

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and Toshiba America Business Solutions, Inc., hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, Region 4 Education Service Center "ESC" has issued a Request for Proposals (RFP No. 17-14 for Managed Print Services included herein by reference), for the provision of digital photocopy machines; and

WHEREAS, CONTRACTOR submitted a proposal that is believed to be in the best interest of the COUNTY; and

WHEREAS, as a result of the competitively bid process (RFP), Region 4 ESC awarded contract (R171405 - Managed Print Solutions included herein by reference) to provide copier services by Toshiba America Business Solutions, Inc.; and

WHEREAS, it is believed that adopting and utilizing this competitively bid process undertaken by Region 4 ESC is in the best interest of the County.

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- | | |
|-----------|---|
| Exhibit A | Definition of Services |
| Exhibit B | Payment Terms |
| Exhibit C | Insurance Requirements |
| Exhibit D | Mendocino County e-Payables Information |
| Exhibit E | Toshiba Multifunction Device Inventory |

The term of the AGREEMENT(s) will be for a period of three (3) year(s) with the option to extend the AGREEMENT(s) up to two (2) additional one-year periods.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

DEPARTMENT HEAD _____ DATE _____

Budgeted: ☒ Yes ☐ No


Budget Unit: GS 1160

Line Item: 862201

Grant: ☐ Yes ☒ No

Grant No.: N/A

COUNTY OF MENDOCINO

By: 
CARRE BROWN, Chair
BOARD OF SUPERVISORS

Date: APR 25 2019

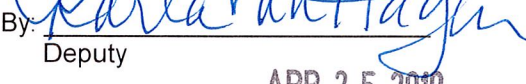
ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: 
Deputy
APR 25 2019

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: 
Deputy
APR 25 2019

INSURANCE REVIEW:

By: _____
Risk Management

Date: _____

NAME AND ADDRESS OF CONTRACTOR:

TOSHIBA AMERICA BUSINESS SOLUTIONS, INC.

By: 
Scott Maccabe, President and CEO

Date: 4/17/2019

Toshiba America Business Solutions, Inc.

25530 Commercentre Drive

Lake Forest, CA 92630

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: _____
Deputy

Date: _____

EXECUTIVE OFFICE/FISCAL REVIEW:

By: _____
Deputy CEO

Date: _____

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; **\$50,001+ Board of Supervisors**

Exception to Bid Process Required/Completed ☐ _____

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

Smile Rana 4/17/19
DEPARTMENT HEAD DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: GS 1160

Line Item: 862201

Grant: ☐ Yes ☒ No

Grant No.: N/A

NAME AND ADDRESS OF CONTRACTOR:

TOSHIBA AMERICA BUSINESS SOLUTIONS, INC.

By: _____

Date: _____

Toshiba America Business Solutions, Inc.

25530 Commercentre Drive

Lake Forest, CA 92630

COUNTY OF MENDOCINO

By: [Signature]
CARRE BROWN, Chair
BOARD OF SUPERVISORS

Date: APR 25 2019

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CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

APR 25 2019

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CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy APR 25 2019

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: [Signature]
Deputy

Date: 4/17/2019

INSURANCE REVIEW:

By: [Signature]
Risk Management

Date: 4/18/19

EXECUTIVE OFFICE/FISCAL REVIEW:

By: [Signature]
Deputy CEO

Date: 4/18/19

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed ☐ _____
Mendocino County Business License: Valid ☐
Exempt Pursuant to MCC Section: _____

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

DEPARTMENT HEAD _____ DATE _____

Budgeted: ☒ Yes ☐ No

Budget Unit: GS 1160

Line Item: 862201

Grant: ☐ Yes ☒ No

Grant No.: N/A

NAME AND ADDRESS OF CONTRACTOR:

TOSHIBA AMERICA BUSINESS SOLUTIONS, INC.

By: Scott Maccabe
Scott Maccabe, President and CEO

Date: 4/17/2019

Toshiba America Business Solutions, Inc.

25530 Commercentre Drive

Lake Forest, CA 92630

COUNTY OF MENDOCINO

By: _____
CARRE BROWN, Chair
BOARD OF SUPERVISORS

Date: _____

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: _____
Deputy

Date: _____

INSURANCE REVIEW:

By: _____
Risk Management

Date: _____

EXECUTIVE OFFICE/FISCAL REVIEW:

By: _____
Deputy CEO

Date: _____

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; **\$50,001+ Board of Supervisors**

Exception to Bid Process Required/Completed ☐

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used by CONTRACTOR for performance of the Services hereunder or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts to its employees.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), Contractor shall assume the defense of, indemnify, and hold harmless the COUNTY, its officers, agents, and employees, from and against all claims, demands, damages, costs, liabilities, and losses occurring or resulting in connection with the CONTRACTOR'S negligent performance or its material breach of obligations under this AGREEMENT, unless arising out of the negligence or willful misconduct of COUNTY, its officers, agents or employees. "CONTRACTOR'S performance" includes CONTRACTOR'S negligent action or inaction and the negligent action or inaction of CONTRACTOR'S officers, employees, agents and subcontractors
3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of CONTRACTOR'S and subcontractors' employees.

5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, or penalties from any of CONTRACTOR's failures to comply with such laws, ordinances, codes

and regulations, except to the extent such liability, fines or penalties are arising out of or caused by the negligence or willful misconduct of County.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.
 - c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.
- If COUNTY over pays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to COUNTY within sixty (60) days of written notice thereof.
- In the event CONTRACTOR claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or the United States Government, the CONTRACTOR shall promptly refund the disallowance amount to COUNTY within sixty (60) days of written request thereof.
- 7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
 - 8. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement created solely for COUNTY in accordance with this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the

request of the CONTRACTOR (collectively, "Documents and Materials"); provided, however, CONTRACTOR shall retain all pre-existing rights it owns in such Documents and Materials. This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials, provided, however, CONTRACTOR shall retain all pre-existing rights it owns in such materials.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. CONFLICT OF INTEREST: The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO
Executive Office/Central Services
501 Low Gap Road
Room # 1010
Ukiah, CA 95482
Attn: Janelle Rau, Deputy CEO

To CONTRACTOR: Toshiba America Business Solutions, Inc.
ATTN: TABS Legal Department
25530 Commercentre Drive
Lake Forest, CA 92630

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONTRACTOR shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
CONTRACTOR certifies that it will comply with all applicable Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to

its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.

- d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
13. DRUG-FREE WORKPLACE: CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
14. ENERGY CONSERVATION: CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. COMPLIANCE WITH LICENSING REQUIREMENTS: CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, as well as file copies of same with the County Executive Office.

Before the COUNTY will issue a notice to proceed with the Services, CONTRACTOR and any subcontractors must acquire, at their expense, a business license from County in accordance with MCC 6.0. Such licenses must be kept valid throughout the Agreement term.

CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

16. AUDITS; ACCESS TO RECORDS: The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination, no more than one (1) time per calendar year, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY for the performance of services under this Agreement, and shall furnish

to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR for the services provided hereunder.

The CONTRACTOR shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

17. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
18. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR notice. Such notice shall be in writing and may be issued by any county officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum

amount payable to CONTRACTOR for its services shall not exceed \$350,000 in annual payments for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding. Although pursuant to this provision the County is allowed to terminate without cause, the County hereby agrees that it will not exercise the termination without cause provision for all leased equipment. This clarification does not apply to maintenance services or for equipment purchased pursuant to this Agreement.”

20. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR . Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR’S receipt of the termination notice.
21. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction’s laws.
22. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
23. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
24. **ADVERTISING OR PUBLICITY:** Neither COUNTY nor CONTRACTOR shall use the name of other party, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of the party in each instance.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document

signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.

26. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
27. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
28. ASSURANCE OF PERFORMANCE: If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
29. SUBCONTRACTING/ASSIGNMENT: CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
30. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.

31. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. INTELLECTUAL PROPERTY WARRANTY: CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this AGREEMENT, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONTRACTOR hereby grants to COUNTY, or represents that it has secured from third parties, an irrevocable license (or sublicense) to use or otherwise utilize CONTRACTOR PRODUCTS to the extent reasonably necessary to use the CONTRACTOR PRODUCTS in the manner contemplated by this agreement.

CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this AGREEMENT except to the extent such claim is arising out of or caused by any misuse, modification or alteration of the CONTRACTOR PRODUCTS by the COUNTY without the express written consent of the CONTRACTOR.

In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CONTRACTOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES HEREIN, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR ANY REPRESENTATION OR WARRANTY ARISING BY USAGE AND TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES ARE PROVIDED "AS IS".

33. ELECTRONIC COPIES:

The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.

34. COOPERATION WITH COUNTY

Contractor shall cooperate with County and County staff in the performance of all work hereunder.

35. PERFORMANCE STANDARD

Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with County to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR shall provide the following services for the Toshiba Multifunction Device Inventory as described in Exhibit E:

Toshiba guarantees customer satisfaction for performance of all Toshiba products via our Toshiba Quality Commitment Guarantee.

- For three years or lease term (whichever is longer).
- If copier or facsimile does not perform to specification – Toshiba will have 60 days to rectify performance issues before replacement is required.
- Free loaner if machine is down for more than 48 hours.
- Additionally, Toshiba will support and commit all the services and resources necessary to ensure that the County of Mendocino is completely satisfied with the Toshiba Solution. All parts & labor will be guaranteed for the term or duration of the awarded contract.

Service Call Resolution and Completion

- Toshiba Business Solutions service model employs a local touch and local service, with support as needed from our corporate team. Toshiba's call center in San Ramon, CA enables our end-users to obtain "live" technical support directly from factory trained customer care representatives for all Toshiba office equipment, network support and software related issues.
- All service calls are received by our local customer care desk. Representatives take all necessary steps to attempt to troubleshoot or resolve the problem on the phone as a first step and if necessary, will dispatch a Toshiba Factory technician for on-site repair.
- Toshiba will assign a primary service technician to the County of Mendocino account to assure familiarity with the needs and process of each end user. Your technician is responsible for contacting County of Mendocino within one (1) hour of notification of any service requirement and will advise your personnel of their estimated time of arrival. Service response is guaranteed same-day, within eight (8) business hours. After a service call is completed, the County of Mendocino contact will be updated on the resolution of the issue. The Toshiba service manager and the customer care representatives will track the call and follow-up with the County of Mendocino contact to confirm that the issue has been resolved to their satisfaction. Normal service hours are 8:00 am to 5:00 pm PST, excluding holidays.

- Average response time will be calculated based upon the response times during a calendar week. Response time for copiers installed at County facilities operating 24 hours per day shall nevertheless be calculated on the workday hour basis. County's records shall be determinate of Toshiba's performance of this obligation.
- All equipment must be repaired or replaced within 24 consecutive hours (not workday hours) of the initial call for service. The County's records shall be determinate of Toshiba's performance of this obligation.
- Temporary Loaner Equipment: When repair time exceeds or is expected to exceed 24 consecutive hours, Toshiba shall replace any such unrepaired machine with a reasonably comparable "loaner" machine that allows continued copy machine operations. "Reasonably comparable" shall, at the very least, mean a machine with a speed that is no less than 15 copies per minute from the machine being temporarily replaced. After five business days wherein a reasonably comparable loaner machine has been placed, such locations must then be provided with a loaner machine that provides equal or better performance and features to the original equipment being temporarily replaced. County's records shall be determinate of Toshiba's performance of this obligation. Toshiba's repeated failure to comply with this obligation shall constitute a material breach of the Contract.

Actual Service Call Procedure

- When a service call is received by our customer care desk from County of Mendocino, your customer care representative takes the following steps in the dispatch process to ensure that your end-user receives the highest level of expertise and professionalism at each step of our service call process.
 - The local Dispatch Center (San Ramon, CA) receives the service call and logs in the date, time, and location where the call was received and a confirmation number is assigned for tracking purposes.
 - The Customer Care Representative obtains the model and serial number of the equipment, the customer's name and address, the customer's contact person and phone number and a description of the problem and, if applicable, any error codes.
 - The Customer Care Representative may conduct first level triage to further determine the nature of the issue and see if it can be resolved over the phone. We routinely solve 18-25% of emergency calls without a technician being dispatched, saving customers down time waiting for a service technician's arrival.

- If the issue cannot be resolved over the phone, the Dispatch Customer Care Representative will quickly dispatch the call to the dedicated service technicians and manager for the County of Mendocino account.
- The Customer Care Representative tracks the service call to ensure that the work is completed on the first call and the problem is resolved within the required timeframe.
- The Customer Care Representative will follow-up as necessary to ensure that the County of Mendocino key contact's needs are met and the call was complete satisfactorily.

TRAINING FOR COUNTY OF MENDOCINO

Operator/User Training:

Each location will receive basic training for an unlimited number of people, per session. The initial Basic Operator training session usually occurs Monday through Friday, 8:00 a.m. to 5:00 p.m. These sessions occur immediately after installation (or as needed) and cover these subjects:

- Feeder functionality and paper supplies
- How to make a copy from glass and/or computer
- How to make a duplex copy
- How to reprogram drawers
- Zoom features and functions
- Finishing options and exposure settings

Key Operator Training:

This training provides a dedicated person ("Key Operator") with a more in-depth overview of the equipment than a basic user. An important objective of the training is to give the dedicated person(s) hands-on training in non-technical maintenance, such as replacing toner, and cleaning the glass. Each location will receive comprehensive training for up to three (3) people per session on the features, capabilities, and standard applications of the equipment. The initial Key Operator training session generally occurs Monday through Friday, between 8:00 a.m. to 5:00 p.m. These sessions will occur immediately after installation and cover topics such as:

- How to add paper and staples
- How to clear a misfeed
- How to place a service call
- How to order supplies

Toshiba will provide on-site training to users at both central and remote locations. However, for ongoing training, Toshiba offers self-paced web training for selected e-

STUDIO models so that end users can familiarize themselves with product functionality on their own and at their own pace.

Experienced technical trainers will conduct face-to-face training on any new software tools procured or supplied under this agreement. These individuals are fully trained and certified on the products we offer. On-going support will be made available to County of Mendocino throughout the life of this program at no additional charge.

[END OF DEFINITION OF SERVICES]

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, Contractor's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall furnish to COUNTY certificates of insurance with Automobile Liability/General Liability Endorsements evidencing at a minimum the following:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT E

Mendocino County – Toshiba MFD Device Inventory

MONO	Qty.	Total Mono	57
ES2802AF	3		
ES3018A	23		
ES4518A	24		
ES6518A	6		
ES8518A	1		

COLOR	Qty.	Total Color	43
ES3015AC	20		
ES4515AC	12		
ES6516AC	8		
ES7516AC	3		

+XMedius Fax Server