



Lease Agreement

APPLICATION NO.

AGREEMENT NO.

18450 Crossing Drive, Suite D • Tinley Park, IL 60487 • Phone: 708.614.1770 • Fax: 708.614.1760

The words Lessee, you and your refer to Customer. The words Lessor, we, us and our refer to Proven Business Systems, LLC.

CUSTOMER INFORMATION

Form with fields for FULL LEGAL NAME, STREET ADDRESS, CITY, STATE, ZIP, PHONE, FAX, BILLING NAME, BILLING STREET ADDRESS, CITY, STATE, ZIP, E-MAIL, and EQUIPMENT LOCATION.

EQUIPMENT DESCRIPTION

Table with columns: MAKE/MODEL/ACCESSORIES, SERIAL NO. Row 1: 1, Toshiba, e-STUDIO5516AC

3 payments at \$0.00 followed by :

See the attached Schedule A

TERM AND PAYMENT SCHEDULE

60 Payments\* of \$285.54 The lease contract payment ("Payment") period is monthly unless otherwise indicated. \*plus applicable taxes

END OF LEASE OPTIONS

You may choose one of the following options within the area you check and initial at the end of the original term, provided that no event of default under the Agreement has occurred and is continuing.

- 1) Purchase all but not less than all the Equipment for the Fair Market Value per paragraph 1, 2) Renew the Agreement per paragraph 1, or 3) Return the Equipment per paragraph 3.
1) Purchase the Equipment for \$1.00, or 2) Return the Equipment per paragraph 3.

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT; THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

LESSOR ACCEPTANCE

Form for Lessor Acceptance with fields for Proven Business Systems, LLC, LESSOR, 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.

Form for Customer Acceptance with fields for Frankfort Square Park District, CUSTOMER, SIGNATURE, TITLE, DATED.

FEDERAL TAX I.D. # PRINT NAME

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon you signing below, your promises herein will be irrevocable and unconditional in all respects.

Form for Acceptance of Delivery with fields for Frankfort Square Park District, CUSTOMER, SIGNATURE, TITLE, DATE OF DELIVERY.

**1. AGREEMENT:** For business purposes only, you agree to lease from us the goods, together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries (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, excluding equipment marked as not financed under 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 or invoice. 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 and will start on the date that you sign a certificate of acceptance of the Equipment. Transition Billing/due date adjustments will be in an amount equal to 1/30th of the Payment, multiplied by the number of days between the Agreement start date and the first Payment due date, which shall be the 20th of each month. Unless otherwise stated in an addendum hereto, this Agreement will renew for 3-month term(s) unless you send us written notice between 90 and 150 days (before the end of any term) that you want to purchase or return the Equipment in accordance with this Agreement. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

**2. RENT, TAXES AND FEES:** You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may increase the Payments to offset the loss of any tax benefits caused by your acts or omissions or a change in the applicable tax laws. We may charge you for any filing fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee of \$125.00, as shown on our invoice or addendum, to cover us for all closing costs. 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. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

**3. MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST:** At your expense, you agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it 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, if you do not purchase the Equipment, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. If this Agreement is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. You will notify us within 30 days if your state of organization revokes or terminates your existence. We own the Equipment and you have the right to use the Equipment under the terms of this Agreement.

**4. 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(s) 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. If you fail to comply with this requirement within 30 days after the start of this Agreement, we may do as provided in either (A) or (B), as follows: (A) obtain insurance on your behalf and you will pay us for any insurance premium and related charges on which we may make a profit; or (B) we may charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and, if requested, to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. No such loss or damage shall relieve you of your payment obligations under this Agreement. 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 purchase price of the Equipment (both discounted at 2%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. All indemnities will survive the expiration or termination of this Agreement.

**5. 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. 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 Lessor 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.

**6. 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 or any other agreement with us or any of our affiliates or any material agreement with any other lender, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition, or (e) any guarantor defaults under any guaranty for this Agreement. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or if less, the maximum charge allowed by law. 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 purchase price 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) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, 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 not be subject to any penalties.

**7. 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. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) compiled, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income, a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end, and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.

**8. FAXED OR SCANNED DOCUMENTS, MISC.:** You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. 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. Your executed counterpart, transmitted electronically or otherwise, which has our original signature and/or is in our possession shall constitute chattel paper as that term is defined in the UCC and shall constitute the original agreement for all purposes. 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. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

**9. WARRANTY DISCLAIMERS:** YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE 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. 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.

**10. LAW, JURY WAIVER:** Agreements, promises and commitments made by Lessor, concerning loans and other credit extensions must be in writing, express consideration and be signed by Lessor to be enforceable. 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 the principal place of business of Lessor or its assignee. You consent to jurisdiction and venue of any state or federal court in the state the Lessor or its assignee has its principal place of business and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, **YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.**



AGREEMENT NO.

## STATE AND LOCAL GOVERNMENT ADDENDUM

Addendum to Agreement # \_\_\_\_\_, between **Frankfort Square Park District**, as Customer and **Proven Business Systems, LLC**, as Lessor. The words **you** and **your** refer to **Customer**. The words **we**, **us** and **our** refer to **Lessor**.

The parties wish to amend the above-referenced Agreement by adding the following language:

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER:** You hereby represent and warrant to us that: (a) you have been duly authorized by 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 bidding, 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 by you only for essential governmental or proprietary functions of you 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 contracted Payments until the end of your current appropriation period, and you intend to request funds to make contracted 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.

**NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make contracted 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 contracted Payments under the 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 contracted Payments have been appropriated, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, 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 contracted 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 contracted 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.

**TITLE TO THE EQUIPMENT:** If the selected purchase option for this Agreement is \$1.00 or \$101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: "You agree that the terms and conditions of the Agreement and any supplement or schedule thereto and any related acceptance certificate constitutes the entire agreement regarding the financing or lease of the Equipment and supersedes any purchase order, invoice, request for proposal or other related document."

Any provision in the Agreement stating that the Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: "This Agreement will renew for month-to-month terms unless you purchase or return the Equipment (according to the conditions herein) or send us written notice at least 30 days (before the end of any term) that you do not want it renewed."

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: "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."

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: "To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a UCC-1 financing statement."

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: "You shall not be required to indemnify or hold us harmless against liabilities arising from the Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you 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, lease, 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 the Agreement to us or that arise directly from our gross negligence or willful misconduct."

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: "You will be in default if: (i) you do not pay any Payment or other sum due to us under the Agreement when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (ii) you make or have made any false statement or misrepresentation to us, (iii) you dissolve, terminate your existence or file bankruptcy, or (iv) there has been a material adverse change in your financial, business or operating condition."

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: "In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys' fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee."

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: "This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum."

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

**Proven Business Systems, LLC**

\_\_\_\_\_  
Lessor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Frankfort Square Park District**

\_\_\_\_\_  
Customer

**X**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.



Proven IT  
18450 Crossing Drive | Tinley Park, IL 60487  
Phone: 708.614.1770 | Fax 708.614.1760  
provenIT.com

**SALES AGREEMENT**

Sales Order Date 10/18/2022	Customer PO#	Delivery Date	Rep Name Karl Landenberger		
<b>Bill To:</b> Frankfort Square Park District		<b>Ship To:</b> Frankfort Square Park District			
<b>Address</b> 7540 W BRAEMAR LANE		<b>Address</b> 7540 W BRAEMAR LANE			
<b>City</b> Frankfort	<b>State</b> IL	<b>Zip</b> 60423	<b>City</b> Frankfort	<b>State</b> IL	<b>Zip</b> 60423
Phone (815) 469-3524		Phone (815) 469-3524	Email recreation@fspd.org		
Attention Audrey Marcquenski		Attention Audrey Marcquenski			

Qty	Description	Unit Price	Total
1	e-STUDIO5516AC e-STUDIO5516AC e-STUDIO5516AC		\$0.00
	e-STUDIO5516AC 50 Sheet Finisher <del>with Saddle Stitch</del> (7505AC/8508C Series)		
1	e-STUDIO5516AC Fax Unit/Second Line Fax Unit GD1370N		
1	e-STUDIO5516AC Holepunch MJ1111/1112 (7505AC/8508C Series) MJ6106N		

**Networking Charges**

\*Additional charges for networking will be applied after the first 2hrs at a \$100.00 hourly rate

I (We) Decline Networking Service:  \_\_\_\_\_  
Initial

*\*For additional items see addendum*

Subtotal:	Per Lease
Tax Rate:	Per Lease
Tax	Per Lease
Networking:	Per Lease
Delivery/Installation:	Per Lease
<b>Total:</b>	Per Lease

Customer Signature: \_\_\_\_\_ Date \_\_\_\_\_

**1. GENERAL:** Invoices shall be due and payable by the Customer for all equipment, accessories, supplies or maintenance purchased pursuant to this agreement (The "Goods and Services"), within the time period specified on the front side of this document. Customer shall pay all applicable sales tax, installation and freight charges. If Customer fails to make any payment when due, there will be a service charge of five percent (5%) of the total amount due, together with an interest rate of one and one-half percent (1 ½%) of the total amount due or the maximum legal rate allowed by law, whichever is less. Customer shall pay a \$20.00 service charge on any returned checks. Customer shall pay all collection expenses incurred by Seller ("Proven IT"), including but not limited to, court, attorneys and accounting fees.

**2. TAXES:** Customer shall be responsible for all sales tax, use tax or other taxes (including without limitations personal property taxes assessable on the equipment) and fees charged relative to this agreement. Customer agrees to reimburse Proven IT for all amounts paid or payable by Proven IT in discharge of the forgoing taxes. Customer shall not be responsible for taxes based on Proven IT's gross or net income.

**3. DEFAULT:** If Customer is in default of any term or condition, Seller may cancel this agreement in whole or part at any time upon ten (10) day's written notice. If Seller cancels, the agreement will be prorated based upon the unused portion of the term of the agreement. Any amount due to Seller will be invoiced and is payable upon receipt. Any amounts due to the customer will be applied to any unpaid invoices prior to refund. Early termination of contract is non-refundable.

**4. AVAILABILITY:** Customer agrees that the Goods and Services are subject to availability and Seller reserves the right to substitute models of like specification if practicable. Seller may cancel any order or any part of an order without cause at any time and without penalty, and Seller's sole obligation shall be to return any down payment paid by Customer. If parts become unavailable for discontinued equipment, Seller reserves the right to delete said equipment in accordance with the terms of this agreement.

**5. DELIVERY AND INSTALLATION:** Seller shall use its standard packaging. Seller shall choose the method of delivery; Seller reserves the right to deliver the goods in installments. Customer will pay an invoice when due, without regard to delivery or non-delivery of subsequent installments. Delay in delivery of any installments shall not relieve customer of its obligations to accept remaining installments. Equipment will be installed in accordance with manufacturer's specification. At customer's sole cost and expense, customer shall insure that equipment is placed in an environment that conforms with the manufacturer's specifications and requirements and will bear all costs and expenses for any additional necessities required for installation such as telephone and electrical wiring, remodeling, and noise and power filters. Any electrical work, external to the equipment (i.e. associated peripheral equipment, power, transmission and phone lines) and equipment line cord, is not covered by this agreement, unless otherwise specified on the front side of this document.

**6. MAINTENANCE, SUPPORT AND SERVICE:** Any and all maintenance, support and service in relation to the goods and services shall come directly from the manufacturer, unless separately agreed to in writing by the parties. Proven IT shall not provide support, education, maintenance, or repairs in relation to the goods and services as Proven IT is acting merely as a reseller and installer of the goods. Proven IT is not acting as employee or agent of the manufacturer in conjunction with the resale or installation of the goods.

**7. INDEPENDENT CONTRACTOR:** It is understood and acknowledged that the goods and services which Proven IT provides to Customer hereunder shall be in the capacity of an independent contractor and not as an employee or agent of Customer. Proven IT shall not be eligible for and shall not receive any employee benefits from Customer and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums and all similar taxes and fees relating to the fees earned by Proven IT hereunder.

**8. TITLE AND RISK OF LOSS:** The goods shall be identified to the contract, and risk of loss shall pass to customer when the goods are placed in the hands of the carrier. For goods purchased outright, title will pass to customer upon payment in full. For goods purchased on an installment payment basis, title will pass to Customer on the installation date.

**9. SECURITY INTEREST.** Seller expressly reserves a security interest in the goods until payment in full has been collected and Customer agrees to notify seller prior to relocation of any goods for which Seller has a security interest. Customer shall execute any other document, including a financing statement or other document similar to the UCC-1, necessary to protect Seller's security interest in the goods. Customer authorizes Seller to file, at customer's expense, any financing statement related to the goods without Customer's signature, except where prohibited by law.

**10. NO WARRANTIES:** PROVEN IT IS NOT THE MANUFACTURER OF THE GOODS AND SERVICES. CUSTOMER UNDERSTANDS AND AGREES THAT THE GOODS AND SERVICES ARE PROVIDED "AS IS" AND PROVEN IT DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE REGARDING OR RELATING TO THE GOODS AND SERVICES, OR ANY MATERIALS, SERVICES OR ITS INSTALLATION FURNISHED OR PROVIDED TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, INCLUDING UPDATES OR SUPPORT. PROVEN IT MAKES NO WARRANTY OR REPRESENTATION REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE GOODS AND SERVICES, REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE GOODS AND SERVICES, THAT THE GOODS AND SERVICES WILL MEET THE CUSTOMER'S NEEDS OR EXPECTATIONS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. USE OF THE GOODS AND SERVICES IS AT CUSTOMER'S SOLE RISK. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE GOODS AND SERVICES IS AT CUSTOMER'S OWN DISCRETION AND RISK. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM USE OF THE GOODS AND SERVICES. ANY APPLICABLE WARRANTY ON THE GOODS AND SERVICES PROVIDED BY THE MANUFACTURER WILL PASS THROUGH TO THE CUSTOMER.

**11. LIMITATIONS:** The goods shall not be returned to Seller for credit without Seller's written consent. No credit will be given after fourteen (14) days from the date of the invoice. All returns for credit within fourteen (14) days are subject to up to a 20% restocking fee. All costs of return shall be the responsibility of the Customer.

**12. LIMITATION OF LIABILITY: TO THE MAXIMUM EXTENT PERMITTED BY LAW, OTHER THAN DAMAGES PROXIMATELY CAUSED BY REASON OF WILLFUL MISCONDUCT ON THE PART OF PROVEN IT, PROVEN IT, ITS REPRESENTATIVES, SUCCESSORS AND ASSIGNS DO NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY CAUSED BY THE GOODS AND SERVICES NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR PRODUCTS, BUSINESS INTERRUPTION, FAILURE OR MALFUNCTION OF THE GOODS AND SERVICES, LOSS, OR OTHERWISE FOR THE PROVISION OF THE GOODS AND SERVICES, EVEN IF NEGLIGENT. PROVEN IT PROVIDES THE GOODS AND SERVICES TO CUSTOMER "AS IS" AND WITH ALL FAULTS. PROVEN IT DOES NOT WARRANT THE ERROR-FREE OPERATION OF THE GOODS AND SERVICES. CUSTOMER ACKNOWLEDGES THIS ALLOCATION OF RISK BY EXECUTION OF THIS AGREEMENT AND/OR BY THE PAYMENT OF FEES TO PROVEN IT. IN NO EVENT WILL PROVEN IT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR OTHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PROVEN IT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. IN NO EVENT SHALL PROVEN IT'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO PROVEN IT DURING THE 90-DAY PERIOD IMMEDIATELY PRECEDING THE ALLEGED CLAIM AND/OR TERMINATION OF THIS AGREEMENT.**

**13. ASSIGNMENT:** This agreement shall not be assigned by Customer without Seller's express written consent. In the event that Seller assigns any of its obligations under this agreement, Seller shall remain primarily responsible to perform those obligations. Any claim or defense Customer may have relating to those obligations must be asserted on or against Seller and not its assignee.

**14. NOTICES:** All notices required to be given under this agreement shall be in writing and shall be sent by U.S. first class mail to the parties at the address listed on the front of this agreement.

**15. INDEMNIFICATION:** Customer shall bear all risk of theft, loss or damage not caused by Seller's employees or agents, to all goods and services installed under this agreement. Customer agrees to indemnify, defend and hold harmless Seller, its officers, directors, employees and agents from all loss, liability, claims or expenses (including reasonable attorneys' fees) arising or Customer's use of the goods and services, including but not limited to liabilities arising from bodily injury, including death, or property damage to any person, unless caused solely as the result of an intentional act or omission by Seller.

Seller shall indemnify Customer against any costs, losses, damages or liability incurred by Customer as the result of any third party's claim of infringement of its patent, copyright trademark which claim arises out of the use of the product by Customer. Customer shall immediately notify Seller in writing of such claim or demand. Seller shall have the sole right to control, and defense, thereof, and Customer agrees that it will not settle any such claim against itself without the prior written consent of Seller. Provided however, that Seller shall not indemnify Customer with respect to any claim relating to product(s) which is/are manufactured according to Customer's instructions, or modified by Customer or combined with other non-seller products, equipment, systems and/or processes. Failure of Customer to provide timely notification of claim to Seller shall relieve Seller of its obligation to indemnify Customer.

**16. FORCE MAJURE:** Neither party shall be responsible for delays or failure in performance of this agreement (other than failure to make payment) to the extent that such party was hindered in its performance by act of god, abuse, misuse, excess of voltage or power surges, repairs other than those provided by PROVEN IT authorized personnel, civil commotion, labor dispute, or any other occurrence beyond its reasonable control.

**17. SEVERABILITY:** If any provision of this agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of the remaining provisions of this agreement.

**18. APPLICABLE LAW:** This agreement shall be governed by the laws of the State of Illinois and the Uniform Commercial Code as adopted therein without regard to choice of law principles. In the event of litigation or other proceedings by Seller to enforce or defend any term or provision of this agreement, Customer agrees to pay all costs and expenses sustained by Seller, including but not limited to, reasonable attorney's fees.

**19. SELLER'S AGENTS.** Customer acknowledges that it has been advised that no agent, employee, or representative of Seller has any authority to bind seller to any affirmation promise, representation, or warranty concerning any goods and services, and unless such affirmation, promise, representation, or warranty is specifically set forth in this agreement it does not form a basis of this bargain and shall not be enforceable against Seller.

**20. ACCEPTANCE:** This agreement and its terms and conditions shall not take effect until accepted and executed by an authorized Seller representative at Seller's offices in the state of ILLINOIS.

**21. ENTIRE AGREEMENT:** This instrument, and any attachments hereto, is the entire agreement between customer and seller and supersedes any proposal or prior agreement, oral written, and any other communications relating to the subject matter of this agreement. The terms and conditions of this agreement shall supersede any terms and conditions which may be contained on any purchase order or other document which may be issued by Customer.

Customer Initials \_\_\_\_\_

Proven IT Representative Initials \_\_\_\_\_



## SERVICE AGREEMENT

Customer:	Frankfort Square Park District	Phone:	(815) 469-3524
Contact:	Audrey Marcquenski	Email:	recreation@fspd.org
Address:	7540 W BRAEMAR LANE	City:	Frankfort
		State:	IL
		Zip:	60423

Model	Serial#	ID#	Meter	Meter Contact
Toshiba e-STUDIO5516AC				

Attach Schedule A for additional equipment. Attach Schedule B for additional customer owned equipment. Maximum 7 Devices above.

### SERVICE

<b>B/W Monthly Copies</b>	<b>0</b>	x Service Rate: <b>.0055</b>	<b>0.00000</b>	<b>\$0.00</b>
	B/W Overages Billed at	<del>0.00000</del>		
<b>Color Monthly Copies</b>	<b>0</b>	x Service Rate: <b>.0534</b>	<b>0.00000</b>	<b>\$0.00</b>
	Color Overages Billed at	<del>0.00000</del>		
<b>B/W Monthly Prints</b>	<b>0</b>	x Service Rate:	<b>0.00000</b>	<b>\$0.00</b>
	B/W Overages Billed at	<b>0.00000</b>		
<b>Color Monthly Prints</b>	<b>0</b>	x Service Rate:	<b>0.00000</b>	<b>\$0.00</b>
	Color Overages Billed at	<b>0.00000</b>		

Contract Start Date:	<b>10/18/2022</b>	Total:	
Term:	<b>60</b>		

<b>Select a Base Billing Cycle</b> <b>Monthly</b>	<b>Select an Overage Cycle</b> <b>Monthly</b>
<input checked="" type="radio"/> Unlimited Remote Support: \$200 Annually	<input type="radio"/> Decline Remote Support: \$150/hr Chargeable
Meter Contact:	Phone:      Email:

**Meter Collection Method:** FM Audit Installed on Print Server. Required for Auto-Toner Replenishment

**Notes:** Will be billed Monthly on Actual Usage, Rate locked for 5 Years

<b>Authorized Customer Signature</b>	<b>Date</b>
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<b>Proven IT Authorized Signature</b>	<b>Date</b>
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Agreement is not binding until accepted by Proven IT, Tinley Park, IL  
 Leased equipment-Maintenance Agreement will run full term of lease and is non cancellable.

## Terms and Conditions

1. **ITEMS INCLUDED:** This Agreement Includes the following as applicable: unlimited service calls, parts (as classified by the manufacturers) and consumable supplies (maintenance kits, transfer kits, fuser kits, process kits, developer and imaging drums and loner). Supplies consumption is based off the manufacturer's suggested yields and fill rate. If supplies consumption is excessive, a surcharge may be assessed. Proven IT reserves the right to reset supply items (i.e. fuser and maintenance kits) in lieu of replacement so long as the device functionality and print quality are not affected.
2. **ITEMS EXCLUDED:** This Agreement excludes the following unless otherwise specified:
  - a. Paper and staples.
  - b. Any items damaged by Customer such as, but not limited to, doors, paper trays and covers. Replacement of these items will be charged to the Customer at current Proven IT rates.
  - c. Fax Machines: Thermal heads, process units and fuser units.
  - d. Network Connected Equipment: Network connected equipment will be covered up to the network connection of the Printer/MFP. Service calls caused by computer or network issues will be charged to the Customer at current Proven IT rates.
3. Proven IT reserves the right, at reasonable times during Customer's normal business hours and upon reasonable notice to customer, to inspect all equipment covered under this Agreement to determine that it is in good mechanical condition prior to the effective date on the front of this Agreement. Should the equipment require significant repair or overhaul, such repairs may be chargeable to the Customer at current Proven IT rates. Such repairs will be performed only upon Agreement of both parties.
4. **SERVICE:** Proven IT agrees to provide emergency service and all maintenance on the equipment listed on the attached schedule(s) for the term of the Agreement except as follows:
  - a. Use of supplies, spare parts, or paper that do not meet manufacturer's specifications and cause abnormal service problems.
  - b. Fire, accident, theft or damage to the machine due to repairs or movement by someone other than an authorized Proven IT representative.
  - c. If replacement of consumable items recommended by Proven IT service representatives is not complied with and results in additional service calls, the Customer will be charged at our normal hourly rates. These consumable items are to include, but not limited to toner, developer, drums and supply modules.
  - d. Proven IT shall not be responsible for repairs or maintenance resulting from the use of supplies or parts not obtained from Proven IT. Any repairs resulting from the use of supplies or parts not obtained through Proven IT will be charged to the Customer at current Proven IT rates. For these purposes, the term "supplies" will not include paper, envelopes, labels or other related paper products.
  - e. Proven IT shall not be responsible for delays, inability to provide service calls due to strikes, accidents, act of God or any other event beyond its reasonable control. All Service under this Agreement shall be rendered during normal working hours of 8:00am to 5:00pm Monday through Friday, local time, unless otherwise agreed upon by both parties.
  - f. Proven IT does not guarantee that parts will be available during the term of the Agreement, but in the event a manufacturer discontinues parts or supplies for a specific device, the unused portion of the services under this Agreement can be transferred to a new machine purchased through Proven IT. Should all or some parts become unavailable and no longer are supported by the Original Equipment Manufacturer ("OEM") the products shall be considered "End of Life". In such cases, Proven IT will make all reasonable efforts to honor any respective contract Maintenance Agreement term or as agreed upon service coverage. "End of Life" defined products will not be available under new or renewed Contracted Maintenance Agreements.
5. **EQUIPMENT:** All equipment covered under the Agreement must adhere to the following guidelines:
  - a. Equipment must be located in a normal office setting with sufficient amount space for access, free from excessive dust, humidity, temperature and ammonia or other corrosive fumes.
  - b. Equipment must be operated on an isolated electrical line, if so noted on the Scope of Work Agreement or the OEM. Equipment must always be operated on a UL approved electrical circuit, with proper current, voltage and type of outlets as specified by the OEM.
  - c. Equipment should be operated within the specified operational (including usage) specifications of the OEM.
  - d. Only Proven furnished supplies may be used.
6. **PREVENTATIVE MAINTENANCE:** Proven IT will perform preventative maintenance on each machine based on the manufacturer's recommended interval. This will include cleaning toner and paper dust out of the inside. Checking and proactively replacing high-mortality parts (i.e. rollers) and a wipe-down of the exterior of the machine.
7. **METERS:** Proven IT utilizes Print Management Software to electronically report meters and supply consumption. Customer agrees to work with Proven IT's software administrator to install the Print Management software prior to the New Customer Onboard. Customer grants Proven IT permission to upgrade, modify, or maintain the Print Management software or to install new releases or additions. Under no circumstances will the Print Management software provide Proven IT access to confidential information other than data directly related to the Printers/Copiers on the network. Customer agrees not to delete, alter, modify, or otherwise render the software unusable during the term of this Agreement and agrees to reinstall the software in the event their actions inadvertently affect reporting capabilities. If Customer declines to install Proven IT's Print Management Software, then Proven IT retains the right to invoice Customer at the prevailing hourly labor rate for services due to manual meter collections. Manual meter collection will be performed during standard business 8:00am to 5:00pm Monday through Friday, local time.
8. **NEW EQUIPMENT ADDED:** Throughout the duration of the Agreement, if additional metered devices of like models to those on the Agreement today are discovered in the Customer fleet, they will be automatically added to this Agreement and initiated for coverage and billing.

Throughout the duration of the Agreement, if additional metered devices of dissimilar models to those on the Agreement today are discovered in the Customer fleet, or are reported by the Customer to be added to the Agreement, they will be added to the Agreement at the then current rates and be included for coverage and billing. For devices of this kind, the Customer will have the opportunity to remove the devices from the Agreement 90 days from the date they were added.
9. **REMITTANCE:** Payment is due thirty (30) days from date of Customer's receipt of invoice. Delinquent accounts which are not being disputed in good faith by Customer shall accrue interest at a rate of one and one half percent of the past due amount per month or, (if lower, the maximum rate of interest chargeable under applicable law). Customer shall pay all federal, state and local sales, use, property, excise or other taxes imposed with respect to the purchase price listed on this Agreement.
10. **BILLING AND CONTRACT ADJUSTMENT:** Proven IT will invoice the Customer monthly for the Monthly Payment and usage will be reconciled on the frequency indicated on the front of this Agreement, Customer will be invoiced for any overages multiplied by the rates indicated on the front of this Agreement. The contract volume can be adjusted at the end of each reconciliation period. The Contract volume may be adjusted down to the previous quarters' actual usage; not to exceed 15% of the current volume at the time of the adjustment. At the end of the first year of this Agreement and once each successive twelve month period, we may increase the base contract payment and overage rates by a maximum of 15% or an equivalent amount to that stated on any associated Value Agreement or Lease Agreement between both the parties. Additionally, Proven reserves the right to increase the base contract payment and overage rates beyond the aforementioned 15% annual increase on equipment which is more than five (5) years old.
11. **BREACH OR DEFAULT:** If the Customer does not pay all charges as provided hereunder promptly when due Proven IT may (a) Refuse to service the equipment or (b) Furnish service on a C.O.D, "Per Call" basis at current Proven IT rates.

The Customer agrees to pay Proven IT costs and expenses of collection including reasonable attorney's fees permitted by law in addition to all other rights and remedies available to Proven IT.
12. **AGREEMENT:** This Agreement is not refundable or transferable to a third party unless agreed upon in writing by both parties.
13. **PENALTY FOR EARLY CANCELLATION:** This Agreement is binding and noncancelable. If the Customer wishes to terminate the Agreement in advance of the Agreement maturity date then the Customer is responsible for buying out the remaining term of the Agreement.

The penalty is calculated using the then current service rates multiplied by the remaining term published on the front of the Agreement or the remaining term based on any Supplements that have been executed modifying the term of the Agreement.

For Customer Agreements billing using Actual Meter reads or Usage Based programs, the penalty is calculated based on the prior 12 months average monthly billing multiplied by the remaining term published on the front of the Agreement or the remaining term based on any Supplements that have been executed modifying the term of the Agreement.

If there is no request for cancellation, but all devices covered under this Agreement have been removed from service, this will be considered a cancellation of the Agreement and the formula(s) listed above will apply.
14. **RESPONSIBILITY:** Other than the obligations set forth herein, Proven IT disclaims all warranties, expressed or implied, including any implied warranties or merchantability for use or fitness for a particular purpose. Proven IT shall not be responsible for direct, incidental or consequential damages, including but not limited to, damages arising out of the performance of the equipment or the loss of the use of the equipment and the Customer hereby waives any claims related thereby.
15. **INDEMNIFICATION:** Each party shall indemnify, defend and hold harmless the other party and its officers, directors, employees, agents and representatives from any and all claims, losses, damages or expenses, including but not limited to, court costs, fees and expenses of counsel and attorney fees to the extent any such claim, loss, or damage results from a breach of the terms of the Agreement by a party, or resulting from the death or bodily injury for any person or damage to any property to the extent it was caused by the negligent act, willful misconduct, tortious or other unlawful act, error or omission of a party or its officers, directors, employees, agents and representatives on connection with the subject matter of this Agreement.
16. **JURISDICTION:** This Agreement shall be governed by and construed according to the laws of the State of Illinois applicable to Agreements wholly negotiated, executed and performed in Illinois. It constitutes the entire Agreement between parties and may not be modified except in writing signed by duly authorized officer of Proven IT and the Customer.
17. **TRAINING:** The customer agrees to make available and designate a key contact for training on the use of any Proven IT furnished equipment. Should the employment status of designated operator change so as to affect the contact's availability to perform the assignment, the Customer shall inform Proven IT as soon as reasonably practical.
18. **RENEWAL:** This Agreement shall be renewed automatically upon approval by Proven IT unless Customer notifies Proven IT in writing between 90 and 150 days prior to the end of the Agreement term. Customer agrees to pay the then current rates at the beginning of each subsequent renewal Agreement period.