

This Toshiba Global Commerce Solutions (“Toshiba”) Master Customer Agreement (called the “Agreement”) governs transactions by which Customer purchases Machines, licenses Programs and acquires Services (including without limitation customized development, support and maintenance Services) from Toshiba.

1. General

1.1 Agreement Structure

This Agreement is organized in five Parts:

Part 1 – General includes terms regarding Agreement Structure, Definitions, Acceptance of Terms, Delivery, Charges and Payment, Changes to Agreement Terms, Toshiba Business Partners, Intellectual Property Protection, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, and Geographic Scope and Governing Law.

Part 2 – Warranties defines applicable Warranties for Toshiba Machines, Toshiba Programs, Toshiba Services, and Systems, and terms regarding Extent of Warranty.

Part 3 – Machines includes Machine terms regarding Production Status, Title and Risk of Loss, and Installation.

Part 4 – Programs includes terms regarding License, Program Services, Compliance Verification, and License Termination.

Part 5 – Services includes Services terms regarding Personnel, Materials Ownership and License, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

1.2 Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by Toshiba. This Agreement and its associated Transaction Documents and Attachments is the complete agreement between you and Toshiba regarding your purchase of Products, licenses, and Services.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

1.3 Definitions

Affiliates – any entities that directly or indirectly control, are controlled by, or are under common control with a party to this Agreement. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of a party to this Agreement.

Customer – the legal entity that signs this Agreement.

Customer-set-up Machine – a Toshiba Machine that Customer is responsible for installing according to instructions provided with it.

Date of Installation –

- a. For a Toshiba Machine that Toshiba is responsible for installing, the business day after the day Toshiba installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by Toshiba;
- b. For a Customer-set-up Machine and a non-Toshiba Machine, the second business day after the Machine's standard transit allowance period; and
- c. For a Program --
 1. Basic license, the second business day after the Program's standard transit allowance period,
 2. Copy, the date (specified in a Transaction Document) on which Toshiba authorizes Customer to make a copy of the Program, and
 3. Chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify Toshiba of the chargeable component's Date of Installation.

Designated Machine – the Toshiba Machine on which Customer may use or install a Toshiba Program. Toshiba may limit Customer’s use of a Toshiba Program to a specific Toshiba Machine or set of Toshiba Machines, (for example but not by way of limitation) by location, or by type/model and serial number. Unless Toshiba specifies otherwise, when a Toshiba Program is delivered to Customer pre-loaded on, or for use with a specific Toshiba Machine, that Toshiba machine is the Designated Machine.

Enterprise – a legal entity and its Affiliates. The term “Enterprise” applies only to that portion of your Enterprise located in the same country as the entity signing this agreement.

Machine – a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term “Machine” includes a Toshiba Machine and any non-Toshiba Machine (including other equipment) that Toshiba may provide to Customer.

Materials – literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that Toshiba may deliver to Customer as part of a Service. The term “Materials” does not include Programs or other items available under their own license terms or agreements.

Product – a Machine or a Program.

Program – the following, including the original and all whole or partial copies:

- a. Machine-readable instructions and data;
- b. Components;
- c. Audio-visual content (such as images, text, recordings, or pictures); and
- d. Related licensed materials.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that Toshiba makes available to Customer.

Services Transaction – the parties’ agreement regarding a particular transaction and includes the terms of this Agreement and any related Attachments and Transaction Documents. Customer may receive one or more Attachments or Transaction Documents for a single Services Transaction. Attachments and Transaction Documents are part of this Agreement only for those Services Transactions to which they apply. Each Services Transaction is separate and independent from others.

Specifications – information specific to a Product. Toshiba generally publishes Machine Specifications and Program Specification in announcement letters, or otherwise includes those specifications in the product documentation.

Specified Operating Environment – the machines and programs with which a Program is designed to operate, as described in its Specifications.

Toshiba Machine – a Machine bearing a Toshiba logo.

Toshiba Product – a Toshiba Machine or Toshiba Program.

Toshiba Program– a Program bearing a Toshiba logo and licensed by Toshiba.

1.4 **Acceptance of Terms**

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Product or Service, or allowing others to do so, or iii) making any payment for the Product or Service.

Affiliates of the parties may become bound by this Agreement by approving a Participation Agreement that adopts the terms of this Agreement.

A Product or Service becomes subject to this Agreement when Toshiba accepts Customer’s order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 **Delivery**

Delivery dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs Toshiba provides to Customer in tangible form, Toshiba fulfills its shipping and delivery obligations upon the delivery of such Programs to the Toshiba-designated carrier, unless otherwise agreed to in writing by Customer and

Toshiba.

1.6 Charges and Payment

1.6.1 Charges

A Transaction Document specifies the amount payable for Products or Services. Additional charges such as special handling or travel related expenses may apply. Toshiba will inform Customer in advance whenever additional charges apply.

Recurring charges for a Product begin on (or, in some countries, after) its Date of Installation. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document), Toshiba does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for time and materials, the estimate is for planning purposes only.

1.6.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use. Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify and pay any applicable charges. Recurring charges will be adjusted accordingly.

1.6.2 Changes to Charges

From time to time, Toshiba may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, Toshiba may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date Toshiba specifies in the notice.

Toshiba may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) Toshiba receives the order before the announcement date of the increase and ii) one of the following occurs within three months after Toshiba's receipt of the order:

- a. Toshiba ships Customer the Machine or makes the Program available to Customer;
- b. Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or
- c. A Program's increased use charge becomes due.

1.6.3 Payment and Taxes

Amounts are due upon receipt of invoice and are payable as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee.

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on Toshiba's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property taxes for each Product from the date Toshiba ships it to Customer. Additional taxes and tax related charges may apply if Toshiba personnel are required to perform Services outside their normal tax jurisdiction. Toshiba will inform Customer in advance if these additional charges apply and are payable by Customer.

1.7 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, both parties may agree to modify the terms of this Agreement. For amendments to be valid they must be in writing and agreed to by both parties.

1.8 Toshiba Business Partners

Toshiba has signed agreements with certain organizations (called "Toshiba Business Partners") to promote, market, and support certain Products and Services. Customer may order Toshiba Products or Services that are promoted or marketed to Customer by Toshiba Business Partners or other suppliers, however, i) this Agreement does not apply to the purchase of Products and Services through such Business Partners, and ii) such Business Partners and suppliers remain independent and separate from Toshiba. Toshiba is not responsible for the actions or statements of Toshiba Business Partners or other suppliers, any obligations

either has to Customer, or any products or services that they supply to Customer under their agreements.

1.9 Intellectual Property Protection

The limitations and exclusions in this Section 1.9 (Intellectual Property Protection) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.9.1 Third Party Claims

If a third party asserts a claim against Customer that a Product that Toshiba provides to Customer under this Agreement infringes that party's patent or copyright, Toshiba will defend Customer against that claim at Toshiba's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by Toshiba, provided that Customer:

- a. Promptly notifies Toshiba in writing of the claim;
- b. Allows Toshiba to control and cooperates with Toshiba in the defense and any related settlement negotiations; and
- c. Remains in compliance with the Product's applicable license terms and Customer's obligations under section 1.9.2 (Remedies) below.

1.9.2 Remedies

If such a claim is made or appears likely to be made, Toshiba may, at its sole discretion, (i) enable Customer to continue to use the Product, (ii) modify it, or (iii) replace it with one that is at least functionally equivalent. If Toshiba determines that none of these alternatives are reasonably available, then on Toshiba's written request, Customer agrees to promptly return the Product to Toshiba and discontinue its use. Toshiba will then give Customer a credit equal to:

- a. For a Machine, Customer's net book value calculated according to generally-accepted accounting principles; and
- b. For a Program, the lesser of the amount the Customer paid Toshiba for the Program's license or 12 months' charges.

1.9.3 Claims for Which Toshiba Is Not Responsible

Toshiba has no obligation regarding any claim based on any of the following:

- a. Anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or Toshiba's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. The use of a Product other than in accordance with its applicable licenses and restrictions
- c. The use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version if Toshiba has offered the then-current version or release to the Customer at no charge;
- d. Any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- e. The distribution, operation or use of a Product outside Customer's Enterprise; or
- f. Any non-Toshiba Product.

The Intellectual Property Protection section (Section 1.9) states Toshiba's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

1.10 Limitation of Liability

The limitations and exclusions in this Section 1.10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.10.1 Items for Which Toshiba May Be Liable

Circumstances may arise where, because of a default on Toshiba's part or other liability, Customer is entitled to recover damages from Toshiba. Regardless of the basis on which Customer is entitled to claim damages from Toshiba (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Toshiba's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed: 1) damages for bodily injury (including death) and damage to real property and tangible personal property; 2) any amounts set forth in section 1.9,

above; and 3) the amount of any actual direct damages up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Materials.

This limit also applies to any of Toshiba's subcontractors and Program developers. It is the maximum for which Toshiba and its subcontractors and Program developers are collectively responsible.

1.10.2 Items for Which Toshiba Is Not Liable

Under no circumstances is Toshiba, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. Loss of, or damage to, data;
- b. Special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. Lost profits, business, revenue, goodwill, or anticipated savings.

1.11 General Principles of Our Relationship

1.11.1 Electronic Authentication

To the extent permissible under applicable law, the parties consent to the use of electronic means to authenticate a writing.

1.11.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. However, either party may assign this Agreement, in whole or in part, within its Enterprise, or to a successor organization by merger or acquisition without the consent of the other. Toshiba is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for Toshiba to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees not to resell any Service without Toshiba's prior written consent. Any attempt to do so is void.

Customer agrees to acquire Machines with the intent to use them within its Enterprise and not for reselling, leasing, or transferring to a third party.

1.11.3 Compliance with Laws

Toshiba will comply with laws applicable to Toshiba generally as a provider of information technology services. Unless otherwise expressly agreed in a Transaction Document, Toshiba is not performing Customer's regulatory or management obligations and is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Toshiba Machines, Toshiba Programs, Toshiba Program licenses, and Services that Customer acquires under this Agreement, or that Toshiba's provision of or Customer's receipt of particular Toshiba Machines, Toshiba Programs, Toshiba Program licenses, and Services under this Agreement meet the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party will comply with applicable import and export control laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users.

1.11.4 Dispute Resolution

Neither party will bring a legal action, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose. After such time limit, any such claim and all respective rights related to the claim lapse.

1.11.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its or any of its Enterprise's trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. All information exchanged between Toshiba and Customer is non-confidential. If either party requires the exchange of any confidential information, the exchange will be made under a separate, signed confidentiality agreement.

- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and Toshiba. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer authorizes Toshiba and its Affiliates (and their successors and assigns, contractors and Business Partners) to store and use Customer's business contact information wherever they do business, in connection with Products and Services or in furtherance of Toshiba's business relationship with Customer.
- f. Customer agrees to provide Toshiba, a Toshiba subcontractor or reseller with sufficient, free, and safe access to your facilities for Toshiba to fulfill its obligations.
- g. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is Toshiba responsible for any third party claims against Customer except as described in section 1.9 (Intellectual Property Protection) above or as permitted in section 1.10 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which Toshiba is legally liable to that third party.
- h. Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- i. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- j. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- k. As reasonably required by Toshiba to fulfill its obligations under this Agreement, Customer agrees to provide Toshiba with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to Toshiba. Toshiba is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

1.12 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and thirty days' time to comply, unless otherwise agreed to by the parties.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

1.13 Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the country in which the transaction is performed or, if Toshiba agrees, the country where the Product is placed in productive use, except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of Customer's and Toshiba's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

In the United States, both parties agree to the application of the laws of the State of North Carolina to govern, interpret, and enforce all of Customer's and Toshiba's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement and any Services Transaction, without regard to conflict of law principles.

In the United States, each party agrees that any action arising under or to enforce this Agreement may be brought in the state or federal courts located in the state and county where either party maintains its

principal place of business. Each party consents to the jurisdiction of such courts to hear and decide any such action.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

2. Warranties

2.1 The Toshiba Warranties

Unless Toshiba otherwise notifies Customer, the following warranties apply, and only in the country of acquisition.

Toshiba Machines are warranted in accordance with the terms of the Toshiba Statement of Limited Warranty that accompanies each Toshiba Machine. Toshiba will identify Toshiba Machines that it does not warrant.

Not all Toshiba Programs are provided with a warranty. Warranties for Toshiba Programs, if any, are in accordance with the warranty terms included in the applicable license agreement accompanying the Product.

When Toshiba specifies in an Attachment or Transaction Document that it is providing Products to Customer that are intended to operate together as a system, Toshiba warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to Toshiba's other applicable warranties.

2.2 Extent of Warranty

The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, the use of any Machine capacity or capability, other than that authorized by Toshiba in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which Toshiba is not responsible. The warranty for Toshiba Machines is voided by removal or alteration of Machine or parts identification labels.

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NONINFRINGEMENT.

Items Not Covered by Warranty

Toshiba does not warrant uninterrupted or error-free operation of a Product or Service or that Toshiba will correct all defects.

2.3 No Warranty for Third Party Products

Unless otherwise specified in an Attachment or Transaction Document, Toshiba provides non-Toshiba Products (including those provided with, or installed on, a Toshiba Machine at Customer's request) WITHOUT WARRANTIES OF ANY KIND. However, non-Toshiba manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Non-Toshiba Programs may be found in their license agreements.

3. Machines

3.1 Production Status

Toshiba Machines are originally manufactured from new parts. In some cases however, a Toshiba Machine may not be new and may have been previously installed. Regardless, Toshiba's applicable warranty terms apply.

3.2 Title and Risk of Loss

Toshiba transfers title to a Machine to Customer or, if applicable, Customer's lessor, when the Machine is shipped to Customer or its designated location. For a feature, conversion, or another type of upgrade

acquired for a Machine, Toshiba shall withhold the transfer of title until Toshiba receives payment of all the amounts due and, as applicable, all removed parts, which become Toshiba's property.

For each Machine, Toshiba bears the risk of loss or damage up to the time it is delivered to the Toshiba-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk.

3.3 Installation

3.3.1 Machine Installation

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Toshiba has standard installation procedures. Toshiba will successfully complete these procedures before it considers a Toshiba Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed.

Customer is responsible for installing a Customer-set-up Machine and a non-Toshiba Machine according to instructions provided by Toshiba or the Machine's manufacturer.

3.3.2 Upgrades and Engineering Changes

As used in this section, the term "upgrade" includes, without limitation, features and conversions. Toshiba sells upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 days of the shipment of an upgrade, Customer agrees to install the upgrade or, if Toshiba is responsible for the installation, to allow Toshiba to install the upgrade. Otherwise, Toshiba may terminate the transaction and Customer must return the upgrade at Customer's expense.

Customer agrees to allow Toshiba to install mandatory engineering changes (such as those required for safety) on a Machine.

Many upgrades and engineering changes require the removal of parts and the transfer of ownership and possession of the removed parts to Toshiba. Customer is responsible for the return of all removed parts to Toshiba upon installation of the upgrade or engineering change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install upgrades and engineering changes and ii) transfer ownership and possession of removed parts to Toshiba. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

4. Programs

Programs are copyrighted and licensed (not sold) under the terms of the license agreements that accompany them. If a Toshiba Program is not accompanied by a license, or Toshiba designates that Toshiba Program as an "ICA Program," the following terms apply.

4.1 ICA Program License

When Toshiba accepts Customer's order, Toshiba grants Customer a nonexclusive license to use the ICA Program only in the country where the transaction is performed. ICA Programs are owned by Toshiba, one of its affiliates, or a third party and are copyrighted and licensed (not sold).

4.2 Authorized Use

Under each license, Toshiba authorizes Customer to:

- a. Use the ICA Program's machine-readable portion on only the Designated Machine, and only to the extent authorized by Toshiba; and
- b. Use any portion of the ICA Program that Toshiba either i) provides in source form, or ii) marks restricted (for example, "Restricted Materials of ") only to --
 1. Resolve problems related to the use of the ICA Program, and
 2. Modify the ICA Program so that it will work together with other products.

4.3 Customer's Additional Obligations

For each ICA Program, Customer agrees to:

- a. Comply with any additional or different terms in its published announcement letter, published specifications, an Attachment or Transaction Document; and

- b. Maintain a record of all copies and provide it to Toshiba at its request.

4.4 Actions Customer May Not Take

Customer agrees not to:

- a. Reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- b. Sublicense, assign, rent, lease or transfer the ICA Program.

4.5 ICA Program Services

Toshiba ICA Program service or maintenance, if any, is provided under a separate maintenance agreement.

4.6 Compliance Verification

Toshiba's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with other terms of this Agreement (including applicable Attachments and Transaction Documents) relating to Customer's use of ICA Programs at all sites and for all environments in which Customer installs or uses ICA Programs for any purpose. Toshiba may use an independent auditor to assist with such verification, provided Toshiba has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to Toshiba and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and use of ICA Programs complies with the Agreement terms, including Toshiba's applicable licensing and pricing terms. Toshiba will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

4.7 Toshiba Program License Termination

Customer may terminate the license for an ICA Program at any time with written notice to Toshiba.

For ICA Program licenses that Customer acquired for a one-time charge, replacement licenses may be acquired (if available) for an upgrade charge. When Customer obtains licenses for these replacement ICA Programs, the license of the replaced ICA Programs terminates upon installation of the replacement Toshiba Program, or when charges become due, unless Toshiba specifies otherwise.

Toshiba may terminate Customer's license if Customer fails to comply with the license terms. If Toshiba does so, Customer's authorization to use the ICA Program is also terminated.

Upon termination, Customer must remove the ICA Program from any machine on which it is installed.

5. Services

5.1 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and each party is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

Toshiba may engage subcontractors to provide or assist in providing Services, in which case Toshiba remains responsible for the fulfillment of its obligations under this Services Agreement and for the performance of the Services.

5.2 Materials Ownership and License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or "Type III Materials" or otherwise as both parties agree. If not specified, Materials will be considered Type III Materials.

Toshiba or its suppliers will own the copyright in Type III Materials. Toshiba grants Customer a limited license, as more fully specified in Transaction Documents, to use Type III Materials, but only up to the level of use specified

Toshiba or its suppliers will own the copyright in Materials that are identified as Type II Materials. Toshiba grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

Customer will own the copyright in Materials that are identified as "Type I Materials." Customer grants Toshiba an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

Toshiba or its supplier retain ownership of the copyright in any of Toshiba's or its suppliers' works that pre-exist or were developed outside of this Services Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type III Materials.

Notwithstanding anything else to the contrary, but without waiver of a party's patent rights, each party is free to use in its business activities the ideas, concepts, and know-how that are developed or provided by either party (orally or in writing) in the performance of a Service.

Toshiba and Customer agree to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

5.3 Customer Resources

If Customer is making available to Toshiba any facilities, software, hardware or other resources in connection with Toshiba's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for Toshiba to perform the Services and develop Materials. Toshiba will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse Toshiba for any reasonable costs and other amounts that Toshiba may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to Toshiba in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data.

5.4 Service for Machines (during and after warranty)

The following terms do not apply to maintenance services sold under a separately signed Maintenance Agreement

5.4.1 Service for Machines

Toshiba provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. Toshiba will inform Customer of the available types of Service for a Machine. At its discretion, Toshiba will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. Toshiba manages and installs selected engineering changes that apply to Toshiba Machines and may also perform preventive maintenance.

Any feature, conversion, or upgrade Toshiba services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an engineering-change level compatible with the feature, conversion, or upgrade.

When the type of Service requires that Customer deliver the failing Machine to Toshiba, Customer agrees to ship it suitably packaged (prepaid unless Toshiba specifies otherwise) to a location Toshiba designates. After Toshiba has repaired or exchanged the Machine, Toshiba will deliver it to Customer at Toshiba's expense unless Toshiba specifies otherwise. Toshiba is responsible for loss of, or damage to, Customer's Machine while it is i) in Toshiba's possession or ii) in transit in those cases where Toshiba is responsible for the transportation charges.

Customer agrees:

- a. To obtain authorization from the owner to have Toshiba service a Machine that Customer does not own;
- b. Where applicable, before Toshiba provides Service, to --
 1. Follow the problem determination and service request procedures that Toshiba provides,
 2. Secure all programs, data, and funds contained in a Machine, and
 3. Inform Toshiba of changes in a Machine's location.
- c. To follow the Service instructions that Toshiba provides (which may include installing Programs and other software updates either downloaded from a Toshiba Internet Web site or copied from other electronic media); and

- d. When Customer returns a Machine to Toshiba for any reason --
 1. To securely erase from any Machine all programs not provided by Toshiba with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 2. To remove all funds from Machines returned to Toshiba. Toshiba is not responsible for any funds, Programs not provided by Toshiba with the Machine, or data contained in a Machine that Customer returns to Toshiba; and
 3. Toshiba may ship all or part of the Machine or its software to other Toshiba or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes Toshiba to do so.

5.4.2 Replacements

When Service involves the exchange of a part or Machine, the item Toshiba replaces becomes its property and the replacement becomes Customer's property. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before Toshiba exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under Toshiba's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to Toshiba.

Service for some Toshiba Machines involves Toshiba providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request Toshiba to install the replacement CRU or Machine, however, Customer may be charged for the installation. Toshiba provides information and replacement instructions with Customer's Machine and at any time on Customer's request. Toshiba specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to Toshiba. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if Toshiba does not receive the failing CRU or Machine within 15 days of Customer's receipt of the replacement.

5.4.3 Items Not Covered

Repair and exchange Services do not cover:

- a. Accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. Failures caused by a product for which Toshiba is not responsible;
- e. Service of Machine alterations; or
- f. Service of a Machine on which Customer is using capacity or capability, other than that authorized by Toshiba in writing.

5.4.4 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. Toshiba charges for the Service upgrade during the warranty period. Customer may not terminate the Service upgrade or transfer it to another Machine.

5.4.5 Maintenance Coverage

When Customer orders maintenance Service for Machines, Toshiba will inform Customer of the date on which maintenance Service will begin. Toshiba may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have Toshiba restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that Toshiba has performed at Customer's request.

5.5 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless Toshiba or Customer provides the other with written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

5.6 Termination and Withdrawal of a Service

Either party may terminate a Service Transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service on notice to Toshiba provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Product, for which the Service is provided, from productive use within Customer's Enterprise;
- b. The eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. The Machine has been under maintenance Service for at least one year and Customer gives Toshiba one month's written notice prior to terminating the maintenance Service.

Customer agrees to pay Toshiba for i) all charges for Services Toshiba provides and any Products and Materials Toshiba delivers through Service termination, and ii) reimbursable expenses Toshiba incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses Toshiba incurs as a result of such termination. Toshiba will take reasonable steps to mitigate the cost of charges and expenses.

Toshiba may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If Toshiba withdraws a Service for which Customer has prepaid and Toshiba has not yet fully provided it to Customer, Toshiba will give Customer a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines, licenses Programs and acquires Services from Toshiba, and replaces any prior oral or written communications between Customer and Toshiba. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: i) estimated completion dates, hours, or charges to provide any Service; ii) performance or function of any Product or system, other than as expressly warranted in Part 2 above; iii) the experiences or recommendations of other parties; or iv) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Agreed to:
[Toshiba entity name]

Agreed to:
[Customer Company name]

By _____
Authorized Signature

By _____
Authorized Signature

Title:

Title:

Date:
Toshiba address:

Date:
Customer address:

Agreement Number:

Customer Identification Number:
Enterprise number: