

RESOLUTION NO. 2025-041

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A LEASE AGREEMENT AND A MAINTENANCE CONTRACT WITH TOSHIBA AMERICA BUSINESS SOLUTIONS, INC. FOR THREE (3) COPIER/PRINTER/SCANNERS; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, all departments of the Town rely on photocopiers to make copies, prints and scans of documents in the course of carrying out Town business; and

WHEREAS, currently the Town has a lease agreement with Toshiba America Business Solutions, Inc. to lease three copiers that was approved on June 10, 2021 pursuant to Resolution 2021-058. The lease expired in August 2024, and since then, the Town has been leasing the machines on a month-to-month basis; and

WHEREAS, the Town is desirous of leasing three new copier/printer/scanners to perform copying, printing, and scanning as needed to conduct normal business operations; and

WHEREAS, it is in the best interest of the Town to also enter into a Maintenance Contract with Toshiba America Business Solutions, Inc. for the proper maintenance and servicing of the three (3) copier/ printer/scanners; and

WHEREAS, after reviewing the operating costs and based on comparative National Association of State Procurement Officials (NASPO) pricing, technical specifications and performance efficiencies offered, Town Staff has determined that the products offered by Toshiba America Business Solutions, Inc. will satisfy the Town's needs.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

SECTION 1. ADOPTION OF RECITALS. The foregoing recitals are true and correct and are incorporated herein by reference.

SECTION 2. The Town Council hereby approves the leasing of three (3) copier/ printer/scanners, pursuant to a lease agreement with Toshiba America Business Solutions, Inc. in substantially the form attached hereto as Exhibit "A" (the "Lease Agreement"), with such changes, insertions and omissions as may be necessary to effectuate the intent of this Resolution.

SECTION 3. The Town Council hereby approves the Lease and Maintenance Contract for the maintenance and servicing of three (3) copier/ printer/scanners, in substantially the form attached hereto as Exhibit "B" (the "Lease and Maintenance Order Form"), with such changes, insertions and omissions as may be necessary to effectuate the intent of this Resolution.

SECTION 4. The Mayor or Vice Mayor and the Town Administrator, as attested by the Town Clerk and approved as to legal form and correctness by the Town Attorney, are hereby authorized and directed to enter into the Lease Agreement and Maintenance Contract with Toshiba America Business Solutions, Inc. for three (3) copier/printer/scanners.

SECTION 5. SAVINGS CLAUSE. If any section, paragraph, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unenforceable, such decision shall not affect the validity of the remaining sections, paragraphs, sentences, clauses or phrase of this Resolution.

SECTION 6. CONFLICTS. All resolutions or parts thereof which conflict herewith are, to the extent of such conflict, superseded and repealed.

SECTION 7. EFFECTIVE DATE. This Resolution shall be effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 13th day of February, 2025, on a motion by C/M JABLONSKI, and seconded by V/M HARTMANN.

[SIGNATURES ON NEXT PAGE]

Breitkreuz YES
Hartmann YES
Allbritton YES
Jablonski YES
Kuczenski YES

Ayes 5
Nays 0
Absent 0
Abstaining 0



Steve Breitkreuz, Mayor

ATTEST:



Debra Ruesga, Town Clerk

Approved as to legal Form and Correctness



Keith M. Poliakoff, J.D., Town Attorney
1001.016.2025

ATTACHMENT 1 – TOSHIBA LEASE AGREEMENT TERMS AND CONDITIONS

AGREEMENT FOR LEASE OF EQUIPMENT

a Contract Between

“Lessee”

Town of Southwest Ranches, 13400 Griffin Road, Southwest Ranches, FL 33330
and

Toshiba America Business Solutions, Inc.

WHEREAS, Lessee is authorized to lease under the NASPO-ValuePoint Master Agreement (“Master Agreement”) and the State of Florida 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 6, Toshiba Lease Order Form and if applicable Attachment 7, 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 delivered to the 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 Non appropriation. 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 defaults, Lessor may do one or more of the following: (a) recover from Lessee, 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 3% per annum; and (iii) if this lease is not a \$1 Buyout Lease, the Fair Market Value of the effected item(s) of Leased Equipment; (b) 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(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 and Lessee shall be responsible for any balance deficiency after such application. 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 Florida 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 Florida 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 Florida 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 Florida and County of Broward, 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.**

By: Matthew Barnes

Name: Matthew Barnes

Title: South Region President

Date: January 24, 2025

LESSEE:
Town of Southwest Ranches

By:  _____

Name: Steve Breitkreuz

Title: Mayor

Date: February 13, 2025



NASPO LEASE FOR EQUIPMENT AND MAINTENANCE ORDER FORM

Agreement #

LESSEE - BILLING CONTACT INFORMATION <small>(Separate Order Form must be completed for each billing locations.)</small>		
Lessee Legal Name: TOWN OF SOUTHWEST RANCHES	Department Name:	FEIN#
Street Address 13400 GRIFFIN ROAD		Bldg./Room/Suite: TOWN CLERKS OFFICE
City: SOUTHWEST RANCHES	State: FL	Zip 33330
Billing Contact Name: DEBRA M RUESGA		
Bill-To Phone Number: 954-434-0008	Email: druesga@southwestranches.org	Fax Number: 954-434-1490

LESSEE INSTALLATION LOCATION		
Lessee Legal Name: Town of Southwest Ranches		Department Name:
Street Address 13400 Griffin Road		Bldg./Room/Suite:
City: Southwest Ranches	State: FL	Zip:33330
Contact Name:		
Phone Number:	Email:	Fax Number:

EQUIPMENT LEASE WITH SEPARATE MAINTENANCE PLAN		
EQUIPMENT LEASE TYPE		LEASE TERM
<input checked="" type="checkbox"/> Fair Market Value <input type="checkbox"/> Capital Lease <input type="checkbox"/> Straight Lease		<input type="checkbox"/> 24 Mo <input checked="" type="checkbox"/> 36 Mo <input type="checkbox"/> 48 Mo <input type="checkbox"/> 60 Mo

ITEM DESCRIPTION <small>(If insufficient space, use Schedule A to this Lease Order form and enter below "See Order Form Schedule")</small>	EQUIPMENT LEASE		MAINTENANCE & SERVICES (M&S) PLAN					<input type="checkbox"/> Include Staples BW OVERAGE RATE COLOR OVERAGE RATE	
	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 VOLUME (BW)	MONTHLY BASE CHARGE (BW)	BW OVERAGE RATE	COLOR OVERAGE RATE
Toshiba e6527ACT - TWO		\$523.00	.0054	.0325			\$		
Toshiba e3528A - ONE		\$83.00	.0074				\$		
Power Filter - THREE							\$		
Staple Finisher - THREE							\$		
Hole Punch Unit - TWO							\$		
Fax Unit - ONE							\$		
Stand - ONE							\$		
Rail - TWO							\$		

Sum of Monthly Equipment Lease Payments:	\$606.00	Sum of Monthly Base Charges:	\$
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TOTAL MONTHLY PAYMENT: Equipment Lease Payment + Monthly Base Charge (If Applicable)	\$606.00	Personal Property Tax Required <input type="checkbox"/>
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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 <input type="checkbox"/> Yes <input type="checkbox"/> No	Tax-Exempt No. [Attach Tax Exemption]	PO Issued <input type="checkbox"/> yes <input type="checkbox"/> 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: South Region President 	Date: 2-11-2025
LESSEE: Town of Southwest Ranches SIGNATURE:	Title: Steve Breitkreuz, Mayor	Date: 02/13/2025

TOSHIBA	MAINTENANCE AGREEMENT 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 6, 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, applications 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.