## ATTACHMENT 1 – TOSHIBA LEASE AGREEMENT TERMS AND CONDITIONS

## AGREEMENT FOR LEASE OF EQUIPMENT

a Contract Between

“Lessee”

(NAME, ADDRESS, PHONE OF LESSEE)

and

Toshiba America Business Solutions, Inc. (known herein as “Toshiba”)

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

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

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

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

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

3. CONSIDERATION (RENT). The parties agree that for the Lease Term, Lessor leases to Lessee the equipment described in, and for the lease payments set forth in, the Order Form, excluding meter charges, late fees and applicable taxes. Except as provided in section 6(c), lessee’s payment obligations are absolute and unconditional and are not subject to cancellation, reduction or setoff for any reason whatsoever. Lessee does not agree to reimburse Lessor for expenses, unless otherwise specified in the incorporated documents.

4. POSSESSION, TITLE AND RETURN.

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

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

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

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

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

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

6. TERMINATION.

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

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

(c) Termination for Nonappropriation. The continuation of this Agreement beyond the current State Fiscal Year (or relevant fiscal period observed by a non-State Purchasing Entity) is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by Lessee’s legislature, governing body and/or federal sources. If for any reason Lessee’s funding is not appropriated or is withdrawn, limited, or impaired, Lessee may terminate this Agreement, and Lessor waives any and all claim(s) for damages, effective as of the end of the fiscal period in which written notice of such non-appropriation, withdrawal, limitation or impairment is provided by Lessee to Lessor.

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

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

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

9. WARRANTY AND MAINTENANCE OF EQUIPMENT. All services performed under this Agreement shall be of workmanlike quality, consistent with the standards of the trade, profession or industry. Lessor shall assign to Lessee all manufacturer’s warranties on the Leased Equipment, which shall be not less than a full six months’ warranty. Lessor shall be responsible for ongoing service and maintenance of the Leased Equipment for the duration of the Lease Term. EXCEPT AS OTHERWISE STATED HEREIN, LESSOR MAKES NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE LEASED EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE LEASED EQUIPMENT IS MERCHANTABLE. Lessee acknowledges that neither Lessor nor any of its representatives are agents of any assignee and none of them are authorized to modify the terms of this lease or any Schedule. No representation or warranty of Lessor with respect to the Leased Equipment will bind any assignee, nor will any breach thereof relieve Lessee of any of its obligations hereunder. THIS LEASE AGREEMENT AND EACH SCHEDULE CONSTITUTES A “FINANCE LEASE” AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE (the “UCC”). Lessee agrees that any manufacturer or Lessor warranty or service agreement is a separate and independent obligation of Lessor to Lessee, that no assignee of the Lessor shall have any obligation to Lessee with respect to such warranty or service agreement and that Lessee’s obligations, except as provided under Section 6(c) above, under this Agreement are not subject to setoff, withholding, or reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim Lessee may have against Supplier.

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

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

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

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

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

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

16. GOVERNING LAW, JURY TRIAL WAIVER. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Colorado, without giving effect to any principle of conflict of laws that would require the application of the law of any other jurisdiction.

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

18. RESERVED.

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

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

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| **LESSOR:**  **Toshiba America Business Solutions, Inc.**  Name:  Title:  Date: |  | **LESSEE:**    **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Name:  Title:  Date: |