TOSHIBA
BUSINESS SOLUTIONS

EDUCATION, STATE, & LOCAL GOVERNMENT SERVICE MANAGEMENT AGREEMENT

TOSHIBA
FINANCIAL SERVICES

APPLICATION NUMBER	AGREEMENT NUMBER
	MCS2021-1

The words **User, Lessee, you** and **your**, refer to **Customer.** The words **Owner, Lessor, we, us**, and **our**, refer to **Toshiba Financial Services.**

CUSTOMER INFORMATION

FULL LEGAL NAME			STREET ADDRESS	
Montgomery County Schools			441 Page Street	
CITY	STATE	ZIP	PHONE	FAX
Troy	NC	27371	(910) 576-6511	(910) 576-2044
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING ADDRESS	
			PO Box 427	
CITY	STATE	ZIP	E-MAIL	
Troy	NC	27371		
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				
See Schedule A				

TBS LOCATION

CONTACT NAME	SUBSIDIARY LOCATION
	TBS - CMG

PROGRAM DESCRIPTION

All-inclusive Cost Per Copy Agreement to include: Equipment, Accessories, Fax, Service, and Supplies		
(Excludes paper, staples, fax supplies, & NC sales tax)		
99 PaperCut License Included. Optional Card Readers Can Be Added $2.59 Per Month/Per Device		
Can add on desktop printers not on original schedule A:		
M3250 @ $9 each / month, XM3250 @ $19 each / month, C4150 @ $15 each / month,		
XC4140 @ $29 each / month Service / Supplies @ $0.01229 Mono and $0.059 Color Per Print		

☒ See attached form (Schedule "A") for Additional Equipment

TERM & PAYMENT SCHEDULE

Number of Months: 62 Begin Date: July 1, 2021 CPC billed: ☒ Monthly ☐ Quarterly

Invoiced Monthly	B/W Copies/Prints: $ 0.01229	Anticipated Monthly Volume: 532,000	Excess B/W Invoiced at: $ 0.01229 Per Copy/Print
Invoiced Monthly	Color Copies/Prints: $ 0.0590	Anticipated Quarterly Volume: 25,000	Excess Color Invoiced at: $ 0.0590 Per Copy/Print

OWNER ACCEPTANCE

Toshiba Financial Services			
OWNER	SIGNATURE	TITLE	DATED

CUSTOMER ACCEPTANCE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

Montgomery County Schools	X Dale Ellis	Superintendent	6-21-21
CUSTOMER (as referenced above)	SIGNATURE	TITLE	DATED
56-6001076	Dale Ellis		
FEDERAL TAX I.D. #	PRINT NAME		

CUSTOMER ACCEPTANCE & PRE-AUDIT CERTIFICATE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.
Pre-Audit Certificate: This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act (G.S. § 115C-441).

Montgomery County Schools	X Dale Ellis	Superintendent	
CUSTOMER (as referenced above)	SIGNATURE	TITLE	DATE OF DELIVERY

SEE PAGE 2 FOR ADDITIONAL TERMS AND CONDITIONS

TERMS AND CONDITIONS

1. **AGREEMENT:** For essential governmental purposes only, you agree to rent from us the goods (the "Equipment") and/or to finance certain licensed software and services ("Financed Items", which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order, invoice, request for proposal, response, proposal or other document. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name and address. This Agreement becomes valid upon execution by us. This Agreement will renew on a twelve-month basis unless you send us written notice at least 90 days before the end of the scheduled term that you want to return the Equipment. If any provision of this Agreement is declared unenforceable, the other provisions herein shall remain in full force and effect to the fullest extent permitted by law.

2. **REPRESENTATIONS AND WARRANTIES: CUSTOMER:** You hereby represent and warrant that: (a) you have been duly authorized under the Constitution and laws of the applicable jurisdiction and by a resolution or other authority of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (b) all legal requirements have been met, and procedures have been followed, including public bid ding, in order to ensure the enforceability of this Agreement; (c) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (d) the Equipment will be used only for your essential governmental or proprietary functions consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (e) you have funds available to pay Payments until the end of your current appropriation period, and you intend to request funds to make Payments in each appropriation period from now until the end of the term of this Agreement; and (f) your exact legal name is as set forth on page one of this Agreement.

3. **RENT, TAXES AND FEES:** Subject to paragraph 4, you will pay the monthly Payment (as adjusted for taxes when due, plus any applicable sales and use taxes. You will never pay less than the minimum Payment stated on the front page except as stated in the following sentences. Notwithstanding the amount of the minimum Payment listed on the front page hereof. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request. We will have the right to apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. We may make a profit on any fees and other charges paid under this Agreement.

4. **NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make Payments under this Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which Payments have been appropriated, deliver possession of the Equipment to us. If you fail to allow Owner to pick up all of the Equipment, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the Payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

5. **MAINTENANCE AND LOCATION OF EQUIPMENT;** At your expense, you agree to keep the Equipment: (a) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (b) free and clear of all liens and claims other than liens and claims under this Agreement; and (c) only at your address shown on page 1 of this Agreement, and you agree not to move the Equipment unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, you will allow Owner to pick up all but not less than all of the Equipment and all related manuals and use and maintenance records, at Owner's expense, in retail re-saleable condition, full working order and complete repair, reasonable wear and tear excepted. Owner is responsible for removing any data that may reside in the Equipment, including but not limited to hard drives, disk drives or any other form of memory.

6. **COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE:** You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(ies) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. As between you and us, and to the extent permitted by law and legally available funds, you are responsible for and shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, renting, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of this Agreement to us or that arise directly from our gross negligence or willful misconduct. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and we have not otherwise agreed in writing, you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated residual value of the Equipment (both discounted at 2%). Any proceeds of insurance will be paid to us and credited against any loss or damage.

7. **ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent.** Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent. You agree that if we sell, assign or transfer this Agreement, our assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new owner will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

8. **DEFAULT AND REMEDIES:** You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (b) you make or have made any false statement or misrepresentation to us, (c) you dissolve or terminate your existence or file bankruptcy, or (d) there has been a material adverse change in your financial, business or operating condition. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated residual value of the Equipment (both discounted at 2%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) allow Owner to pick up all of the Equipment and (2) immediately stop using any Financed Items. In the event of any enforcement of our rights under this Agreement after a default by you, you agree to pay our reasonable costs and expenses to the extent permitted by law and to the extent of legally available funds, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 522 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will refund such excess to you which will be your sole remedy. In the event that legal proceedings relating to this Agreement (other than our enforcement of this Agreement after a default by you) are commenced in any court or before any other tribunal of competent jurisdiction, to the extent permitted by law and to the extent of legally available funds, the legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the non-prevailing party on demand of the prevailing party.

9. **INSPECTIONS AND REPORTS:** We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. If information is no longer publicly available, within 30 days after our request, you will deliver all requested information which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof, including the appropriation of funds to pay amounts due under this Agreement.

10. **FAXED OR SCANNED DOCUMENTS, MISC.:** You agree to submit the original duly-signed documents to us the same day of the facsimile or scanned transmission of the documents. We do not accept electronic or stamped signatures. Any faxed or scanned copy may be considered the original, and you waive the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. Any provision in this Agreement requiring you to pay amounts due under this Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew this Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

11. <u>WARRANTY DISCLAIMERS</u>: **YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU ARE UNCONDITIONALLY OBLIGATED TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. YOU ARE NOT ENTITLED TO REDUCE OR SET-OFF AGAINST AMOUNTS DUE UNDER THIS AGREEMENT FOR ANY REASON. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.**

12. **LAW, JURY WAIVER:** <u>Agreements, promises and commitments made by us, concerning loans and other credit extensions must be in writing, express consideration and be signed by us to be enforceable.</u> This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with the law of the state of North Carolina. You consent to jurisdiction and venue of any state or federal court in North Carolina and waive the defense of inconvenient forum.

13. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the Equipment, accessories, maintenance by supplier during normal business hours, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and black toner and developer. Paper and staples must be separately purchased by you. Color toner is included in this Agreement. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you.

14. **EXCESS CHARGES AND COST ADJUSTMENTS:** You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment.

15. **LUNSFORD ACT.** Toshiba also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. Toshiba shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each employee who will engage in any service on Board property pursuant to this Agreement. The checks shall include, at a minimum, checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For Toshiba's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at http://www.nsopw.gov/. Toshiba shall provide certification on the Sexual Offender Registry Check Certification Form that the registry checks were conducted on each individual providing services under this Agreement prior to the commencement of such services. Toshiba shall conduct a current initial check of the registries. The sex offender registry checks shall be conducted within 30 days of Toshiba's execution of the Agreement and prior to any employee performing any services on Board property. In addition, Toshiba agrees to conduct the registry checks and provide a supplemental certification form before any additional individual provides services pursuant to this Agreement. Toshiba further agrees to conduct annual registry checks of all individuals providing services under this Agreement and provide annual certifications at each anniversary date of this Agreement. Toshiba shall not assign any individual to provide services pursuant to this Agreement if said individual appears on any of the listed registries. Toshiba agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each individual providing services under this Agreement and agrees to provide such records and documents to the Board upon request. Toshiba specifically acknowledges that the Board retains the right to audit these records to ensure compliance with this section at any time in the Board's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement.

This instrument has been
preaudited in the manner
required by the School
Budget and Fiscal Control

Signature of Finance Officer

DATE PAID _____

VOUCHER # _____

APPROVED BY