

# TOSHIBA

## BUSINESS SOLUTIONS

### AIMS MAINTENANCE CONTRACT

# MA-1.0.0

SALES PACKET NUMBER

DATE

Sales Representative: Whitney Rayborn

11/1/2013

Customer agrees to purchase and Toshiba Business Solutions agrees to provide parts, labor, ink, toner, and toner collection containers (the "Maintenance Services") for the equipment listed below in accordance with the terms and conditions of this contract. The Maintenance Services exclude paper, staples and all other parts and services listed under the Exclusion section on page two of the contract. A Connectivity & Security Options Agreement must be attached and executed for Network Integration Support.

#### CUSTOMER INFORMATION

Customer Name: Johnson County	Bill to Number:		
Billing Address: 1102 E. Kilpatrick	Phone #: 817-556-6384 Ext.	Fax #:	
Address 2:	Contact: Heather Carmichael	Customer PO #:	
City: Cleburne State: TX Zip: 76031	email: hcarmichael@johnsoncountytexas.org		

#### INVOICE / METER COLLECTION INFORMATION

Meter Collection: Meters Online	Electronic Invoicing: Yes	Invoice Location:	Term: 12 Months
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#### SEE ATTACHED MAINTENANCE CONTRACT SCHEDULE FOR DEVICE DETAILS

#### TRANSACTION TERMS (Consolidated Minimums Per Pool)

Pool Description	Type	Includes	Units	Price	Payment Frequency	Excess Per Unit Charge	Excess Billing Frequency
ES355 - CGL746069 and ES355 - CGH860189		48,000	2	\$550	Annually	0.012	Annually

#### DECLINATION

Customer is declining maintenance on the equipment listed above.

Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_

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

#### ACCEPTANCE

THE TERMS AND CONDITIONS HEREOF ARE PART OF THIS SERVICE AGREEMENT. BY SIGNING THIS CONTRACT, THE CUSTOMER ACKNOWLEDGES HAVE READ AND UNDERSTAND THESE TERMS.

Customer agrees to pay the Minimum Payment per transaction terms, plus any Excess Per Unit Charges for the term of this Contract. When this Contract is signed by Customer and TBS, it shall constitute a binding contract and is non-cancelable. This Contract will begin on the date signed by TBS below. You hereby agree and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes.

Customer: <i>[Signature]</i>	<b>Toshiba Business Solutions</b>		
Printed Name: Roger Harmon	Printed Name: KEVIN CATES		
Signature: <i>[Signature]</i>	Signature: <i>[Signature]</i>		
Title: Johnson County Judge	Date: 1-13-14	Title: SERVICE MANAGER	Effective Date: 11/7/2013

# TERMS AND CONDITIONS (CONTINUED)

1. **ACCEPTANCE.** This Contract shall not be effective unless signed by the authorized TBS representative (Effective Date) within 30 days from the Customer's signing of this Contract.

2. **Term.** This Contract will remain in force for 12 months from the Effective Date (Renewal Date) and will then be automatically renewed for annual period(s) unless either party provides notice of termination not less than thirty (30) days prior to the Renewal Date. For each piece of equipment under this Contract there will be a Start Date & Start Meter. Service for each piece of equipment will be provided from the Start Date & Start Meter until this Contract is terminated or the equipment is withdrawn from the service. Customer may withdraw individual equipment by providing thirty (30) day written notice prior to the Renewal Date. Customer is responsible for all remaining Minimum Payments if Customer is in default or if equipment is withdrawn prior to Renewal Date. *Annual renewal is not to exceed a total of 5 renewals/years from date of acceptance by Johnson County*

3. **SERVICE AVAILABILITY.** TBS will provide service during TBS's normal service hours while the equipment is located within TBS's designated service area. Service outside TBS's designated area, if available and accepted by TBS is subject to a Trip Charge, which shall be based on reasonable travel expense for TBS's personnel. It is the responsibility of the Customer to notify TBS prior to relocating equipment.

The service to keep the equipment in or restore the equipment to good working order includes Emergency Service Calls and Periodic Maintenance (PM's). PM's may be performed during the course of an Emergency Service Call and are based upon the specific needs of the individual equipment as determined by TBS. Maintenance will include lubrication, adjustments and replacement of maintenance parts deemed necessary by TBS. Maintenance parts will normally be either new or equivalent to new in performance when installed in the equipment. Maintenance parts will be furnished on an exchange basis and the replaced parts become the property of TBS. Service provided under this Contract does not assure the uninterrupted operation of the equipment.

If the Customer requests service to be performed at a time outside TBS's normal service hours, there will be no additional charge for maintenance parts, however, the service, if available, will be furnished at TBS's applicable hourly rates and terms then in effect. Nothing herein shall be construed to require TBS to provide service outside its normal service hours and TBS hereby reserves the right to accept or reject such requests.

In the event there is a substantial increase in the cost of fuel, Customer agrees to pay a fuel surcharge. "Substantial" shall be defined as a 10% or more change over a six month period in the average national fuel cost as reported by the United States Energy Information Administration. If there is a substantial decline in the cost of fuel, the fuel surcharge, if applied by TBS pursuant to this provision, may be decreased accordingly. The benchmark will be the national average fuel cost as reported by the United States Energy Information Administration on the Effective Date of this Agreement.

4. **NETWORK INTEGRATION SUPPORT.** Support of print controllers and print/scan enablers that permit the integration of the device onto a Customer's network is covered under the terms of a properly executed Connectivity & Security Options Agreement. The Connectivity & Security Options Agreement is an amendment to this contract and must be attached and/or on file for this optional service support.

5. **INVOICING - LATE CHARGES.** The first Minimum Payment is due upon receipt of an invoice. Thereafter, Minimum Payments will be due on the same date each month during the Term of this Contract whether or not Customer receives an invoice. Customer's obligation to pay the Minimum Payment is unconditional and is not subject to any reduction, set-off, defense, or counterclaim for any reason whatsoever. Excess Click Charge, if applicable, will be invoiced based on the billing period selected on the face of this contract. *As pursuant to Texas law.*

If any part of a payment is not made by the Customer when due, Customer agrees to pay TBS a Late Charge of the higher of \$25 or two percent (2%) of each such late payment, but not more than permitted by law. Customer agrees to pay TBS the Late Charge not later than one (1) month following the date of the original Minimum Payment.

6. **USAGE.** In return for the Minimum Payment, Customer is entitled to use the Minimum Number of Units each billing period. If Customer uses more than the Minimum Number of Units in any billing period, Customer will pay an additional amount equal to the number of metered Units exceeding the agreed Minimum Included Units times the Excess Charge as shown on the face of this Contract. In no event shall the Customer be entitled to any refund or rebate of the Minimum Payment if metered units result in less than the Minimum Number of Units in any billing period.

TBS may estimate the number of units used if requested Meter Readings are not received before a new billing period begins. TBS will adjust the estimated charge for Excess Units upon receipt of actual Meter Readings. Notwithstanding any adjustment, the Customer will never pay less than the Minimum Payment. Customer will provide meter readings via an automated website. TBS may charge a fee to recover the cost of meter collections if meters are not submitted through the automated website.

Upon the first Renewal Date and each subsequent Renewal Date thereafter, TBS reserves the right to increase the Minimum Payment and/or Excess Unit Charge by the greater of either (i) fifteen (15%) percent or (ii) the then-current cost per unit for that model. *no*

7. **CONSUMABLE SUPPLIES.** TBS agrees to furnish consumable supplies (ink, toner and toner collection containers) for the Term of the Contract, except as excluded in section 11 below. Customer is responsible for ordering supplies to assure ample time for delivery. TBS may charge you a supply freight fee to cover our cost of shipping supplies to you. TBS will determine the number of supplies to be shipped based on the Minimum Number of Units and Excess Units metered. If TBS determines that the Customer has used more than fifteen percent (15%) supplies than normal for the number of metered units, based on yields published by the manufacturer, Customer agrees to pay TBS's customary charges for all excess supplies.

All supplies delivered as part of this Contract remain the property of TBS until and unless they are consumed by the equipment in the performance of this Contract. Any supplies not consumed as specified and not surrendered to TBS upon expiration or termination of this Contract will be invoiced to the Customer at TBS's then current prices. Customer agrees to provide insurance coverage for supplies in case of loss under any circumstances. Notwithstanding the foregoing, the risk of loss of the consumable supplies shall be transferred from TBS to Customer if such consumable supplies are stored at Customer's facility.

8. **TAXES.** In addition to the charges due under this Contract, the Customer agrees to pay amounts equal to any taxes resulting from this Contract, or any activities hereunder, exclusive of taxes based upon net income.

9. **INSTALLATION AND ACCESS TO EQUIPMENT.** Customer agrees to provide adequate space, environment and appropriate electrical requirements including, if required, a dedicated 120 volt or 220 volt electrical line, as published in the Operator and Service Manuals for the operation and maintenance of the equipment. If TBS has installed a power filter/surge protector on the equipment, it must at all times remain continuously installed. If it is removed Customer agrees to purchase a replacement from TBS immediately. TBS shall have full and free access to the equipment to provide service thereon.

If persons other than TBS representatives install conversions, feature additions, accessories or perform service on equipment and as a result further repair by TBS is required, such repairs shall be made at TBS's applicable Time and Material rates and terms then in effect. If such additional repair is required, TBS may immediately withdraw the equipment from this Contract.

10. **KEY OPERATOR - END-USER TRAINING.** Customer agrees to designate a Key Operator for training on the use, applications and features of the equipment. The Key Operator will be responsible for normal Key Operator activities as detailed in the Operator Manual and for training additional end-users. If the Key Operator assignment changes Customer agrees to designate a new Key Operator immediately. TBS agrees to provide training for the designated Key Operator and to provide initial training for end-users on the use, applications and features of the equipment. Additional training requested by Customer after thirty (30) days from installation will be at TBS normal hourly rates.

11. **EXCLUSIONS.** Service under this Contract does not include:

(a) Furnishing paper, staples, replacement print heads, batteries, ribbons, media, periodic maintenance on thermal printers or any of the following:

(b) Service of equipment if moved outside of TBS's designated service area;

(c) Repair of damage or increase in service time caused by accident, misuse, negligence, abuse or disaster;

(d) Service of accessories, attachments or click control devices other than those of the same manufacturer as the equipment;

(e) Painting or refinishing of the equipment;

(f) Making specification changes;

(g) overhaul; when TBS determines an overhaul is necessary because normal repair and parts replacement cannot keep the equipment in satisfactory operating condition, TBS will submit a cost estimate to Customer and TBS will not commence work until Customer has approved cost;

(h) Performing key operator functions as described in the operator manual;

(i) Moving equipment, repair of damage or increase in service time caused by the use of the equipment for other than the ordinary use for which designed;

(j) Repair of damage caused by electrical surges or lightning strikes, if equipment is connected to a TBS supplied power filter/surge protector repairs will be included;

(k) Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment as defined by the manufacturer, with all the facilities prescribed by TBS including, but not limited to, adequate space, electrical power, air conditioning or humidity control.

(l) Repair of equipment that has been designated as obsolete by the manufacturer and genuine OEM parts are no longer available.

(m) Repair of damage or increase of service time caused by Customer's use of media outside the specifications as described in the operator manual.

12. **INDEMNITY AND DISCLAIMER.** TBS shall not be responsible for any injuries, damages, penalties, claims or losses including legal expenses incurred by Customer or any other person caused by the installation, selection, ownership, possession, maintenance, condition or use of the Equipment. *Customer agrees to reimburse TBS for and to defend TBS against any claims for such losses, damages, penalties, claims, injuries or expenses. This Indemnity shall continue even after this Contract has expired.*

**IN NO EVENT WILL TBS BE LIABLE FOR LOST PROFITS, CONSEQUENTIAL, EXPECTANCY OR INDIRECT DAMAGES EVEN IF TBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**EXCEPT AS OTHERWISE SET FORTH HEREIN, TBS DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, REPRESENTATION OR WARRANTY ARISING OUT OF USAGE AND TRADE, COURSE OR DEALING OR COURSE OR PERFORMANCE. EXCEPT AS PROVIDED HEREIN, THE PARTS AND SERVICES ARE PROVIDED "AS IS."**

13. **GENERAL.** Subject to the terms of the following paragraph, TBS may modify the terms and conditions of this Contract effective on the Renewal Date by providing the Customer with prior written notice.

Any such modification will apply unless the Customer withdraws the equipment affected by such modification from this Contract. Otherwise this Contract can only be modified by a written agreement duly signed by persons authorized to sign contracts on behalf of the Customer and of TBS. Variance from the terms and conditions of this Contract in any Customer order or other written modification will be of no effect.

The Customer represents that the Customer is the owner of the equipment under this Contract, or, if not the owner, is the lessee or renter of the equipment. Customer will execute a maintenance agreement for the equipment with a Toshiba authorized dealer or Customer will waive certain rights under Toshiba's manufacturer's warranty.

This Contract is not assignable, its right, duties and obligations may not be assigned or transferred by the Customer without the prior written consent of TBS. Any attempt to assign or transfer any of the rights, duties or obligations of this Contract without such consent is void.

TBS's service provided outside the scope of this Contract will be furnished at TBS's applicable time and material rates and terms then in effect.

TBS is not responsible for failure to render service due to causes beyond its control.

This Contract will be governed by the laws of the state where the Customer executed this Contract. If either party fails to comply with the terms and conditions of this Contract, the non-breaching party shall notify the breaching party in writing using certified mail to the address on the face of this Contract. The breaching party shall have thirty (30) days to cure any breach of this Contract prior to the non-breaching party takes the legal action. No action, regardless of form, arising out of this Contract may be brought by either party more than one year after the cause of action has arisen, or, in the case of non-payment, more than two years from the date of the last payment.

*TBS modifications to the terms and conditions must be accepted by Johnson County Prior to going into effect.*

*TBS cannot assign without contacting Johnson 2 of 2 County.*

*The addendum entitled Johnson County Contract Terms Addendum-TBS is attached hereto and incorporated herein in full.*

## **JOHNSON COUNTY CONTRACT TERMS ADDENDUM - TOSHIBA BUSINESS SOLUTIONS**

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This Johnson County Contract Terms Addendum to Service Contract, (hereinafter referred to as the "ADDENDUM") is between **Johnson County, Texas**, a political subdivision of the State of Texas, (hereinafter referred to as "COUNTY"), and **Toshiba Business Solutions**, (hereinafter referred to as "SERVICE PROVIDER"), collectively referred to as the "PARTIES", and is an addendum to the AIMS Maintenance Contract between the Parties for copier maintenance and together the Landscape Services Contract (hereafter "Service Contract"), along and this Addendum shall constitute the entire and complete contract, (hereinafter referred to as the "AGREEMENT"), between the Parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. The Parties agree and understand that this Addendum is to clarify, limit, modify or delete terms and provisions of the Service Contract and in the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Service Contract, this Addendum shall control and amend the contractual provisions of the Service Contract and any provisions in the Service Contract to the contrary are hereby deleted.
2. This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement will be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.
3. Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.
4. Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted.
5. The Parties agree that under the Texas Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.
6. The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental/sovereign immunity and limitations on liability, and that

County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said insurance coverage is limited to the statutory maximum limits of the Texas Tort Claims Act (Chapter 101, Texas Civil Practice and Remedies Code); therefore, any provisions requiring County to provide and maintain any insurance in excess of the statutory maximum limits are hereby deleted.

7. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled; therefore any provisions to the contrary are hereby deleted.

8. The Contract period will begin on the 15<sup>th</sup> day of Nov., 2013, and will terminate on the 30th day of Oct 31, 2014. The continuation of this Agreement from year to year after Oct 31, 2014 is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the services provided by Toshiba Business Solutions pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. Notwithstanding the foregoing, in no event shall this Agreement continue for a period exceeding 36 months from the date the contract first becomes effective without specific consideration and approval by the commissioners Court of Johnson County, Texas.

9. Following the first anniversary of the initial effective date of this Agreement, the Commissioners Court of Johnson County Texas may, pursuant to a vote of a majority of the Court terminate this Agreement by giving 60 days Written Notice to Toshiba Business Solutions of such termination of the Agreement. Any payment to Toshiba Business Solutions shall be for services performed up to the time of the termination of services and in no circumstance shall Toshiba Business Solutions be paid for services beyond the date of termination of the Agreement.

10. The Parties agree and understand that County does not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provisions to the contrary are hereby deleted.

11. The Parties agree and understand that County does not agree to waive any rights and remedies available to County under the Texas Deceptive Trade Practices-Consumer Protection Act; therefore, any provisions to the contrary are hereby deleted.

12. The Parties agree and understand that County does not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by

any federal, state or local government or agency which relates to the Service Contract, the equipment or its use; therefore, any provisions to the contrary are hereby deleted.

13. Pursuant to **Texas Government Code Section 2251.021** and this Agreement, a payment by a governmental entity under a contract is overdue on the 31<sup>st</sup> day after the later of:
- a. the date the governmental entity receives the goods under the contract;
  - b. the date the performance of the service under the contract is completed; or
  - c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted. No other provision for overdue or past due payment shall be of any effect.

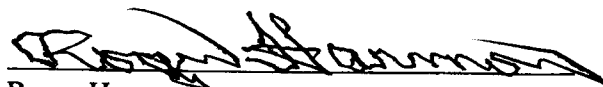
14. To the extent, if any, that any provision in this Agreement is in conflict with Chapter 552 of the Texas Government Code (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act.

15. Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

16. IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused their authorized representative to execute this Agreement. Each representative whose signature appears on this Agreement represents and does hereby certify that they have the authority to enter into this Agreement for their represented Party.

APPROVED AS TO FORM AND CONTENT:

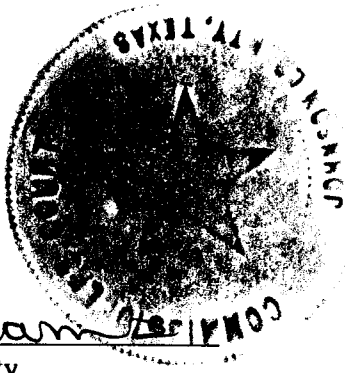
JOHNSON COUNTY:

  
Roger Harmon

1-13-14  
Date

JOHNSON COUNTY CONTRACT TERMS  
ADDENDUM TO TOSHIBA AIMS MAINTENANCE CONTRACT

County Judge



Attest:

Betsy Williams  
County Clerk, Johnson County

1-13-14  
Date

SERVICE PROVIDER:

William C. Terhune  
Authorized Representative  
Printed Name: William C. Terhune  
Title: Service Director

12/31/13  
Date