

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



219

FROM: Riverside County Regional Medical Center (RCRMC)

SUBMITTAL DATE:
2/04/2015

SUBJECT: Approval of the Agreement with Toshiba America Medical Systems, Inc. to provide Planned Maintenance Services on Toshiba Radiology Ultrasound Imaging Equipment owned by RCRMC for five (5) years, without seeking competitive bids. District 5 [\$373,000] Hospital Enterprise Fund.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the service agreement with Toshiba America Medical Systems, Inc. without seeking competitive bids for \$74,600 annually, for five (5) years; and
2. Authorize the Purchasing Agent, in accordance with Ordinance 459, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates.

BACKGROUND:

Summary

Annual maintenance is required to maintain the five (5) Toshiba Ultrasound Imaging Units currently owned by RCRMC at manufacturer's specifications, and to gain the full use and benefit of the equipment.

jph/slh

Zareh Sarrafian CEO

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 25,866	\$ 74,600	\$ 373,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$	\$	\$ 0	

SOURCE OF FUNDS: Hospital Enterprise Fund 100%

Budget Adjustment: No

For Fiscal Year: 14/15-18/19

C.E.O. RECOMMENDATION:

APPROVE

BY:
Debra Courmoyer

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
Nays: None
Absent: None
Date: March 10, 2015
xc: RCRMC, Purchasing

Kecia Harper-Ihem
Clerk of the Board

By:
Deputy

Prev. Agn. Ref.:

District: 5

Agenda Number:

3-29

PURCHASING & FLEET SERVICES

Lisa Brandl, Director

Departmental Concurrence

FORM APPROVED COUNTY COUNSEL
BY:
ANITA C. WILLIS
DATE: 2-5-15

- ☐ A-30
- ☐ Positions Added
- ☐ 4/5 Vote
- ☐ Change Order

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approval of the Agreement with Toshiba America Medical Systems, Inc. to provide Planned Maintenance Services on Toshiba Radiology Ultrasound Imaging Equipment owned by RCRMC for five (5) years, without seeking competitive bids. District 5 [\$373,000] Hospital Enterprise Fund

DATE: 2/04/2015

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

Each uniquely configured ultrasound unit includes proprietary transducers and probes which must be serviced exclusively by the manufacturer to ensure efficacy of the equipment. In addition to the maintenance service and two (2) annual Preventative Maintenance (PM's) visits, the agreement includes:

- Routine system calibration tests
- Remedial maintenance labor
- Quality Assurance Evaluations
- Replacement of parts at Toshiba's cost
- Technician travel expense
- Uptime guarantee
- Option to upgrade or downgrade program plan once per year.

Impact on Residents and Businesses

Radiology services are an integral part of the RCRMC mission and function within Riverside County in maintaining the constituents' health and wellbeing.

Contract History and Price Reasonableness

The proprietary services can only be obtained directly through Toshiba America Medical Systems, Inc. Annual maintenance is required to maintain the five (5) Toshiba Ultrasound Imaging Units and maximize the life of the equipment per the manufacturer's specifications. In addition, RCRMC currently has two (2) of these ultrasound machines that are in need of immediate repair, therefore, Toshiba has assigned three (3) dedicated technicians for RCRMC to ensure service levels are met.

Toshiba is offering the maintenance service agreement at their guaranteed lowest possible price of \$74,600 annually for all five (5) of the machines. The price comparison of the new Toshiba maintenance service agreement is the same dollar amount from the previous five (5) years of service. The contract discounted pricing is equivalent to the Amerinet GPO pricing. If RCRMC were to enter into a time and materials service contract it would not be cost effective, because it does not include the cost of the transducer repair or replacement on the equipment. Furthermore, one transducer can range in cost between \$3,000 to \$5,000 for repairs; not including the labor rate of approximately \$275 an hour. RCMRC has confirmed that the County price is significantly lower when comparing Toshiba's maintenance service agreement to the time and materials hourly rate; i.e. for one of the ultrasound units (SID # 314930) would cost an estimated annual amount of \$24,429 for time and materials. However, the contract pricing is at a lower annual amount of \$12,987. This cost comparison and the high use of the equipment when placed on the maintenance agreement, maintains a significant savings forty-seven percent (47 %) as opposed to the time and materials rate.

Date: 2/04/2015

From: Zareh Sarrafian CEO

Department/Agency: Riverside County Regional Medical Center (RCRMC)

To: Board of Supervisors

Via: Purchasing Agent

Subject: Sole Source Procurement; Request for Service Agreement from Toshiba America Medical Systems, Inc., for annual maintenance of Radiology Ultrasound Equipment.

The below information is provided in support of my Department requesting approval for a single source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** Service Agreement for Planned Maintenance of the five (5) Toshiba Radiology Ultrasound Units currently owned by RCRMC for an aggregate yearly amount of \$74,599.92. The total service agreement price for the five (5) years is \$372,999.60
2. **Supplier being requested:** Toshiba America Medical Systems, Inc.
3. **Alternative suppliers that can or might be able to provide supply/service:** None – Toshiba is the direct manufacturer of the hospital owned equipment and the only authorized service provided for Riverside County. Maintenance to be considered Original Equipment Manufacturer (OEM).
4. **Extent of market search conducted:** Radiology staff knowledge of industry, its practices and direct contact with the manufacturer of the equipment.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** Each uniquely configured ultrasound unit includes proprietary transducers and probes which must be serviced exclusively by the manufacturer to ensure efficacy of the equipment. In addition to the maintenance service and two (2) annual Preventative Maintenance (PM's) visits, the agreement includes:
 - Routine system calibration tests
 - Remedial maintenance labor
 - Quality Assurance Evaluations
 - Replacement of parts at Toshiba's cost
 - Technician travel expense
 - Uptime guarantee
 - Option to upgrade or downgrade program plan once per year.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** The proprietary services can only be obtained directly through Toshiba America Medical Systems, Inc. Annual maintenance is required to maintain the five (5) Toshiba Ultrasound Imaging Units currently owned by RCRMC at manufacturer's

specifications, and to gain the full use and benefit of the equipment. The maintenance services will assist in maintaining the manufacturer warranty and maximize the life of the equipment. Toshiba has assigned three (3) dedicated technicians for RCRMC to ensure service levels are met. In addition to its main headquarters located in Tustin, California, there are multiple warehouses throughout the United States to fulfill parts as needed and to ensure operational equipment under maintenance. RCRMC currently has two (2) of these ultrasound machines that are in need of repair.

7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** Toshiba is offering the maintenance service agreement at their guaranteed lowest possible price of \$74,599.92 annually. The price comparison of the new Toshiba maintenance service agreement is the same dollar amount from the previous five (5) years of service. The contract discounted pricing is equivalent to the Amerinet GPO pricing. If RCRMC were to enter into a time and materials (T&M) service contract it would not be cost effective, because it does not include the cost of the transducer repair or replacement on the equipment. Furthermore, one transducer can range in cost between \$3,000 to \$5,000 for repairs; not including the labor rate of approximately \$275 an hour. RCMRC has confirmed that the County price is significantly lower when comparing Toshiba's maintenance service agreement to the T&M hourly rate; i.e. for one of the ultrasound units (SID # 314930) would cost an estimated annual amount of \$24,428.92 for T&M. However, the contract pricing is at a lower annual amount of \$12,987.00. This cost comparison and the high use of the equipment when placed on the maintenance agreement, maintains a significant savings forty-seven percent (47 %) as opposed to the T&M rate.
8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).** Four (4) one year options to extend maintenance are offered.
9. **Period of Performance:** Five years from March 10, 2015 through March 09, 2020; for an aggregate yearly amount of \$74,599.92. The total service agreement price for the five (5) years is \$372,999.60


Department Head Signature

Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ 74,600.00
through Fy 19/20

☐ One time

☒ Annual Amount


Purchasing Agent

Date

2/5/15 15-384
Approval Number
(Reference on Purchasing Documents)

TOSHIBA AMERICA MEDICAL SYSTEMS, INC.

SERVICE AGREEMENT

CUSTOMER LOCATION: (COMPLETE LEGAL NAME)

DATE: 02/03/2015 QUOTE #: 150128AW
SID #: SEE PAGE 2 SYSTEM: SEE PAGE 2
BILLING ADDRESS:

RIVERSIDE COUNTY REGIONAL MEDICAL
CENTER
26520 CACTUS AVE
MORENO VALLEY, CA 92555

RIVERSIDE COUNTY REGIONAL MEDICAL
CENTER
26520 CACTUS AVE
MORENO VALLEY, CA 92555

Type: INTOUCH FULL SERVICE

Length Of Contract: 60 Months Start Date: MARCH 10, 2015 End Date: MARCH 09, 2020

Total Service Agreement Price: \$ 372,999.60

Payments are made 30 days in advance as follows (Please choose one):

Each system will be invoiced separately

___ Monthly \$ 6,216.66 ___ Annually \$ 74,599.92

Toshiba will provide the following services for the equipment listed in Attachment "A", for the duration of this Agreement. All services will be provided in accordance with the attached Terms and Conditions of Service. Any changes to system configuration or services coverage noted in this agreement will require a revised quotation.

Coverage Hours: MONDAY THROUGH FRIDAY 8:00 AM-5:00 PM EXCLUDING FEDERAL HOLIDAYS

Preventive Maintenance: MONDAY THROUGH FRIDAY 8:00 AM-5:00 PM EXCLUDING FEDERAL HOLIDAYS

Response Time: STANDARD 30 MINUTE PHONE RESPONSE
STANDARD 4 HOUR ON-SITE RESPONSE

Uptime Guarantee: 95%

Labor and Travel Charges: PREFERRED RATES FOR LABOR AND TRAVEL OUTSIDE OF COVERAGE HOURS.

Parts Replacement: PARTS WILL BE REPLACED WHEN DEEMED NECESSARY BY TAMS, EXCLUDING DISPOSABLES, ACCESSORIES, OPTIONS OR UPGRADES NOT LISTED IN THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Probe: ALL PROBES LISTED IN THIS AGREEMENT ARE FULLY COVERED AND WILL BE REPLACED AT NO CHARGE TO THE CUSTOMER, PROVIDED REPLACEMENT IS NOT DUE TO CUSTOMER NEGLIGENCE.

ATTEST:

KECIA HARPER-IHEM, Clerk

By:  DEPUTY

This service agreement quotation is valid if it is signed by Toshiba and Customer on or before 60 days from the date of Quotation. Please return signed quotation to: Toshiba America Medical Systems, 2441 Michelle Drive, Tustin, CA 92780. Additional terms and conditions appear at the end of this quotation.

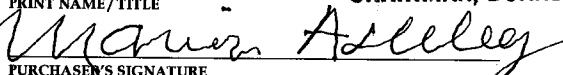
CUSTOMER ACCEPTANCE:

TOSHIBA ACCEPTANCE:


MARION ASHLEY
PRINT NAME/TITLE

CHAIRMAN, BOARD OF SUPERVISORS

Devon Murachanian / Area Service Manager
PRINT NAME/TITLE


PURCHASER'S SIGNATURE

DATE


SERVICE MANAGER

2/3/15
DATE

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MAR 10 2015 3-29

FORM APPROVED COUNTY COUNSEL 2/5/15
BY: NEAL R. KIPNIS DATE

TOSHIBA AMERICA MEDICAL SYSTEMS, INC.

SERVICE AGREEMENT

CUSTOMER LOCATION: (COMPLETE LEGAL NAME)

DATE: 02/03/2015 QUOTE #: 150128AW
 SID #: SEE PAGE 2 SYSTEM: SEE PAGE 2
 BILLING ADDRESS:

RIVERSIDE COUNTY REGIONAL MEDICAL
 CENTER
 26520 CACTUS AVE
 MORENO VALLEY, CA 92555

RIVERSIDE COUNTY REGIONAL MEDICAL
 CENTER
 26520 CACTUS AVE
 MORENO VALLEY, CA 92555

Attachment A Equipment List

This agreement includes coverage for the following items. All other options, including but not limited to lasers, injectors, power conditioners (PCDUs, VRDUs, UPSs, etc.) and other non-TAMS options, are not covered by this agreement. For additional options not listed, please contact your local Service Manager.

<u>SID</u>	<u>PROBES</u>	<u>PERIPHERALS</u>	<u>EXCLUDED</u>	<u>MONTHLY</u>	<u>ANNUAL</u>
314906	PLT-1204BT, PST-65AT, PVT-375BT/FS, PVT-382BT/FS, PLT-1204AT	UP-D897	PVT-681MV	\$ 1,067.58	\$ 12,810.96
314914	PLT-1204BT, PLT-704SBT, PLT-805AT, PST-65AT, PVT-382BT, PVT-661VT, PVT-674BT, PVT-770RT, PVT-375BT	UP-D897	N/A	\$ 1,622.25	\$ 19,467.00
314922	PLT-704SBT, PLT-805AT, PST-65AT, PVT-375BT/FS, PVT-661VT, PVT-674BT	UP-D897	N/A	\$ 1,255.50	\$ 15,066.00
314930	PLT-704SBT, PLT-805AT, PST-65AT, PVT-382BT, PVT-661VT, PVT-375BT	UP-D897	PLT-705BTF	\$ 1,082.25	\$ 12,987.00
314948	PLT-1204BT, PLT-704SBT, PST-65AT, PVT-382BT, PVT-661VT, PLT-1204AT, PVT-375BT	UP-D897	N/A	\$ 1,189.08	\$ 14,268.96

ADDITIONAL COMMENTS

THIS SERVICE AGREEMENT INCLUDES A 90 DAY NO CAUSE OUT CLAUSE WITH A 90 DAY WRITTEN NOTICE ON THE ANNIVERSARY DATE. EARLY TERMINATION FEE ONLY APPLIES TO THE CURRENT CONTRACT YEAR.

The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated as of the Agreement's termination date or the end of the fiscal period, whichever occurs first.

This System is required to have following conditions satisfied prior to the acceptance and activation of this Service Maintenance Agreement (SMA) by Toshiba Medical Systems (TAMS):

1. A Toshiba Service Representative must review the system and certify it to be at Toshiba specifications
2. Any Parts which are deemed as in need of replacement / repair by TAMS and any associated Labor incurred as a result of activities related to Item 1 will be;
 - a. billed at prevailing rates,
 - b. solely the financial responsibility of the Customer and
 - c. may not be included or considered as covered under this Service Agreement.

Upon Acceptance of this agreement, please forward to:

TOSHIBA AMERICA MEDICAL SYSTEMS, INC.
 SERVICES CONTRACTS ADMINISTRATION

Attn: Audrey Weidemann

2441 Michelle Drive

Tustin, CA 92780

Phone: 714-669-2423

E-Mail: ServicePacificZone@tams.com

A countersigned copy will be returned to you for your reference.

**IN-TOUCH SERVICES AGREEMENT
TERMS AND CONDITIONS**

1. **GENERAL TERMS.** Unless otherwise specified on the face of this document, this Agreement will remain valid only if accepted by Customer no later than 60 days from date of submission to Customer.

2. **COVERAGE.** The following items are included in this Agreement.

- a. **Planned Maintenance Service,** as specified by Toshiba. Customer will provide Toshiba service personnel with full access at the agreed upon time. Otherwise, any makeup service will be separately billed by Toshiba to Customer at Toshiba's applicable hourly rate then in effect, including round trip travel.
- b. **Routine System Calibration Tests,** as specified by Toshiba. Customer will perform normal operator adjustments specified in the Equipment Operation Manual.
- c. **Remedial Maintenance Labor** required to maintain the system at manufacturer's specifications during Covered Hours specified on the face of this document. Labor requested outside of the Covered Hours will be billed at Toshiba's applicable hourly rate then in effect.
- d. **Quality Assurance Evaluations,** as specified by Toshiba. Toshiba will routinely perform quality assurance evaluations in order to assure optimum performance. Customer will provide Toshiba service personnel full access for such purposes at times mutually agreed to in advance. If applicable, Customer will run simplified Quality Assurance tests utilizing InnerVision Plus[®] remote diagnostics.
- e. **Replacement of Parts,** at Toshiba's cost, which fail during the term of this Agreement with the exception of the parts specified on the face of this document. Parts that are cosmetic in nature or expendable will be replaced at Customer's cost, including items such as patient pads, head cushions, and acrylic parts. Replaced parts will become the property of Toshiba. Parts replaced may be refurbished.
- f. Customer may elect to upgrade / downgrade Variable Glass Tier level once a year, effective on the next contract anniversary date. This contract modification 1) will be effective on a go forward basis only, 2) may not be applied to the contract retroactively, 3) will reflect Toshiba's current pricing, and 4) must be via a written request from the Customer, presented at least 30 days prior to the contract anniversary date.
- g. **Travel and Living Expenses Incurred** by Toshiba's Customer Engineers during Covered Hours.
- h. **Uptime Guarantee** as specified on the face of this document. Uptime guarantees are measured based on covered hours, excluding Toshiba's recognized holidays. Uptime will be calculated using the following formula:
$$\text{Uptime} = (\text{Base Time} - \text{Downtime}) / \text{Base Time}$$

Definitions: Base Time: Total covered hours. Downtime: Time when the specified imaging equipment is unavailable for scanning or diagnosing images due to Equipment malfunction, and is immediately available for service repairs. Downtime will be calculated during the Covered Hours and commence when the Customer's call is logged into the InTouch[™] Center. Downtime concludes once repairs are completed and the imaging system is available for clinical use. Downtime does not include time spent for preventive maintenance, routine part replacements or repair of any malfunction caused by operator error, accidents or other elements outside the control of Toshiba, such as accidents, fires, floods, and Acts of God. The Uptime Guarantee will be voided if Toshiba is not given access to the Equipment for preventive maintenance or other types of service required during the term of this Agreement.

Uptime statistics will be measured over a 12-month period. If the Equipment fails to achieve the specified uptime percentage, the following year's services contract will be reduced by the uptime discount specified under the specific Services Agreement plan, up to a maximum of 15%.

Software Updates / Upgrades. Toshiba will furnish to Customer, free of charge for the life of the Equipment, all Toshiba software or hardware upgrades to the Equipment purchased by Customer, which are intended to correct a safety risk. Software updates offering enhancements to previously purchased software features are covered under this service agreement, if they do not require hardware modifications or additions. Software upgrades providing new features or capabilities not originally purchased, will be made available for purchase by Customer upon request when compatible with the originally purchased hardware. Toshiba retains the sole right to determine whether a software release is considered an update or an upgrade for which the Customer will be charged.

The above items will be performed only during the Covered Hours stated on the face of this document. Service required outside these hours will be billed at Toshiba's differential rates in effect at the time such items are provided to Customer.

3. **ITEMS EXCLUDED.** The following items are excluded from this Agreement unless otherwise indicated on the face of this document.

- a. Customer operation instructions.
- b. Adding or removing accessories, attachments, or other devices, and remedial services necessary to repair accessories.
- c. Services connected with Equipment movement or relocation.
- d. Problems caused by external sources, including the incoming power supply.
- e. Increase in service time resulting from operator neglect or failure to follow operation instructions.
- f. Repair or damage from accident or any cause other than ordinary use.
- g. Rigging and handling, removal, modification or reconstruction of a wall, partition, ceiling or any other portion of the facility arising from repair, replacement or substitution of Equipment or parts of it.
- h. Chiller maintenance or repair.
- i. Expendable materials or accessories (for example, straps, foam cushions, and other similar items).
- j. Problems caused by modifications, maintenance or repairs of the equipment or software not performed by Toshiba.
- k. Storage facilities for spare parts, tools and supplies.

Performance of services not included in this Agreement will be charged in accordance with Toshiba's prices in effect at the time such services are provided to Customer.

4. **CUSTOMER RESPONSIBILITIES.** During the term of this Agreement, Customer agrees to maintain the site and environment (including temperature and humidity control, incoming power quality, and fire protection system) in a condition suitable for operation of the Equipment; ensure the Equipment is used at all times in accordance with the requirements of the Equipment Operation Manual by properly qualified and appropriately licensed personnel; and make normal operator adjustments to the Equipment as specified in the Equipment Operation Manual. In addition, Customer agrees to provide and maintain a dedicated broadband Internet access node suitable for connection to Customer's network and allow access to Toshiba's VPN for Toshiba's use for InnerVision Plus[™], if applicable. Failure to provide an appropriate VPN connection may result in a reduction in the uptime guarantee commitment and an increase in service charges for the Equipment.

5. **REMOTE DIAGNOSTICS (INNERVISION PLUS[®]).** Toshiba may install certain equipment and parts ("InnerVision Plus[®]") at Customer's site in order to perform remote diagnostics on the Equipment. Customer hereby acknowledges that Toshiba retains title to InnerVision Plus[®]. Toshiba will remove the InnerVision Plus[®] upon termination or expiration of this Agreement. Customer will not remove, modify, or use or allow third parties to use InnerVision Plus[®] without Toshiba's prior written consent. Customer will be responsible and will promptly pay for any loss or damage to InnerVision Plus[®] unless caused by Toshiba's sole negligence.

6. **GEOGRAPHICAL EQUIPMENT OR COVERAGE.** Toshiba must be notified in writing at least ninety (90) days prior to relocation of Equipment to a site that is fifty (50) miles or greater from the unit's base site specified on the face of this document so that Toshiba may adequately address manpower needs to maintain the site.

7. **ACCEPTANCE BY TOSHIBA.** This Agreement will not be binding on Toshiba unless and until it is accepted by Toshiba as evidenced by the signature of an authorized representative of Toshiba on the face of this document. Toshiba's acceptance is expressly made conditional upon Customer's assent to the terms and conditions in this document. All different or additional terms and conditions which may be contained in Customer's bid documents, purchase order or any other documents furnished by Customer are hereby objected to and deemed material unless accepted in writing by an authorized representative of Toshiba. Toshiba will give Customer a fully executed copy of this Agreement upon acceptance by Toshiba.

Toshiba's service of Equipment under this Agreement is available only if the effective date of this Agreement follows within 15 calendar days of (a) the expiration of an applicable warranty period covering such Equipment, or (b) the expiration of an applicable Toshiba Services Maintenance Agreement. If the effective date is outside such 15-day period, Toshiba must be given the right to inspect the Equipment and repair and restore the Equipment to proper working order in accordance with Toshiba's specifications before this Agreement may become effective. All service labor and parts furnished for such repair and restoration will be charged to Customer at Toshiba's prevailing rates.

8. **TERMINATION.** This Agreement will terminate upon the expiration date specified on the face of this document. Customer may not terminate this Agreement before its expiration unless (a) Customer sells, discards or otherwise completely discontinues using the Equipment, or (b) Customer exchanges the Equipment for another new Toshiba Equipment, or (c) Toshiba substantially fails to perform any of its material obligations specified in this Agreement. In the case of termination for the reasons stated in (a) or (b) above, the termination will be effective 90 days from the date of Customer's written notice to Toshiba of termination. If Customer elects to terminate for the reasons stated in (c) above, before such termination, customer must notify Toshiba in writing of the breach and of its intent to terminate this Agreement if such breach is not corrected within thirty (30) days from Toshiba's receipt of the notice of breach. If Customer elects to terminate this Agreement before its expiration for any reason other than the reasons set forth in (a) through (c) above, or if Toshiba terminates this Agreement due to Customer's default pursuant to Section 16, Customer must pay Toshiba, as liquidated damages, an amount equal to 15% of the total service amounts payable under this Agreement for the term remaining as of the date of termination.

9. **ACCESS TO EQUIPMENT.** Customer will afford unrestricted and safe access to the Equipment for Toshiba's representatives and will cooperate with Toshiba's representatives in their performance of the services under this Agreement. If Customer fails to provide such access and cooperation, Toshiba will be relieved of its obligations under this Agreement, including, without limitation, the Uptime Guarantee.

10. **CONSUMABLE ITEMS.** Customer will provide necessary consumable items and processing facilities required by Toshiba in performance of the services under this Agreement at no charge to Toshiba.

11. **END OF MAINTENANCE SUPPORT ANNOUNCEMENT.** In the event that Toshiba makes a future general commercial announcement that services contracts will no longer be offered for an item of Equipment or Equipment component covered by this Agreement, then upon no less than 12 months prior written notice to the Customer, Toshiba may, at their option, remove any such item(s) of Equipment or Equipment component(s) from service coverage under this Agreement, with an appropriate adjustment of charges hereunder, without otherwise affecting this Agreement.

12. **COMPENSATION AND TAXES.** For the services and materials provided under the Agreement, Customer will pay Toshiba the total amounts specified on the face of this document for each system covered. For fixed contracts, this sum will be paid in advance, based on the chosen installments specified on the face of this document. For variable contracts, Toshiba representatives will be given access to usage information and the Equipment for the purpose of measuring variable use. Each month Toshiba will invoice Customer and Customer will pay the higher of the minimal or actual usage for the preceding period based upon the data from the site. The amounts specified on the face of this document do not include sales, use or other similar taxes. Customer will pay any such taxes, unless a tax exemption certificate acceptable to the applicable taxing authorities is provided to Toshiba. All invoices paid after due date will be assessed a late payment charge of the lesser of 1 1/2% per month or the maximum rate permitted by law.

13. **CPI ADJUSTMENT.** The service fees payable under this Agreement may be increased up to three percent annually, at Toshiba's sole discretion. The increase is effective on the anniversary date of the Agreement starting with the first anniversary. The customer will be notified by Toshiba at least 60 days prior to any adjustment. The increase will then be automatically added to the first payment following the anniversary date.

14. **ASSIGNMENT.** Neither Customer nor Toshiba may assign this Agreement without the prior written consent of the other.

15. **SOFTWARE.** All rights and interest in any software that may be furnished under this Agreement, and any updates and enhancements to it, will remain the property of Toshiba. Such software is being furnished to Customer under a non-exclusive license. Customer will not decompile, modify, copy, reproduce, or transcribe the software, nor allow third parties to use the same without Toshiba's prior written consent. Upon Toshiba's request, Customer will execute a software license contract, in a form designated by Toshiba.

16. **DEFAULT.** Upon default by Customer, any affiliate or parent of Customer, any partner of Customer, or any principal of Customer in payment or performance of any obligation under this Agreement or any other agreement with Toshiba, whether entered into before or after the date of this Agreement (including, without limitation, any agreement for sale of equipment to Customer) will, at the sole option of Toshiba, if default is not cured within ten (10) days after written notice of the default, constitute a default of this Agreement. In such event, Toshiba may at its option (a) suspend performance under this Agreement until all such defaults have been cured, (b) terminate this Agreement in which case Customer shall pay Toshiba all amounts that are due for the period prior to the termination date (or the suspension date if the Agreement was suspended prior to termination), as well as liquidated damages equal to 25% of the total service amounts payable under this Agreement for the term remaining as of the termination date (or suspension date if the Agreement was suspended prior to termination), and/or (c) exercise any other remedies allowed by law. If this Agreement is suspended, Customer will be required to pay the following as a condition to Toshiba resuming service: (i) all past due amounts for the period prior to the suspension, and (ii) the liquidated damages amount set forth in Section 8 above for the period of the suspension.

17. **ATTORNEY'S FEES AND COSTS.** In the event of any legal proceeding involving any party to this Agreement against the other relating to the subject matter of this Agreement, the prevailing party in such proceeding will be entitled to recover attorney's fees, expert fees, collection agency fees and court costs against the non-prevailing party.

18. **CIRCUMSTANCES BEYOND CONTROL.** Toshiba will not be liable for non-performance or delay in performance resulting directly or indirectly from any occurrences beyond Toshiba's control, including without limitation, strikes or other labor actions, Acts of God, war, accidents, fires, floods, other catastrophes, inclement weather, transportation, delays caused by Toshiba's suppliers, inability to obtain replacement parts, or laws, regulations, or acts of any governmental agency. The foregoing provision will apply even though such cause may occur after performance of the obligations of Toshiba under this Agreement has been delayed for other causes.

19. **DISCLAIMER OF WARRANTIES.** TOSHIBA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OR WARRANTY OF FITNESS FOR PARTICULAR PURPOSE WITH RESPECT TO ANY OF THE SERVICES AND PARTS FURNISHED UNDER THIS AGREEMENT.

20. **LIMITATION OF LIABILITY AND OF REMEDY.** TOSHIBA WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR EXEMPLARY DAMAGES OR ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF TOSHIBA IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. THIS LIMITATION WILL NOT APPLY TO CLAIMS FOR PERSONAL INJURY OR DEATH CAUSED BY TOSHIBA.

21. **EXPORT RESTRICTIONS.** This Agreement involves products, and/or technical data that may be controlled under the U.S. Export Administration Regulations and may be subject to the approval of the U.S. Department of Commerce prior to export. Any export or re-export by Customer, directly or indirectly, in contravention of such Regulations is prohibited.

22. **FACSIMILE SIGNATURES.** This agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement. Facsimile signatures (signed copies transmitted via fax or electronic file) shall be of equal effect and validity as signatures on original copies, so long as the electronically transmitted copy includes the printed name and title of the signatory of the Agreement.

23. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties and supersedes all prior or concurrent agreements between the parties, whether oral or written, relating to its subject matter. The provisions of this Agreement may not be modified unless in writing and executed by both parties.