order Form, attached to this Agreement, and which is incorporated herein; (ii) any replacement equipment provided by Lessor; and (iii) any additional equipment described under subsequent Order Forms agreed to during the term of this Agreement. "**Lessor**" means Toshiba America Business Solutions, Inc. or, if applicable, its permitted assignee.

3. CONSIDERATION (RENT). The parties agree that for the Lease Term, Lessor leases to Lessee the equipment described in, and for the lease payments set forth in, the Order Form, excluding meter charges, late fees and applicable taxes. Except as provided in section 6(c), lessee's payment obligations are absolute and unconditional and are not subject to cancellation, reduction or setoff for any reason whatsoever. Lessee does not agree to reimburse Lessor for expenses, unless otherwise specified in the incorporated documents. Any intervening end to a fiscal period shall be deemed a contract renewal (not changing the overall Agreement term) or a termination as the results of legislative appropriation may be required.

4. POSSESSION, TITLE AND RETURN.

(a) Lessee shall have possession of the Leased Equipment for the Lease Term, unless this Agreement is earlier terminated in accordance with Section 6 below and shall keep such Leased Equipment at the location specified in the Order Form or such other location as Lessor may agree in writing.

(b) Lessor covenants that it has good title to the Leased Equipment, except any intangible property or associated services such as periodic software licenses and prepaid database subscription rights included in the Leased Equipment, if any. If the Order Form indicates that this lease is a Capital (i.e. $1 Buyout) Lease and if this Agreement is deemed to be a secured transaction, Lessee grants Lessor a first priority security interest in the Leased Equipment to secure all of Lessee's obligations under this Agreement, agrees not to permit any other liens on the Leased Equipment, and shall own such Leased Equipment as of the acceptance date and Lessee authorizes Lessor to record a UCC-1 to reflect such interest. At the end of the Lease Term, if Lessee is not in default, Lessor will release any security interest it may have in the Leased Equipment subject to such Capital Lease, which will be retained by Lessee.

(c) At the expiration of the term of this Agreement and provided that the Order Form does not indicate this lease is a Capital Lease, upon Lessee's written request, Lessor shall remove the hard drive from the applicable Device and provide the Lessee with custody of the hard drive before the Device is removed from the Lessor's location. Lessor may charge the Purchasing Entity a fee if the Purchasing Entity elects to keep the hard drive in their possession. The Lessee shall then be responsible for securely erasing or destroying the hard drive. If Lessee is not in breach of this Agreement, all costs of removing and transporting the Leased Equipment at the expiration of the Lease Term shall be the responsibility of Lessor.

(d) Risk of loss of the Leased Equipment rests with Lessor until the Leased Equipment is picked up from Lessee's designated location, at which time risk of loss passes to Lessee.

(e) If the Order Form indicates this lease is a Fair Market Value Lease, at the end of the Lease Term and upon 30 days' prior written notice to Lessor, Lessee may purchase all, but not less than all, of the Leased Equipment AS-IS and WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE, for the Fair Market Value, plus applicable sales and other taxes, if any.

5. TAXES. Lessee agrees to pay all fees, assessments, taxes and charges governmentally imposed upon Lessor's purchase, ownership, possession, leasing, renting, operation, control or use of the Leased Equipment.

6. TERMINATION.

(a) Termination by Mutual Consent. Any discretionary or vested right of renewal notwithstanding, this Agreement may be terminated upon written notice by mutual consent of both parties.

(b) Termination by Lessee without Cause. This lease may be bought out and all Leased Equipment returned to Lessor, although fair market value leases, operational leases, non-cancelable rentals and capital leases are subject to a termination charge. The termination charge is equal to the balance of unpaid lease payments and other amounts due hereunder (including any current or past due amounts) for leases and with regard to service or maintenance obligations, may not exceed more than four (4) month service and supply base or 25% of the remaining term, whichever is less.

(c) Termination for Nonappropriation. The continuation of this Agreement beyond the current fiscal period is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by Lessee's legislature, governing body and/or federal sources. If for any reason Lessee's funding is not appropriated or is withdrawn, limited, or impaired, Lessee may terminate this Agreement, and Lessor waives any and all claim(s) for damages, effective as of the end of the fiscal period in which written notice of such non-appropriation, withdrawal, limitation or impairment is provided by Lessee to Lessor. If Lessee terminates this Agreement because of non-appropriation, withdrawal, limitation or impairment of funds, Lessee will not purchase, lease or rent replacement equipment performing the same functions as the Leased Equipment during the subsequent fiscal period.

(d) Termination for Default or Breach. A default or breach may be declared with or without termination. This Agreement may be terminated by either party upon written notice to the other party for any material breach or default by the other party of any terms, conditions, covenants, or obligations of this Agreement. Notice of termination for breach or default is effective 30 days following service of notice, or upon any subsequent date specified in the notice of termination. Termination by Lessor due to Lessee's material breach or default will be subject to a termination charge, which is equal to the balance of lease payments and other amounts due hereunder (including any current or past due amounts) for leases and may not exceed more than four (4) month service and supply base or 25% of the remaining term, whichever is less, for service and maintenance charges.

7. INSURANCE. At Lessor's request, Lessee shall provide to Lessor proof that the Leased Equipment is covered for the value thereof against property loss or damage while in Lessee's possession by Lessee's program of self-insurance (if approved by Lessor and Lessor's assignee, if any) or a policy of property insurance from a qualified insurer.

8. LOSS OR DAMAGE. If any item of Leased Equipment is lost, stolen or damaged, Lessee will, at Lessee's option and cost, either: (a) repair the item or replace the item with a comparable item reasonably acceptable to Lessor; or (b) pay Lessor the sum of: (i) all past due and current lease payments and other amounts due under this Agreement; (ii) the present value of all remaining lease payments for the effected item(s) of Leased Equipment, discounted at the rate of 6% per annum; and (iii) if this lease is not a Capital Lease, the Fair Market Value of the effected item(s) of Leased Equipment. Upon Lessee's payment to Lessor under clause (b) above, Lessor will then transfer to Lessee all of Lessor's right, title and interest in the effected item(s) of Leased Product AS-IS AND WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE. "Fair Market Value" means the item's fair market value at the end of the Lease Term, assuming good order and condition (except for ordinary wear and tear from normal use), as estimated by Lessor. No such loss or damage shall relieve Lessee of payment obligations hereunder.

9. WARRANTY AND MAINTENANCE OF EQUIPMENT; WARRANTY DISCLAIMER. All services performed under this Agreement shall be of workmanlike quality, consistent with the standards of the trade, profession or industry. Lessor shall assign to Lessee all manufacturer's warranties on the Leased Equipment, which shall be not less than a full six months' warranty. Lessor shall be responsible for ongoing service and maintenance of the Leased Equipment for the duration of the Lease Term. EXCEPT AS OTHERWISE STATED HEREIN, LESSOR MAKES NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE LEASED EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE LEASED EQUIPMENT IS MERCHANTABLE. Lessee acknowledges that none of Lessor or their representatives are agents of any assignee and none of them are authorized to modify the terms of this lease or on any Schedule. No representation or warranty of Lessor with respect to the Leased Equipment will bind any assignee, nor will any breach thereof relieve Lessee of any of its obligations hereunder. THIS LEASE AGREEMENT AND EACH SCHEDULE CONSTITUTES A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE (the "UCC"). Lessee agree that any manufacturer or Lessor warranty or service agreement is a separate and independent obligation of Lessor to Lessee, that no assignee of the Lessor shall have any obligation to Lessee with respect to such warranty or service agreement and that Lessee's obligations

under this Agreement are not subject to setoff, withholding, reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim Lessee may have against Supplier.

10. LESSOR REMEDIES. If Lessee default, Lessor may do one or more of the following: (a) recover from Lessee, as liquidated damages for loss of bargain and not as a penalty, the sum of: (i) all past due and current lease payments and other amounts due under this Agreement; (ii) the present value of all remaining lease payments, discounted at the rate of 6% per annum; and (iii)) require Lessee to make the Leased Equipment available to Lessor for pickup at Lessee's premises (and Lessee shall be responsible for removing all data as provided in Section 4) and to pay all costs of removing and transporting the Leased Equipment; (c) charge Lessee for expenses incurred in connection with the enforcement of Lessor's remedies. If Lessor picks up the Leased Equipment, Lessor may sell, release or otherwise dispose of the Leased Equipment and apply the proceeds, less reasonable selling and administrative expenses, to the amounts due by Lessee. These remedies are cumulative, in addition to any other remedies provided by law, and may be exercised concurrently or separately. Any failure or delay by Lessor to exercise any right shall not operate as a waiver of any right. LESSOR SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES.

11. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. Any services performed by Lessor before this Agreement is effective or after it ceases to be effective are performed at the sole risk of Lessor.

12. LESSEE REPRESENTATIONS. Lessee represents that: (a) this Agreement and any documents required to be delivered in connection with this Agreement (collectively, the "Documents") have been duly authorized by Lessee in accordance with all applicable laws, rules, ordinances and regulations; (b) the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents, if applicable, have the authority to do so, are acting with the full authorization of Lessee's governing body, and hold the offices indicated below their signatures; (c) the Leased Equipment is essential to the immediate performance of a governmental or proprietary function by Lessee within the scope of Lessee's authority and shall be used during the Lease Term only by Lessee to perform such function; (d) Lessee intends to use the Leased Equipment for the entire Lease Term and shall take all necessary action to include in Lessee's annual budget any funds required to fulfill Lessee's obligations each fiscal period during the Lease Term; (e) Lessee has complied fully with all applicable law governing open meetings, public bidding and appropriations, required in connection with this lease and the debt under applicable state law; (f) unless this lease is a Capital Lease, Lessee's obligations to remit Lease Payments constitutes a current expense and not a debt under applicable state law; (g) this Agreement is binding on Lessee and Lessee's successors and assigns; and (h) all financial information Lessee has provided is true and a reasonable representation of Lessee's financial condition.

13. ASSIGNMENT. Lessee may not assign or dispose of any rights or obligations under this Agreement or sublease the Leased Equipment without Lessor's prior written consent. Notwithstanding anything in the NASPO ValuePoint Master Agreement and/or the Participating Addendum to the contrary, Lessor may assign all or any portion of this Agreement or its interest in the Leased Equipment; provided that service obligations on the Leased Equipment shall remain with Toshiba America Business Solutions, Inc. and expressly not with Lessor's assignee and must conform to the terms of the NASPO ValuePoint Master Agreement and the State of Participating Addendum. Lessor's assignee shall have Lessor's rights under this Agreement, but none of Lessor's obligations. Lessee agrees not to assert any claims, defenses or offsets it may have against Lessor against such assignee.

14. AGREEMENT AND MODIFICATION. This Agreement is made pursuant to the NASPO ValuePoint Master Agreement identified above, and the State of Participating Addendum to that Master Agreement, the terms of which are incorporated herein by reference. In the event of conflict between the Master Agreement or the State of Participating Addendum and this Agreement, the Master Agreement and the Participating Addendum shall govern and control. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties, unless the same is in writing and signed by the respective parties hereto.

15. TIME PRICE. If the Toshiba Lease Order Form and Schedule indicates the lease is a Capital Lease, Lessee understands that the Leased Equipment may be purchased for cash (the "Product Cost") or purchased pursuant to this Agreement for an amount of each Lease Payment times the number of Lease Payments, less maintenance, as set forth on the NASPO Lease Order Form and Schedule and this Agreement, plus the $1 Purchase Option amount stated on the NASPO Lease Order Form and Schedule, and by signing this Agreement, Lessee has chosen to purchase the Leased Equipment for that price. The Product Cost may be determined by dividing the Lease Payment by the lease rate factor set forth on the NASPO Lease Order Form and Schedule. Each Lease Payment under a Capital Lease includes a part of Lessor's investment in the Product Cost and a return on Lessor's investment in the Capital Lease. The total return on Lessor's investment (the total finance charge) is determined by deducting the Product Cost (as determined above) from the Time Price. The difference so determined is the return to Lessor on its investment (the total finance charge). The rate of return (finance rate) may be determined by applying to the Product Cost, the rate that will amortize the Product Cost down to the Purchase Option amount by applying as payments, the Lease Payments. For purposes of that amortization, each Lease Payment will be considered received on the date it is required to be paid under this Agreement.

16. GOVERNING LAW, JURY TRIAL WAIVER. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of , without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO THIS AGREEMENT AND THE LEASED EQUIPMENT.

17. NOTICE. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally in hand, (b) delivered by telephone, facsimile or email with simultaneous regular mail, or (c) mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above or such other address as the other party may have provided written notice of in accordance with this Section 17. For purposes of computing times from service of notice, service of notice by delivery in hand shall be effective on the date of delivery; notices that are mailed shall be effective on the third calendar day following the date of mailing.

18. RESERVED.

19. ELECTRONIC DOCUMENTATION. This Agreement may be executed in counterparts and signed by the parties manually or electronically. The executed counterpart that has Lessor's original signature and/or is in Lessor's possession shall constitute chattel paper as that term is defined in the UCC and shall constitute the original agreement for all purposes. If Lessee transmits this Agreement to Lessor by facsimile or other electronic transmission, the transmitted copy shall be binding upon the parties. Neither party may raise as a defense to the enforcement of this Agreement that it was signed or transmitted electronically.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

**LESSOR:**
**Toshiba America Business Solutions, Inc.**

Name:
Title:
Date:

**LESSEE:**

**By:** _____
Name:
Title:
Date:

# ATTACHMENT 2 – TOSHIBA SERVICE LEVEL AGREEMENT

TOSHIBA

1. Customer Level SLA

1.1. Purpose

The purpose of this Attachment is to outline service levels; as well as provide Customer with a defined process for equipment replacement or loan as set forth herein.

1.2. Customer Service Level Agreement

Contractor agrees to maintain the following service levels defined below as targets:

| Performance Criteria | Target Level |
|---|---|
| Average Uptime | 96% or Better |
| Average On-Site Response Time | 4 Hours or Less |

1.3. Total Quality Commitment (TQC)

1.3.1. Free Replacement - If Buyer's Toshiba MFD, Facsimile or its accessories, do not operate within Toshiba's product specifications during the term of its lease or if purchased its maintenance service term, and if the equipment cannot be repaired to perform within product specifications, Contractor will replace the MFD, facsimile or accessory at no charge with a model of equal or better features and specifications.

1.3.2. Free Loaner:

1.3.2.1. If Customer's Toshiba MFD is out-of-service more than two (2) consecutive business days after notifying a Contractor's Authorized Servicing Provider or requires off-site service, a loaner MFD will be provided by the Contractor Authorized Servicing Provider at no additional charge.

1.3.2.2. All loaned equipment is the property of Contractor or the Contractor's Authorized Servicing Provider and must be returned to Contractor or the Contractor's Authorized Servicing Provider at the time the repaired or replaced equipment is tendered.

1.3.3. Term of Program.

The term of this program is (i) for purchased equipment, three years from equipment installation date or maximum number of copies as stated in the product specifications, whichever occurs first; or, (ii) for leased or rented equipment, the length of the original lease or rental term starting from the equipment installation date or the maximum number of copies as stated in the product specifications, whichever occurs first.

1.3.4. Terms & Conditions Of TQC

This program applies only to new Toshiba MFD and/or accessories acquired by customers from Toshiba or an Contractor Authorized Servicing Provider on or after April 1, 1996, on condition that the equipment: (i) was continuously maintained under a full service maintenance agreement provided by an Authorized Toshiba Servicing Provider, and (ii) only genuine Toshiba parts and consumable supplies are used in the maintenance and operation of the equipment. This program is non-transferable. Product damaged or destroyed because of Buyer's negligence, misuse or abuse, improper electrical power, or an act of God are not covered under this program.

If a Contractor Authorized Servicing Provider is not available to fulfill the terms of this program, Toshiba will

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resolve any program issues within a reasonable period of time. No modification or extension of this program is effective unless it is in writing and signed by the Vice President, General Manager of Toshiba-Electronic Imaging Division.

### 1.3.5. How To Exercise This Guarantee

First, notify your Authorized Toshiba Servicing Provider of the problem. If you do not obtain resolution to your satisfaction via your Authorized Toshiba Servicing Provider, send a certified letter documenting your problem and a copy of the dated sales receipt to:

Toshiba America Business Solutions, Inc.
Director of Field Service
25530 Commercentre Boulevard
Lake Forest, California 92630

# ATTACHMENT 3 – TOSHIBA MAINTENANCE AGREEMENT

| TOSHIBA | MAINTENANCE AGREEMENT<br>Attachment 3 |
|---|---|
| | Administered by the State of Colorado #RFP-NP-23-001 |

These maintenance terms are pursuant to a Participating Addendum under NASPO ValuePoint Master Agreement administered by the State of Colorado #RFP-NP-23-001 (the "Master Agreement"). By accepting this Attachment, Customer agrees to purchase the services as set forth in the Maintenance Order Form. Contractor agrees to provide parts, labor, ink, toner, and toner collection containers (the "Maintenance Services") for the equipment listed in Attachment 5, Toshiba Lease Order Form in accordance with the terms and conditions of the Master Agreement and the Maintenance Agreement Terms below.

**MAINTENANCE AGREEMENT TERMS**

1. **TERM:** Each asset shall be annually renewable on each yearly anniversary date for an additional one (1) year period. Contractor shall notify Customer in writing of any such pending anniversary date no later than ninety (90) days prior to such date, and Customer shall have until thirty (30) days prior to such date to notify Contractor in writing that it wishes to renew the term for an additional year in order for such renewal to take effect.

2. For each piece of equipment under this Maintenance Agreement 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 Maintenance Agreement is terminated or the equipment is withdrawn from service.

3. **REMOVAL FROM 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.

4. **INVOICING CHARGES.** Customer will pay the charges set forth in the Toshiba Lease Order Form. The first Minimum Payment is due upon receipt of an invoice. Thereafter, Minimum Payments will be due on the same date each month during the Term of this Maintenance Agreement whether or not Customer receives an invoice. Customer's obligation to pay the Minimum Payment is unconditional and is not subject to any reduction, set-off, defense, or counterclaim for any reason whatsoever. Excess click charges or Overage Charges, as applicable; will be invoiced monthly for the period selected on the Maintenance Order Form.

5. If any part of a payment is not made by the Customer when due, Customer agrees to pay Contractor a Late Charge pursuant to the terms of the Master Agreement.

6. Contractor may estimate the number of clicks used if requested Meter Readings are not received before a new billing period begins. Contractor will adjust the estimated charge for overage clicks upon receipt of actual Meter Readings. Notwithstanding any adjustment, the Customer will never pay less than the Minimum Payment. Customer will provide meter readings via an automated website.

7. **CONSUMABLE SUPPLIES**. All supplies delivered as part of this Maintenance Agreement remain the property of Contractor until and unless they are consumed by the equipment in the performance of this Agreement. Any supplies not consumed as specified and not surrendered to Contractor upon expiration or termination of the Maintenance Services for an asset will be invoiced to the Customer at Contractor's then current Master Agreement prices. Customer agrees to provide insurance coverage for supplies in case of loss under any circumstances. Notwithstanding the foregoing, the risk of loss of the consumable supplies shall be transferred from Contractor to Customer if such consumable supplies are stored at Customer's facility.

8. **TAXES**. Unless Tax Exempt (as evidenced by certificate or in the case of exempt sales to federal, state, and local government entities a seller may also document the exemption by retaining a copy of a government issued purchase order, government check or voucher in place of the exemption certificate). In addition to the charges due under this

Maintenance Agreement, the Customer agrees to pay amounts equal to any taxes resulting from this Maintenance Agreement, or any activities hereunder, exclusive of taxes based upon net income.

9. **INSTALLATION AND ACCESS TO EQUIPMENT.** Customer agrees to provide adequate space, environment and appropriated electrical requirements including, if required, a dedicated 120 volt or 220 volt electrical line, as published in the Operator and Service Manuals for the operation and maintenance of the equipment. If Contractor has installed a power filter/surge protector on the equipment, it must at all times remain continuously installed. If it is removed Customer agrees to purchase a replacement from Contractor immediately. Contractor shall have full and free access to the equipment to provide service thereon.

10. If persons other than Contractor representatives install conversions, feature additions, accessories or perform service on equipment and as a result further repair by Contractor is required, such repairs shall be made at Contractor's applicable Time and Material rates and terms then in effect, per the Master Agreement pricing. If such additional repair is required, Contractor may immediately withdraw the equipment from this Maintenance Agreement.

11. **KEY OPERATOR - END-USER TRAINING.** Customer agrees to designate a Key Operator for training on the use, supplications and features of the equipment. The Key Operator will be responsible for normal Key Operator activities as detailed in the Operations Manual and for training additional end-user. If the Key Operator assignment changes, Customer agrees to designate a new Key Operator immediately. Contractor agrees to provide training for the designated Key Operator and to provide initial training for end-users on the use, applications and features of the equipment. Additional training requested by Customer will be at Contractor Master Agreement hourly rates.

12. **EXCLUSIONS.** Service under this Maintenance Agreement does not include:
    - **a.** Furnishing paper, staples (unless purchased by the Customer), replacement print heads, batteries, ribbons, media, periodic maintenance on thermal printers or any of the following:
    - **b.** Service of equipment if moved outside of Contractor's designated service area;
    - **c.** Repair of damage or increase in service time caused by accident, misuse, negligence, abuse or disaster;
    - **d.** Service of accessories, attachments or click control devices other than those of the same manufacturer as the equipment;
    - **e.** Painting or refinishing of the equipment;
    - **f.** Making specification changes;
    - **g.** Performing key operator functions as described in the operator manual;
    - **h.** Moving equipment, repair of damage or increase in service time caused by the use of the equipment for other than the ordinary use for which designed;
    - **i.** Repair of damage caused by electrical surges or lightning strikes, if equipment is connected to a Contractor supplied power filter/surge protector repairs will be included;
    - **j.** Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment as defined by the manufacturer, with all the facilities prescribed by Contractor including, but not limited to, adequate space, electrical power, air conditioning or humidity control
    - **k.** Repair of equipment that has been designated as obsolete by the manufacturer and genuine OEM parts are no longer available.
    - **l.** Repair of damage or increase of service time caused by Customer's use of media outside the specifications as described in the operator manual.

13. This Maintenance Agreement is not assignable, its right, duties and obligations may not be assigned or transferred by the Customer without the prior written consent of Contractor. Any attempt to assign or transfer any of the rights, duties or obligations of this Maintenance Agreement without such consent is void. Contractor's service provided outside the scope of this Maintenance Agreement will be furnished at Contractor's applicable time and material rates and terms then in effect. Contractor is not responsible for failure to render service due to causes beyond its control.

# ATTACHMENT 4 – TOSHIBA $1 BUYOUT LEASE ADDENDUM

Addendum to Agreement number between , as Lessor and , as Lessee

Provided the lease has not terminated early, Lessee shall have the following option at the end of the original term.

**Buy:** Purchase the equipment for $1.00.

**OR**

**Return:** Return the equipment per the lease agreement.

LESSOR

Signature

Title

Date

LESSEE

Signature

Title

Date

**NOTE: SIGNATURE MUST BE SAME AS ON LEASE**

# ATTACHMENT 5 – TOSHIBA LEASE ORDER FORM

| LESSEE - BILLING CONTACT INFORMATION (Separate Order Form must be completed for each billing locations.) | | | | |
|---|---|---|---|---|
| Lessee Legal Name: | | Department Name: | | FEIN# |
| Street Address I P.O. Box: | | | Bldg/Room/Suite: | |
| City: | State: | Zip | Billing Contact Name: | |
| Bill-To Phone Number: | Email: | | Fax Number: | |

| LESSEE INSTALLATION LOCATION | | | | |
|---|---|---|---|---|
| Lessee Legal Name: | | | Department Name: | |
| Street Address I P.O. Box: | | | Bldg/Room/Suite: | |
| City: | State: | Zip: | Contact Name: | |
| Phone Number: | Email: | | Fax Number: | |

## EQUIPMENT LEASE WITH SEPARATE MAINTENANCE PLAN

| | EQUIPMENT LEASE TYPE | LEASE TERM |
|---|---|---|
| | ☐ Fair Market Value ☐ Capital Lease ☐ Straight Lease | ☐ 24 Mo ☐ 36 Mo ☐ 48 Mo ☐ 60 Mo |

| ITEM DESCRIPTION (If insufficient space, use Schedule A to this Lease Order form and enter below "See Order Form Schedule") | EQUIPMENT LEASE | | MAINTENANCE & SERVICES (M&S) PLAN ☐ Include Staples | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | EQUIPMENT LEASE % or RATE- FOR $OUT LEASES ONLY | EQUIPMENT LEASE PAYMENT | ZERO BASE B&W CPC | ZERO BASE COLOR CPC | MAINT. OPTION NUMBER 1, 2, 3 | MONTHLY VOLLUME (BW) | MONTHLY BASE CHARGE (BW) | BW OVERAGE RATE | COLOR OVERAGE RATE |
| | | $ | | | | | $ | | |
| | | $ | | | | | $ | | |
| | | $ | | | | | $ | | |
| | | $ | | | | | $ | | |
| | | $ | | | | | $ | | |
| | | $ | | | | | $ | | |
| | | $ | | | | | $ | | |
| | | $ | | | | | $ | | |
| | | $ | | | | | $ | | |
| Sum of Monthly Equipment Lease Payments: | | $ | Sum of Monthly Base Charges: | | | | $ | | |

| | TOTAL MONTHLY PAYMENT: Equipment Lease Payment + Monthly Base Charge (If Applicable) | $ | Personal Property Tax Required ☐ |
|---|---|---|---|

**NASPO ADMIN FEE RATE: 0.25%** **STATE ADMIN FEE RATE (If Applicable):**

**Special Instructions/Additional Information (e.g. equipment models upgraded; Buyout details; etc.):**

**TERM & PAYMENT SCHEDULE (All Payments are exclusive of sales and use tax)**

| Sales/Use Tax Exempt ☐ Yes ☐ No | Tax-Exempt No. | [Attach Tax Exemption] | PO Issued ☐ yes ☐ No PO # |
|---|---|---|---|

*Payment Cycle:* Monthly Billing *Document Fee*: $75.00 included in the 1st invoice

*THIS ORDER FORM INCORPORATES ALL OF THE TERMS AND CONDITIONS OF THE LEASE AGREEMENT*

| | | | |
|---|---|---|---|
| | LESSOR: Toshiba America Business Solutions, Inc. SIGNATURE: | Title: | Date: |
| | LESSEE: SIGNATURE | Title: | Date: |

# ATTACHMENT 6 – TOSHIBA LEASE ORDER FORM SCHEDULE

LESSEE _____

## Schedule B to NASPO Lease Order Form - EQUIPMENT LEASE WITH SEPARATE MAINTENANCE PLAN

v011119

This Schedule is solely for use with NASPO ValuPoint Participating Addendum only and should accompany the Lease Order Form
For Use with Colorado #RFP-NP-18-01 only

☐ INCLUDE STAPLES:

| | | | | | | | | | | | | MAINTENANCE PLAN | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| DEPT. NAME | DIV NAME / CODE | STREET ADDRESS | FLOOR | ROOM / SUITE | CITY | ST | ZIP | PO # | TOSHIBA MODEL | CONFIGURATION SUMMARY / ITEM DESCRIPTION | EQUIPMENT LEASE PAYMENT (w/o PPT) | No Base Plan, Only CPC for Usage | MAINT. OPTION 1, 2 OR 3 | INCLUDED BASE NUMBER OF COPIES | MAINT. MONTHLY BASE CHARGE | B&W OVERAGE RATE | COLOR OVERAGE RATE |
| EXAMPLE | 10001 | 123 East Main Street | 2nd Floor | 201 | Arlington | TX | 76210 | | Toshiba eStudio 6560C | A4 COLOR/B&W System | $ 254.56 | n/a | 2 | 25,000 | $ 137.50 | $0.0055 | $0.0300 |
| | | | | | | | | | | | | | | 0 | | | |
| | | | | | | | | | | | | | | 0 | | | |
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| | | | | | | | | | | Total Monthly Equipment Lease Payment: $ - | | | | Tot. Mo Base Chrg: $ - | | | |

TOTAL MONTHLY PAYMENT (Total Monthly Equipment Lease Payment + Total Mo Base Charge: $0.00

This Schedule to the NASPO Lease for Equipment and Maintenance Order Form incorporates all of the Terms and Conditions of the Lease Agreement.
Capitalized terms not defined herein shall have the same meaning as defined in the PA and/or the Agreement for Lease of Equipment.

LESSEE

By: _____
Name: _____
(Please Print)
Title: _____
Date: _____
(date of signature)

LESSOR: Toshiba America Business Solutions, Inc.

By: _____
Name: _____
(Please Print)
Title: _____
Date: _____
(date of signature)

# ATTACHMENT 7 – TOSHIBA AMENDMENT TO OPT OUT

This Amendment amends that certain Lease Agreement for use with the Participating Addendum between Toshiba America Business Solutions, Inc. and (the "PA") under NASPO ValuePoint Master Terms and Conditions for Multi-Function Devices and Related Software, Services, and Cloud Solutions with Colorado as Lead State #RFP-NP-23-001 (the "Master Agreement"), dated as of , 20 . All capitalized terms used in this Amendment which are not otherwise defined herein shall have the meanings given to such terms in the Master Lease or PA.

WHEREAS, Lessee and Lessor executed that certain the Lease Agreement, which provides for non-appropriation of funds in Section 6(c) thereof,

WHEREAS, Lessee is not a state or local governmental entity;

NOW THEREFORE, the parties agree that the Lease Agreement is amended as follows:

(1) Section 6 (c) is deleted in its entirety and Section 6 (d) is renumbered "Section 6 (c)".

(2) The following is added as Section 6 (d):

"(d) Upon acceptance, subject to the foregoing termination provisions, your obligations under the Lease Agreement will become absolute and unconditional, and are not subject to cancellation, reduction or setoff for any reason whatsoever."

Except as specifically amended herein, all other provisions of the Lease Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be executed by their duly authorized representatives as of the date of the Lease Agreement.

| **TOSHIBA FINANCIAL SERVICES, Lessor** | **, Lessee** |
|---|---|
| By: | By: |
| Name: | Name: |
| Title: | Title: |

# ATTACHMENT 8 – TOSHIBA OPINION OF COUNSEL

(LETTERHEAD OF LESSEE'S / CUSTOMER'S COUNSEL)

(Date)

RE: (the "**Lease / Agreement**") dated , 20 between ("**Lessee / Customer**") and , its successors and assigns ("**Lessor / Owner**")

Gentlemen and Ladies:

I have acted as counsel to Lessee / Customer in connection with the execution and delivery of the Lease / Agreement by Lessee / Customer and, in this capacity, I have reviewed a duplicate original or certified copy of the Lease / Agreement and such other documents and instruments as I have deemed necessary or appropriate. As counsel for Lessee / Customer, I have made such factual inquiries, and have examined or caused to be examined such questions of law as I have considered necessary or appropriate for the purposes of this opinion. Based on such inquiries, examination and review, I am of the opinion that:

(a) Lessee / Customer is the entity indicated on the face of the Lease / Agreement and is a political subdivision of the state in which it is located. Lessee / Customer is duly organized and existing under the Constitution and laws of said state and is authorized to enter into and to carry out its obligations under the Lease / Agreement.
(b) The Lease / Agreement has been duly authorized, executed and delivered by Lessee / Customer in accordance with all applicable laws, rules and regulations. The Lease / Agreement is a valid, legal, binding agreement, enforceable in accordance with its terms, except as limited by laws of general application affecting the enforcement of creditors' rights. The person signing the Lease / Agreement (1) has the authority to do so, (2) is acting with the full authorization of Lessee's / Customer's governing body, and (3) holds the office indicated below their signature. The signature of the person signing the Lease / Agreement is genuine.
(c) The Lease / Agreement does not constitute a debt of the Lessee / Customer under applicable state law or a pledge of the tax or general revenues of the Lessee / Customer.
(d) Lessee / Customer has complied fully with all applicable law governing open meetings, public bidding and appropriations required in connection with the Lease / Agreement and the acquisition of the Equipment.
(e) The execution of the Lease / Agreement and the appropriation of funds to meet its obligations thereunder do not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee / Customer.

[LESSEE / CUSTOMER COUNSEL]

By: _____

# ATTACHMENT 9 – TOSHIBA M&S ACTIVATION FOR PURCHASED EQUIPMENT

TOSHIBA

## NASPO MAINTENANCE & SERVICES ACTIVATION SCHEDULE

### CUSTOMER INFORMATION

| Customer Purchase Order Number | Date | FSM Number (Internal) | NASPO Customer No. |
|---|---|---|---|
| | | | |

| Maintenance Agreement Term | Agreement Term |
|---|---|
| 2 year ☐ 3 year ☐ 4 year ☐ 5 year ☐ | Start Date End Date |

### BILL TO INFORMATION

| Customer Name Department | | |
|---|---|---|
| Street | | |
| City | State | Zip Code |
| Contact Name | Fax Number | |
| Telephone Number | Fax Number | |

### EQUIPMENT LOCATION

| Customer Name Department | | |
|---|---|---|
| Street | | |
| City | State | Zip Code |
| Contact | Fax Number | |
| Telephone Number | Fax Number | |

### BILLING INFORMATION

| Billing Cycle ☐ Monthly ☐ Other | Billing Performed by ☐ **Toshiba bills the customer;** ☐ **Other** |
|---|---|
| Billing Format ☐ Per Machine ☐ Consolidated Bill (Grouped by ☐ De-Centralized Billing (**Each billing entity must sign separate Maintenance** | |
| Additions will be: ☐ Coterminous ☐ Other | Tax Exempt *(if multiple locations, indicate on P.O. for each state)* ☐ No ☐ Yes If YES, Certificate Number: |
| Meter Read **Submitted By Customer**: E:bridge ☐ FMAudit ☐ E:meters online (Web) ☐ | Customer P.O. Required? (If Yes, Attach Purchase Order) No ☐ Yes ☐ PO Number |
| Special Instructions: | |

### CUSTOMER SIGNATURE

***Signature on this page indicates acceptance of the Maintenance Plan set forth on Page 2 of this Order and all terms and conditions as stated in the NASPO Master Contract and State Participating Addendum.***

| **Name** | | **Title** | |
|---|---|---|---|
| **Signature** | | **Date** | |

*Maintenance & Services Activation Schedule for Purchased Equipment v011119* Document A06

**NASPO-Toshiba Document #A06**

**NASPO MAINTENANCE & SERVICES ACTIVATION SCHEDULE – Page 2**

**ZERO BASE PLAN or**
**OPTIONAL MONTHLY BASE CHARGE WITH OVERAGES PLAN**

**Staples Included**
☐ Yes ☐ No

| | | Option 1 | | | | Option 2 | | | | Option 3 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Monthly Volume | Monthly Base Charge | Overage Rate | | Monthly Volume | Monthly Base Charge | Overage Rate | | Monthly Volume | Monthly Base Charge | Overage Rate | |
| Model | Zero Base M&S Rate | B&W | B&W | Color | B&W | B&W | B&W | Color | B&W | B&W | B&W | Color | B&W |
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**CUSTOMER SIGNATURE:**

| | | | |
|---|---|---|---|
| Name | | Title | |
| Signature | | Date | |

# ATTACHMENT 10 – TOSHIBA SAMPLE MPS STATEMENT OF WORK

Toshiba will provide to Customer throughout the United States, the Services outlined in this Statement of Work during the Initial Term and Renewal Terms. This SOW sets forth the scope of managed print services, requirements and obligations of the parties and is subject to the terms and conditions of a Managed Print Services Agreement ("Agreement") by and between Customer and Toshiba America Business Solutions, Inc. ("Toshiba"), and will be incorporated therein by reference.

**1. Assessment Phase**

1.1. Initial Assessment and Design

1.1.1. Toshiba's responsibilities are to:

1.1.1.1. Work with Customer to determine the scope and discovery to include sites and device types

1.1.1.2. Develop a schedule for discovery and design

1.1.1.3. Work with Customer to ascertain any security and safety requirements

1.1.1.4. Work with Customer to obtain necessary badging requirements

1.1.1.5. Use Toshiba meter collection software, a network discovery tool, when necessary to facilitate and augment the discovery process

1.1.1.6. Identify and confirm equipment

1.1.2. Customers responsibilities are to:

1.1.2.1. Provide a local onsite customer liaison to work with Toshiba at each site to assist with prioritization, coordination and communication of discovery

1.1.2.2. Provide the computer hardware necessary to operate the software

1.1.2.3. Provide the IP address, queue names, and any other network address required to perform Services

1.1.2.4. SNMP enable the networked equipment

1.1.2.5. Provide a specific list and location (name, address, building, floor, city, state, zip code, serial number, model number) for all meterable equipment

1.1.2.6. Provide any necessary access to floorplans and business areas

1.1.2.7. Provide and be responsible for all such telephone and modem lines, telephones, computers and peripheral devices, computer connections, and network access, as may be necessary for Toshiba to provide Services and to interconnect with Toshiba's network discovery and meter submission tool;

1.1.2.8. Provide Toshiba with current-state print device information to include: print queue names, device configuration, custom form, and IP addresses or host names for devices accepting print jobs from host or mainframe applications. Customer shall have the flexibility to direct output.

1.1.3. Following discovery and design, Toshiba and Customer will mutually agree by location upon

1.1.3.1. The number and models of devices within the scope of Services

1.1.3.2. Fleet configuration, optimal mix, and future-state design including the placement of new Product and retention of Existing Equipment

**2. Implementation Phase**

2.1. Toshiba and Customer shall:

2.1.1. Toshiba's responsibilities consist of:

2.1.1.1. Maintain an Asset List of all Meterable equipment

2.1.1.2. Coordinate with Customer any network and phone installations needed to support new devices

2.1.1.3. Create and distribute Toshiba asset tags for all equipment having the following necessary information to facilitate a Help Desk calls for networked equipment and supply provisioning for equipment:

- Toshiba's Supplies Ordering Web Portal URL
- Serial Number or Asset Tag
- Toll Free Phone Number or Web URL for Service Dispatch

2.2. Customer's responsibilities consist of:

- Affix asset tags to all equipment and remove any previous service provider asset tags

- Provide and be responsible for all such telephone and modem lines, telephones, computers and peripheral devices, computer connections, and network access, as may be necessary for Toshiba to provide Services and to interconnect with Toshiba's network discovery and meter submission tool

**3. Training**

3.1. Customer may engage Toshiba to provide a customized training program by working with Toshiba to develop a Training Plan and order such plan via an MPSA Order Form and Training Plan Schedule.

**4. Fleet Management.**

Within ninety (90) calendar days following the Effective Date, Toshiba shall develop and thereafter maintain a comprehensive inventory of all Equipment that is discovered through Toshiba's electronic discovery tool: (a) equipment and network connections and infrastructure used by Toshiba to provide the services; (b) equipment, software and network connections and infrastructure used by Customer in connection with the Services. Toshiba shall provide an electronic copy of such inventory to Customer upon request.

**5. Services & Help Desk**

5.1. In general, Toshiba is responsible for providing Services for Customer's networked Equipment identified through Toshiba's remote electronic discovery tool.

5.2. Toshiba's responsibilities include:

- To troubleshoot for the repair of the equipment and to attempt a phone resolution if one is available
- To provide on-site break fix services for technical hardware issues that cannot be resolved remotely
- Toshiba will provide all the support and materials necessary to maintain covered Existing Equipment in operating condition
- To bear financial responsibility for all time, material, and travel associated with break / fix activities
- Next business day break-fix service: Toshiba shall provide response times for new Toshiba Product within 4-8 hours, and shall average an on-site response to a service call within four (4) business hours. For other non-Toshiba new Product, Toshiba shall provide a next business day response time. Customer shall assure that Toshiba's Servicing Providers have reasonable access to Product. If Product cannot be repaired within two (2) business days, a loaner machine with a model of equal or better features and specifications will be provided.
- To restore malfunctioning equipment to good working order during the Service Hours of 8:00 am to 5:00 pm, Monday through Friday - Holidays Excluded
- To provide toner required for the normal operation of equipment
- To meet reasonable security requirements identified by Customer
- To provide a status upon call completion to the on-site service requestor (End-User or representative of End User) prior to leaving the Customer's site

5.3. Toshiba is not responsible for:

- Adjustments, repairs or replacements made necessary resulting from non-Toshiba Third Parties performing any maintenance, repair or replacement
- Failures or damage resulting from accident, neglect, misuse, failure or inadequacy of electrical power or air conditioning or humidity control, or any causes other than ordinary use of the equipment
- Damage to equipment that is placed in an area that does not conform to manufacturer's electrical and environmental requirements
- Failure due to improper telephone or electrical power Acts of God, lightning or other incidents of excess voltage or power surges
- Repairs necessary when Customer modifies, relocates, damages (including without limitation, unavoidable accidents) abuses or misuses the equipment (including without limitation, the spilling of toner or other substance in the machine) and the breakage of lids, hinges, cassettes, etc.
- Repairs necessary when equipment is altered, tampered, or interconnected with non-compatible Equipment
- Repairs relative to connectivity to the device
- Providing cabling required to connect the printer to the network

- Installing any customer-replaceable consumables including but not limited to paper and toner

5.4. Customer's responsibilities are:
- To provide reasonable access to the equipment
- To provide reasonable notice prior to Toshiba if a service request is cancelled
- To notify Toshiba of any required security requirements as required by Customer
- Support the diagnosis of malfunctioning devices by engaging by phone and/or in person with Toshiba technical support personnel as needed

**6. Help Desk**

6.1. Help Desk Services are those services required to coordinate and respond to problems and service requests made by Customer in the United States. Toshiba shall be responsible for providing, direct or indirect Help Desk access with begin-to-end logging, tracking, resolution and reporting of service calls.

6.2. Toshiba's will perform the following:
- Toshiba will provide Help Desk support for equipment
- To provide on-line and toll-free dispatch services to Customer
- To provide access to Toshiba's portal for the purpose of placing service calls
- To provide an estimated time of arrival for all service calls

6.3. Customers' Responsibilities are:
- To make all service calls through Toshiba's GSP or toll-free phone number
- To convey the end user name and location
- To convey the model type and serial number
- To convey the nature of the service call whether it is a problem or failure
- To promptly return any calls that Help Desk was unable to reach live

**7. Vendor Managed Supplies**

7.1. Toshiba responsibilities are to:
- Fulfill all orders for supply replenishment under the Billing Program F.O.B. destination
- Fulfill supply orders within three-days of order
- Provide access to the Toshiba GSP, with a single sign-on, for the purpose of ordering all supplies

7.2. Customer responsibilities consist of:
- Provide secure and environmentally appropriate storage for all supplies
- Customer will order supplies as required through Toshiba's GSP and will instruct Customer employees to order such supplies through Toshiba's GSP
- Installation of toner and other customer installable consumables
- Ensuring that all supplies ordered on behalf of Customer are protected against theft or misuse

**8. Parts**

Part(s) used in the repair of equipment will be new or refurbished, equivalent or better-than-new in functionality and are not necessarily brand name specific. Replaced parts become the property of Toshiba.

**9. Additional Activities**

9.1. Toshiba is not obligated, but may at its discretion and Customer's approval perform the following services and charge the Customer a time and material rate of **$150 an hour** for services associated with the following:
- Adjustments, repairs or replacements made necessary resulting from non-Toshiba Third Parties performing any maintenance, repair or replacement;
- Failures or damage resulting from accident, neglect, misuse, failure or inadequacy of electrical power or air conditioning or humidity control, or any causes other than ordinary use of the equipment;
- Damage to equipment that is placed in an area that does not conform to manufacturer's electrical and environmental requirements;

- Failure due to improper telephone or electrical power Acts of God, lightning or other incidents of excess voltage or power surges;
- Repairs necessary when Customer modifies, relocates, damages (including without limitation, unavoidable accidents), abuses or misuses the Equipment (including without limitation, the spilling of toner or other substance in the machine), and the breakage of lids, hinges, cassettes, etc.,
- Repairs necessary when Equipment is altered, tampered, or interconnected with non-compatible Equipment.

9.2. Outside of the Service Hours. After-hour services, weekend and Holidays are considered out-of-scope activities that do not fall within the Service Hours. Toshiba, at its discretion with Customer's consent and direction, may provide the out-of-scope services, provided that proper authorization is received from Customer. These services will be billed separately to Customer and the amounts so billed will be payable to Toshiba according to the then current NASPO ValuePoint Master Agreement pricing.

9.3. Network/Software/Other/Supply Replacement. Requests for the following types of services are out-of-scope and may be performed at Toshiba's discretion with Customer's consent, direction and proper authorization. In the event Toshiba is willing to perform the tasks, Customer shall be billed in addition to time spent and distance traveled fees for: (a) Driver support for single or individual user software applications (Toshiba will provide installation support for two workstations upon new equipment delivery), (b) Service requested to replace consumable items such as but not limited to printer supplies (paper, ink cartridges and toner), power strips, and batteries.

**10. Asset Management.**

Within ninety (90) calendar days following the Effective Date, Toshiba shall develop and thereafter maintain a comprehensive inventory of all Equipment that is discovered through Toshiba's electronic discovery tool: (a) equipment and network connections and infrastructure used by Toshiba to provide the services; (b) equipment, software and network connections and infrastructure used by Customer in connection with the Services. Toshiba shall provide an electronic copy of such inventory to Customer upon request.

# ATTACHMENT 11 – TOSHIBA ASSET RELOCATION REQUEST FORM

**DATE OF REQUEST:**

**CUSTOMER INFORMATION**

| Purchase Order Number (if required) | Date of Installation | Contract Number | Member # |
|---|---|---|---|
| | | | |

Request for:

**Relocation** - One (1) free relocation move per asset per year. If move requires trained personnel, move must be supervised. Note for the 2nd move, the installation, de-installation, freight and other additional fees may apply to the total cost of the equipment move. Dealer will provide a quote to member and will bill direct at the agreed upon rate.

**Return** of Leased Asset (no cost)

Please allow 15-30 days for return processing

**BILL TO INFORMATION**

| | | |
|---|---|---|
| Customer Name | | |
| Street | | |
| City | State | Zip Code |
| Contact Name | Contact Title | |
| Telephone Number | Fax Number | |

| CURRENT EQUIPMENT LOCATION | | | NEW EQUIPMENT LOCATION | | |
|---|---|---|---|---|---|
| Customer Name | Department | Floor/Room/Suite | Customer Name | Department | Floor/Room/Suite |
| Street | | | Street | | |
| City | State | Zip Code | City | State | Zip Code |
| Contact Name | Contact Title | | Contact Name | Contact Title | |
| Telephone Number | Fax Number | | Telephone Number | Fax Number | |
| Model Number: | Serial Number: | | Model Number: | Serial Number: | |
| Meter Read | Pickup Date: | | Meter Read | Delivery Date: | |

| | | |
|---|---|---|
| Name: | Title: | Date: |
| Signature: | | |
| Special Instructions/Removal Instructions | | |

Customer must sign this form indicating consent to move or remove equipment. Send this form to Operations via **REQUESTOR AUTHORIZATION**

FAX or EMAIL:

Operations Fax: 800.999.0057

Operations Email: naspo.orders@tabs.toshiba.com

# ATTACHMENT 12 – TOSHIBA FLEET MONITORING TOOL SITE SURVEY

The information in this survey allows Toshiba to provide the highest level of quality service. By filling out this survey, you authorize Toshiba FMAudit Support to contact the individuals for implementation and account management purposes.

## Part I: Dealer Contact Information

| 1. Primary Contact Information | |
|---|---|
| Contact Name: | |
| Job Title: | |
| Job Function: | |
| Tel: | |
| Email: | |

## Part II: End-User Organizational Information

| 1. Company Information | |
|---|---|
| *Company Name: | **NASPO ValuePoint** |
| Company Address: | |
| **2. Primary Contact Information** | |
| Contact Name: | |
| Job Title: | |
| Job Function: | |
| Tel: | |
| Email: | |
| **3. IT Administration** | |
| Same as Primary: | |
| Contact Name: | |
| Job Title: | |
| Job Function: | |
| Tel: | |
| Email: | |

***Note: Please do not change the Company Name. It must state, "NASPO Valuepoint."**

## Part III: Hosting System

| | | |
|---|---|---|
| a. | What operating system will FMAudit Onsite be run on? | |
| b. | Is this operating system installed using 32 or 64 bit? | |
| c. | Does the server/workstation meet the following minimum hardware requirements?<br>• 2.4 GHz processor<br>• 1 GB memory<br>• 1 GB free disk space | |
| d. | Does the server/workstation meet the following minimum software requirements?<br>• One of the following Microsoft operating systems:<br>I. Windows XP<br>II. Microsoft Windows 2003<br>III. Microsoft Vista/7/8<br>• Internet Explorer 7.0<br>• Windows .NET 2.0 Framework with SP2 | |

## Part IV: Network Infrastructure

| | | |
|---|---|---|
| a. | Is SNMP traffic (port 161) blocked or restricted on the network? | |
| b. | What SNMP community name is used for communication with printer related devices?<br>*(i.e. PUBLIC)* | |
| c. | Are all printers on the WAN accessible from the server/workstation where Onsite will be installed? | |

## Part V: Proxy / Firewall Restrictions

| Answer the following questions if a proxy and/or firewall are present. | | |
|---|---|---|
| a. | Is there a domain authenticated proxy? | |
| b. | Is there an IE passport authenticated proxy? | |
| c. | Will port 80 (HTTP) allow outgoing printer related data to be transferred from the Onsite application back to the Central application located within another facility? | |
| d. | Will port 443 (SSL / HTTPS) allow license related data to be exchanged between the Onsite application and the FMAudit license server? | |
| e. | Is there a firewall or router that will block outgoing XML (SOAP) traffic?<br>*(Note: some older Cisco products detect the XML data exchange format as invalid HTTP traffic)* | |

## Part VI: Network Connected Printer Infrastructure

| | | |
|---|---|---|
| a. | Approximately how many network connected printers will be monitored? | |
| b. | Are any printers connected via Jet Direct or compatible devices? | |
| c. | Is there a workstation firewall installed; if so what product and version?<br>*(i.e. Windows XP sp2 firewall)* | |
| d. | Is the Windows SNMP Provider service installed? | |

## Part VII: Items to Prepare

| | |
|---|---|
| *a.* | Please attach a list of subnets where printer related products will be discovered.<br>*(i.e. 10.0.1.1-254, 10.0.1-254.1-254)* |
| b. | Please attach a list of networked printer names that will be monitored. These will be cross referenced with known supported device lists to flag any potential issues.<br>*(i.e. HP LaserJet 2300)* |

# ATTACHMENT 13 – TOSHIBA EMETERS ONLINE INFORMATION AND INSTRUCTIONS

Meter reads can be submitted through Toshiba's E-Meters Online (Online Web E-Meter Submission) system using the Internet. Through E-Meter, you can submit your current meter reads for all equipment on a spreadsheet that can be exported on the site and then MASS upload the reads for all devices. Or you can directly enter each meter read per device on the web page.

**When are meters due?**

The eMeter Online website opens on the 26th of the prior month. Please submit your current meter reads from this date through the 8th of the current month.

If the dates are missed above, you can go to the 'Submitted Meter Read' tab and edit the estimated meter read that processes around the 9th of each month. Meter Reads can be changed from the 9th through the 14th. Billing occurs on the 15th therefore, the website is closed. The site does not open again until the 26th of the month.

To enter a meter read, please follow the steps listed below. **eMeters On line**

**Submission Instructions**

1. Log onto FYI
2. Go to: Programs and click on Meters Online
3. Search by 'ALL' or Customer Name.
4. Enter the meter read by device.
5. Or export the upload spreadsheet, enter the meter reads, then save the document.
6. The on the website click on the upload spreadsheet, retrieve your data and hit submit. All reads should automatically update. If any fallout, a message will be displayed.

Should you have any questions on submitting your meters on line please either email tabs.fsm@tabs.toshiba.com or call (800) 866-4361, select option 1.

# ATTACHMENT 14 – TOSHIBA STATEMENT OF SERVICES

| Client | Contractor |
|---|---|
| <enter Client Principal Contact Name><br>**Printed Name** | <enter Authorized Contractor name><br>**Printed Name** |
| <enter Client Principal Title><br>**Printed Title** | <enter Authorized Contractor Title ><br>**Printed Title** |
| **Signature (Authorized Client)** | **Signature (Authorized Contractor)** |
| <enter Client SOS Signing Date><br>**Date** | <enter Authorized Contractor SOS Signing Date><br>**Date** |

This Statement of Services ("SOS") is made by and between Toshiba America Business Solutions, Inc. ("TABS"), including its division Toshiba Business Solutions ("TBS"), with its headquarters located at 25530 Commercentre Drive, Lake Forest, CA 92630 (collectively or individually TABS and TBS shall be referred to as the "Contractor"), and <enter Client Legal Name> located at <enter Client Location> (the "Client").
This SOS describes the project and details the services and deliverables (hereinafter collectively known as "Project Services") associated with the <enter Solution Name> project (the "Project").
Project Services shall be provided pursuant to the "Project Contract" which consists of (i) this SOS together with (ii) the Master Software and Services Agreement ("MSSA") <enter Specific MSSA Name> between Contractor and its Client (the "Services Agreement"). This SOS is subject and subordinate to the MSSA. To the extent the terms and conditions of the Services Agreement and SOS conflict, the SOS shall prevail.

## 1. Project Contacts

| Contractor Office Details | |
|---|---|
| Contractor Region | |
| Address Line1 | |
| Address Line 2 | |
| City, State, ZIP City, State. ZIP | |
| Phone Number | |
| Fax Number | |
| Contractor Sales Rep. Name | |
| Contractor Consultant Name | |
| Contractor Analyst Name | |
| Client Number | |
| Contract Number | |

| Client Details | | | |
|---|---|---|---|
| Client Name | | | |
| Client Contact Person | | | |
| Client Address Line-1 | | | |
| Client Address Line-2 | | | |
| City, State, ZIP | | | |
| Telephone #: | | Ext: | |
| Fax Number: | | | |
| Email Address: | | | |
| Client Number: | | | |
| Contract Number: | | | |

## 2. Introduction

Client's acceptance of this SOS shall be authorization for Contractor's performance of the Project Services set forth in this SOS. Contractor reserves the right to utilize subContractors and sub-subContractors (collectively known as "Sub-Contractors") in performance of the Project Services. Contractor represents that all its Sub-Contractors (i) will be competent to perform the Project Services; (ii) will exercise commercially reasonable standards in performing these Project Services; and (iii) will comply with all terms and conditions applicable to Contractor in the performance of the Project Services.

The purposes of the SOS are to (i) specify the work to be completed by the Contractor during phases of the Project; (ii) detail the obligations of the Contractor and the Client; and (iii) set forth the Project schedule and fees.

Contractor has prepared this SOS to detail the scope of Project Services and costs for the Project Services. The costs stated were derived by drawing from Contractor's experience with similar engagements and using preliminary information received from Client.

## 3. Project Objective

Based on the agreed upon business requirements, Contractor will provide design, implementation, training, and support services to the following locations:

<enter "SaaS" if Cloud Hosted or enter the Client's physical Address Location for On-Premises hosted solutions>

## 4. SOS Addendums

The SOS Addenda are supplementary documents that detail the specific deliverables and responsibilities by party. The relevant addendum is predicated upon whether your solution is a cloud solution, non-cloud solution, or mix of both. The SOS Addenda describe the Project Deliverables, Client and Contractor Responsibilities, Professional Services and Licensing Fees, Project Plan, Support Escalation Process, Pricing Schedule, Business Requirements, Functional Design, Change Order Authorization, and Solution Delivery and Acceptance.

**A checkmark incorporates the referenced document into this agreement.**

☐ Statement of Services - Addendum A (Cloud Solution).

☐ Statement of Services - Addendum B (On-Premises Solution).

☐ Statement of Services - Addendum C (Hybrid Solution).

### Project Deliverable(s)

Based on the agreed upon business requirements, Contractor will provide the following:

- Statement of Service (SOS).
- Master Software and Services Agreement (MSSA).
- Professional Services as defined in the SOS.
- Software documentation is provided with the Contractor provided Software.
- User and Administration manual.
- User Acceptance Testing Recommendations.

**NOTE**: For the on-premises components of the deployed solution, it is the responsibility of the Client to meet

the minimum installation pre-requisites provided to them prior to the installation of the software.

## 5. Services

Contractor will provide the following services:

- Consult with Client personnel to implement the solution.
- Inform the Client IT personnel on the features of the solution.
- Deployment, configuration, and integration of solution.
- Training:
  - Administrative training.
  - End user to use the solution.

Provide Details of the Services being rendered for the specific solution implemented. Remove these highlighted notes prior to submission of this SOS to Client.

<Replace this line with details of the services being provided for this solution>

## 6. Project Milestones

**Notes:** The milestones table below is intended as a sample. Update as needed. Remove the highlighted notes prior to submission of this SOS to Client.

| Milestone Description | Milestone Date |
|---|---|
| <enter Solution Name> | |
| 1. Initiating and Planning complete | Mutually established between Client and Contractor |
| 2. Executing complete | Mutually established between Client and Contractor |
| 3. Monitoring and Controlling complete | Mutually established between Client and Contractor |
| 4. Solution Delivery and Acceptance complete | Mutually established between Client and Contractor |
| 5. Project Complete | Mutually established between Client and Contractor |

## 7. Completion Criteria

When the services detailed in this SOS have been completed and demonstrated, the project will be considered complete, and Contractor will request Client signoff of the Solutions Delivery and Acceptance document referenced in this SOS within 15 days of Project Plan completion.

## 8. Change Management

This SOS is intended to provide, as much as possible, a clear understanding of the responsibilities of the parties concerning these Project Services. Changes to the scope, assumptions, personnel, environment, dependencies, timeline, Software or Deliverables post execution of this SOS will be communicated in writing and agreed to by both Contractor and Client via Contractor's Project Management personnel. A Change Order Authorization ("COA") form will be added to this agreement to amend and set forth the effective date, purpose, description, and price, if applicable.

The work required to address these changes will be scoped and presented to Client as a COA with any

additional time, materials, or cost. The following list provides a detailed process to follow if changes to the scope of this SOS are required.

- A COA will be the vehicle for communicating change and will be prepared by the Contractor lead Solutions Analyst assigned to this project. The COA must describe the change, the reason for the change, and the effect the change will have on the project.
- Both Client and Contractor will review the proposed change and approve. The review will determine the effect the COA will have on price, schedule, and other terms and conditions of this SOS.
- Both parties must sign a written COA to authorize the implementation of any changes.

## 9. Support

Contractor will provide implementation support for this project through to its completion. This includes but is not limited to ensuring installed applications are performing to manufacturer's specifications.

Upon completion of the project, and provided client is up to date with their maintenance and support payments, Client will have access to a Contractor support engineer for technical issues. Support will continue to be available throughout the term of the contract and upon renewal of the contract.

## 10. SOS – Assumptions

The following are the general assumptions on which this SOS and Professional Services Fee are based. If any of these assumptions either change or are incorrect a COA may be required, which may result in additional Professional Services fees.

- Building environmental conditions that are within equipment specifications for airflow, temperature, humidity, and electrical quality.

Project work will be performed during normal business hours Monday through Friday 8 a.m. to 5 p.m. local time, excluding holidays. Client will provide unimpeded access to equipment and facilities. If access delays occur, work performed outside of normal business hours may incur an overtime premium.

- Contractor:
  - Is not responsible for any conflicts with existing hardware or software that is no longer supported by the manufacturer.
  - Is only responsible for integration tasks outlined in this proposed SOS.
  - At Contractor's discretion project work may be provided remotely in whole, or in part.
- All systems will be installed in US English (other localized language configurations can be provided at an incremental cost).

## Exhibit A: Referenced Documents Table

**A checkmark incorporates the document into this agreement.**

| Applicable | Document Title | Document Description |
|---|---|---|
| ☐ | **Project Plan** | Project Plan describes the execution, management, and control of the project |
| ☐ | **Pricing Schedule** | Provides pricing and line-item details as necessary. |
| ☐ | **Solutions Delivery and Acceptance** | Acknowledgement form: client acknowledges and confirms that the deliverable, milestone and/or project referenced has been completed, and all testing and acceptance criteria have been satisfied. |
| ☐ | **Change Order Authorization** | Document to be executed when the original project scope has changed post SOS authorization by client. |
| ☐ | **Support Escalation Process** | Describes steady state user-support escalation process. |
| ☐ | **Business Requirements Document** | The BRD outlines the details for a project including the documentation of Client needs and expectations. The BRD is intended to highlight the project Scope, Requirements, Assumptions, Constraints, and Risks. |
| ☐ | **Functional Design Document** | The FDD provides an overview of the business issue to be addressed, a mock-up of the User Interface (UI) design, and a plain English synopsis of the logic anticipated. This document provides the Client with the opportunity to approve the high-level design before the effort is made to develop a detailed or technical design. |

# ATTACHMENT 15 – TOSHIBA SAAS STATEMENT OF SERVICES

This addendum is hereby incorporated by reference as Addendum A to the Statement Of Service ("SOS") by and between Toshiba America Business Solutions, Inc. ("Contractor") and ("Client").

**Associated Project SOS Name:** <Enter Associated Proejct SOS Name Here>
**Associated Project MSSA Name:** <Enter Associated Proejct MSSA Name Here>

## Client Responsibilities

The following activities are the responsibility of Client.
The "Client Responsibilities – Details" is the Solution specific activities that are defined as the responsibility of Client. If any of these responsibilities either change or are incorrect a (COA) Change Order Authorization may be required, which may result in additional Professional Services fees.

- Ensure that all applications and data are successfully backed up prior to Contractor beginning project services detailed in the SOS.
- Provide technical and application support for configuration and testing of Client specific information. Contractor does not warrant Client applications.
- Provide systems personnel for the project familiar with all aspects of Client's enterprise configuration – security, remote access, domain structure, WAN/LAN connectivity, applications used for this project – to work in conjunction with the Contractor team on this implementation. Additionally, a desktop technician may be required to perform Client -side duties.
- Make available all the appropriate resources, systems, network access, reports and any/all other data elements required for Contractor to complete the deliverables and other research necessary to complete this project as contained herein.
- Provide a dedicated project manager or coordinator to provide management, reporting, day to day project tracking, move/add/change requirements, and cross-coordination of requirements.
- Network connectivity between all solution components.
- Deploy Solution to Client end-user desktops (if required).
- Identify a Project Sponsor with sign-off authority and ability to facilitate Client stakeholder participation.
- Report on any Client technical or resource issues that would delay, hinder, or adversely affect the deployment of the solution or its performance in the Client environment.
- Allow for the distribution of Solution upgrades to Client PC's as needed.
- Accept title and/or license upon delivery/installation for product and/or Solution purchased if applicable.
- Sign appropriate Contractor finance document for leased or financed transactions.

## Contractor Responsibilities

The following activities are the responsibility of Contractor.
The "Contractor Responsibilities – Details" is the Solution specific activities that are defined as the responsibility of Client. If any of these responsibilities either change or are incorrect a COA may be required, which may result in additional Professional Services fees.

- Solution license key.
- Technical specifications for implementation.
- Email and phone support for the duration of the contract.
- Technical Services included in the scope herein.
- Configuration of the Solution components.
- Solution training.
- Solution revisions, updates, and patches during the term of the agreement.
- Support for the Solution updates for any of the on-premises components of the solutions defined in this SOS is included in this Agreement.

## Support

Contractor will provide implementation support for this project through to its completion. This includes but is not limited to ensuring installed applications are performing to manufacturer's specifications.

Upon completion of the project, Client will have access to a Contractor support Engineer for technical issues. Support will continue to be available throughout the term of the contract and upon renewal of the contract.

## Professional Services and License Fees

**A checkmark incorporates the referenced table into this agreement.**

☐ **TABLE 1: SaaS FEES:**

This is a fixed fee engagement. If applicable the Professional Services fees for this project are included in the terms of the lease agreement signed by Client. Any changes to this SOS will require a Change Order executed and agreed upon by both parties. Contractor cannot perform work outside of the scope of this SOS without an authorized Change Order signed by Client.

| | |
|---|---|
| **Services Fees** | |
| **Initial Investment** | **$<Enter Initial Client's Payment Here>** |
| **License Fees** | **$<Enter Licensing Fee Here> (renewable annually)** |
| **(includes M&S)** | |

Taxes, if applicable, are not included and will be invoiced separately.

This document is valid for a period of 30 days from the cover date; after this date it may be revised upon consent by Contractor.

Expenses associated with travel, overnight stays, etc., for the hours estimated in this SOS are included in the estimate of this project.

# ATTACHMENT 16 – TOSHIBA ON-PREMISES STATEMENT OF SERVICES

This addendum is hereby incorporated by reference as Addendum B to the Statement Of Service ("SOS") by and between Toshiba America Business Solutions, Inc. ("Contractor") and ("Client").

**Associated Project SOS Name:** <Enter Associated Proejct SOS Name Here>
**Associated Project MSSA Name:** <Enter Associated Proejct MSSA Name Here>

## Client Responsibilities

The following activities are the responsibility of Client.
The "Client Responsibilities – Details" is the Solution specific activities that are defined as the responsibility of Client. If any of these responsibilities either change or are incorrect a COA may be required, which may result in additional Professional Services fees. Please review this section to make sure these responsibilities are correct.

- Ensure that all applications and data are successfully backed up prior to Contractor beginning work. Contractor is not responsible for any lost information.
- Provide original manufacturer documentation for all existing hardware and Solution.
- Provide Backup equipment and media.
- Provide UPS equipment and media.
- Provide technical and application support for configuration and testing of Client specific information. Contractor does not warrant Client applications.
- Provide systems personnel for the project familiar with all aspects of Client's enterprise configuration – security, remote access, domain structure, WAN/LAN connectivity, applications used for this project – to work in conjunction with the Contractor team on this implementation. Additionally, a desktop technician may be required to perform Client - side duties.
- Make available all the appropriate resources, systems, network access, reports and any/all other data elements required for Contractor to complete the deliverables and other research necessary to complete this project as contained herein.
- Provide a dedicated project manager or coordinator to provide management, reporting, day to day project tracking, move/add/change requirements, and cross-coordination of requirements.
- Network configuration information to assist in solution design.
- Deploy Solution to Client end-user desktops (if required).
- Suitable hardware to host the Solution application components.
- Suitable Operating Systems Solution and licenses for the above.
- Identify a Project Sponsor with sign-off authority and ability to facilitate Client stakeholder participation.
- Report on any Client technical or resource issues that would delay, hinder or adversely affect the deployment of the solution or its performance in the Client environment.
- Provide the appropriate physical and network access to onsite resources, including IT area and all necessary fees, licenses, and release forms, related to photos, logos, and imagery that are to be provided to Contractor.
- Provide a workspace for Contractor staff to use if on-site work is required.
- Allow for the distribution of Solution upgrades to Client PCs as needed.
- Hardware and Solution maintenance for all servers.
- System Maintenance Tasks:
    - Resolution of Solution system alerts as listed in the solution application.
    - Daily monitoring of Server Health.
    - Backup of all Solution data and system settings.
    - Distribution of Solution upgrades to Client PCs as needed.
    - Installation and deployment of Solution updates.
    - Inclusion of Solution servers in routine maintenance activities (anti-virus, backup, etc.).
- Accept title and/or license upon delivery/installation for product and/or Solution purchased if applicable.

- Sign appropriate Contractor finance document for leased or financed transactions.

**Contractor Responsibilities**

The following activities are the responsibility of Contractor.
The "Contractor Responsibilities – Details" is the Solution specific activities that are defined as the responsibility of Contractor. If any of these responsibilities either change or are incorrect a COA may be required, which may result in additional Professional Services fees.

- Solution License Key.
- Technical specification for implementation.
- Installation of the Solution components.
- Email and phone support for the duration of the contract.
- Technical Services included in the scope herein.
- Configuration of the Solution components.
- Solution training.
- Solution revisions, updates, and patches during the term of the agreement.
- Support for the download of Solution updates for the solutions defined in this SOS is included in this Agreement.
- Services associated with this installation and deployment of updates, patches, bug fixes and updates for the components of the solutions defined in this SOS are outside of this agreement and will require a separate project plan and SOS.

**Support**

Contractor will provide implementation support for this project through to its completion. This includes but is not limited to ensuring installed applications are performing to manufacturer's specifications.

Upon completion of the project, Client will have access to a Contractor support Engineer for technical issues. Support will continue to be available throughout the term of the contract and upon renewal of the contract.

***Note:*** *If applicable, refer to the* ***Statement of Services Support Escalation Process - Addendum E*** *document referenced in this SOS for support details.*

**Professional Services and License Fees**

**A checkmark incorporates the referenced document into this agreement.**

**TABLE 1: FIXED FEE ENGAGEMENT:**

This is a fixed fee engagement. If applicable the Professional Services fees for this project are included in the terms of the lease agreement signed by Client. Any changes to this SOS will require a Change Order executed and agreed upon by both parties. Contractor cannot perform work outside of the scope of this SOS without an authorized Change Order signed by Client.

**Professional Service Fees $XXXXXX.XX**

Taxes, if applicable, are not included and will be invoiced separately.

This document is valid for a period of 30 days from the cover date; after this date it may be revised upon consent by Contractor.

Expenses associated with travel, overnight stays, etc., for the hours estimated in this SOS are included in the estimate of this project.

☐ **TABLE 2: TIME AND MATERIALS ENGAGEMENT:**

This is a time and materials engagement. The Professional Services fees for this project are inclusive for up to XX hours. The hours are an estimate based upon our current understanding of the project. Any changes to this Statement of Service will require a Change Order executed and agreed upon by both parties. Contractor cannot perform work outside of the scope of this SOS without an authorized Change Order signed by Client.

**Professional Service Fees $XXXXXX.XX**

Taxes, if applicable, are not included and will be invoiced separately.

This document is valid for a period of 30 days from the cover date; after this date it may be revised.

Expenses associated with travel, overnight stays, etc., for the hours estimated in this SOS are included in the estimate of this project.

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☐ **TABLE 3: BLOCK OF HOURS ENGAGEMENT:**

This is a Block of Hours engagement. The Professional Services fees for this project are limited to XX hours. If additional hours are required, additional Block of Hours must be purchased using a Change Order executed and agreed upon by both parties. Contractor cannot perform work outside of the scope of this SOS without an authorized Change Order signed by Client.

**Professional Service Fees $XXXXXX.XX**

Taxes, if applicable, are not included and will be invoiced separately.

This document is valid for a period of 30 days from the cover date; after this date it may be revised.
Expenses associated with travel, overnight stays, etc., for the hours estimated in this SOS are included in the estimate of this project.

# ATTACHMENT 17 – TOSHIBA HYBRID STATEMENT OF SERVICES

This addendum is hereby incorporated by reference as Addendum C to the Statement Of Service ("SOS") by and between Toshiba America Business Solutions, Inc. ("Contractor") and ("Client").

**Associated Project SOS Name:** <Enter Associated Proejct SOS Name Here>
**Associated Project MSSA Name:** <Enter Associated Proejct MSSA Name Here>

## Client Responsibilities

The following activities are the responsibility of Client.
The "Client Responsibilities – Details" is the Solution specific activities that are defined as the responsibility of Client. If any of these responsibilities either change or are incorrect a (COA) Change Order Authorization may be required, which may result in additional Professional Services fees.

- Ensure that all applications and data are successfully backed up prior to Contractor beginning project services detailed in the SOS.
- Provide technical and application support for configuration and testing of Client specific information. Contractor does not warrant Client applications.
- Provide systems personnel for the project familiar with all aspects of Client's enterprise configuration – security, remote access, domain structure, WAN/LAN connectivity, applications used for this project – to work in conjunction with the Contractor team on this implementation. Additionally, a desktop technician may be required to perform Client -side duties.
- Make available all the appropriate resources, systems, network access, reports and any/all other data elements required for Contractor to complete the deliverables and other research necessary to complete this project as contained herein.
- Provide a dedicated project manager or coordinator to provide management, reporting, day to day project tracking, move/add/change requirements, and cross-coordination of requirements.
- Network connectivity between all solution components.
- Deploy Solution to Client end-user desktops (if required).
- Identify a Project Sponsor with sign-off authority and ability to facilitate Client stakeholder participation.
- Report on any Client technical or resource issues that would delay, hinder, or adversely affect the deployment of the solution or its performance in the Client environment.
- Allow for the distribution of Solution upgrades to Client PC's as needed.
- Accept title and/or license upon delivery/installation for product and/or Solution purchased if applicable.
- Sign appropriate Contractor finance document for leased or financed transactions.

**Specific to on-premises components - Client responsibilities:**

- Suitable hardware to host the Solution application components.
- Suitable Operating System Solution and licenses for the hardware provided.
- Network configuration information to assist in solution design.
- Deploy Solution with the assistance of Client IT Personnel to Client desktops (if required).
- Provide a workspace for Contractor staff to use if on-site work is required.
- Provide Backup equipment and media.
- Provide UPS equipment and media.
- Hardware and Solution maintenance for all servers.
- System Maintenance Tasks:
    - Resolution of Solution system alerts as listed in the solution application.
    - Daily monitoring of Server Health.
    - Backup of all Solution data and system settings.
    - Distribution of Solution upgrades to Client PC's as needed.

- Installation and deployment of Solution updates.
- Inclusion of Solution servers in routine maintenance activities (anti-virus, backup, etc.).

**Contractor Responsibilities**

The following activities are the responsibility of Contractor.
The "Contractor Responsibilities – Details" is the Solution specific activities that are defined as the responsibility of Contractor. If any of these responsibilities either change or are incorrect a COA may be required, which may result in additional Professional Services fees.

- Solution license key.
- Technical specifications for implementation.
- Email and phone support for the duration of the contract.
- Technical Services included in the scope herein.
- Configuration of the Solution components.
- Solution training.
- Solution revisions, updates, and patches during the term of the agreement.
- Support for the Solution updates for any of the on-premises components of the solutions defined in this SOS is included in this Agreement.

**Support**

Contractor will provide implementation support for this project through to its completion. This includes but is not limited to ensuring installed applications are performing to manufacturer's specifications.

Upon completion of the project, Client will have access to a Contractor support Engineer for technical issues. Support will continue to be available throughout the term of the contract and upon renewal of the contract.

**Professional Services and License Fees**

**A checkmark incorporates the referenced table into this agreement.**

☐ **TABLE 1: SaaS FEES:**

This is a fixed fee engagement. If applicable the Professional Services fees for this project are included in the terms of the lease agreement signed by Client. Any changes to this SOS will require a Change Order executed and agreed upon by both parties. Contractor cannot perform work outside of the scope of this SOS without an authorized Change Order signed by Client.

**Services Fees**

**Initial Investment** **$<Enter Initial Client's Payment Here>**

**License Fees** **$<Enter Licensing Fee Here> (renewable annually)**

**(includes M&S)**

Taxes, if applicable, are not included and will be invoiced separately.

This document is valid for a period of 30 days from the cover date; after this date it may be revised upon consent by Contractor.

Expenses associated with travel, overnight stays, etc., for the hours estimated in this SOS are included in the estimate of this project.

# ATTACHMENT 18 – TOSHIBA MASTER SOFTWARE AND SERVICES AGREEMENT

TOSHIBA

## 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"). For on-premises based software solutions only, the following clauses are not applicable to this Agreement and hereby stricken 1.2, 1.8, 4, 6, and 8. For cloud-based or hybrid solutions (whereby both an on-premises solution(s) and cloud-based solution(s) will be implemented), all terms apply.

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." 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 software and services 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

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TOSHIBA

Master Software and Services Agreement

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"), excluding any period of Permitted Unavailability (as defined below). Client shall provide notice to Contractor of any unavailability for access or use and document such disruption for review by Contractor. "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

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Master Software and Services Agreement

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"), excluding any period of Permitted Unavailability (as defined below). Client shall provide notice to Contractor of any unavailability for access or use and document such disruption for review by Contractor. "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.

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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

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Master Software and Services Agreement

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 it's 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

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## Master Software and Services Agreement

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.

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, providing such rates do not exceed NASPO ValuePoint Master Agreement pricing; 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 NASPO ValuePoint Master Agreement pricing.

15.2 Payment of Invoices. All invoices shall be paid by Client within thirty (30) days of invoice date. Payments not made within forty-five (45) days shall be subject to late charges of (i) one percent (1%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law, whichever is less. In the event an invoice remains unpaid forty-six (46) 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.

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Master Software and Services Agreement

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

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## Master Software and Services Agreement

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; or (xvi) the negligence or more culpable acts or omissions (including recklessness or willful misconduct) by Client or any third party on behalf of Client. 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.

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,

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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. 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 the Client. 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. In the event of a conflict between the body of this Agreement and any SOS, exhibit, other attachment, this Agreement, or the Client's purchase order, the Client's purchase order 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 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 after the force majeure event concludes. In addition, neither party will have the

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TOSHIBA

Master Software and Services Agreement

right to claim damages or to terminate this Agreement because of a force majeure event.

22.9 Reserved.

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.

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]**

**Exhibit 2**
**Connecticut Standard Terms**

# 1. Definitions

## a. Business Day

A day of the week recognized by the Client Agency as a workday, exclusive of Saturdays, Sundays and any State or federal holiday.

## b. Claims

All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any forum.

## c. Client Agency Data

Any data or information of the Client Agency that Contractor receives or creates by any means and in any form in connection with this Contract, Deliverables or Performance, including data and information with respect to any one or more of the following: databases, systems, operations, facilities, and regulatory compliance.

## d. Confidential Information

Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that DAS classifies as “confidential” or “restricted.” Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

## e. Confidential Information Breach

Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the Client Agency, the Contractor, or State.

## f. Contractor IP

Contractor’s materials and other intellectual property (1) in existence prior to this Contract, (2) created, developed or acquired during the Term but not exclusively for the State, or (3) identified as Contractor IP in the applicable SOW; or (4) otherwise developed or acquired independent of this Contract and employed by the Contractor in connection with the Deliverables.

## g. Contractor Parties

Contractor's members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to Perform under this Contract in any capacity.

## h. Corrective Action Plan, or CAP

A detailed written plan produced by Contractor at the request of the Client Agency to correct or resolve a Breach identified by the Client Agency in accordance with the Breach section of this Contract.

## i. Deliverable

Each (1) Good, Service, Maintenance Services, Improvement, Documentation, System, process or information of any type, whether stand-alone or intended as part of the integration of the System with existing hardware or software of the State, and whether or not used for administrative, maintenance, consulting, training, data warehousing, operations, support, hosting, or fulfillment of Performance; and (2) warranty of a Deliverable(s) that is listed in the Pricing Schedule or provided by Contractor as an element of Contractor's overall approach and solution to the requirements of this Contract. Any one of them or a combination of any of them may be developed or produced by Contractor or by a third party as a supplier or subcontractor to Contractor.

## j. Documentation

All Specifications; all technical, systems and user reference manuals; all System documentation related to each component of the System, Deliverables and processes; and any Improvements to any of them.

## k. Effective Date

The date that the Connecticut Attorney General's Office approves this Contract, as evidenced by its signature.

## l. Force Majeure Event

Strikes, lockouts, riot, sabotage, rebellion, insurrection, acts of war, acts of terrorism, failure of or inadequate permanent power, fire, flood, earthquake, epidemics, natural disasters, and acts of God.

## m. Goods

All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things.

## n. Improvement

Any Contractor changes, patches, corrections, repairs, replacements, additions, modifications, enhancements, updates, releases, revisions, error fixes, bug fixes or any new versions of Deliverables, or any combination of the foregoing, that are to be or may be provided as a

Deliverable from time to time. An Improvement may serve any purpose. Improvements do not include upgrades to software for which Contractor charges its customers, or upgrades by a Licensor that is charging Contractor for such upgrade.

## o. Licensor

The party who licenses all or any part of a Deliverable either to the State, in the case of the Contractor, its Assignees, or Authorized Dealers, or to the Contractor, in the case of a third-party provider.

## p. Maintenance Services

The software and process support services described in this Contract, or a Statement of Work, as applicable.

## q. Materials

Collectively, software programs, literary works, other works of authorship, documented specifications, designs, analyses, processes, methodologies, concepts, inventions, know-how, programs, program listings, program tools, Documentation, reports, drawings, data bases, spreadsheets, machine readable text, models and work product, whether tangible or intangible.

## r. Perform

All acts and things of the Contractor and Contractor Parties, severally and collectively, that are necessary or appropriate to fulfill or accomplish this Contract fully, including the Deliverables and all other Contract obligations. The word “Perform” includes all parts of speech.

## s. Performance Criteria

Operation of the Deliverables in compliance with all Specifications and Documentation and complying with the requirements of this Contract and a Statement of Work, as applicable.

## t. Purchase Order

A written or electronic document that the Client Agency issues for one or more Deliverables in accordance with the terms of this Contract.

## u. Records

All working papers and such other information and materials furnished or prepared by the Contractor in Performing including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

## v. Replacement Deliverable

Any new Deliverable that replaces a previously accepted Deliverable.

## w. Service Level Agreement (SLA)

Attachment 2 of Exhibit 3, which sets forth and describes the service level, response times and associated obligation between the parties, that may be set forth in this Contract or in a Statement

of Work as applicable.

### x. Site

Location(s) specified by the Client Agency where Deliverables are to be installed, Services rendered, or materials furnished.

### y. Specifications

Contractor's published technical and non-technical detailed descriptions of each Deliverable's capabilities, or intended use or both, as more fully set forth in this Contract or a Statement of Work, as applicable.

### z. State

The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

### aa. Statement of Work ("SOW")

Statement issued in connection with a Purchase Order for a Deliverable available under this Contract which sets forth all work and payment requirements for Contractor's Performance in connection with said Purchase Order.

### bb. System

Contractor furnished or otherwise supplied Deliverables that collectively and in an integrated fashion fulfill the Performance Criteria and the business and technical requirements of this Contract.

### cc. Term

The original term of this Contract plus any extensions exercised under this Contract.

### dd. Termination

An end to this Contract prior to the end of its Term.

### ee. Warranty Period

The 90-day period commencing upon the Acceptance Date for the System or Deliverable.

## 2. P-Card (Purchasing Credit Card

a. Purchases may be made using the State of Connecticut Purchasing Card Program ("P-Card Program or P-Card") in accordance with sections 4-98(c) and 42-133ff(a) of the Connecticut General Statutes.

b. Contractor shall be equipped to receive orders issued by the Client Agency using the P- Card Program. The Contractor shall be responsible for the credit card user-handling fee associated with P-Card Program purchases. The Contractor shall charge to the P-Card only upon acceptance of Goods delivered to the Client Agency or rendering of Services.

c. The Contractor shall capture and provide to its merchant bank, Level 3 reporting at the line item level for all orders placed by MasterCard.

d. Questions regarding the state of Connecticut P-Card Program may be directed to the Procurement Card Program Administrator at DAS.PCardAdmin@ct.gov.

## 3. Purchase Orders

a. This Contract itself is not an authorization for the Contractor to begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued Purchase Order against this Contract for Performance.

b. The Client Agency shall issue a Purchase Order against this Contract directly to the Contractor and to no other party.

c. All Purchase Orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase Orders issued in compliance with such requirements shall be deemed to be duly issued.

d. A Contractor Performing without a duly issued Purchase Order in accordance with this Section does so at the Contractor's own risk.

e. The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued Purchase Orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the Purchase Order or a copy bearing any hand-written signature or other "original" marking.

## 4. Delivery

a. Delivery shall be made as ordered and in accordance with this Contract. Unless otherwise specified in this Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.

b. In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in this Contract, such extension applying only to the particular item or shipment.

c. Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in this Contract.

d. All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

## 5. Time of the Essence

Time is of the essence with respect to all provisions of this Contract that specify a time for Performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Contract.

## 6. Waiver

a. No waiver of any Breach of this Contract shall be interpreted or deemed to be a waiver of any other or subsequent Breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in this Contract or at law or in equity.

b. A party's failure to insist on strict performance of any provision of this Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or Breach.

## 7. Emergency Standby for Deliverables

If any Federal or State official, having authority to do so, declares an emergency or the occurrence of a natural disaster within the State of Connecticut, DAS and the Client Agency may request the Goods and Services on an expedited and prioritized basis. Upon receipt of such a request the Contractor shall make all necessary and appropriate commercially reasonable efforts to reallocate its staffing and other resources in order to give primary preference to Performing this Contract ahead of or prior to fulfilling, in whole or in part, any other contractual obligations that the Contractor may have. The Contractor is not obligated to make those efforts to Perform on an expedited and prioritized basis in accordance with this paragraph if doing so will make the Contractor materially breach any other contractual obligations that the Contractor may have.

Contractor shall acknowledge receipt of any request made pursuant to this paragraph within 2 hours from the time that the Contractor receives it via Purchase Order or through a request to make an expedited or prioritized purchase through the State of Connecticut P-Card Program. If the Contractor fails to acknowledge receipt within 2 hours, confirm its obligation to Perform or actually Perform, as set forth in the Purchase Order or through the P-Card Program, then DAS and the Client Agency may procure the Performance from another source without further notice to Contractor and without creating any right of recourse at law or in equity against DAS or Client Agency.

## 8. Deliverable Evaluation, Acceptance and Ownership

a. Any Deliverable furnished by Contractor under the terms of this Contract will be subject to User Acceptance Testing. User Acceptance Testing (UAT) for each Deliverable begins as of the date the Client Agency notifies the Contractor in writing that the Deliverable provided for UAT has successfully met the Acceptance Criteria, was successfully delivered and/or installed in the development and testing computer environment and is ready for UAT. The following procedures will apply during UAT:

   1. The Client Agency shall provide Contractor with (a) written notice of Acceptance of the Deliverable or (b) a written statement which identifies in reasonable detail, with references to the applicable requirements, the deficiencies preventing Acceptance.

   2. Contractor shall have five (5) Business Days, or such other period mutually agreed upon by the parties in writing, from the date it receives the notice of deficiencies to complete corrective actions to make the Deliverable conform in all material respects to the applicable Specifications. The Client Agency shall review the corrected Deliverable and notify Contractor in writing of Acceptance or rejection in accordance with the foregoing provisions of this Section.

   3. The Acceptance Date for a Deliverable shall be the date of written notice of Acceptance of the Deliverable from Client Agency to Contractor.

b. After Acceptance by the Client Agency of each of the Deliverables required under Exhibit ASOW of the Master Agreement, the Client Agency shall perform UAT on the System for Acceptance prior to implementing the System in the Client Agency's production environment. If UAT for the System is successfully completed, the Client Agency shall in writing notify the Contractor of the Client Agency's Acceptance of the System, and the date of such notice will be the Acceptance Date for the System.

c. If requested by Contractor, Client Agency shall complete Contractor's acceptance certificate, in a form reasonably acceptable to Client Agency, so long as such certificate does not amend, alter or modify in any way the terms of this Contract.

d. The State shall own all Deliverables provided by Contractor under this Contract, subject to subparagraph e) below, and shall have the right to alter, modify, create derivative works, copy and distribute any Deliverable acquired under this Contract including any and all configuration, programming, inventions or improvements to computer programs or base software or both, specifically developed by the Contractor and paid for by the Client Agency pursuant to this Contract. The State shall retain all ownership rights to any such configuration, programming, inventions or improvements.

    1. The State shall own any inventions or improvements to Contractor IP, if such invention or improvement was developed in the Performance of this Contract and paid for by the State. Contractor shall have a perpetual license at no cost to use any such inventions or improvements to Contractor IP for Contractor's own or commercial purposes.

    Nothing in this provision shall be construed as transferring to the State any ownership interest or rights to Contractor IP.

e. The State shall have a nonexclusive, nontransferable, perpetual license to use, alter, modify, create derivative works (without the right to sublicense) and copy Contractor IP in connection with the State's business needs and operations if Contractor IP is provided to the State by Contractor in order to Perform any Services or provide any Deliverables required under this Contract.

f. If any Deliverable becomes the actual or prospective subject of any patent, copyright, license or proprietary rights claim or proceeding, Contractor shall do one or more of the following at the option of Contractor:

    1. Modify the Deliverable or substitute another equally suitable Deliverable (provided that the function of the modified or substitute Deliverable equals or exceeds that of the original Deliverable);

    2. Obtain for the Client Agency the right to continued use of the Deliverable; or

    3. If neither 1 nor 2 above is commercially reasonable, Client Agency shall discontinue use of the Deliverable subject to such claim or proceeding and the Contractor shall refund the Client Agency the fees paid for the Deliverable.

g. Each party reserves for itself all proprietary rights not expressly granted to the other. Contractor shall not be limited in developing, using or marketing services or products which are similar to the Deliverables or Services provided under this Contract.

## 9. Data: Access and Ownership

a. Access to Contract and State Data

The Contractor shall provide to the Client Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning this Contract and the Client Agency that are in the possession or

control of the Contractor upon demand and shall provide the data to the Client Agency in a format prescribed by the Client Agency and the State Auditors of Public Accounts at no additional cost.

b. Ownership of Data

1. All ownership, title, licenses, proprietary rights and interest (including, but not limited to, perpetual use) (for purposes of this Ownership of Data Section, collectively, "Title") of and to any and all data as defined in section 4e-1 of the Connecticut General Statutes, ("Data") that is uploaded, collected, stored, held, hosted, located or utilized by the Client Agency or Contractor and Contractor Parties directly or indirectly in connection with this Contract at all times is and will always remain vested in the State. At no time will Contractor have Title to such Data, wherever located.

2. At no cost to the State the Contractor and Contractor Parties shall, no later than fifteen (15) days after (i) receiving a written request from the Client Agency or (ii) Termination for any reason, deliver and transfer possession to the Client Agency all of the Data, in a format acceptable to the State.

3. At no cost to the State, the Contractor and Contractor Parties shall, no later than fifteen (15) days, unless otherwise mutually agreed to in writing by the Parties, after (i) receiving a written request from the Client Agency, (ii) receiving final payment from the Client Agency, or (iii) Termination for any reason, over-write and securely delete all of the Data, such that the Data will be expunged in a manner to make retrieval of the Data impossible.

4. The Contractor's failure to deliver and transfer possession of the Data to a duly authorized agent of the Client Agency shall constitute, without more, a de facto breach of this Contract. Consequently, the Contractor shall indemnify and hold harmless the Client Agency and the State, as appropriate, for any and all damages, costs and expenses associated directly or indirectly with such failure. The damages, costs and expenses shall include, but not be limited to, those resulting from any corresponding contracting for credit or identity protection services, or both, and from any subsequent non-State use of any Data. If Contractor Parties will Perform for any purpose under this paragraph, the Contractor represents and warrants that it shall cause each of the Contractor Parties to so Perform and that each has vested in the Contractor plenary authority to cause the Contractor Parties to Perform. For purposes of this Ownership of Data Section, "Perform" shall include, but not be limited to, the obligations relating to the sale, transfer of Title, removal and transfer of possession of the Data and indemnifying and holding harmless the Client Agency and the State. The Contractor on its own behalf and on behalf of the Contractor Parties shall also provide, no later than 30 days after receiving a request by the Client Agency, such information as the Client Agency may identify to ensure, in the Client Agency's sole discretion, compliance with the provisions of this Ownership of Data Section. This Ownership of Data Section survives Termination.

## 10. Rejected Items; Abandonment

a. The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with this Contract, direct the Contractor to remove any or all such Goods ("the "Rejected Goods") and any or all other supplies, materials, equipment or other tangible personal property (collectively, the "Contractor Property") from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties, that:

1. they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;

2. there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;

3. they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;

4. if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and

5. they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.

b. The Contractor shall secure from each Contractor Party, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this Section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this Section.

## 11. State Comptroller's Specifications

In accordance with Conn. Gen. Stat. § 4d-31, this Contract is deemed to have incorporated within it, and Contractor shall deliver the Deliverables in compliance with, all specifications established by the State Comptroller to ensure that all policies, procedures, processes and control systems, including hardware, software and protocols, which are established or provided by Contractor or Contractor Parties, are compatible with and support the State's core financial systems, including but not limited to, accounting, payroll, time and attendance, and retirement systems.

## 12. Working and Labor Synergies

The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties, their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to

make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under this Contract.

## 13. Background Checks

The Contractor and Contractor Parties shall submit to and incur the cost of fingerprint supported federal and state criminal history background checks as may be required by the State, the State of Connecticut Department of Emergency Services and Public Protection, or as provided for in any State document that governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

## 14. Other Warranties

Contractor warrants that:

a. Each Deliverable installed by Contractor, an authorized agent of Contractor or installed by the Client Agency in accordance with Contractor's instructions, will function according to the Specifications and Performance Criteria on the Acceptance Date for such Deliverable;

b. During the Warranty Period, Contractor shall make Improvements to the Deliverable as necessary or appropriate to maintain ongoing reliability according to Performance Criteria identified in Exhibit A – SOW of the Master Agreement; and

c. Contractor shall provide each Deliverable within the time frames established under this Contract or a SOW, as applicable.

d. Contractor does not exclude or modify the implied warranties of merchantability and fitness for a particular purpose concerning the Deliverables.

## 15. System Warranties

a. Contractor represents and warrants that the System shall conform to this Contract, the Specifications, Performance Criteria, Documentation and as applicable, the SOW and that it shall be free from defects in material and workmanship upon the Acceptance Date of the System and through the Warranty Period, unless this Contract is Terminated earlier.

b. During the Warranty Period, Contractor shall, at no charge, make Improvements to the Deliverables as necessary to maintain ongoing System reliability in accordance with the Specifications, Performance Criteria, Documentation, and as applicable, the SOW.

## 16. Contractor Guaranties

. Contractor shall:

a. Perform fully under this Contract;

b. Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;

c. Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the Site, Goods, the Contractor's work or that of Contractor Parties;

d. With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices.

e. Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and

## 17. Representations and Warranties Regarding Motor Vehicles

If in the course of Performance or in any other way related to this Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1 (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, represents and warrants for itself and the Contractor Parties, that:

a. it is the owner of record or lessee of record of each such motor vehicle used in the Performance of this Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.

b. each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of this Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.

c. each Contractor Party who uses or operates a motor vehicle at any time in the Performance of this Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.

d. each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for intrastate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 18,001 pounds or more or interstate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 10,001 pounds or more otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations. If the Contractor is a "motor carrier," as that term is defined in section 49 CFR Part 390, and the Contractor is subject to an order issued by the Federal Motor Carrier Safety Administration that prohibits such Contractor from operating or allowing the operation of a motor vehicle, then the Contractor shall comply fully with such order. In addition, if a motor vehicle or its operator is declared out of service pursuant to Conn. Gen. Stat. § 14-163c(d)(4), then the Contractor shall not operate or allow the operation of that motor

vehicle and shall not allow the operator to operate a motor vehicle while the respective subject out-of-service order is in effect.

## 18. Breach

a. If one party (the “Non-breaching Party”) determines that the other (the “Breaching Party”) has failed to comply with any of the Breaching Party’s corresponding Contract obligations (a "Breach"), then the Non-Breaching Party shall provide written notice of such failure to the Breaching Party in accordance with this Contract. The Non-breaching Party must provide the Breaching Party an opportunity to remedy the Breach within thirty (30) calendar days from the date of the notice. However, if Contractor is the Breaching Party, then the Client Agency may set forth any remedy period in the notice, so long as that period is otherwise consistent with the provisions of this Contract. The period set forth in the notice is known as the “Remedy Period.” The Non-Breaching Party shall extend the Remedy Period if it is satisfied that the Breaching Party is making a good faith effort to remedy the Breach, but the nature of the Breach is such that it cannot be remedied within the Remedy Period.

b. If the Client Agency determines that the Contractor has committed a Breach, then the Client Agency may require the Contractor to, and Contractor shall, prepare and submit to the Client Agency a CAP in connection with the identified Breach. Contractor shall provide in the CAP a detailed explanation of the deficiencies and other factors that contributed to the cited Breach, Contractor’s assessment or diagnosis of Breach (identifying the deficiencies and factors in reasonable detail, with references to the applicable Specifications), and a specific proposal to remedy or resolve the Breach. Contractor shall submit the CAP to the Client Agency within (10) Business Days following the Client Agency’s request for the CAP for the Client Agency’s review and approval. Within (10) Business Days of receiving the CAP, the Client Agency must either approve the CAP, or reject it by delivering to Contractor a written explanation for the rejection. If the Client Agency fails to accept or reject the CAP within the (10) Business Days, then the CAP is deemed to have been approved, without more. The Client Agency’s explanation for the rejection must include suggestions for changes to the CAP and the Contractor shall address the suggestions in such a manner to make it likely that the Client Agency will approve the CAP when the Contractor re-submits it to the Client Agency for review and approval. If the Client Agency rejects a CAP, then the parties will repeat this submittal and review process until the earliest of one of the following: (1) the Client Agency accepts a CAP, (2) the Client Agency waives its right to receive a CAP, (3) Contractor remedies the Breach, (4) the Client Agency waives the Breach, or (5) the Client Agency makes a determination to Terminate this Contract. After the first rejection, each of the parties will have (5) Business Days, instead of (10) Business Days, within which to review the CAP. Each subsequent revision and review will be for up to (3) Business Days each instead of (10) or (5) Business Days.

c. If the Client Agency determines that the Contractor has Breached this Contract, then the Client Agency may withhold payment in whole or in part for any amounts due pending resolution of the Performance issue, provided that the Client Agency notifies Contractor in writing prior to the date that the payment would have been due.

d. For purposes of the Client Agency determining whether there is a Breach under this Contract, or whether any statement in the Representations and Warranties Section of this Contract is false or misleading, the parties deem the Acts of the Contractor Parties to be the Acts of the Contractor itself, as if the Contractor itself was the subject of the Acts which the Client Agency considers in determining if there was a Breach, or an instance of false or misleading statements, or both.

e. The written notice of the Breach may include an effective Termination date. If the identified Breach is not remedied by the stated Termination date, unless otherwise modified by the Non-breaching Party in writing before such date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Termination date, then the Non-breaching Party shall provide the Breaching Party no less than

twenty-four (24) hours' prior written notice before terminating this Contract.

f. Notwithstanding any provisions in this Contract, DAS may terminate this Contract with no Remedy Period for Contractor's Breach or violation of any of the representations or warranties in this Contract and revoke any consent to assignments given as if the assignments had never been requested or consented to, without liability to Contractor or Contractor Parties or any third party. Termination under this Breach section is subject to the provisions of the Termination Section of this Contract. In case of such revocation or Termination, the Client Agency will have no liability or responsibility to Contractor or Contractor Parties or any third party, or any of them, resulting from the Termination or revocation.

g. None of the State's rights under this Breach Section diminishes the State's rights under the Termination Section of this Contract.

## 19. Termination

a. Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate this Contract whenever DAS makes a written determination that such Termination is in the best interests of the State . DAS shall notify the Contractor in writing of Termination pursuant to this Section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under this Contract prior to such date. Termination by DAS under this Section 19.a shall not affect the rights and obligations attending Orders outstanding at the time of Termination, including Contractor's right of payment for Equipment delivered and accepted by DAS.

b. Notwithstanding any provisions in this Contract, either party, through a duly authorized employee, may, after making a written determination that the other party has Breached this Contract and has failed to remedy the Breach, Terminate this Contract in accordance with the Breach Section of this Contract.

c. Notices of Termination must be sent certified in accordance with the Notice Section of this Contract. Upon receiving the Termination notice from DAS, the Contractor shall immediately modify or discontinue all Performance affected in accordance with the terms of the notice, undertake commercially reasonable efforts to mitigate any losses or damages and deliver to DAS or the Client Agency (as directed in the notice) all Records. The Records are deemed to be the property of the State and the Contractor shall deliver them to DAS or the Client Agency (as directed in the notice) no later than thirty (30) days after the Termination of this Contract or fifteen (15) days after the Contractor receives a written request from DAS for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

d. Except for any work which DAS directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.

e. The Client Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Client Agency in accordance with Exhibit A SOW of the Master Agreement, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Client Agency will not tender to the Contractor any payments for anticipated or lost profits. Upon request by the Client Agency, the Contractor shall assign to the Client Agency, or any replacement contractor which the Client Agency designates, all subcontracts, Purchase Orders and other commitments, deliver to the Client Agency all Records and other information pertaining

to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as DAS or the Client Agency (as directed in the notice) may request.

f. Upon Termination of this Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the Sections which survive Termination. All representations, warranties, agreements and rights of the parties under this Contract shall survive such Termination to the extent not otherwise limited in this Contract and without each one of them having to be specifically mentioned in this Contract.

g. Termination of this Contract pursuant to this Section shall not be deemed to be a Breach of contract by DAS or the Client Agency.

## 20. Continued Performance

The Contractor and Contractor Parties shall continue to Perform their obligations under this Contract while any dispute concerning this Contract is being resolved.

## 21. Setoff

The State, in its sole discretion, may setoff and withhold (1) any costs or expenses including but not limited to costs or expenses such as overtime, that the State incurs resulting from the Contractor's unexcused Breach under this Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts of whatever nature that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under this Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff and to withhold shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' Breach of this Contract, all of which shall survive any setoffs and withholdings by the State.

## 22. Cross-Default

a. If the Contractor or Contractor Parties Breach, default or in any way fail to Perform satisfactorily under this Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements ("Other Agreements") that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in this Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.

b. If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under this Contract. Accordingly, the State may then exercise at its sole option any and all of its rights or remedies provided for in the Other Agreements or this Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under this Contract.

## 23. Representations and Warranties

Contractor represents and warrants to the State for itself and, as applicable, the Contractor Parties that:

a. each is a duly and validly existing under the laws of each such entity's respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by this Contract. Further, as appropriate, each has taken all necessary action to authorize the execution, delivery and Performance of this Contract and have the power and authority to execute, deliver and Perform its obligations under this Contract;

b. each will comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics; Title 4a, Chapter 51 concerning State purchasing; and (3) Title 22a, Chapter 446c, section 22a-194a concerning the use of polystyrene foam;

c. the execution, delivery and Performance of this Contract will not violate, be in conflict with, result in a Breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

d. each is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;

e. as applicable, each has not, within the three years preceding the Effective Date of this Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under this Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or Performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property;

f. each is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;

g. they have notified DAS in writing whether they have had any contracts with any governmental entity Terminated for cause within the three (3) years preceding the Effective Date;

h. none has employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure this Contract and it has not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Contract or any assignments made in accordance with the terms of this Contract;

i. to the best of each entity's knowledge, there are no Claims involving Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract;

j. each shall disclose, to the best of its knowledge, to the State in writing any Claims involving it that would be required disclosure on Form 8-K of the Securities Exchange Act of 1934 no later than ten (10) calendar days after becoming aware or after it should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the State, the ten (10) calendar days in the Section of this Contract concerning disclosure of Contractor Parties litigation shall run consecutively with the ten (10) days provided for in this representation and warranty;

k. each is able to Perform under this Contract using their own resources or the resources of a party who has not submitted a proposal;

l. if Contractor does not have plenary authority to make the representations and warranties in this Section, as applicable, on behalf of Contractor Parties, then Contractor shall enter into a written contract with Contractor Parties, in which contract Contractor Parties shall make all of the applicable representations and warranties in this Section;

m. each has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut; they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;

n. none owes unemployment compensation contributions;

o. none is delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;

p. all of each entity's vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;

q. each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms of this Contract and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from DAS or the Client Agency, such information as DAS or the Client Agency may require to evidence, in their sole determination, compliance with this Section;

r. each either owns or has the authority to use all the Deliverables;

s. to the best knowledge of Contractor, the Deliverables do not infringe or misappropriate any patent, copyright, trade secret or other intellectual property right of a third party;

t. to the best knowledge of Contractor, the Client Agency's use of any Deliverables in a manner consistent with this Contract shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

u. if any party shall procure any Deliverables, they shall sublicense such Deliverables and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Deliverables; and

v. each shall assign or otherwise transfer to the Client Agency or afford the Client Agency the full benefits of any manufacturer's warranty for the Deliverables, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

## 24. Further Assurances

The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in this Contract, in order to give full effect to this Contract and to carry out the intent of this Contract.

## 25. Advertising

The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS' prior written approval.

## 26. Contractor Changes

The Contractor shall notify DAS in writing no later than ten (10) days from the effective date of any change in:

a. its certificate of incorporation or other organizational document;

b. more than a controlling interest in the ownership of the Contractor; or

c. the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS' satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of this Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS' written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under this Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under this Contract until Performance is fully completed.

## 27. Contractor Responsibility

a. The Contractor shall be responsible for the entire Performance under this Contract regardless of whether the Contractor itself Performs. The Contractor shall be the sole point of contact concerning the management of this Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of this Contract.

b. The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

## 28. Continuity of Systems

a. This Section is intended to comply with Conn. Gen. Stat. §4d-44. Nothing in this Section shall be construed to prevent Contractor from being paid for its Performance that is provided in accordance with this Contract.

b. Contractor acknowledges that the Deliverables, the Systems and associated Services are important to the function of State government and that they must continue without interruption. Pursuant to Conn. Gen. Stat. §4d-44, if the work under this Contract, any subcontract, or amendment to either, is transferred back to the State or to another contractor at any time for any reason, then Contractor shall cooperate fully with the State, and do and Perform all acts and things that DAS deems to be necessary or appropriate, to ensure continuity of the Client Agency information system and telecommunication system facilities, equipment and Services so that there is no disruption or interruption in Performance as required or permitted in this Contract. Contractor shall not enter into any subcontract for any part of the Performance under this

Contract without approval of such subcontract by DAS, as required by Conn. Gen. Stat. §4d-32 and without such subcontract including a provision that obligates the subcontractor to comply fully with Conn. Gen. Stat. §4d-44 as if the subcontractor were in fact the Contractor. Contractor shall make a full and complete disclosure of and delivery to DAS or its representatives of all Records and "Public Records," as that term is defined in Conn. Gen. Stat. §4d-33 in whatever form they exist or are stored and maintained and wherever located, directly or indirectly concerning this Contract.

c. The parties shall follow the below applicable and respective procedures in order to ensure the orderly transfer to the State:

1. Facilities and Equipment:

   Unless a shorter period is necessary or appropriate to ensure compliance with Conn. Gen. Stat. §4d-44 , in which case that shorter period shall apply, Contractor shall deliver to the State, F.O.B. Hartford, Connecticut or other State location which the State identifies, all Deliverables, Systems, facilities and equipment related to or arising out of this Contract, subcontract or amendment, (other than any of the Deliverables, Systems, facilities or equipment in which Contractor has title under this Contract) no later than ten (10) days from the date that the work under this Contract is transferred back to the Client Agency or to another contractor for any reason. Contractor shall deliver the Deliverables, Systems, facilities or equipment to the State, during the State's business hours, in good working order and in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, Contractor shall also deliver all related operation manuals and other Documentation in whatever form they exist and a list of all related passwords and security codes;

2. Software Deliverables created or modified pursuant to this Contract, subcontract or amendment: Unless a shorter period is necessary or appropriate to ensure compliance with Conn. Gen. Stat. §4d-44, in which case that shorter period shall apply, Contractor shall deliver to the State, F.O.B. Hartford, Connecticut or other location which the Client Agency identifies, all Deliverables, Materials and Systems, no later than 10 days from the date that the work under the SOW or this Contract is transferred back to the State or to another contractor for any reason. Contractor shall deliver such Deliverables, Materials and Systems to the Client Agency, during the Client Agency's Business Hours, in good working order, and if the Client Agency's equipment shall be delivered, in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, Contractor shall also deliver all Deliverable-related operation manuals and other Documentation in whatever form they exist, if delivery of such manuals and documentation is required by this Contract or the SOW for such Deliverable, and a list of all Deliverable passwords and security codes; and

3. Public Records, as defined in Conn. Gen. Stat. §4d-33, which Contractor or Contractor Parties possess or create pursuant to this Contract, subcontract or amendment: Unless a shorter period is necessary or appropriate to ensure compliance with Conn. Gen. Stat. §4d-44, in which case that shorter period shall apply, Contractor shall deliver to the Client Agency, F.O.B. Hartford, Connecticut or other State location which Client Agency identifies, all Public Records created or modified pursuant to this Contract, any SOW, subcontract or amendment and requested in writing by the Client Agency (provided that Contractor may redact confidential information of Contractor, its personnel or third parties to the extent permitted by applicable law) no later than the latter of (1) the time specified in the section in this Contract concerning Termination for the return of Public Records and (2) ten (10) days from the date that the work under this Contract or SOW is transferred back to the Client Agency or to another contractor for any reason. Contractor shall deliver to the Client Agency during the Client Agency's Business Hours those Public Records in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or TXT. Contractor shall deliver to the Client Agency, during the Client Agency's business hours,

those Public Records and a list of all applicable passwords and security codes, all in appropriately protective packaging to ensure delivery without damage.

d. If Contractor employs former State employees, Contractor shall facilitate the exercising of any reemployment rights that such State employees may have with the State, including, but not limited to, affording them all reasonable opportunities during the workday to interview for State jobs. Contractor shall include language similar to this Section in all of its contracts with its subcontractors and applicable Contractor Parties so that they are similarly obligated.

## 29. Security and/or Property Entrance Policies and Procedures

Contractor shall adhere to established security and/or property entrance policies and procedures for each Client Agency. It is the responsibility of Contractor to understand and adhere to the Client Agency's policies and procedures prior to entering the Client Agency Site to Perform under this Contract.

## 30. Disclosure of Contractor Parties Litigation

Contractor shall require that all Contractor Parties, as appropriate, disclose in writing to Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract, no later than ten (10) calendar days after becoming aware of or after they should have become aware of any such Claims.

## 31. Protection of Confidential Information

a. Contractor and Contractor Parties have a duty to and shall, at their own expense, protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices, as they may be amended from time to time.

b. Contractor and all Contractor Parties shall develop, implement and maintain a comprehensive written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards contained in the written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in written policy of the Client Agency or DAS concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;

2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;

3. A process for reviewing policies and security measures at least annually;

4. Creating secure access controls to Confidential Information, including but not limited to passwords; and

5. Encrypting of Confidential Information that is stored on laptops, portable devices and storage media or that is being transmitted electronically.

c. Contractor and Contractor Parties shall notify DAS, the Client Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which, in the sole opinion of the Client Agency after consultation with the Attorney General, constitutes a breach of security as defined in Connecticut General Statutes, § 36a- 701b, or otherwise (Breach), the Contractor shall, within three (3) Business Days after the notification, present a credit monitoring and protection plan to the Commissioner of DAS, the Client Agency, and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring and protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to, reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractor's nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from DAS, the Client Agency, or any State of Connecticut entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.

d. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.

e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the provisions of this Contract concerning the obligations of the Contractor to the Client Agency or DAS.

## 32. Confidentiality; Non-Disclosure

The State shall exercise at least the same degree of care to safeguard any trade secrets or confidential information of Contractor as the State does its own property of a similar nature and shall take reasonable steps to ensure that neither the confidential information of Contractor nor any part of it will be disclosed for reasons other than its own business interests. Such prohibition on disclosures does not apply to disclosures by the State to its employees, agents or representatives, provided such disclosures are reasonably necessary to the State's use of the Deliverable, and provided further that the State will take all reasonable steps to ensure that the Deliverable is not disclosed by such parties in contravention of this Contract. The State's performance of the requirements of this Section shall be subject to the State of Connecticut Freedom of Information Act ("FOIA").

All Records, Client Agency Data, and any Data owned by the State in any form, in the possession of the Contractor or Contractor Parties, whether uploaded, collected, stored, held, hosted, located or utilized by Contractor and Contractor Parties directly or indirectly, must remain within the continental United States.

## 33. Disclosure of Records Concerning Governmental Functions

This Contract may be subject to the provisions of Section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with

FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes.

## 34. Contractor's Obligation to Notify DAS Concerning Public Records

In accordance with Conn. Gen. Stat. § 4d-38, if the Contractor or Contractor Parties learn of any violation of the provisions of Conn. Gen. Stat. §§ 4d-36 or 4d-37 they shall, no later than seven calendar days after learning of such violation, notify the Chief Information Officer of such violation.

## 35. General Assembly Access to Records

In accordance with Conn. Gen. Stat. § 4d-40, the Joint Committee on Legislative Management and each nonpartisan office of the General Assembly shall continue to have access to DAS records that is not less than the access that said committee and such offices have on July 1, 1997.

## 36. Profiting from Public Records

In accordance with Conn. Gen. Stat. § 4d-37, neither Contractor nor Contractor Parties shall sell, market or otherwise profit from the disclosure or use of any public records which are in their possession pursuant to this Contract or any contract, subcontract or amendment to a contract or subcontract, except as authorized in this Contract. For purposes of this Section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

## 37. Application of FOIA to Public Records Provided to Contractor

In accordance with Conn. Gen. Stat. § 4d-35, any public record which a state agency provides to Contractor or Contractor Parties shall remain a public record for the purposes of subsection (a) of Conn. Gen. Stat. § 1-210 and as to such public records, the State, Contractor and Contractor Parties shall have a joint and several obligation to comply with the obligations of the state agency under the Freedom of Information Act (FOIA), as defined in Conn. Gen. Stat. §1-200, provided that the determination of whether or not to disclose a particular record or type of record shall be made by such state agency.

## 38. Ownership Rights and Integrity of Public Records

In accordance with Conn. Gen. Stat. § 4d-34, (a) neither Contractor nor Contractor Parties shall have any Title in or to (1) any public records which the Contractor or Contractor Parties possess, modify or create pursuant to a contract, subcontract or amendment to a contract or subcontract, or (2) any modifications by such contractor, subcontractor, employee or agent to such public records; (b) neither Contractor nor Contractor Parties shall impair the integrity of any public records which they possess or create; and (c) public records which Contractor or Contractor Parties possess, modify or create pursuant to this Contract or other contract, subcontract or amendment to a contract or subcontract shall at all times and for all purposes remain the property of the State. For purposes of this Section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 4d-33, as it may be modified from time to time.

## 39. Nondisclosure of Public Records

In accordance with Conn. Gen. Stat. § 4d-36, neither Contractor nor Contractor Parties shall disclose to the public any public records (a) which they possess, modify or create pursuant to this Contract or any contract, subcontract or amendment to a contract or subcontract and (b) that a state agency (1) is prohibited from disclosing pursuant to state or federal law in all cases, (2) may disclose pursuant to state or federal law only to certain entities or individuals or under certain conditions or (3) may withhold from disclosure pursuant to state or federal law. This provision shall not be construed to

prohibit the Contractor from disclosing such public records to any Contractor Parties to carry out the purposes of its subcontract. For purposes of this section, “public records” shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

## 40. Audit and Inspection of Plants, Places of Business and Records

a. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State’s Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor’s and Contractor Parties’ plants and places of business which, in any way, are related to, or involved in, the Performance of this Contract.

b. Contractor shall maintain, and shall require each Contractor Party to maintain, accurate and complete Records. Contractor shall make all of its and the Contractor Parties’ Records available at all reasonable hours for audit and inspection by the State and its agents.

c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty- four (24) hours’ notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.

d. Contractor shall pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a Breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract.

e. Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties’ Records until three (3) years after the latter of (1) final payment under this Contract, or (2) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

f. Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.

g. Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

## 41. Indemnification

a. Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Contract for the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or this Contract. Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. Contractor’s obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor’s bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or non-copyrighted compositions, secret processes, patented

or unpatented inventions, articles or appliances furnished or used in the Performance.

b. Contractor shall not be responsible for indemnifying, defending or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.

c. Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.

d. Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms of this Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims or both.

e. Contractor shall carry and maintain at all times during the Term of this Contract, and during the time that any provisions survive the Term of this Contract, sufficient commercial general liability insurance to satisfy its obligations under this Contract.

f. This Section shall survive the Termination of this Contract and shall not be limited by reason of any insurance coverage.

g. Neither party shall be liable for consequential, special, punitive, or incidental damages, or lost profits from any cause under this Contract.

## 42. Forum and Choice of Law

The parties deem this Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

## 43. Assignment

Except as set forth in Section 11 of the Contract, the Contractor shall not assign any of its rights or obligations under this Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this Section and declare the Contractor in breach of Contract. Any Termination by DAS for a breach is without prejudice to DAS' or the State's rights or possible Claims.

## 44. Tangible Personal Property

a. Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

1. For the Term, Contractor and its Affiliates shall collect and remit to the State of Connecticut,

Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus with the State under the provisions of Chapter 219 to be required to collect Connecticut use tax;

2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;

3. Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in this Contract if any, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;

4. Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and

5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in this Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the Connecticut General Statutes.

b. For purposes of this Section of this Contract, the word "Affiliate" means any person, as defined in section 12-1 of the Connecticut General Statutes, that controls is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten percent of the voting securities of the other person. The term "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.

c. Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

## 45. Americans with Disabilities Act

Contractor represents that it is familiar with the terms of the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq, and that it is in compliance with the law. Failure of Contractor to satisfy this standard either now or during the Term as it may be amended will render this Contract voidable at the option of the State upon notice to Contractor. Contractor warrants that it will hold the State harmless from any liability that may be imposed upon the State as a result of any failure of Contractor to be in compliance with the Americans with Disabilities Act.

## 46. Executive Orders and Other Enactments

a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its Term, or that may be made applicable to the Contract during its Term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless

otherwise provided by Enactments, the Contractor is not relieved of its obligation to Perform under this Contract if it chooses to contest the applicability of the Enactments or the State's authority to require compliance with the Enactments.

b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.

c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

## 47. Non-Discrimination

a. For purposes of this Section, the following terms are defined as follows:

1. "Commission" means the Commission on Human Rights and Opportunities;
2. "Contract" and "contract" include any extension or modification of the Contract or contract;
3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
5. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
6. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
7. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
8. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
9. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
10. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for

construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms “Contract” and “contract” do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3),or (4).

b. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status of a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status of a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers’ representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

c. Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

d. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

e. The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and

such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

f. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

g. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

h. The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

i. Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following box: ☐

## 48. Whistleblower Provision

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the

Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of such statute, Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty percent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

## 49. Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for Termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

## 50. Campaign Contribution Restriction

For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of $50,000 or more, or a combination or series of such agreements or contracts having a value of $100,000 or more, the authorized signatory to this Contract represents that they have received the State Elections Enforcement Commission’s notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

## 51. Force Majeure

a. The parties shall not be excused from their respective Contract obligations except in the case of Force Majeure Events and as otherwise provided for in this Contract.

b. If a Force Majeure Event prevents a party from complying with any obligation or satisfying any conditions under this Contract, then that failure to comply will not constitute a Breach if (A) that party uses reasonable efforts to comply; (B) that party’s failure to comply is not due to its failure to (i) take reasonable measures to protect itself against Force Majeure Events or (ii) develop and maintain a reasonable contingency plan to respond to Force Majeure Events; and (C) that party complies with its obligations under subsection (c) of this Section.

c. If a Force Majeure Event occurs, then the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on its obligations under this Contract, and how long the noncomplying party expects the noncompliance to last. Thereafter, the

noncomplying party shall update that information as reasonably necessary, or as the other party may reasonably request, whichever is more frequent. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume complying with its Performance and obligations under this Contract.

d. Failure to provide written notice of any Force Majeure Event as soon as the failing party becomes aware of it, or failure by the other party to Act in response to the notice, does not excuse any delays or failures in Performance or obligations.

## 52. Notice

a. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this Section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut Department of Administrative Services
Procurement Division
450 Columbus Boulevard, Suite 1202
Hartford, CT 06103

Attention: Nora Sinkfield

If to the Contractor:

Toshiba America Business Solutions, Inc.
22530 Commercentre Drive, Lake Forest, CA 92630

Attention: Christina Fisher - Director of Bids, Proposals & Contracts

b. Details regarding invoices and all technical or day-to-day administrative matters pertaining to this Contract shall be directed to:

Client Agency: The individual specified in the applicable Purchase Order.

Contractor: The individual designated by Contractor in the response to the Solicitation or as the Contractor may otherwise designate in writing to the Client Agency.

## 53. Headings

The headings given to the Sections in this Contract are inserted only for convenience and are in no way to be construed as part of this Contract or as a limitation of the scope of the particular Section to which the heading refers.

## 54. Number and Gender

Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

## 55. Amendments, Supremacy, Entirety of Contract

No amendment to or modification of this Contract shall be valid or binding unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General. Any and all Purchase Orders, Statements of Work or other documents authorized in connection with this Contract shall be subject to the terms of this Contract. Any additional terms within any such Purchase Order, Statement of Work, or other document that contradict the terms of this Contract shall have no force or effect and shall in no way affect, change or modify any of the terms of this Contract. This Contract contains the complete and exclusive statement of the terms agreed to by the parties.

## 56. Severability

If any term or provision of this Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of this Contract shall be valid and enforced to the fullest extent possible by law.

## 57. Risk of Loss and Insurance

The State shall not be liable to Contractor for any risk of Deliverable loss or damage while Deliverables are in transit, or while in the Client Agency's possession, except when such loss or damage is due directly to the Client Agency's negligence or intentional misconduct. Nothing in this Section is intended nor shall it be construed, in any manner, as waiving or compromising the sovereign immunity of the State.

The insurance required by this Section shall be written on an occurrence basis as opposed to a "claims made" basis and shall be on such forms, and contain such endorsements and terms, as shall be acceptable to DAS.

Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the Term of this Contract, the insurance described below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

### a. Commercial General Liability

Throughout the Term and during the time that any provisions survive the Term, Contractor shall maintain, at Contractor's sole cost and expense, a policy or policies of commercial general liability insurance, including contractual liability coverage, in an amount not less than $1,000,000 for all damages arising out of bodily injuries to, or death of, all persons and injuries to or destruction of property, in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of $2,000,000 per occurrence for all damages arising out of bodily injuries to, or death of, all persons and injuries to or destruction of property per policy period. The Contractor shall cause the State and its officers, agents, and employees to be named as an additional insured on the policy and shall provide (1) a certificate of insurance (2) the declaration page and (3) the additional insured endorsement to the policy to DAS all in an electronic format acceptable to DAS prior to the Effective Date evidencing such coverage. The Contractor shall not begin Performance until the delivery of these 3 documents to DAS. Contractor shall provide an annual electronic update of the 3 documents to DAS on or before each anniversary of the Effective Date during the Term. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the State is contributorily negligent, but only for that portion of the negligence attributable to the Contractor and not for that portion of the negligence attributable to the State.

### b. Automobile Liability

$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage extends to owned, hired and non-owned automobiles. If the Contractor does not own an automobile, but one is used in the execution of this Contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of this Contract, then automobile coverage is not required.

### c. Workers' Compensation and Employer's Liability

Contractor shall maintain Worker's Compensation and Employer's Liability insurance in compliance with the laws of the state of Connecticut, which coverage shall include Employer's Liability coverage with minimum limits of $100,000 for each accident, $500,000 for disease, and $100,000 for each employee, per policy period.

### d. Excess / Umbrella Liability

Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

### e. Information Security Privacy

Throughout the Term, Contractor shall carry, at Contractor's sole cost and expense, an information security and privacy Insurance policy with limits not less than $1,000,000 per occurrence or claim, $1,000,000 annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract and shall include, but not limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including infringement of copyright, trademark, trade dress, invasion of privacy violations information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

### f. Professional Liability

During the Term, and for a period of three (3) years thereafter, the Contractor shall carry Professional Liability Insurance in the amount of $5,000,000 per Claim and Annual Aggregate. Contractor shall provide the State a certificate of insurance evidencing such Professional Liability Insurance coverage upon written request on an annual basis and shall not begin Performance until such a certificate has been provided to the Client Agency.

## 58. Chief Information Officer Approval of Subcontractors

In accordance with Conn. Gen. Stat. § 4d-32, Contractor shall not award a subcontract for work under this Contract without having first obtained the written approval of the Chief Information Officer of the Department of Administrative Services or their designee of the selection of the subcontractor and of the provisions of the subcontract.

## 59. Iran Energy Investment Certification

a. Pursuant to Conn. Gen. Stat. § 4-252a, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1,

2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.

b. If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this Section then the Contractor shall not be deemed to be in breach of the Contract or in violation of this Section. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the state of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Contract.

## 60. Large State Contract Representation for Contractor

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

(1) That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;

(2) That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and

(3) That the Contractor is submitting bids or proposals without fraud or collusion with any person.

## 61. Large State Contract Representation for Official or Employee of State Agency

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State official or employee represents that the selection of the person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

## 62. Consumer Data Privacy and Online Monitoring

Pursuant to section 4e-72a of the Connecticut General Statutes, Contractor shall at all times comply with all applicable provisions of sections 42-515 to 42-525, inclusive, of the Connecticut General Statutes, as the same may be revised or modified.

## 63. Consulting Agreements Representation

Pursuant to Conn. Gen. Stat. § 4a-81, the person signing this Contract on behalf of the Contractor represents, to their best knowledge and belief and subject to the penalty of false statement as provided in Conn. Gen. Stat. § 53a-157b, that the Contractor has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of Conn. Gen. Stat. §4a-81.

Consultant's Name and Title _____ Name of Firm (if applicable) _____

Start Date _____ End Date _____ Cost _____

The basic terms of the consulting agreement are:

_____

_____

_____

Description of services provided:

_____

_____

_____

Is the consultant a former State employee or former public official? ☐ YES ☐ NO

If YES: Name of Former State Agency _____ Termination Date of Employment _____

# EXHIBIT 3 - Attachments

## Table of Contents

Exhibit 3 - Attachment 1 – TOSHIBA Lease Agreement Terms and Conditions

Exhibit 3 - Attachment 2 – TOSHIBA Service Level Agreement

Exhibit 3 – Attachment 3 – TOSHIBA Maintenance Agreement

Exhibit 3 – Attachment 4 – TOSHIBA Lease Order Form

Exhibit 3 – Attachment 5 – TOSHIBA Lease Order Form Schedule

Exhibit 3 - Attachment 6 – TOSHIBA M&S Activation For Purchased Equipment

Exhibit 3 – Attachment 7 – TOSHIBA E-Meters Online Information and Instructions

Exhibit 3 - Attachment 8 – Master Software and Services Agreement

**Exhibit 3**

## ATTACHMENT 1 – TOSHIBA LEASE AGREEMENT TERMS AND CONDITIONS

**AGREEMENT FOR LEASE OF EQUIPMENT**
a Contract Between

"Lessee"
(NAME, ADDRESS, PHONE OF LESSEE)
and
Toshiba America Business Solutions, Inc.

WHEREAS, Lessee is authorized to lease under the NASPO-ValuePoint Master Agreement ("Master Agreement") and the State of Participating Addendum thereto; and

WHEREAS, it is deemed that the lease of this equipment is both necessary and for the good of Lessee;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. LEASE TERM. This Agreement shall be effective from the date of delivery and acceptance of Leased Equipment for the term set forth on the (i) Attachment 5, Toshiba Lease Order Form and if applicable Attachment 6, Toshiba Lease Order Form Schedule B (collectively an "Order Form"); or (ii) the Lessee's Purchase Order (PO), unless sooner terminated by either party as set forth in Section 6 of this Agreement.

2. DEFINITIONS. "**Lease Term**" means the term of this Agreement as set forth in Section 1. "**Leased Equipment**" means the (i) equipment described in the Order Form, attached to this Agreement, and which is incorporated herein; (ii) any replacement equipment provided by Lessor; and (iii) any additional equipment described under subsequent Order Forms agreed to during the term of this Agreement. "**Lessor**" means Toshiba America Business Solutions, Inc. or, if applicable, its permitted assignee.

3. CONSIDERATION (RENT). The parties agree that for the Lease Term, Lessor leases to Lessee the equipment described in, and for the lease payments set forth in, the Order Form, excluding meter charges, late fees and applicable taxes. Except as provided in section 6(c), lessee's payment obligations are absolute and unconditional and are not subject to cancellation, reduction or setoff for any reason whatsoever. Lessee does not agree to reimburse Lessor for expenses, unless otherwise specified in the incorporated documents. Any intervening end to a fiscal period shall be deemed a contract renewal (not changing the overall Agreement term) or a termination as the results of legislative appropriation may be required.

4. POSSESSION, TITLE AND RETURN.

(a) Lessee shall have possession of the Leased Equipment for the Lease Term, unless this Agreement is earlier terminated in accordance with Section 6 below and shall keep such Leased Equipment at the location specified in the Order Form or such other location as Lessor may agree in writing.

(b) Lessor covenants that it has good title to the Leased Equipment, except any intangible property or associated services such as periodic software licenses and prepaid database subscription rights included in the Leased Equipment, if any. At the end of the Lease Term, if Lessee is not in default, Lessor will release any security interest it may have in the Leased Equipment subject to such Capital Lease, which will be retained by Lessee.

(c) At the expiration of the term of this Agreement and provided that the Order Form does not indicate this lease is a Capital Lease, upon Lessee's written request, Lessor shall remove the hard drive from the applicable Device and provide the Lessee with custody of the hard drive before the Device is removed from the Lessor's location. Lessor may charge the Purchasing Entity a fee if the Purchasing Entity elects to keep the hard drive in their possession. The Lessee shall then be responsible for securely erasing or destroying the hard drive. If Lessee is not in breach of this Agreement, all costs of removing and transporting the Leased Equipment at the expiration of the Lease Term shall be the responsibility of Lessor.

(d) Risk of loss of the Leased Equipment rests with Lessor until the Leased Equipment is picked up from Lessee's

designated location, at which time risk of loss passes to Lessee.

(e) If the Order Form indicates this lease is a Fair Market Value Lease, at the end of the Lease Term and upon 30 days' prior written notice to Lessor, Lessee may purchase all, but not less than all, of the Leased Equipment AS-IS and WHERE- IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE, for the Fair Market Value, plus applicable sales and other taxes, if any.

5. TAXES. Lessee shall provide Lessor with a tax exemption certificate regarding all fees, assessments, taxes and charges governmentally imposed upon Lessor's purchase, ownership, possession, leasing, renting, operation, control or use of the Leased Equipment.

6. TERMINATION.

(a) Termination by Mutual Consent. Any discretionary or vested right of renewal notwithstanding, this Agreement may be terminated upon written notice by mutual consent of both parties.

(b) Termination by Lessee without Cause. This lease may be bought out and all Leased Equipment returned to Lessor, although fair market value leases, operational leases, non-cancelable rentals and capital leases are subject to a termination charge. The termination charge is equal to the balance of unpaid lease payments and other amounts due hereunder (including any current or past due amounts) for leases and with regard to service or maintenance obligations, may not exceed more than four (4) month service and supply base or 25% of the remaining term, whichever is less.

(c) Termination for Nonappropriation. The continuation of this Agreement beyond the current fiscal period is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by Lessee's legislature, governing body and/or federal sources. If for any reason Lessee's funding is not appropriated or is withdrawn, limited, or impaired, Lessee may terminate this Agreement, and Lessor waives any and all claim(s) for damages, effective as of the end of the fiscal period in which written notice of such non-appropriation, withdrawal, limitation or impairment is provided by Lessee to Lessor. If Lessee terminates this Agreement because of non-appropriation, withdrawal, limitation or impairment of funds, Lessee will not purchase, lease or rent replacement equipment performing the same functions as the Leased Equipment during the subsequent fiscal period.

(d) Termination for Default or Breach. A default or breach may be declared with or without termination. This Agreement may be terminated by either party upon written notice to the other party for any material breach or default by the other party of any terms, conditions, covenants, or obligations of this Agreement. Notice of termination for breach or default is effective 30 days following service of notice, or upon any subsequent date specified in the notice of termination. Termination by Lessor due to Lessee's material breach or default will be subject to a termination charge, which is equal to the balance of lease payments and other amounts due hereunder (including any current or past due amounts) for leases and may not exceed more than four (4) month service and supply base or 25% of the remaining term, whichever is less, for service and maintenance charges.

7. INSURANCE. At Lessor's request, Lessee shall provide to Lessor proof that the Leased Equipment is covered for the value thereof against property loss or damage while in Lessee's possession by Lessee's program of self-insurance (if approved by Lessor and Lessor's assignee, if any) or a policy of property insurance from a qualified insurer. Notwithstanding the foregoing, Lessor acknowledges that Lessee is an agency of the State of Connecticut and relies upon sovereign immunity as a primary defense to claims. Any claims presented against Lessee shall be made pursuant to the claims commissioner process in accordance with Chapter 53 of the Connecticut General Statutes for claims against the State. Lessee shall have no obligation to purchase insurance to satisfy such claims.

8. LOSS OR DAMAGE. If any item of Leased Equipment is lost, stolen or damaged, Lessee will, at Lessee's option and cost, either: (a) repair the item or replace the item with a comparable item reasonably acceptable to Lessor; or (b) pay Lessor the sum of: (i) all past due and current lease payments and other amounts due under this Agreement; (ii) the present value of all remaining lease payments for the effected item(s) of Leased Equipment, discounted at the rate of 6% per annum; and (iii) if this lease is not a Capital Lease, the Fair Market Value of the effected item(s) of Leased Equipment. Upon Lessee's payment to Lessor under clause (b) above, Lessor will then transfer to Lessee all of Lessor's right, title and interest in the effected item(s) of Leased Product AS-IS AND WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE. "Fair Market Value" means the item's fair market value at the end of the Lease Term, assuming good order and condition (except for ordinary wear and tear from normal use), as estimated by Lessor. No such loss or damage shall relieve Lessee of payment obligations hereunder.

9. WARRANTY AND MAINTENANCE OF EQUIPMENT; WARRANTY DISCLAIMER. All services performed under this Agreement shall be of workmanlike quality, consistent with the standards of the trade, profession or industry. Lessor shall assign to Lessee all manufacturer's warranties on the Leased Equipment, which shall be not less than a full six months' warranty. Lessor shall be responsible for ongoing service and maintenance of the Leased Equipment for the duration of the Lease Term. EXCEPT AS OTHERWISE STATED HEREIN, LESSOR MAKES NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE LEASED EQUIPMENT IS FIT FOR A

PARTICULAR PURPOSE OR THAT THE LEASED EQUIPMENT IS MERCHANTABLE. Lessee acknowledges that none of Lessor or their representatives are agents of any assignee and none of them are authorized to modify the terms of this lease or on any Schedule. No representation or warranty of Lessor with respect to the Leased Equipment will bind any assignee, nor will any breach thereof relieve Lessee of any of its obligations hereunder. THIS LEASE AGREEMENT AND EACH SCHEDULE CONSTITUTES A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE (the "UCC"). Lessee agree that any manufacturer or Lessor warranty or service agreement is a separate and independent obligation of Lessor to Lessee, that no assignee of the Lessor shall have any obligation to Lessee with respect to such warranty or service agreement and that Lessee's obligations under this Agreement are not subject to setoff, withholding, reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim Lessee may have against Supplier.

10. LESSOR REMEDIES. If Lessee default, Lessor may do one or more of the following: (a) recover from Lessee, as liquidated damages for loss of bargain and not as a penalty, the sum of: (i) all past due and current lease payments and other amounts due under this Agreement; (ii) the present value of all remaining lease payments, discounted at the rate of 6% per annum; and (iii)) require Lessee to make the Leased Equipment available to Lessor for pickup at Lessee's premises (and Lessee shall be responsible for removing all data as provided in Section 4) and to pay all costs of removing and transporting the Leased Equipment, and (b) charge Lessee for expenses incurred in connection with the enforcement of Lessor's remedies. If Lessor picks up the Leased Equipment, Lessor may sell, release or otherwise dispose of the Leased Equipment and apply the proceeds, less reasonable selling and administrative expenses, to the amounts due by Lessee. These remedies are cumulative, in addition to any other remedies provided by law, and may be exercised concurrently or separately. Any failure or delay by Lessor to exercise any right shall not operate as a waiver of any right. Neither party shall be liable for consequential, special, punitive, or incidental damages, or lost profits from any cause under this Agreement.

11. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. Any services performed by Lessor before this Agreement is effective or after it ceases to be effective are performed at the sole risk of Lessor.

12. LESSEE REPRESENTATIONS. Lessee represents that: (a) this Agreement and any documents required to be delivered in connection with this Agreement (collectively, the "Documents") have been duly authorized by Lessee in accordance with all applicable laws, rules, ordinances and regulations; (b) the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents, if applicable, have the authority to do so, are acting with the full authorization of Lessee's governing body, and hold the offices indicated below their signatures; (c) the Leased Equipment shall be used during the Lease Term only by Lessee to perform such function; (d) Lessee intends to use the Leased Equipment for the entire Lease Term ; (e) Lessee has complied fully with all applicable law governing open meetings, public bidding and appropriations, required in connection with this lease and the debt under applicable state law; (f) unless this lease is a Capital Lease, Lessee's obligations to remit Lease Payments constitutes a current expense and not a debt under applicable state law; (g) this Agreement is binding on Lessee and Lessee's successors and assigns; and (h) all financial information Lessee has provided is true and a reasonable representation of Lessee's financial condition.

13. ASSIGNMENT. Lessee may not assign or dispose of any rights or obligations under this Agreement or sublease the Leased Equipment without Lessor's prior written consent which shall not be unreasonably withheld. Notwithstanding anything in the NASPO ValuePoint Master Agreement and/or the Participating Addendum to the contrary, Lessor may assign all or any portion of this Agreement or its interest in the Leased Equipment; provided that service obligations on the Leased Equipment shall remain with Toshiba America Business Solutions, Inc. and expressly not with Lessor's assignee and must conform to the terms of the NASPO ValuePoint Master Agreement and the State of Connecticut Participating Addendum. Lessor's assignee shall have Lessor's rights under this Agreement, but none of Lessor's obligations. Lessee agrees not to assert any claims, defenses or offsets it may have against Lessor against such assignee as Lessor shall retain those obligations under this Agreement.

14. AGREEMENT AND MODIFICATION. This Agreement is made pursuant to the NASPO ValuePoint Master Agreement identified above, and the State of Connecticut Participating Addendum to that Master Agreement. In the event of conflict between the Master Agreement or the State of Connecticut Participating Addendum and this Agreement, the Participating Addendum shall govern and control. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties, unless the same is in writing and signed by the respective parties hereto.

15. TIME PRICE. If the Toshiba Lease Order Form and Schedule indicates the lease is a Capital Lease, Lessee understands that the Leased Equipment may be purchased for cash (the "Product Cost") or purchased pursuant to this Agreement for an amount of each Lease Payment times the number of Lease Payments, less maintenance, as set forth on the NASPO Lease Order Form and Schedule and this Agreement, plus the $1 Purchase Option amount stated on the NASPO Lease Order Form and Schedule, and by signing this Agreement, Lessee has chosen to

purchase the Leased Equipment for that price. The Product Cost may be determined by dividing the Lease Payment by the lease rate factor set forth on the NASPO Lease Order Form and Schedule. Each Lease Payment under a Capital Lease includes a part of Lessor's investment in the Product Cost and a return on Lessor's investment in the Capital Lease. The total return on Lessor's investment (the total finance charge) is determined by deducting the Product Cost (as determined above) from the Time Price. The difference so determined is the return to Lessor on its investment (the total finance charge). The rate of return (finance rate) may be determined by applying to the Product Cost, the rate that will amortize the Product Cost down to the Purchase Option amount by applying as payments, the Lease Payments. For purposes of that amortization, each Lease Payment will be considered received on the date it is required to be paid under this Agreement.

16. GOVERNING LAW, JURY TRIAL WAIVER. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Connecticut, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction. BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO THIS AGREEMENT AND THE LEASED EQUIPMENT.

17. NOTICE. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally in hand, (b) delivered by telephone, facsimile or email with simultaneous regular mail, or (c) mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above or such other address as the other party may have provided written notice of in accordance with this Section 17. For purposes of computing times from service of notice, service of notice by delivery in hand shall be effective on the date of delivery; notices that are mailed shall be effective on the third calendar day following the date of mailing.

18. RESERVED.

19. ELECTRONIC DOCUMENTATION. This Agreement may be executed in counterparts and signed by the parties manually or electronically. The executed counterpart that has Lessor's original signature and/or is in Lessor's possession shall constitute chattel paper as that term is defined in the UCC and shall constitute the original agreement for all purposes. If Lessee transmits this Agreement to Lessor by facsimile or other electronic transmission, the transmitted copy shall be binding upon the parties. Neither party may raise as a defense to the enforcement of this Agreement that it was signed or transmitted electronically. Notwithstanding the above, neither Lessor nor any of its assignees will have a security interest in the form of a lien against the Lessee or State of Connecticut as part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

| **LESSOR:** | **LESSEE:** |
|---|---|
| **Toshiba America Business Solutions, Inc.** | |
| | **By:** _____ |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

**Exhibit 3**

# ATTACHMENT 2
# TOSHIBA SERVICE LEVEL AGREEMENT

**1.** Client Agency Level SLA

**1.1.** Purpose

The purpose of this Attachment is to outline service levels; as well as provide Client Agency with a defined process for equipment replacement or loan as set forth herein.

**1.2.** Equipment Availability Agreement

Contractor agrees to maintain the following service levels defined below as targets:

| Performance Criteria | Target Level |
|---|---|
| Average Uptime | 96% or Better |
| Average On-Site Response Time | 4 Hours or Less |

**1.3.** Total Quality Commitment (TQC)

Free Replacement - If Buyer's Toshiba MFD, Facsimile or its accessories, do not operate within Toshiba's product specifications during the term of its lease or if purchased its maintenance service term, and if the equipment cannot be repaired to perform within product specifications, Contractor will replace the MFD, facsimile or accessory at no charge with a model of equal or better features and specifications.

**1.4.** Equipment Availability Reports:

Contractor shall upon request provide Client Agency with the following reports, in electronic form, or such other form as Client Agency may approve in writing:

**1.4.1.** A quarterly report describing the Equipment during the calendar quarter as compared to the Equipment Availability requirement, upon request by Client Agency of Contractor.

**1.4.2.** A report will also include, at minimum:

a. Number of Service Calls placed, response time per device, dates that Preventative Maintenance was performed, if applicable and estimated end of Useful Life per Device, based on current usage
b. A description of the actual performance of the System relative to the Equipment Availability requirement.
c. If performance of Equipment has failed in any respect to meet or exceed the Equipment Availability requirement during the reporting period, a description in sufficient detail to inform Client Agency of the cause of such failure, the length of the failure and the corrective actions the Contractor has taken to ensure that the

Equipment Availability requirements are fully met. Any such failure to meet the 96% Equipment Availability requirement will trigger the rights and obligations in Section 1.5, Equipment Performance, Non-Compliance in this Exhibit 3.

**1.5.** Equipment Performance, Non-Compliance:

**1.5.1.** Equipment Unavailability:

**1.5.1.1.** The Contractor shall provide Equipment Availability as provided in Section 1.2 of this Attachment 2 of this Exhibit 3. For every hour or part of an hour, during normal business hours (8AM-5PM, Monday through Friday), starting with minute 1 beyond the 29 hours of failure to provide Equipment Availability, Contractor shall incur a charge of 10% of the total invoice for the month to be credited to the invoice until Equipment Availability is restored. Partial hours shall be prorated upwards to next one-half (1/2) hour.

**1.5.1.2.** The charge imposed on Contractor under Section 1.4.1.1 of this Exhibit 3 will be paid to Client Agency within forty-five (45) calendar days OR applied as a service level credit(s) to offset Client Agency's next Equipment payment to Contractor.

**1.5.1.3.** For any service level credit assessed, Client Agency will send a written notice to Contractor detailing the amount to be applied as a service level credit and the payment date to which Contractor shall apply the service level credit. The Contractor shall then credit Client Agency the amount on the next billing invoice.

**1.5.1.4.** If Client Agency terminates the Contract, or the Contract expires, prior to the next payment, then Contractor shall pay Client Agency the amount of the service level credit owed for Equipment unavailability or noncompliance within thirty (30) days of Client Agency's written notice to Contractor.

**1.5.2.** Free Loaner:

**1.5.2.1.** If Client Agency's Toshiba MFD is out-of-service more than two (2) consecutive business days after notifying a Contractor's Authorized Servicing Provider or requires off-site service, a loaner MFD will be provided by the Contractor Authorized Servicing Provider at no additional charge.

**1.5.2.2.** All loaned equipment is the property of Contractor or the Contractor's Authorized Servicing Provider and must be returned to Contractor or the Contractor's Authorized Servicing Provider at the time the repaired or replaced equipment is tendered.

**1.5.3.** Term of Program.

The term of this program is (i) for purchased equipment, three years from equipment installation date or maximum number of copies as stated in the product specifications, whichever occurs first; or, (ii) for leased or rented equipment, the length of the original lease or rental term starting from the equipment installation date or the maximum number of copies as stated in the product specifications, whichever occurs first.

**1.5.4.** Terms & Conditions Of TQC

This program applies only to new Toshiba MFD and/or accessories acquired by customers from Toshiba or a Contractor Authorized Servicing Provider on or after April 1, 1996, on

condition that the equipment: (i) was continuously maintained under a full service maintenance agreement provided by an Authorized Toshiba Servicing Provider, and (ii) only genuine Toshiba parts and consumable supplies are used in the maintenance and operation of the equipment. This program is non-transferable. Product damaged or destroyed because of Buyer's negligence, misuse or abuse, improper electrical power, or an act of God are not covered under this program.

**Exhibit 3**

# ATTACHMENT 3 – TOSHIBA MAINTENANCE AGREEMENT

These maintenance terms are pursuant to a Participating Addendum under NASPO ValuePoint Master Agreement administered by the State of Colorado #RFP-NP-23-001 (the "Master Agreement"). By accepting this Attachment, Client Agency agrees to purchase the services as set forth in the Maintenance Order Form. Contractor agrees to provide parts, labor, ink, toner, and toner collection containers (the "Maintenance Services") for the equipment listed in Attachment 5, Toshiba Lease Order Form in accordance with the terms and conditions of the Master Agreement and the Maintenance Agreement Terms below.

**MAINTENANCE AGREEMENT TERMS**

1. **TERM:** Each asset shall be annually renewable on each yearly anniversary date for an additional one (1) year period. Contractor shall notify Client Agency in writing of any such pending anniversary date no later than ninety (90) days prior to such date, and Client Agency shall have until thirty (30) days prior to such date to notify Contractor in writing that it wishes to renew the term for an additional year in order for such renewal to take effect.

2. For each piece of equipment under this Maintenance Agreement there will be a date the Client Agency first uses the equipment (" Start Date") and an amount of prints the equipment has made before the Start Date ("Start Meter"). Service for each piece of equipment will be provided from the Start Date & Start Meter until this Maintenance Agreement is terminated or the equipment is withdrawn from service.

3. **REMOVAL FROM SERVICE.** Client Agency may withdraw individual equipment by providing thirty (30) day written notice prior to the Renewal Date. Client Agency is responsible for all remaining Minimum Payments if Client Agency is in default or if equipment is withdrawn prior to Renewal Date.

4. **INVOICING CHARGES.** Client Agency will pay the charges set forth in the Toshiba Lease Order Form. The first Minimum Payment is due upon receipt of an invoice. Thereafter, Minimum Payments will be due on the same date each month during the Term of this Maintenance Agreement whether or not Client Agency receives an invoice. Client Agency's obligation to pay the Minimum Payment is unconditional and is not subject to any reduction, set-off, defense, or counterclaim for any reason whatsoever. Excess click charges or Overage Charges, as applicable; will be invoiced monthly for the period selected on the Maintenance Order Form.

5. If any part of a payment is not made by the Client Agency when due, Client Agency agrees to pay Contractor a Late Charge pursuant to the terms of the Master Agreement, or such lesser rate as is the maximum rate allowable under applicable Connecticut law.

6. Contractor may estimate the number of clicks used if requested meter readings ("Meter Readings") are not received before a new billing period begins. Contractor will adjust the estimated charge for overage clicks upon receipt of actual Meter Readings. Notwithstanding any adjustment, the Client Agency will never pay less than the Minimum Payment. Client Agency will provide Meter Readings via an automated website.

7. **CONSUMABLE SUPPLIES**. All supplies delivered as part of this Maintenance Agreement remain the property of Contractor until and unless they are consumed by the equipment in the performance of this Agreement. Any supplies not consumed as specified and not surrendered to Contractor upon expiration or termination of the Maintenance Services for an asset will be invoiced to the Client Agency at Contractor's then current Master Agreement prices.

8. **TAXES**. In addition to the charges due under this Maintenance Agreement, the Client Agency agrees to pay amounts equal to any taxes resulting from this Maintenance Agreement, or any activities hereunder, exclusive of taxes based upon net income unless the Client Agency provides Contractor a certificate evidencing it is exempt from paying federal, state or local government sales and use tax.

9. **INSTALLATION AND ACCESS TO EQUIPMENT.** Client Agency agrees to provide adequate space, environment and appropriated electrical requirements including, if required, a dedicated 120 volt or 220 volt electrical line, as published in the Operator and Service Manuals for the operation and maintenance of the equipment. If Contractor has installed a power filter/surge protector on the equipment, it must at all times remain continuously installed. If it is removed Client Agency agrees to purchase a replacement from Contractor immediately. Contractor shall have full and free access to the equipment to provide service thereon.

**10.** If persons other than Contractor representatives install conversions, feature additions, accessories or perform service on equipment and as a result further repair by Contractor is required, such repairs shall be made at Contractor's applicable Time and Material rates and terms then in effect, per the Master Agreement pricing. If such additional repair is required, Contractor may immediately withdraw the equipment from this Maintenance Agreement.

**11. KEY OPERATOR - END-USER TRAINING.** Client Agency agrees to designate a Key Operator for training on the use, supplications and features of the equipment. The Key Operator will be responsible for normal Key Operator activities as detailed in the Operations Manual and for training additional end-user. If the Key Operator assignment changes, Client Agency agrees to designate a new Key Operator immediately. Contractor agrees to provide training for the designated Key Operator and to provide initial training for end-users on the use, applications and features of the equipment. Additional training requested by Client Agency will be at Contractor Master Agreement hourly rates.

**12. EXCLUSIONS.** Service under this Maintenance Agreement does not include:

- **a.** Furnishing paper, staples (unless purchased by the Client Agency), replacement print heads, batteries, ribbons, media, periodic maintenance on thermal printers or any of the following:
- **b.** Service of equipment if moved outside of Contractor's designated service area;
- **c.** Repair of damage or increase in service time caused by accident, misuse, negligence, abuse or disaster;
- **d.** Service of accessories, attachments or click control devices other than those of the same manufacturer as the equipment;
- **e.** Painting or refinishing of the equipment;
- **f.** Making specification changes;
- **g.** Performing key operator functions as described in the operator manual;
- **h.** Moving equipment, repair of damage or increase in service time caused by the use of the equipment for other than the ordinary use for which designed;
- **i.** Repair of damage caused by electrical surges or lightning strikes, if equipment is connected to a Contractor supplied power filter/surge protector repairs will be included;
- **j.** Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment as defined by the manufacturer, with all the facilities prescribed by Contractor including, but not limited to, adequate space, electrical power, air conditioning or humidity control;
- **k.** Repair of equipment that has been designated as obsolete by the manufacturer and genuine OEM parts are no longer available; or
- **l.** Repair of damage or increase of service time caused by Client Agency's use of media outside the specifications as described in the operator manual.

**13.** This Maintenance Agreement is not assignable, its right, duties and obligations may not be assigned or transferred by the Client Agency without the prior written consent of Contractor which consent shall not be unreasonable withheld. Any attempt to assign or transfer any of the rights, duties or obligations of this Maintenance Agreement without such consent is void. Contractor's service provided outside the scope of this Maintenance Agreement will be furnished at Contractor's applicable time and material rates and terms then in effect.

Lessee Legal Name: Department Name: FEIN#

Street Address I P.O. Box: Bldg/Room/Suite:

City: State: Zip Billing Contact Name:

Bill-To Phone Number: Email: Fax Number:

| | | | |
|---|---|---|---|
| Lessee Legal Name: | | | Department Name: |
| Street Address I P.O. Box: | | | Bldg/Room/Suite: |
| City: | State: | Zip: | Contact Name: |
| Phone Number: | Email: | | Fax Number: |

**EQUIPMENT LEASE TYPE**

Fair Market Value Capital Lease Straight Lease

**LEASE TERM**

24 Mo 36 Mo 48 Mo 60 Mo

**ITEM DESCRIPTION**

**(If insufficient space, use Schedule A to this Lease Order form and enter below "See Order Form Schedule")**

**EQUIPMENT LEASE**

**EQUIPMENT**

**MAINTENANCE & SERVICES (M&S) PLAN**

**Include Staples**

| LEASE % or RATE- FOR $OUT LEASES ONLY | EQUIPMENT LEASE PAYMENT | ZERO BASE B&W CPC | ZERO BASE COLOR CPC | MAINT. OPTION NUMBER 1, 2, 3 | MONTHLY VOLLUME (BW) | MONTHLY BASE CHARGE (BW) | BW OVERAGE RATE | COLOR OVERAGE RATE |
|---|---|---|---|---|---|---|---|---|
| | $ | | | | | $ | | |
| | $ | | | | | $ | | |
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| | $ | | | | | $ | | |
| | $ | | | | | $ | | |
| | $ | | | | | $ | | |

**Sum of Monthly Equipment Lease Payments:** **$_____** **Sum of Monthly Base Charges:** **$**

**TOTAL MONTHLY PAYMENT:**

**Equipment Lease Payment + Monthly Base Charge (If Applicable)** **$_____**

**Personal Property Tax Required**

**NASPO ADMIN FEE RATE: 0.25%** **STATE ADMIN FEE RATE (If Applicable):**

**Sales/Use Tax Exempt Yes No Tax-Exempt No. [Attach Tax Exemption]**

**PO Issued yes No**

**PO #**

***Payment Cycle:*** **Monthly Billing** ***Document Fee*: $75.00 included in the 1st invoice**

***THIS ORDER FORM INCORPORATES ALL OF THE TOSHIBA LEASE AGREEMENT TERMS AND CONDITIONS***

**LESSOR: Toshiba America Business Solutions, Inc.** **Title: SIGNATURE:**

**LESSEE:** **Title:**

**SIGNATURE**

# ATTACHMENT 5 – TOSHIBA LEASE ORDER FORM SCHEDULE

LESSEE _____

## Schedule B to NASPO Lease Order Form - EQUIPMENT LEASE WITH SEPARATE MAINTENANCE PLAN

v011119

This Schedule is solely for use with NASPO ValuPoint Participating Addendum only and should accompany the Lease Order Form
For Use with Colorado #RFP-NP-18-01 only

☐ INCLUDE STAPLES:

| | | | | | | | | | | | | MAINTENANCE PLAN | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| DEPT. NAME | DIV NAME / CODE | STREET ADDRESS | FLOOR | ROOM / SUITE | CITY | ST | ZIP | PO # | TOSHIBA MODEL | CONFIGURATION SUMMARY / ITEM DESCRIPTION | EQUIPMENT LEASE PAYMENT (with PPT) | No Base Plan, Only CPC for Usage | MAINT. OPTION 1, 2 OR 3 | INCLUDED BASE NUMBER OF COPIES | MAINT. MONTHLY BASE CHARGE | B&W OVERAGE RATE | COLOR OVERAGE RATE |
| EXAMPLE | 10001 | 123 East Main Street | 2nd Floor | 201 | Arlington | TX | 76210 | | Toshiba eStudio 8560C | A4 COLOR/B&W System | $ 284.58 | n/a | 2 | 25,000 | $ 137.50 | $0.0055 | $0.0300 |
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| | | | | | | | | | | Total Monthly Equipment Lease Payment: | $ - | | | Tot. Mo Base Chrg: | $ - | | |
| | | | | | | | | | | TOTAL MONTHLY PAYMENT (Total Monthly Equipment Lease Payment + Total Mo Base Charge: | | | | $0.00 | | | |

This Schedule to the NASPO Lease for Equipment and Maintenance Order Form incorporates all of the Terms and Conditions of the Lease Agreement.
Capitalized terms not defined herein shall have the same meaning as defined in the PA and/or the Agreement for Lease of Equipment.

| LESSEE | LESSOR: Toshiba America Business Solutions, Inc. |
|---|---|
| By: _____ | By: _____ |
| Name: _____ (Please Print) | Name: _____ (Please Print) |
| Title: _____ | Title: _____ |
| Date: _____ (date of signature) | Date: _____ (date of signature) |

ATTACHMENT 6 – TOSHIBA M&S ACTIVATION FOR PURCHASED EQUIPMENT

TOSHIBA

# NASPO MAINTENANCE & SERVICES ACTIVATION SCHEDULE

## CUSTOMER INFORMATION

| Customer Purchase Order Number | Date | FSM Number (Internal) | NASPO Customer No. |
|---|---|---|---|
| | | | |

| Maintenance Agreement Term | Agreement Term |
|---|---|
| 2 year ☐ 3 year ☐ 4 year ☐ 5 year ☐ | Start Date End Date |

| BILL TO INFORMATION | | | EQUIPMENT LOCATION | | |
|---|---|---|---|---|---|
| Customer Name Department | | | Customer Name Department | | |
| Street | | | Street | | |
| City | State | Zip Code | City | State | Zip Code |
| Contact Name | Fax Number | | Contact | Fax Number | |
| Telephone Number | Fax Number | | Telephone Number | Fax Number | |

## BILLING INFORMATION

| | |
|---|---|
| Billing Cycle ☐ Monthly ☐ Other | Billing Performed by ☐ **Toshiba bills the customer;** ☐ **Other** |
| Billing Format ☐ Per Machine ☐ Consolidated Bill (Grouped by ☐ De-Centralized Billing (**Each billing entity must sign separate Maintenance** | |
| Additions will be: ☐ Coterminous ☐ Other | Tax Exempt *(if multiple locations, indicate on P.O. for each state)* ☐ No ☐ Yes If YES, Certificate Number: |
| Meter Read **Submitted By Customer**: E:bridge ☐ FMAudit ☐ E:meters online (Web) ☐ | Customer P.O. Required? (If Yes, Attach Purchase Order) No ☐ Yes ☐ PO Number |
| Special Instructions: | |

## CUSTOMER SIGNATURE

***Signature on this page indicates acceptance of the Maintenance Plan set forth on Page 2 of this Order and all terms and conditions as stated in the NASPO Master Contract and State Participating Addendum.***

| **Name** | | **Title** | |
|---|---|---|---|
| **Signature** | | **Date** | |

**NASPO-Toshiba Document #A06**

**NASPO MAINTENANCE & SERVICES ACTIVATION SCHEDULE – Page 2**

**ZERO BASE PLAN or**
**OPTIONAL MONTHLY BASE CHARGE WITH OVERAGES PLAN**

**Staples Included**
☐ Yes ☐ No

| | | Option 1 | | | | Option 2 | | | | Option 3 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Monthly Volume | Monthly Base Charge | Overage Rate | | Monthly Volume | Monthly Base Charge | Overage Rate | | Monthly Volume | Monthly Base Charge | Overage Rate | |
| Model | Zero Base M&S Rate | B&W | B&W | Color | B&W | B&W | B&W | Color | B&W | B&W | B&W | Color | B&W |
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**CUSTOMER SIGNATURE:**

| | | | |
|---|---|---|---|
| **Name** | | **Title** | |
| **Signature** | | **Date** | |

# ATTACHMENT 7 – TOSHIBA EMETERS ONLINE INFORMATION AND INSTRUCTIONS

Meter reads can be submitted through Toshiba's E-Meters Online (Online Web E-Meter Submission) system using the Internet. Through E-Meter, you can submit your current meter reads for all equipment on a spreadsheet that can be exported on the site and then MASS upload the reads for all devices. Or you can directly enter each meter read per device on the web page.

**When are meters due?**

The eMeter Online website opens on the 26th of the prior month. Please submit your current meter reads from this date through the 8th of the current month.

If the dates are missed above, you can go to the 'Submitted Meter Read' tab and edit the estimated meter read that processes around the 9th of each month. Meter Reads can be changed from the 9th through the 14th. Billing occurs on the 15th therefore; the website is closed. The site does not open again until the 26th of the month.

To enter a meter read, please follow the steps listed below. **eMeters On line**

**Submission Instructions**

1. Log onto FYI
2. Go to: Programs and click on Meters Online
3. Search by 'ALL' or Customer Name.
4. Enter the meter read by device.
5. Or export the upload spreadsheet, enter the meter reads, then save the document.
6. The on the website click on the upload spreadsheet, retrieve your data and hit submit. All reads should automatically update. If any fallout, a message will be displayed.

Should you have any questions on submitting your meters on line please either email tabs.fsm@tabs.toshiba.com or call (800) 866-4361, select option 1.

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 "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.

1.3 "Licensed Entities" means those Client entities specifically identified in a SOS as licensed to use a Product.

1.4 "SOS," or "Statement of Services," "Statement of Work," of "Statement of Support" as applicable, is defined in Section 2.

1.5 "Product" refers to such Software, Third Party Materials, 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.

1.6 "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."

1.7 "Support" means Contractor's then current support and maintenance program for the relevant Product, as more fully described in the relevant SOS.

1.8 "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 or Client, 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.

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. **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: (i) permit any unauthorized user or any third party within its control 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 within its control 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. Contractor shall not 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 if the other software or third-party products are not provided to Client by Contractor to use the Products "(Non-Confirming Use"). All such Non-Conforming Use shall be at Client's sole risk.

5. **Registration**. Contractor may request certain information in connection with the registration of Products, including contact name, and email address. 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.

6. **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.

7. **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. 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.

8. **Training.** To the extent applicable, Contractor will provide the training services set forth in the SOS.

9. **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 be extended for additional successive one (1) year periods at Client's discretion by giving Client giving Contractor notice of its intent to renew at least thirty (30) days prior to commencement of the next renewal term. If Client does not provide such notice, this Agreement shall expire without any further action by Client at the end of the then current year of the Agreement.

10. **Fees**.

10.1 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 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 subject to the terms of Article VI, Section 6.1.5 of the Master Agreement. 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.

10.2 Payment of Invoices. All invoices shall be paid by Client within forty-five (45) 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 sixty (60) or more days from the invoice date, Contractor may, in its discretion, terminate the applicable SOS.

11. **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 conformity with its Documentation. 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.

12. **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.

14.**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. Contractor's liability to Client shall be limited to four (4) times the total amount paid or payable to Contractor by the Client under this Agreement, including any amendments or SOS. The limitation of liability in this subparagraph under this Section 14 shall not limit Contractor's liability for:

1. Any actual or alleged claim that the Products or Services under this Agreement infringe, misappropriate, or otherwise violate any intellectual property rights, including copyright and patent, by any software or other intangible deliverable, including open source software that may be included in the Products or Services provided under this Agreement, or to any other liability for infringement of third party intellectual property rights;

2. Claims arising against the Client for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct;

3. Contractor's breach of its data security privacy obligations, including, without limitation, those obligations in Section 31 of Exhibit 2 of the Participating Addendum (23PSX0022); or

4. Contractor's gross negligence, fraud, or willful misconduct.

13. **General Provisions**.

13.1 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.

13.2 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 address as a party may designate in writing to the other party.

13.3 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.

13.4 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.

**[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 Legal Name | **Enter Client Legal Name Here** | **Toshiba America Business Solutions, Inc.** | |
| By: | | By: | |
| Authorized Name: | | Authorized Name: | |
| Authorized Title: | | Authorized Title: | |
| Authorized Signature: | | Authorized Signature: | |
| Date: | | Date: | |
| Notice Address: | | Notice Address: | 25530 Commercentre Drive<br>Lake Forest, CA 92630 |
| With Copy To: | | With Copy To: | TABS Legal Department<br>25530 Commercentre Drive<br>Lake Forest, CA 92630 |