



## POPP.com, Inc. (dba POPP Communications) TOSHIBA TERMS AND CONDITIONS

The Agreement between POPP.com, Inc. ("POPP" or "Company") and Client sets forth the legal rights and obligations governing the Company's offer and delivery of Equipment Client's receipt and use thereof. Client shall contract for, and order, Equipment on a Company-designed Service Agreement ("SA").

The offer and delivery of Equipment are subject at all times to the receipt by Company of all required approvals or authorizations from regulatory agencies having jurisdiction over the Company. Client shall be deemed to have accepted, and therefore will be bound by, all the applicable terms and conditions relating to the Equipment received and used.

**THESE GENERAL TERMS AND CONDITIONS WILL BE LOCATED ON POPP'S WEBSITE ([www.popp.com](http://www.popp.com)) AND MAY BE MODIFIED BY POPP AT ANY TIME AS PERMITTED OR REQUIRED BY LAW. THE COMPANY SHALL PROVIDE CLIENT WITH AT LEAST THIRTY (30) DAYS PRIOR NOTICE OF ANY CHANGES THAT WOULD MATERIALLY AND ADVERSELY AFFECT CLIENT SO THAT CLIENT MAY ELECT TO AVOID THE EFFECTS OF THE CHANGES. COMPANY NOTICE MAY BE FURNISHED BY: (1) A MESSAGE INCLUDED WITH THE INVOICE; (2) A POSTCARD OR LETTER; (3) CALLING AND SPEAKING TO CLIENT OR LEAVING A MESSAGE; OR (4) E-MAIL. THE COMPANY WILL PUBLISH CHANGES ON RELEVANT COMPANY WEBSITES AT LEAST FIFTEEN (15) DAYS IN ADVANCE OF THEIR TAKING EFFECT. CLIENT SHALL BE BOUND BY CHANGES AFTER THEY BECOME EFFECTIVE. IN NO EVENT WILL ANY CHANGE BE DEEMED TO AFFECT ANY EXISTING SERVICE AGREEMENT.**

**1. Payment** Client agrees to pay the Total Purchase Price set forth in this Agreement and, in addition, to pay or reimburse POPP for all transportation, packing, rigging and drayage charges associated with the transportation of any Equipment from POPP designated points of shipment, applicable installation charges, and all sales, excise and other taxes. POPP will not invoice Client with any sales taxes with respect to which Client furnished POPP a valid exemption certificate from the State imposing the tax. Payment of fees and charges are due on or before the due date stated on the invoice. Payment must be received by POPP before the due date or Client may be assessed a late payment fee of eighteen (18) percent per year calculated on a daily basis or the statutory maximum on any undisputed balances not paid when due or any disputed balances later found to be correct. Finance charges may be assessed, as of the original Due By Date, against any disputed amount denied by Company. POPP reserves the right to delay delivery of equipment at any time if, in POPP's opinion, the financial condition of the Client warrants such action. Unless written notice of any dispute is received before the due date, such invoice shall be deemed to be correct and any further dispute by Client shall be waived and the amount shall become payable in full. Client upon request of POPP shall provide detailed information regarding any dispute. Client agrees to cooperate with POPP in any investigation of disputed matters. Reasonable attorney fees and reasonable costs, as determined by a court of competent jurisdiction, incurred by POPP in the collection of past due accounts are the responsibility of the Client. **DOWN PAYMENT:** POPP requires a down payment of 50% of the estimated quote for new installations. POPP requires a 50% down payment on add/move/change work over \$5,000. A 20% restocking fee applies on returned equipment or cancelled orders. Returned equipment must be in new condition and must include all materials originally provided to the Client including, but not limited to the original box, manual, CD, etc. POPP is unable to accept returns or provide refunds for any licenses which have already been applied or extended warranties which have already been registered with Toshiba.

**2. Credit** POPP is authorized to investigate or appoint an agent to investigate Client's credit standing. A service fee, at prevailing rates, will be charged to Client for dishonored checks.

**3. Insurance** Client agrees to maintain insurance on equipment purchased pursuant to this Purchase Agreement. Such insurance shall be in an amount sufficient to cover replacement of equipment. POPP workers are fully covered by workman's compensation insurance.

**4. Taxes** The prices quoted do not include sales or local taxes. All taxes imposed upon the purchase of the equipment and services referred to in this Agreement shall be paid by the Client. If POPP is required to pay any of such taxes, the amount paid shall be immediately due from the Client to POPP.

**5. Limitations of Liability** POPP SHALL NOT BE LIABLE TO CLIENT FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT. POPP SHALL NOT BE HELD LIABLE FOR CONSEQUENTIAL DAMAGE ARISING FROM INTERRUPTION, DELAY, ERROR, DEFECTS IN TRANSMISSION, OR THE LIKE, OCCURRING IN THE COURSE OF FURNISHING SERVICES NOR FOR THE COSTS INCURRED BY CLIENTS FOR CALLS NOT PLACED OVER POPP'S NETWORK OR EQUIPMENT. POPP SHALL NOT BE LIABLE FOR ROUTING OR PROGRAMMING ERRORS; UNAUTHORIZED USE OR ACCESS OF ALL INTERNATIONAL, INTRASTATE, INTERSTATE, 800 OR 900 SERVICES OR SUCH ACCESS OR USE BY VOICE MAIL, DISA, OR AUTO ATTENDANT; USE OF COPYRIGHTED MUSIC WITH THE PRODUCTS; DAMAGES RESULTING FROM PHYSICAL INJURY TO TANGIBLE PROPERTY OR DEATH OR INJURY OF ANY PERSON WHETHER ARISING FROM POPP'S NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE. Any POPP liability to Client for any damages of any kind under this Agreement shall not exceed, in amount, a sum equivalent to the applicable out-of-service credit under the governing tariff and/or catalog/price list. Remedies under this Agreement are exclusive and limited to those expressly described herein. POPP is a reseller/retailer of Communications equipment and services. Our suppliers may change and omit items beyond our control. Client agrees not to hold POPP liable.

**6. 911** Client must notify POPP in writing when an IP telephone or telephone system (PBX) is moved to a new 911 address. 911 addresses will not be updated unless POPP is notified in writing of the change. 911 service will not work if your internal voice network goes down, if the connection to your local provider is down due to a cable cut or other network interruption, if your telephone loses power or dial tone, you have not provided POPP with your correct / updated 911 address, or if your local service has been suspended or disconnected.

**7. Force Majeure** If POPP's performance of any obligation under this Agreement is prevented, restricted or interfered with by causes including failure or malfunction of Client-supplied equipment, acts of God, explosions, vandalism, cable cut, storms, fires, floods, catastrophes, power failure, national emergencies, insurrections, riots, wars, strikes, lockouts, boycotts, work stoppages or other labor difficulties, or any law, order regulation or other actions of any governmental authority, agency, instrumentally, or of any civil or military authority, then POPP shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. POPP shall use reasonable efforts under circumstances to avoid or remove such causes of nonperformance with reasonable dispatch.

**8. Client Responsibility** Client agrees that the equipment will not be used for any unlawful purpose or in any manner contrary to the policies of the FCC. The terms and conditions of this Agreement may not be changed or altered by employees of POPP or the applicant without the express written approval of an officer of POPP. Client agrees and acknowledges that the terms and conditions stated in POPP's Agreement may be modified. Client shall supply all electrical power and other utilities necessary to operate or use the equipment provided by POPP. Client shall be responsible for maintaining, installing, and reporting all Client-supplied hardware, including telephone sets and wiring necessary to make use of the services provided under this Agreement. Client shall provide POPP access to Client's premise as may be necessary for POPP to perform the services under this Agreement and/or to remove or install any POPP property. Client shall not connect any equipment to the telecommunications line and/or system provided by and through POPP without approval from POPP. Client shall be responsible for any damage or loss resulting from Client's use of equipment not approved or authorized by POPP. If any of Client's equipment and/or lines requires modification or reprogramming to make it compatible with POPP provided equipment or service, POPP shall not be liable for any applicable costs associated with modification or reprogramming changes.

**9. Warranty** Client agrees to and acknowledges Limited Warranty terms and conditions. Damage resulting from unapproved or unauthorized equipment is not covered under warranty. Use of equipment not approved or authorized by POPP voids warranty. Any warranty provided pursuant to this Agreement does not apply to equipment or any components that have been altered or repaired by any party other than POPP, or defects resulting from mishandling, abuse, misuse, improper storage, installation, maintenance, or operation of the equipment or use of the equipment in conjunction with other equipment with which the equipment is electrically or mechanically incompatible or to equipment damaged by fire, explosions, power failure, act of God, or any other cause whatsoever, or damage to the equipment that is covered by Client's property insurance. New Toshiba CIX phone systems purchased from POPP include a two-year Toshiba End-User Limited Parts Warranty including the cabinet, power supply, processor, line cards, station cards, IP Interface Modules, Digital and IP Telephone Stations, and voice mail systems. The Media Application Server (MAS or MicroMas) comes with a two-year manufacturer's warranty from Toshiba. Toshiba call center solutions, including ACD, Call Manager, and Taske, come with a one-year manufacturer support on the software that includes software upgrades, patches, and manufacturer technical support. New Toshiba IPedge systems purchased from POPP include a one-year Toshiba End-User Limited Parts Warranty on the IPedge server and a two-year Toshiba End-User Limited Parts Warranty on the Toshiba phones. Extended Toshiba Warranties are available for purchase for both the CIX and IPedge products. See [www.telecom.toshiba.com](http://www.telecom.toshiba.com) for full details on Toshiba End-User Limited Parts Warranty. Toshiba's rechargeable batteries for the Digital Cordless Telephones come with a 90-day warranty. POPP offers third-party manufactured products that support the Toshiba Strata® CIX™ and IPedge product portfolio, including Adtran, Poly (formerly Polycom and Plantronics), GN Netcom, SonicWall, Minuteman, and others. Similar to other resellers of software, hardware and peripherals, these third-party manufactured products carry warranties independent of Toshiba's limited warranty. All third party (non-Toshiba) equipment includes a 90-day POPP warranty; Client is responsible for contacting the manufacturer regarding any manufacturer warranties available after the 90 days expires. Clients should note that third-party manufacturer warranties vary from product to product and are covered by the warranties provided through the original manufacturer and passed on intact to the purchaser by POPP. Clients should consult their product documentation for third-party warranty information specific to third-party products. More information may also be available in some cases from the manufacturer's public Web site.

**10. General Provisions** This Agreement will not be assignable by Client without the express written consent of POPP. This Agreement together with the applicable terms and conditions constitutes the entire understanding between Client and POPP and supersedes any and all prior agreements, in each case, with respect to the subject matter hereof. This Agreement may only be amended in writing. If any provision of this Agreement is invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provisions of this Agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable parts to the extent necessary to render such parts valid and enforceable.

**11. Termination of Agreement** Client agrees that upon termination of this Agreement, Client agrees to reimburse POPP for all costs, including, but not limited to, cost of labor, materials, overhead charges, expenses, attorney's fees, and damages arising out of the order to terminate service.

**12. Client Contacts** For Client's protection, information relating to this account will only be given to authorized client contacts listed on the account. It is the Client's responsibility to notify POPP of changes to the authorized contacts.

**13. Maintenance Contract:** The Maintenance Contract is entered into between Client and POPP in conjunction with Toshiba or other Manufacturers Warranty plans, for the purpose of providing service on the Client's Telephone and Voice Mail Systems. This Maintenance Contract is subject to the following terms and conditions:

A. **Performance:** POPP agrees to provide 100% of labor necessary to maintain the telephone system in good working order when system is subjected to normal use and service, as long as Client shall not be in default of any provision of this or any other agreement between the parties hereto. POPP agrees to keep all standard parts in stock and to supply properly trained technicians to service the Client's telephone system. POPP agrees to maintain in effect Property/Liability Insurance on employees, vehicles, etc. Further, all employees are covered by appropriate workers compensation and disability insurance. POPP is fully insured and bonded.

POPP will respond within 2 hours of notification of a complete system failure or a critical phone line, critical station, or Automatic Call Distribution (ACD) failure, 24 hours a day, 365 days a year. POPP will respond within 24 hours for standard repair services (non-emergency) during normal business hours (7:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays). Service outside of normal business hours will be provided upon request at POPP's current rates for such services.

B. **Exclusions:** This contract does not cover service of parts due to damage caused by lightning, water, flood, storm or any other force of nature, power surge, accident, negligence, vandalism, abuse, misuse, theft, work performed on or modifications made to equipment by anyone other than POPP or its authorized agent, Client data entry, Client's failure to maintain the environmental and/or electrical conditions for the equipment set forth in the manufacturer's specifications, any host system, or peripheral equipment attached to the equipment. Any damage to or destruction of the equipment or any portion thereof occurring due to the fault, negligence or omission of the Client shall void this contract and shall be the responsibility of the Client, to be billed at POPP's current rates.

This Maintenance Contract does not include labor and materials for adds/moves/changes, cost for relocation, rearrangement, addition to, or removal of equipment. POPP agrees to repair or replace equipment which has become defective through normal wear and usage, relocate or rearrange equipment, add to, or remove equipment at the expressed request of the Client. Client agrees to pay POPP's current rates for such services. This Maintenance Contract does not include labor or materials for repairs or troubleshooting to the Client's data equipment, LAN or WAN, ISP, or local service provider. If the problem reported cannot be reproduced during service, POPP may charge the Client for labor costs incurred.

C. **Client Assistance:** Client agrees to furnish the POPP personnel with all pertinent information related to the reported malfunction, and to afford them access to the equipment as required for the performance of this agreement.

D. **Unauthorized Maintenance:** If any vendor other than a POPP authorized representative performs service or repairs on the equipment while the equipment is under this Maintenance Contract, POPP will terminate this agreement.

E. **Limitation of Liability:** POPP shall be excused from performance of its obligations under this contract to the extent that it is prevented, hindered, delayed, or otherwise made impracticable by reason of acts of God, acts of government, acts of omissions of third parties, flood, storm, riot, vandalism, fire, lightning, strike, explosion, war, or civil strife. During the term of the contract, POPP will maintain any part supplied under this contract on the same terms and conditions as the equipment. POPP disclaims all other warranties and conditions, expressed, implied, statutory of any nature whatsoever, concerning the services and materials provided in connection with this Maintenance Contract. This Maintenance Contract is non-transferable in the event that ownership of the system is changed to another party.

F. **Database Loss Disclaimer:** POPP disclaims any expressed or implied warranty that the Software and any enabling Firmware are technically immune from or prevent the loss of data and/or Client's database. The Client hereby assumes all risk associated with the loss of data.

G. **Modifications:** No person other than an officer of POPP may extend or modify this Maintenance Contract. Since the laws of the State of Minnesota govern this service contract, all amendments must be in writing, and signed by both parties.