

SOFTWARE FINANCING AGREEMENT

Loan Agreement No. _____

TERMS AND CONDITIONS

THIS SOFTWARE FINANCING AGREEMENT (this "Agreement"), dated as of the _____ day of _____, 20____ by and between **Toshiba Financial Services** ("FS Provider"; together with its successors and assignees, "we", "us" or "our") and _____ a _____, ("Customer", "you" or "your"), with a principal place of business located at the address set forth on the signature page hereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree that we shall loan you an amount equal to the Software Cost (as defined in Section 1 below) pursuant to the terms and conditions set forth herein:

Authorized Supplier/Reseller of the Software Licensor (the "Software Supplier")	Licensor (the "Software Licensor")	Description of Licensed Software

- Funding Authorization.** You have agreed to purchase from the Software Supplier the software license(s) described above and as further described on the Software Supplier's invoice, together with related equipment, services, maintenance, installation and training incurred prior to or within ninety (90) days of the Acceptance Date (as defined below) (collectively, the "Licensed Software"). You direct us to disburse to the Software Supplier \$ _____, which represents the invoiced cost of the Licensed Software, as such amount may be adjusted pursuant to Section 2 below (collectively, the "Software Cost") as payment for the Licensed Software, but only after the delivery and your acceptance of the Licensed Software. Upon our request, you agree to sign and return to us a certificate of acceptance (which, at our option, may be returned electronically) within three (3) business days after the installation of the Licensed Software.
- Promise to Pay; Interest Rate.** You promise to pay to the order of us or our assignee, if applicable, the Software Cost plus interest on the unpaid principal balance thereof at the rate of _____% per annum. The unpaid principal balance of the Software Cost and accrued but unpaid interest shall be payable in consecutive _____ payments of \$ _____ each (as adjusted pursuant to this Section, a "Payment") over a term of _____ months (the "Term"). Payments will begin on the date the Licensed Software is delivered and accepted by you (such date, the "Acceptance Date"). The remaining payments are due on the same date of each subsequent month, quarter or other period, as indicated above. You agree to pay a document fee of \$75.00. You authorize us to adjust the amounts of the Software Cost and the Payment by up to fifteen percent (15%) to reflect any sales, use or other taxes due and payable upon your acquisition or use of the Licensed Software to the extent that such amount is not included in the Software Cost and the Payment stated above. You shall pay the unpaid balance of the Software Cost and all accrued interest and any other charges due hereunder on the earlier of (i) the last day of the Term, (ii) the last day of the minimum term set forth in the Lease Agreement, if applicable and (iii) the termination of the Lease Agreement, if applicable. The "Lease Agreement" shall mean that certain lease agreement/product schedule # _____ or, if blank, no Lease Agreement is referenced in this Agreement.
- Payments.** YOUR OBLIGATIONS TO REMIT PAYMENTS TO US HEREUNDER SHALL BE ABSOLUTE, UNCONDITIONAL AND COMPLETELY INDEPENDENT OF ANY DEFECT IN OR DAMAGE TO THE LICENSED SOFTWARE, CUSTOMER'S LOSS OF POSSESSION OR USE OF THE LICENSED SOFTWARE, OR ANY FAILURE ON THE PART OF ANY PARTY TO PERFORM ANY SERVICES RELATED TO THE LICENSED SOFTWARE. PAYMENTS HEREUNDER ARE NOT SUBJECT TO SET-OFFS, CLAIMS OR DEFENSES OF ANY NATURE WHATSOEVER, ALL OF WHICH YOU HEREBY WAIVE TO THE EXTENT PERMITTED BY APPLICABLE LAW. You agree that you will remit payments to us in the form of company checks (or personal checks in the case of sole proprietorships), direct debit or wires only. Cash and cash equivalents are not acceptable forms of payment under this Agreement, and you will not remit such forms of payment to us. Payment in any other form may delay processing or be returned to you.
- Late Payments.** If any Payment or any other sum due hereunder is not received within three (3) days after the applicable due date thereof, in addition to the amount of each such Payment or other amount, you shall pay a late payment charge of five percent (5%) of such past due amount or \$35 (whichever is greater), but not to exceed the maximum amount allowed by applicable law.
- Ownership; Security Interest.** Unless we are listed as the Software Supplier or Software Licensor above, we have no ownership interest in the Licensed Software, we are not the purchaser or user of the Licensed Software and we shall not be shown as the owner, purchaser or user thereof on any tax reports or returns. To secure all of your obligations under this Agreement and any Lease Agreement, you grant to us a security interest in your rights under and interests in each software license agreement relating to the Licensed Software (except to the extent the security interest hereunder would have the effect of terminating, causing the termination of, or entitling the licensor to terminate such license agreement), including any amendments thereto (each, a "License") and each maintenance, support or other service agreement related to any License, together with all of your rights and interest in any general intangibles which any of the foregoing may represent, any equipment described above and all products and proceeds thereof (collectively, the "Collateral"). You irrevocably grant to us the power to prepare, sign on your behalf (if applicable), and file Uniform Commercial Code ("UCC") financing statements identifying the Collateral and any related amendments or continuations.
- Representations, Warranties and Covenants.** You hereby represent, warrant and covenant as follows: (i) you have the power and authority to enter into this Agreement and to grant the security interest described in this Agreement; (ii) the Collateral is, and will remain, free and clear of all liens and encumbrances of every kind, except for the security interest granted in this Agreement and the rights of the Software Licensor in the Licensed Software; (iii) you will maintain each License in full force and effect and will do all acts deemed necessary by us to continue our perfected, first priority security interest in the Collateral; (iv) you shall remain solely responsible under any License for the observance and performance of all conditions and obligations of you under such License and you will comply with, observe and perform all such obligations and conditions; (v) you shall pay promptly when due all taxes, fees, assessments and other charges levied or assessed on any of the Collateral or on the use of the Collateral or on this Agreement; (vi) you will use the Licensed Software only in the

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FS PROVIDER	CUSTOMER
Toshiba Financial Services	_____ (Customer Full Legal Name)
By: X _____ _____ Name	_____ (Customer Address)
_____ Title	By: X _____ _____ Name
_____ Date	_____ Title
	_____ Date
	_____ Federal Tax ID

lawful conduct of your business, and not for personal, household or family purposes; (vii) your address, legal name, and form and jurisdiction of organization are set forth above or referenced above, and you will not change your address, legal name or form or jurisdiction of organization without thirty (30) days prior written notice to us; and (viii) this Agreement has been duly executed and delivered by your authorized officer or agent and constitutes your legal and binding obligations, enforceable against you in accordance with its terms.

7. Default and Remedies. Each of the following is a "Default" under this Agreement: (i) you fail to make payment of any amount due hereunder within ten (10) days after its due date; (ii) you breach any of your obligations hereunder or under any other agreement between you and us; (iii) any Lease Agreement referenced in Section 4 or any License is terminated for any reason; or (iv) the assignment for the benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency law by or against you. Upon the occurrence of a Default we may (A) terminate or cancel this Agreement and/or any or all other agreements that we have entered with you; (B) declare all of the Software Cost immediately due and payable, without demand or notice to you, and such amount shall bear interest at the lower of one and one-half percent (1-1/2%) per month or the maximum rate allowed by applicable law; (C) terminate or cause to be terminated your rights under each License and withhold, or cause to be withheld, any maintenance, support or other service relating to each License; and (D) exercise any and all rights of a secured party under the UCC. We may also charge you and you shall pay to us all costs and expenses, including reasonable attorneys' and collection fees, incurred by us in enforcing the terms and conditions under, or in protecting our rights and interests in, this Agreement. You irrevocably grant to us the power to terminate or suspend any maintenance, support or other service relating to each License for and on your behalf upon the occurrence and during the continuance of a Default. Our remedies are cumulative, are in addition to any other remedies provided for by law, and may be exercised concurrently or separately. Any failure or delay by us to exercise any right shall not operate as a waiver of any other right or future right. We shall not be required to first foreclose, proceed against or exhaust any Collateral before enforcing your obligations hereunder. You hereby waive presentment, demand for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, and all other notices in connection herewith.
8. DISCLAIMER OF WARRANTIES. YOU ACKNOWLEDGE AND AGREE THAT: WE ARE AN INDEPENDENT CONTRACTOR AND NOT A FIDUCIARY OF YOU; YOU HAVE SELECTED THE LICENSED SOFTWARE, THE SOFTWARE LICENSOR AND THE SOFTWARE SUPPLIER BASED UPON YOUR OWN JUDGMENT; YOU AFFIRMATIVELY DISCLAIM RELIANCE ON ANY STATEMENTS OR REPRESENTATIONS MADE BY FS PROVIDER OR ITS AGENTS OR EMPLOYEES; THE LICENSED SOFTWARE IS OF A DESIGN, SIZE, FITNESS AND CAPACITY SELECTED BY YOU AND YOU ARE FULLY SATISFIED THAT THE SAME IS SUITABLE AND FIT FOR ITS PURPOSES; FS PROVIDER DOES NOT MAKE, HAS NOT MADE, NOR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, THE LEGAL, TAX OR ACCOUNTING TREATMENT OF THIS AGREEMENT OR THE LICENSED SOFTWARE, THE FITNESS FOR ANY PARTICULAR PURPOSE, USE OR MERCHANTABILITY, OR ANY WARRANTY AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, COMPLIANCE WITH APPLICABLE LAW, USE OR OPERATION OR CONDITION OR CAPACITY, AS TO SAFETY, OR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT. YOU WILL OBTAIN YOUR OWN LEGAL, TAX AND ACCOUNTING ADVICE AND WILL MAKE YOUR OWN DETERMINATION OF THE PROPER ACCOUNTING TREATMENT OF THIS AGREEMENT. FS PROVIDER SHALL HAVE NO LIABILITY WHATSOEVER TO YOU OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.
9. Limitation on Charges. Both parties intend to comply with all applicable laws. In no event will we charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that could, but for this Section, be read under any circumstance to allow for a charge higher than that allowable under any applicable legal limit, is limited and modified by this Section to limit the amounts chargeable under this Agreement to the maximum amount allowed under the legal limit. If in any circumstance, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by us in excess of that legally allowed will be applied by us to the payment of amounts legally owed under this Agreement or refunded to you.
10. Notices. All required notices will be considered to have been given if sent by registered or certified mail or overnight courier service to the other party (as the case may be) at its address stated herein, or at such other place as such addressee may have designated in writing. Notices shall be effective upon the earlier of actual receipt or four days after the mailing date.
11. Assignment; Successors and Assigns. You shall not assign or transfer this Agreement, any License or the Licensed Software or any of your obligations under this Agreement or any License, without our prior written consent. We may sell or assign all or a portion of our interests herein without notice to you. In that event, the assignee (the "Assignee") will have such rights as we assign to them but none of our obligations (we will keep those obligations) and the rights of the Assignee will not be subject to any claims, defenses or set-offs that you may have against us. This Agreement shall be binding upon you and your representatives, successors and assigns, and shall inure to the benefit of us, our successors and assigns. You acknowledge that the Assignee is not the owner, developer, designer, licensor, reseller or supplier of the Licensed Software.
12. Indemnification. You are responsible for all losses, claims, liens, suits, damages, liabilities, infringement claims, injuries, taxes, and attorneys' fees and costs, including, without limitation, those incurred in connection with responding to subpoenas, third party or otherwise ("Claims"), incurred or asserted by any person, in any manner relating to this Agreement or the Licensed Software. You agree to indemnify and defend us against, and hold us harmless from, any and all Claims, although we reserve the right to control the defense and to select or approve defense counsel.
13. GOVERNING LAW, JURY TRIAL WAIVER, SEVERABILITY, EFFECT OF AGREEMENT. THIS AGREEMENT AND ANY AND ALL OBLIGATIONS AND LIABILITIES SECURED HEREBY SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF IOWA, WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES THEREOF. YOU CONSENT TO THE NONEXCLUSIVE JURISDICTION AND VENUE OF FEDERAL AND STATE COURTS IN IOWA. BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL. If a court finds any provision of this Agreement to be unenforceable, all other terms shall remain in effect and enforceable. This Agreement constitutes the full and complete agreement between you and us in connection with the Licensed Software. This Agreement cannot be modified except by mutual, signed written agreement between you and us. This Agreement shall continue in full force and effect for so long as any amount shall remain outstanding hereunder.
14. Miscellaneous. You authorize us to insert or correct missing information on this Agreement, including agreement numbers, your proper legal name, jurisdiction and form of organization, the agreement/product schedule number of any Lease Agreement and any information describing the Licensed Software. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignees, potential purchasers and third parties having an economic interest in this Agreement or the Licensed Software. Each of our respective rights and indemnities will survive the termination of this Agreement. TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT. WHAT THIS MEANS TO YOU: WHEN YOU OPEN AN ACCOUNT, WE WILL ASK FOR YOUR NAME, ADDRESS AND OTHER INFORMATION THAT WILL ALLOW US TO IDENTIFY YOU. WE MAY ALSO ASK TO SEE IDENTIFYING DOCUMENTS. We may receive compensation from the Software Supplier in order to enable us to reduce the cost of this Agreement below what we otherwise would charge. If we received such compensation, the reduction in the cost of this Agreement is reflected in the Payment.
15. Electronic Transmission of Documents; Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement. The executed counterpart which (a) has our original signature (if executed by us manually), (b) is electronically maintained by us (if executed by us electronically), and/or (c) is in our possession shall constitute the original agreement for all purposes, including, without limitation: (i) any hearing, trial or proceeding with respect to this Agreement; and (ii) any determination as to which version of the Agreement constitutes the authoritative record of the Agreement for the purposes of establishing the provisions of the Agreement and to the extent the Agreement constitutes chattel paper as that term is defined in the UCC, perfection of a security interest by possession or control may only be accomplished by possession or control of such counterpart. The Agreement is not binding on us until we sign it. If you sign or transmit the Agreement to us electronically, you shall provide the counterpart containing your original manual signature upon our request. Both parties agree not to raise as a defense to the enforcement of the Agreement that it was executed or transmitted electronically by either party.