

This Master Maintenance Services Agreement ("Agreement"), shall be effective as dated on the signature line below (the "Effective Date"), and entered into by and between **[TGCS Entity name]** ("Toshiba" or "Servicer"), and **[Customer name]**, a **[corporate location or other identifier]** ("Customer" or "you"; each of Servicer and Customer, a "Party", and together, the "Parties"). This Agreement supersedes any and all other agreements previously entered into by the Parties, or Customer and IBM, pertaining to the Services contemplated herein.

Whereas Toshiba desires and appreciates the opportunity to be Customer's service provider, Toshiba will, or will cause its affiliates and, to the extent authorized by Toshiba or its affiliates, its and their authorized business partners and subcontractors to, provide the Services herein to Customer.

Whereas Customer desires to have Toshiba provide the Services herein in accordance with the terms and conditions set forth in this Agreement and the associated Schedules, Attachments, Change Authorizations and Statements of Work.

Now, therefore, in consideration of the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Servicer and Customer hereby agree as follows:

## 1. Definitions

**Advanced Exchange (Service)** – means a Service delivery methodology whereby Servicer ships a replacement Product in proper operating condition to Customer, for installation by Customer personnel, in advance of Customer returning the defective Product to Servicer, and as further defined in Section 5, "Product Services."

**Agreement** – means this Master Maintenance Services Agreement and any associated Schedules, Attachments, Change Authorizations and Statements of Work. If there is a conflict among the terms of this Master Maintenance Services Agreement, and the associated Schedules, Attachments, Change Authorizations and/or Statements of Work, the terms contained in the Schedules, Attachments, Change Authorizations and/or Statements of Work shall prevail.

**Covered Product** – means a specific Eligible Product (as identified by manufacturer designation, product type and/or model, and serial number) that is installed at a Customer Install Location, is used in the normal course of Customer's business, meets all eligibility requirements as defined in this Agreement and is covered by the Services herein when listed in a Schedule.

**Customer Replaceable Unit (CRU)** - means a Covered Product part or subassembly designated by Servicer as Customer replaceable / installable where such CRU is a generally industry-accepted CRU component and no special tools or training are required on Customer personnel's behalf to perform such CRU replacement / installation.

**Depot Repair (Service)** - means a Service delivery methodology whereby Customer ships the defective Product to Servicer for repair at a Servicer designated depot repair facility and as further defined in Section 5, "Product Services."

**Eligible Product** – means a product that is eligible under this Agreement to be covered by the Services herein, but only upon its purchase and / or installation at a Customer Install Location.

**Engineering Change** – means an update to modify certain aspects of the design of a Toshiba Product.

**Firmware** – means licensed code or software (including utility programs and device drivers) internal to a Product.

**Install(ed) Location** – means the street number and address(es) of Customer's physical retail locations, to include inventory of Covered Products at each location where the Services are to be provided.

**On-Site Exchange (Service)** - means a Service delivery methodology whereby Servicer restores a defective Product to proper operating condition, at the Customer's Install Location, by performing the responsibilities that Customer would otherwise be responsible to perform under the Advanced Exchange Service methodology above.

**On-Site Repair (Service)** - means a Service delivery methodology whereby Servicer restores a defective Product to proper operating condition by performing the required Product repair at the Customer's Install Location and as further defined in Section 5, "Product Services".

**Product** – means a hardware device or machine. The term Product includes a Toshiba Product and any non-Toshiba Products. A Product that is eligible for Services is called an Eligible Product. A Product that is covered by Services is called a Covered Product.

**Response Time** – means, in the case of On-Site Repair, the elapsed time between Servicer receipt of a Service request (or after completion of helpdesk services when performed by Servicer) and the arrival time of Servicer personnel at the Install Location. In the case of Depot Repair it is the elapsed time between Servicer receipt and inbounding of the defective return Product at Servicer's depot repair facility and the time such Product is repaired and prepared for common carrier pick-up and delivery.

**Product Code** - means all code provided for a Product including, without limitation, a Product's Firmware, microcode and licensed internal code. Product Code specifically includes any whole or partial copy of Product Code, and any fix, patch, upgrade or replacement for the Product Code.

**Schedule** – means an attachment to this Agreement which lists the Services, Service Levels and options selected by the Customer for each identified Covered Product, and related information.

**Service(s)** – means the post-warranty maintenance, warranty service upgrade, and other related tasks and/or activities to be performed by Servicer as set forth in this Agreement.

**Service Levels** – describes, usually in measurable terms, Response Time objectives, as specified on the Schedules.

**Toshiba Product** – means an Eligible Product or Covered Product manufactured and sold by a Toshiba company or one of its authorized resellers and logoed respectively, or which bears an IBM logo and was manufactured and sold by IBM or one of its authorized resellers prior to January 1, 2013.

## 2. Scope

Servicer will provide Customer the Services set forth in this Agreement for Covered Products. Once an Eligible Product is installed for normal use in the course of Customer's business at a Customer Install Location and subject to the terms and conditions herein, then Service coverage will commence on such specific Eligible Product (as identified by manufacturer designation, product type and/or model, and serial number), thereby making such Eligible Product a Covered Product.

Covered Products as of the Effective Date of this Agreement, Eligible Products entitled to Service upon installation post Effective Date, the entitled Services and Service Levels that apply to each, and the term of this Agreement are identified in the attached Schedule, Attachment(s), and any future Change Authorizations. The Schedule will also identify the Installed Locations for which Servicer agrees to provide the entitled Services.

The specific terms regarding Services contained in this Agreement apply only when you have contracted for Service on the Eligible and Covered Product(s) in the Installed Location(s) specified in the Schedule.

## 3. Service of Toshiba and non-Toshiba Products

### Warranty Service Upgrade

Servicer will provide the warranty Service for the Product's base warranty period and terms at no additional cost to Customer. For select Toshiba Products, you may purchase a Warranty Service Upgrade ("WSU") from the standard type of Toshiba warranty Service for the Product. Additional charges will apply for WSUs. WSUs may not be terminated or transferred to another Product. When the warranty period ends, the Covered Product will convert to maintenance Service at the same, or materially similar, type of Service you selected for the WSU, if applicable.

### Post Warranty Service of Toshiba Products

After the warranty period has ended, Servicer will provide the Service(s) as described in this Agreement (i) for those Toshiba Eligible Products and Covered Products, and (ii) at the Installed Locations, specified in the attached Schedule(s).

Customer agrees to follow Servicer's provided instructions pertaining to operator responsibilities, problem determination and resolution, and maintenance procedures prior to placing a Service request. Certain Covered Products may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution. You agree to enable Servicer to use such remote tools and equipment for the sole purpose of performing the Services herein to Customer.

A Toshiba Product can only become a Covered Product if it is fully operational as designed, passes manufacturer diagnostics (if such diagnostics are available), is in good working order, has not been abused, dropped, subjected to liquid or moisture or otherwise damaged, and is in conformance with the original manufacturer's specifications.

#### **Service of Non-Toshiba Products**

Servicer will provide the Service(s) as described in this Agreement (i) for those non-Toshiba Eligible Products and Covered Products, and (ii) at the Installed Locations, specified in the attached Schedule(s).

Unless specified otherwise in the Schedule, maintenance Service is provided only for the Eligible Product or Covered Product model type and/or configuration specified in the Schedule. You agree to follow the manufacturer's provided instructions pertaining to proper Product installation and operation requirements, and Servicer's instructions pertaining to operator responsibilities, problem determination and resolution, and maintenance procedures prior to placing a Service request.

A non-Toshiba Product can only become a Covered Product if it is fully operational and performs as designed, passes manufacturer diagnostics (if such diagnostics are available), is in good working order, has not been abused, dropped, subjected to liquid or moisture or otherwise damaged, is in conformance with the original manufacturer's specifications, and such non-Toshiba Product's failure rate is within ten percent of the manufacturer's advertised or reported failure rate for such non-Toshiba Product, or absent a manufacturer advertised or reported failure rate, the industry average failure rate for functionally similar Products as reasonably determined by Servicer. Servicer desires to provide the Services on non-Toshiba Products to Customer at the charges identified herein and to Customer's satisfaction. If during the term of this Agreement, any non-Toshiba Eligible Product or Covered Product does not conform to the terms of this Section, Servicer will work with Customer to develop a mutually agreeable action plan to address the non-conforming issue. If the issue cannot be resolved, Servicer may, upon thirty (30) days' notice to Customer, (i) adjust the charges for such non-conforming, non-Toshiba Eligible Products or Covered Products, in which case Customer may terminate the Services on such non-conforming, non-Toshiba Eligible Products or Covered Products by providing written notice to Servicer within the thirty (30) day period following Servicer's notice to Customer, (ii) terminate the Services on such non-conforming, non-Toshiba Eligible Products or Covered Products, or (iii) provide the Services on such non-conforming, non-Toshiba Eligible Products or Covered Products on a time and material basis at the then prevailing Servicer agreed to time and material rate set forth in the Schedule.

Repair of non-Toshiba Products is subject to the availability of repair parts. Repair parts for non-Toshiba products are expected to be functionally equivalent to those replaced. They may be new or used and may have been manufactured or repaired by a party other than the original manufacturer.

#### **4. Service Eligibility**

Servicer reserves the right to inspect any Product within ninety (90) days of commencement of Service for such Product to verify that such Product is in acceptable condition for Service eligibility. Service will be discontinued effective immediately for any Product determined to be ineligible for Service. Customer may request that Servicer restore to proper operating condition any such Product determined to be ineligible for Service at the prevailing time and materials rate set forth in the Schedule, in which case, upon completion of the time and materials repair, Service will continue for the term of this Agreement.

Eligible non-Toshiba Products must meet Servicer's safety and serviceability requirements. Servicer reserves the right to inspect a non-Toshiba Product at any time during the term of this Agreement. If any non-Toshiba Product(s) is/are found not to be in an acceptable condition for Service, Servicer will notify Customer. Servicer will work with Customer to determine a mutually agreed to action plan to rectify the safety or serviceability

problem. If such problem cannot be resolved in a manner and timeframe as reasonably determined by Servicer, Servicer may terminate Service for such Product.

## **5. Product Services**

Servicer will provide the types of Service described below that you select to keep Covered Products in, or restore them to, proper operating condition ("Service Types").

### **CRU Service**

For all Product Service Types, notwithstanding the Service Type chosen, some parts of Covered Products are designated as CRUs. If your problem can be resolved with a CRU (e.g. keyboard, memory, hard disk drive), Servicer will ship the CRU to you for you to install. For all CRUs designated by Servicer as requiring return, return instructions and a prepaid mailer are included in the container shipped by Servicer which is intended for re-use by Customer personnel. You must return the malfunctioning part to Servicer. Customer may be charged for the replacement CRU if Servicer does not receive the failing CRU within 15 calendar days of Customer's receipt of the replacement.

### **On-Site Repair Service**

On-Site Repair Service involves Servicer performing repairs at the Customer Install Location. Some repair situations may involve the Servicer exchanging the failing product with a replacement. Some Products may involve Servicer providing Customer with an exchange replacement or CRU for installation by Customer personnel. Customer personnel are responsible for the installation of such CRUs; however, Servicer will provide written replacement instructions with the CRU and via telephone upon request of Customer personnel. Such written instructions will also include whether the replaced CRU must be returned to Servicer.

### **Advanced Exchange Service**

Advanced Exchange Service involves Servicer providing Customer with an exchange replacement Product in advance of Customer returning the defective Covered Product to Servicer. De-installation of the defective Covered Product and installation of the replacement Advanced Exchange Product is a Customer responsibility.

Customer is responsible to provide Servicer an adequate supply of Advanced Exchange Product inventory ("Seed Stock") to enable Advanced Exchange of Products. The quantity of replacement inventory spare Products to support these Services will be based on the install quantity of such Products. You will ship the replacement inventory spare Products to Servicer for their arrival 10 business days prior to the start of Services. You will replenish, replace and/or adjust Seed Stock quantities as requested by Servicer. Servicer will return your remaining Seed Stock to you 45 calendar days after the termination date of this Agreement.

Servicer will provide shipping for the Product to and from your Install Locations. Shipment of a replacement Product to your Install Location will be provided via standard overnight priority shipping, along with instructions for installation. Return shipment for the defective Product will be provided via ground freight to the Servicer depot center. All shipping will be according to the designated Service Level for such Products as reflected in the Schedule.

For all Advanced Exchange Products, return instructions and a prepaid mailer are included in the container shipped by Servicer which is intended for re-use by Customer personnel. You will package the defective Covered Product in the same container the replacement Product arrived in, following the enclosed return material authorization packing instructions. Upon receipt of the defective Product, Servicer will repair the defective Product and place it in your inventory of Seed Stock. Failure to promptly return defective Advanced Exchange Products may result in delivery delays with your elected Service Levels.

Servicer is liable for all Covered Products lost or destroyed while at the Servicer depot center and during Servicer provided shipping. Customer is liable for loss of, or damage to, a Product while it is in Customer's possession or during Customer provided shipping. Equivalent replacement Products will be provided to you by Servicer within 30 calendar days of confirmation of loss or destruction for which Servicer is liable.

### **Advanced Exchange Plus Service**

Advanced Exchange Plus Service shares the same terms as Advanced Exchange Service, except that there is no requirement for Customer to provide or maintain a Seed Stock. With this option, Seed Stock is owned, maintained and managed by Servicer.

### **Depot Repair Service**

Depot Repair Service involves Customer shipping the defective Product to a Servicer designated repair facility ("Depot") and Servicer, upon restoring the Product to proper operating condition, return shipping the repaired Product to Customer. De-installation of the defective Product and installation of the Depot Repaired Product is a Customer responsibility.

For all Depot Repair Products, Customer is responsible for packaging the Product to be repaired in a manner adequate to protect the Product from shipping damage, and for the associated shipping costs. Customer will provide Servicer with the shipment tracking number for each machine shipped to the Servicer Depot. Customer is responsible for loss of, or damage to, a Product while it is in transit from Customer to Servicer or in Customer's possession. Servicer will inspect the exterior of a shipping box for damage before accepting any shipment of a defective Product from you and notify the contracted carrier of such damage. Servicer will assist Customer in the pursuit of claims for such damage.

Servicer is responsible for the shipping cost of the Depot Repaired Product to Customer Install Location. Servicer is responsible for loss of, or damage to, a Product while it is in transit from Servicer to Customer or in Servicer's possession. Equivalent replacement Products will be provided to you by Servicer within 30 calendar days of confirmation of loss or destruction for which Servicer is liable.

## **6. Service Levels**

Toshiba offers many Service Level options for Service coverage and Response Times. Service Levels may vary by product and country. Customer's elections, and the commencement date of such Service(s), will be identified in the Schedule attached to this Agreement. Service Levels are goals and not a guarantee of delivery. Your Toshiba Sales Representative can provide you more detail on Service Level availability, and exceptions by Product and country.

If Customer requests Service be performed on a Covered Product outside of the type, or Service Level coverage selected in this Agreement, Servicer will respond to each such request on a reasonable basis and will charge the time and materials rate which will be communicated to the Customer prior to beginning work. There will be no additional charge for any parts used in the performance of such outside of coverage Service other than parts used in the performance of service exclusions as specified in Section 10, "Service Exclusions."

## **7. Optional Services**

If your Schedule indicates that you have purchased the Hard Drive Retention option, then the terms in the Toshiba Maintenance Service Attachment – Hard Drive Retention shall apply to the applicable machines.

If your Schedule indicates that you have purchased Managed Technical Support, then the terms in the Toshiba Maintenance Service Attachment – Managed Technical Support shall apply.

Terms in these attachments take precedence over any conflicting terms in this Agreement.

## **8. Customer Responsibilities**

Customer will:

- a. designate a technically qualified representative who will be your focal point for all communications with Servicer relative to these Services and who will have the authority to act on your behalf in matters regarding these Services. Servicer will contact your designated focal point when necessary to resolve any problems that arise.
- b. follow all Servicer provided guidelines pertaining to operator responsibilities, maintenance procedures and supplies.

- c. ensure that all Product Code and Firmware is at the respective Product manufacturers' then current designated level prior to requesting service hereunder.
- d. assist Servicer in performing remote problem determination prior to Servicer launching a repair action. Servicer may attempt to diagnose and resolve your problem over the telephone or electronically by connecting to your Product. Products may contain remote support capabilities for direct problem reporting, remote problem determination, and resolution with Servicer. When you contact Servicer for service, you must follow the problem determination and resolution procedures that Servicer specifies.
- e. secure all programs, data, and funds contained in the Product prior to providing a Product to Servicer for repair. Customer will specifically:
  - i. securely erase all information about identified or identifiable individuals or legal entities ("Personal Data") as well as 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; and
  - ii. remove all funds. Servicer is not responsible for any funds, software / application programs, or data contained in a Product that Customer provides to Servicer.

## 9 Terms Applicable to All Product Services

For Toshiba Products, Servicer may also install select Engineering Changes.

Servicer may ship all or part of a Product to other Servicer or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes Servicer to do so.

For each Service request, Servicer will assign a Problem Management Record ("PMR") number to be used by Servicer and you in all communications concerning the request, including status and closure of the PMR.

When Service involves a part, CRU, or Advanced Exchange, the item replaced becomes Servicer's property and the installed replacement part or CRU becomes Customer's property. Customer represents that all removed items are genuine and unaltered. Servicer replacement parts, CRUs and Advanced Exchange Products may not be new, but will be in good working order and functionally equivalent to the item replaced. The replacement item assumes the warranty or maintenance Service status of the replaced item. Customer also agrees and represents that the parts, CRUs and Advanced Exchange Products are free of any legal obligations or restrictions that prevent its i) exchange, and ii) transfer of ownership and possession of removed parts, CRUs and Advanced Exchange Products to Servicer.

During the course of providing Service such as Advanced Exchange Service, On-Site Repair Exchange, the serial numbers of a product may change. The customer is responsible for reporting the serial number changes to any of their internal systems or to any third parties that require knowledge of the serialized inventory.

## 10. Service Exclusions

Maintenance and repair Services do not include general helpdesk services like call screening to assist Customer end-user personnel in resolving user or operational problems such as operator usage or error, "how to" questions, application configuration or use, Product Code upgrades or installation, Product set-up, and consumable replacement assistance. Such services may be available separately from Servicer.

Repair Services do not cover the following items and conditions and are subject to being billed at the then prevailing Servicer time and material rate:

- a. accessories, supply items, consumables (such as batteries, printer cartridges, ink, etc.), and structural parts (such as frames and covers);
- b. damage by misuse, accident or impact, modification, unsuitable physical or operating environment, liquid spills, electrical failures or spikes, Product alteration, or improper maintenance by Customer or a third party;
- c. Products and/or parts with removed or altered identification labels;
- d. failures caused by an attached product, features or device for which Servicer is not responsible;
- e. Service requests to perform any activity other than the repair of a non-functioning Product that is a result of a covered hardware defect that is expressly identified along with an applicable Service charge in the attached Schedule;
- f. damage as a result of natural disasters, fire, acts of God or force majeure, theft or missing Product parts and/or components;

- g. Service requests as a result of down level Product Code or Firmware;
- h. repairs necessary to make a machine eligible for Service as outlined in Section 4, "Service Eligibility;"
- i. upgrades to the defective Covered Product received for repair. Servicer will repair the defective Product at the same configuration level which you provided for repair;
- j. replenishment of missing parts to return the defective Covered Product to its standard configuration;
- k. software image load; and
- l. a new installation of your Covered Product.

Scheduled or un-scheduled inspection, cleaning and/or replacement of Products and/or parts that are in proper operating condition is not a covered Service unless expressly included along with the applicable description of the Service and the associated charges in the Schedule. Such service can be performed upon Customer's request at the prevailing time and materials rate.

#### **11. Use of Contractors & Partners**

Each Party will assign personnel that are qualified to perform the tasks required of such Party under this Agreement and is responsible for the supervision, direction, control, and compensation of its respective personnel. Subject to the foregoing, each Party may determine the assignment of its personnel and its contractors. Each Party may engage subcontractors or partners to perform or assist in their respective tasks herein, and in such case, each Party is responsible for the fulfillment of its obligations under this Agreement, all compensation for any such subcontractors or partners it engages, and for the performance of the Services as if such tasks were performed by Customer's and Servicer's own employees.

#### **12. Import and Export Compliance**

Each Party agrees to comply with applicable country export and import laws and regulations, including those of the United States that prohibit or limit export of certain uses or to certain end users, and each Party agrees to cooperate with the other by providing all necessary information to the other, as needed for compliance. Each Party shall provide the other with advance written notice prior to providing the other Party with access to data requiring an export license.

#### **13. Product Inventory & Covered Inventory Adjustment**

Customer agrees to provide Servicer with an accurate inventory in which you identify all Products and Product serial numbers (and if required, their model and/or configuration) which you desire to be Covered Products as well as the respective Installed Locations for all such Products to be covered. Customer agrees to provide Servicer at least ten (10) days advance written notice (i) whenever you move, add, or delete Covered Products at an existing or new Installed Location, and (ii) prior to terminating Service coverage for a Covered Product being permanently removed from productive use within your enterprise. Unless otherwise specified in the Statement of Work or Schedule, Toshiba will automatically increase or, in the event a Customer does not select the prepayment option described in Section 14, decrease the inventory count and associated Services at Installed Locations whenever:

1. an Eligible Toshiba Product is added to or removed from the inventory at an Installed Location. If the Product is under warranty when added, maintenance Services will commence at warranty exit. If the Product is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period. Toshiba Products specifically excluded from coverage at the transaction contract period start will remain outside the scope of this Section unless you request Toshiba add them during the transaction contract period. However, all Eligible Toshiba Products added to your inventory during the transaction contract period will be included in the inventory count and receive maintenance Services as set out in this Section.
2. an Eligible non-Toshiba Product, of the same type as other non-Toshiba Products already covered at that Installed Location, is added to or removed from the inventory at that Installed Location. If the Product is under warranty when added, maintenance Services will commence at warranty exit. If the Product is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period.

In the event the Customer does not select the prepayment option described in Section 14, a Covered Product can be removed from Service only by Customer's written instruction to do so with at least ten (10) days' advance notice and will be effective upon Customer's requested future termination date.

The maintenance Services that apply for added Covered Products will be the same as that which you are receiving for all other Covered Products of the same or significantly equivalent type at the Installed Location, unless agreed upon in writing by both parties.

Newly installed Toshiba Products of the same type for which you have already selected a Warranty Service Upgrade will be added at the date of actual installation per the terms set forth in this Section 13 and will become Covered Products at the same Warranty Service Upgrade support level.

The Parties acknowledge the importance of an accurate Covered Product inventory and serial numbers at Installed Locations and the resulting adverse effect inaccurate inventory will have on Servicer resource allocation, Service call entitlement, training, Service level achievement, and parts availability. Therefore Customer agrees to take all commercially reasonable actions to ensure that Servicer is notified of inventory changes at Installed Locations on a timely and accurate basis as noted above.

Upon reasonable notice to Customer, Servicer may take commercially reasonable actions to verify the inventory accuracy and other information affecting the calculation of charges under this Agreement at some or all Install Locations. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to provide records and other electronic or hard copy system information requested by Servicer and as reasonably necessary to validate and/or update the inventory, and promptly pay any additional, valid charges and other liabilities determined as a result of such verification. Servicer may use an independent third party to assist with such verification, provided Servicer has a written confidentiality agreement in place with such third party.

#### **14. Charges and Payment**

Your charges are calculated taking into account your Service selections, and for prepayments, length of the prepay period. For the initial contract period of this Agreement, charges for both Eligible Products and Covered Products will not increase. All identified Eligible Products and Services upon becoming Covered Products during the term of this Agreement will assume the charge rate identified herein. New Products and Services that become available in-country during the term of this Agreement will be added at the charge rate in effect at the time of in-country availability.

You may select a prepayment option for the initial contract term of this Agreement. If you choose this option, all added Services for Eligible Products and Covered Products, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these upon the Effective Date adjusted for the reduced prepay period. New Products and Services that become available during the term of this Agreement will be added at the charge rate in effect at the time of their initial in-country availability with adjustment for the remaining prepay period. If you elect to have these charge terms apply for charges during any renewal transaction contract period (as recalculated at the start of each renewal period), you must provide Servicer written notification (at least one month prior to the start of the renewal period) and prepayment for the entire renewal period. Otherwise, charges for the renewal period will revert to a quarterly (or other agreed upon) billing cycle under the terms set out in the preceding paragraph. There are no refunds or credits for any prepaid Service.

#### **Terms Applicable To Pricing Options**

1. The total Service(s) charges under any Schedule will be adjusted as a result of any addition or, if the Customer does not select the prepayment option, any decrease to the number of Covered Products.
2. Servicer may adjust Service charges if you add a new Service type or add a different Product type/model as an Eligible Product or a Covered Product.
3. In the event a Customer does not select the prepayment option and reduces the Covered Product inventory count by more than twenty percent (20%), Servicer may increase the Service charge for one or more Covered Products between six percent (6%) and nine percent (9%).
4. Servicer may adjust pricing if there is a change in local country or state law that impacts Servicers' cost or pricing (e.g. a change in tax rates, consumer laws, etc.).

Customer agrees to provide Servicer advance written notice of all inventory changes to include the removal of any Covered Products from Servicer in accordance with the terms and conditions set forth in this Agreement. In no case will a retroactive refund or credit apply.



Additional charges may apply during the term of this Agreement for non-covered services or Service exclusions. Unless specifically defined otherwise in the Schedule, these charges will be billed at the prevailing time and material rate and are not subject to price protection. In select countries, the prices under this Agreement may be subject to adjustment due to changes in local macroeconomic variables (e.g.: exchange rate, inflation rates, etc.). When this situation applies, the methodology and parameters considered to adjust prices will be defined in the associated Schedules.

Customer agrees to pay Servicer in advance for all charges for Services through Service termination. Amounts are due upon receipt of invoice and payable with thirty (30) days of invoice date. If the Customer does not select the prepayment option, Servicer will invoice Customer on a quarterly basis commencing on the effective date of the applicable Statement of Work or similar contract, or as otherwise specified in a Schedule, Attachment, Change Authorization and/or Statement of Work.

## **15. Contract Renewal**

To ensure uninterrupted Services, Servicer and Customer agree this Agreement may automatically renew upon expiration. Customer may specify the number of years (0 or greater) of the renewal contract term in the Schedule. Whenever this number is greater than zero, the Agreement will automatically renew at the end of the initial contract term for the number of years specified. Thereafter, the Agreement will automatically renew for successive periods of the same length unless you notify Servicer sixty (60) days in advance of the applicable expiration date in writing of your desire to change the length of the renewal. Servicer can select not to renew by providing written notification at least ninety (90) days prior to the end of the current transaction contract period to Customer of its decision not to renew. In the case of renewals, charges may be recalculated at the start of each renewal period. Servicer will notify Customer in advance if new charges apply. Any new charges will be based on the length of the renewal contract term and the then current charges associated with your elected payment option.

## **16. Taxes**

If any legal or government authority or common carrier imposes upon any Service under this Agreement a duty, tax, levy, surcharge or fee, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies legal exemption documentation. Additional taxes and tax related charges may apply if Servicer personnel are required to perform Services outside their normal tax jurisdiction. As practical, Servicer will work to mitigate any such additional surcharge, duty, levy, tax and tax-related charges.

## **17. Third Party Claims**

If a third party asserts a claim against Customer that a Servicer provided Service to Customer under this Agreement infringes that party's patent or copyright, Servicer will defend Customer against that claim at Servicer'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 Servicer, provided that Customer:

- a. promptly notifies Servicer in writing of the claim;
- b. allows Servicer to control, and cooperates with Servicer in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with Customer's obligations under Section 18, "Remedies," below.

## **18. Remedies**

If such a claim as described in Section 17, "Third Party Claims" is made or appears likely to be made, Customer agrees to permit Servicer, at Servicer's sole discretion, either to (i) continue to perform the Service, ii) modify it, or iii) replace it with an alternative one that produces like results.

## **19. Limitation of Liability**

### **Items for Which Servicer May be Liable**

Circumstances may arise where, because of a default on Servicer's part or other liability, Customer is entitled to recover damages from Servicer. Regardless of the basis on which Customer is entitled to claim damages from Servicer (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Servicer's entire liability for all claims in the aggregate arising from or related to Services or otherwise arising under this Agreement will not exceed the lower of any actual direct damages, the then annual Service value of this

Agreement, or \$100,000 USD (SUBSTITUTE WITH EQUIVALENT AMOUNT OF LOCAL CURRENCY) for the Service that is the subject of the claim. This limit also applies to any of Servicer's partners, subcontractors and vendors and therefore is the maximum for which Servicer, Servicer's partners, subcontractors and vendors are collectively responsible.

The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to Section 17, "Third Party Claims," above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which Servicer is legally liable.

**Items for Which Servicer Is Not Liable**

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is Servicer, Servicer subcontractors, partners and vendors 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;
- c. failure to perform any of the responsibilities outlined in Section 5, "Product Services";
- d. lost profits, business, revenue, goodwill, or anticipated revenues or savings.

**20. Dispute Resolution**

Each Party will allow the other Party reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The Parties will attempt in good faith to resolve all disputes, disagreements, or claims between the Parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, (i) neither Party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and (ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

**21. Termination**

**For Customer**

if the Customer does not select the prepayment option, you may terminate Services for a Product upon ten (10) days advance written notice to Servicer if you permanently remove it from productive use within your enterprise. Otherwise, Services for all Covered Products will be for the term of the Agreement and any subsequent renewal periods as set forth in Section 15, "Contract Renewal."

**(REPLACE ABOVE PARAGRAPH WITH ONE DIRECTLY BELOW FOR ALL QUALIFIED STATE AND LOCAL GOVERNMENT CUSTOMERS)**

if the Customer does not select the prepayment option, you may terminate Services for a Product upon ten (10) days advance written notice to Servicer if you permanently remove it from productive use within your enterprise. Otherwise, Services for all Covered Products will be for the term of the Agreement and any subsequent renewal periods. Notwithstanding Section 15, "Contract Renewal," Customer may elect not to renew this Agreement or any subsequent renewal period by providing written notification of its decision not to renew at least one hundred and twenty (120) days prior to the end of (i) the initial contract period or (ii) the end of any subsequent renewal period, of its decision not to renew. In addition, after the Services have been under contract for one fiscal year, just prior to Customer's start of each fiscal year during the term of this Agreement or any renewal term thereafter, you may also terminate Services upon thirty (30) days advance written notification if government funds have not been appropriated for Services. You agree to make all reasonable efforts to request such funds from the applicable legislative body.

**For Servicer**

During the term of this Agreement and any subsequent renewal periods, Servicer may (i) upon thirty (30) days advance written notice to Customer, terminate Service for an Eligible Product or Covered Product, or (ii) upon one hundred and twenty (120) days advance written notice to Customer, terminate this Agreement in its entirety, if;

- a. Servicer determines it can no longer secure economically reasonable repair parts; or
- b. Customer fails to perform the responsibilities set forth in Section 3, "Service of Toshiba and non-Toshiba Products," and/or Section 5, "Product Services"; or
- c. any Products fail to meet the terms and conditions set forth in Section 4, "Service Eligibility"; or

- d. the non-Toshiba Covered Product(s)' maintenance performance as determined by Servicer varies significantly from the original manufacturer's advertised specification or industry performance for like Products; or
- e. Customer fails to make timely payment of invoices to Servicer.

**By Either or Both Parties**

This Agreement may be terminated in its entirety by either Party upon written notice to the other Party in the event the other Party:

- a. permanently ceases or suspends for a period in excess of 3 months, operations of all or substantially all of its business related to this Agreement;
- b. becomes the subject of (x) a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or (y) an involuntary petition in bankruptcy (or similar proceeding) or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, in each case which is not dismissed within sixty (60) days after filing; or
- c. materially fails to meet its obligations under this Agreement.

**22. Notices and Communications**

All written communications contemplated under this Agreement between the Parties, unless otherwise mutually agreed to in writing, are to be sent to the address (physical, e-mail or facsimile) specified below. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with the business relationship arising out of this Agreement, and such communications are acceptable as signed in writing.

	For Customer:	For Servicer:
Company:	_____	_____
Contact Name	_____	_____
Address:	_____	_____
	_____	_____
Email:	_____	_____
Fax:	_____	_____

A copy to also be forwarded to counsel at:

Contact Name:	_____	_____
Address	_____	_____
	_____	_____
Email:	_____	_____

**23. Assignment**

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. Notwithstanding the foregoing, the assignment of this Agreement, in whole or in part, within Customer or Servicer enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. Servicer is also permitted to assign its rights to payments without obtaining Customer consent. It is not considered an assignment for either Party to divest a portion of its business in a manner that similarly affects all or most of its counterparties.

**24. Other Principles of Our Relationship**

- a. Neither party grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent other than Servicer's right to communicate or advertise that Servicer is a Customer Service provider.
- b. The exchange of any confidential information, if any, will be made under a separate, signed confidentiality agreement between the parties.

- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and Servicer. Each party is free to enter into similar agreements with others.
- d. Customer agrees that Servicer may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) to the extent required by Servicer to provide the Services herein. This contact information can be stored, disclosed internally and processed by Servicer and its subsidiaries, business partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is Servicer responsible for any third party claims against Customer except as permitted by Section 17, "Third party Claims," and Section 19, "Limitation of Liability," above.
- g. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by Servicer to fulfill its obligations under this Agreement, Customer agrees to provide Servicer with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to Servicer. Servicer 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.

## **25. Governing Law**

The rights, duties, and obligations of each Party are valid only where the Services are performed. This Agreement is governed by the laws of the country in which the services are performed except: (i) in Australia, this Agreement will be governed by the laws of the State or Territory in which the disclosure occurs; (ii) in the United Kingdom, this Agreement will be governed by the laws of England; (iii) in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Romania, Russia, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, this Agreement will be governed by the laws of Germany, unless otherwise provided by the local law; (iv) in Estonia, Latvia, and Lithuania, Finnish law will apply; (v) in Canada, the laws of the Province of Ontario govern this Agreement; and (vi) in the United and Puerto Rico, and People's Republic of China, the laws of the State of North Carolina govern this Agreement.

Each party hereby agrees to waive its right to a jury trial. 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.

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.

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This agreement and its applicable transaction documents (e.g. Statements of Work, Change Authorizations, Attachments and Schedules) (the "Agreement") comprise the complete agreement regarding the Services and replace any prior oral or written communications between Customer and Toshiba. Each party accepts the terms of this Agreement by signing below by hand or, where recognized by law, electronically.

**Agreed to:**  
(Enterprise Name)

**Agreed to:**  
**[TGCS Entity name]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Authorized signature

Authorized signature

Name (type or print): \_\_\_\_\_

Name (type or print): \_\_\_\_\_

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

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

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

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