



# TOTAL IMAGE MANAGEMENT<sup>SM</sup> SLG Commercial Pricing

NATIONAL & GOVERNMENT  
ACCOUNT DIVISION

Agreement# \_\_\_\_\_

### EQUIPMENT

Equipment Model & Description	Serial Number	Accessories
KYOCERA TA-420i		DP-760, DUAL SCAN, DF780, AK-700, STAND, FAX & INTERNET FAX
_____	_____	_____
_____	_____	_____

See attached schedule for additional Equipment / Accessories

Equipment Location (if different from Billing Address) GILA COUNTY SHERIFF - ROOSEVELT SUB-STATION - GLOBE, AZ 85501 - CLAUDIA DALMOLIN / 928-402-8572

YOU HAVE SELECTED THE EQUIPMENT. THE SUPPLIER AND ITS REPRESENTATIVES ARE NOT OUR AGENTS AND ARE NOT AUTHORIZED TO MODIFY THE TERMS OF THIS AGREEMENT. YOU ARE AWARE OF THE NAME OF THE MANUFACTURER OF EACH ITEM OF EQUIPMENT AND YOU WILL CONTACT EACH MANUFACTURER FOR A DESCRIPTION OF YOUR WARRANTY RIGHTS. WE MAKE NO WARRANTIES TO YOU, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY OR OTHERWISE. WE PROVIDE THE EQUIPMENT TO YOU AS-IS. WE SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES.

EXCEPT AS PROVIDED IN SECTION 2, YOUR PAYMENT OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL AND ARE NOT SUBJECT TO CANCELLATION, REDUCTION OR SETOFF FOR ANY REASON WHATSOEVER. BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL.

BY SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE RECEIPT OF PAGE 2 OF THIS AGREEMENT, AND AGREE TO THE TERMS ON BOTH PAGES 1 AND 2. ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU AND US FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

### TRANSACTION TERMS

Minimum Monthly Payment \$178.32 Term 36 months  
(plus applicable taxes)

Image Type	Minimum Number of Images	Excess Per Image Charge
Black & White Images	<u>0</u>	<u>.0045</u>
Color Images	_____	_____
Scanned Images	_____	_____
Faxed Images	_____	_____

Excess Per Image Billing Preference (monthly if not checked)  
 Monthly  Quarterly  Semi-Annually  Annually

### CUSTOMER ("You")

GILA COUNTY  
 Full Legal Name  
1400 E. ASH STREET  
 Billing Address  
GLOBE AZ 85501  
 City State Zip  
ACCOUNTS PAYABLE 928-425-3231  
 Contact Name Phone E-mail Address

By: X \_\_\_\_\_  
 Signature of Authorized Signer  
 Name: Michael A. Pastor  
 Please Print  
 Title: Chairman, Board of Supervisors

Date: 07/05/2011 Fed Tax ID 86-6000444  
 Date of Signature

### OWNER ("We", "Us")

Kyocera Mita America, Inc.  
 1961 Hirst Drive, Moberly, MO 65270

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### For Supplier Use Only

#### Documentation Checklist:

- Invoice
- Purchase Order
- Tax Exemption Certificate
- Certificate of Insurance
- Other \_\_\_\_\_

#### Other supporting documents as requested:

- Delivery and Acceptance
- Copy of Bid and Award
- Opinion of Counsel
- Assignment
- Other \_\_\_\_\_
- UCC Financing Statements
- Copy of Board Minutes
- Amendment (for certain states)
- Cert of Incumbency/Resolution

## ADDITIONAL TERMS AND CONDITIONS OF AGREEMENT

1. **COMMENCEMENT OF AGREEMENT.** Commencement of this Agreement and acceptance of the Equipment shall occur upon delivery of the Equipment to you. You agree to inspect the Equipment upon delivery and verify by telephone or in writing such information as we may require. The Equipment is accepted by you under this Agreement unless you notify us within three (3) days of delivery that you do not accept the Equipment and specify the defect or malfunction. In that event, we will replace the defective item of Equipment or cancel this Agreement and you will assume all our rights under any purchase order or agreement entered into by us to buy the Equipment. If you signed a purchase order or similar agreement for the purchase of the Equipment, by signing this Agreement you assign to us all of your rights, but none of your obligations under it. All attachments, accessories, replacements, replacement parts, substitutions, additions and repairs to the Equipment shall form part of the Equipment under this Agreement.

2. **IMAGE CHARGES.** Each month during the Term of this Agreement, you agree to remit to us the "Minimum Monthly Payment" and all other sums when due and payable at the address we provide to you from time to time. In return for the Minimum Monthly Payment, you are entitled to produce the Minimum Number of Images for each applicable Image Type each month. You also agree to pay us the applicable Excess Per Image Charge (plus applicable taxes) for each metered image that exceeds the applicable Minimum Number of Images. We may estimate the number of images produced if you do not provide us with meter readings within seven (7) days of request. We will adjust the estimated charge for excess images upon receipt of actual meter readings. Notwithstanding any adjustments, you will never pay us less than the Minimum Monthly Payment. You agree that we may increase the Minimum Monthly Payment and/or Excess Per Image Charge for each Image Type each year during the Term of this Agreement by an amount not to exceed ten percent (10%) of the Minimum Monthly Payment and/or Excess Per Image Charge in effect at the end of the prior annual period, or the maximum percentage permitted by law, whichever is lower. At our option, you will (a) provide us by telephone or facsimile the actual meter readings when requested by us, (b) provide us (or our agent) access to the Equipment to obtain meter readings, or (c) allow us (or our agent) to attach an automatic meter reading device to the Equipment. We may audit any automatic meter reading device periodically. Minimum Monthly Payments are due whether or not you are invoiced. If you have a dispute with the Supplier regarding the Equipment, you shall continue to pay us all Minimum Monthly Payments and Excess Per Image Charges without deduction or withholding any amounts. You authorize us to adjust the Minimum Monthly Payments by not more than 15% to reflect any reconfiguration of the Equipment or adjustments to reflect applicable sales taxes or the cost of the Equipment by the manufacturer/supplier.

**NON-APPROPRIATION OF FUNDS.** You intend to remit to us all Minimum Monthly Payment and other sums when due for the full Term if funds are legally available. In the event you are not granted an appropriation of funds at any time during the Term for the Equipment or for equipment which is functionally similar to the Equipment and operating funds are not otherwise available to you to pay Minimum Monthly Payments and other sums due and to become due under this Agreement, and there is no other legal procedure or available funds by or with which payment can be made to us, and the non-appropriation did not result from an act or omission by you, you shall have the right to return the Equipment in accordance with Section 12 of this Agreement and terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to you, except as to the portion of the Minimum Monthly Payments for which funds shall have been appropriated and budgeted. At least thirty (30) days prior to the end of your fiscal period, your chief executive officer (or legal counsel) shall certify in writing that (a) funds have not been appropriated for the fiscal period, (b) such non-appropriation did not result from any act or failure to act by you, and (c) you have exhausted all funds legally available to pay Minimum Monthly Payments. If you terminate this Agreement because of a non-appropriation of funds, you may not purchase, lease, or rent, during the subsequent fiscal period, equipment performing the same functions as, or functions taking the place of, those performed by the Equipment provided, however, that these restrictions shall not be applicable if or to the extent that the application of these restrictions would affect the validity of this Agreement. This Section 3 shall not permit you to terminate this Agreement in order to acquire any other Equipment or to allocate funds directly or indirectly to perform essentially the application for which the Equipment is intended.

3. **OTHER CHARGES.** You agree to: (a) pay all premiums and other costs of insuring the Equipment; (b) reimburse us for all costs and expenses (including reasonable attorneys' fees and court costs) incurred in enforcing this Agreement; and (c) pay all other costs and expenses for which you are obligated under this Agreement. We may take on your behalf any action required under this Agreement which you fail to take, and upon receipt of our invoice you will promptly pay our costs (including insurance premiums and other payments to affiliates), plus reasonable processing fees. Restrictive endorsements on checks you send to us will not reduce your obligations to us. We may charge you a return check or non-sufficient funds charge of \$25.00 for any check which is returned by the bank for any reason (not to exceed the maximum amount permitted by law).

4. **LATE CHARGES.** For any payment which is not received within five (5) days of its due date, you agree to pay a late charge equal to the higher of 5% of the amount due or \$22.00 (not to exceed the maximum amount permitted by law) as reasonable collection costs.

5. **MAINTENANCE AND SERVICE; OWNERSHIP AND USE.** The Supplier identified on Page 1 of this Agreement has agreed to provide FULL SERVICE MAINTENANCE DURING NORMAL BUSINESS HOURS, INCLUDING ALL TONER, DEVELOPER AND PARTS NECESSARY TO PRODUCE IMAGES. YOU MUST PURCHASE COPIER PAPER AND STAPLES SEPARATELY. You acknowledge that (a) we are not responsible for any service, repair or maintenance of the Equipment, and (b) we are not a party to any service maintenance agreement. You agree to pay for service maintenance outside of the Supplier's normal business hours for service required by your negligence or misuse of the Equipment at Supplier's customary rates. We reserve a security interest in the Equipment to secure all of your obligations under this Agreement. We own the Equipment and you have the right to use the Equipment under the terms of this Agreement. If this Agreement is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all of your obligations under this Agreement. We hereby assign to you all our rights under any manufacturer or supplier warranties, so long as you are not in default hereunder. You must keep the Equipment free of liens. You may not remove the Equipment from the address indicated on the front of this Agreement without first obtaining our approval. If we grant permission to move the Equipment, the Minimum Monthly Payments and Excess per Image Charges may be increased by us at our sole discretion to cover the additional costs of service, maintenance and supplies. You agree to: (a) keep the Equipment in your exclusive control and possession; (b) USE THE EQUIPMENT ONLY IN THE LAWFUL CONDUCT OF YOUR BUSINESS, AND NOT FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES; (c) use the Equipment in conformity with all insurance requirements, manufacturer's instructions and manuals; (d) keep the Equipment repaired and maintained in good working order and as required by the manufacturer's warranty and specifications; and (e) give us reasonable access to inspect the Equipment and its maintenance and other records.

If any Equipment is designated "Service Only", you acknowledge and agree that (1) we do not own such Equipment; (2) we are not providing such Equipment to you pursuant to the terms of this Agreement; (3) Supplier has agreed to provide full service maintenance of such Equipment pursuant to the terms outlined above; and (4) that portion of the Minimum Monthly Payment attributable to such Equipment includes only the full service maintenance.

6. **INDEMNITY.** You are responsible for all losses, damage, claims, infringement claims, injuries and reasonable attorneys' fees and costs ("Claims"), incurred or asserted by any person, in any manner relating to the Equipment, including its use, condition or possession. You agree to defend and indemnify us against all Claims, although we reserve the right to control the defense and to select or approve defense counsel. This indemnity continues beyond the termination of this Agreement, for acts or omissions which occurred during the Term of this Agreement. You also agree that this Agreement has been entered into on the assumption that we will be entitled to certain tax benefits available to the owner of the Equipment. You agree to indemnify us for the loss of any income tax benefits caused by your acts or omissions inconsistent with such assumption

or this Agreement. In the event of any such loss, we may increase the Minimum Monthly Payments and other amounts due to offset any such adverse effect.

7. **LOSS OR DAMAGE.** If any item of Equipment is lost, stolen or damaged you will, at your option and cost, either: (a) repair the item or replace the item with a comparable item reasonably acceptable to us; or (b) pay us the sum of: (i) all past due and current Minimum Monthly Payments, Excess Per Image Charges and other charges; (ii) the present value of all remaining Minimum Monthly Payments and other charges for the item, discounted at the rate of 6% per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the Fair Market Value of the Equipment. We will then transfer to you all our right, title and interest in the Equipment AS-IS AND WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE. Insurance proceeds shall be applied toward repair, replacement or payment hereunder, as applicable. In this Agreement, "Fair Market Value" of the Equipment means its fair market value at the end of the Term, assuming good order and condition (except for ordinary wear and tear from normal use), as estimated by us.

8. **DEFAULT.** You will be in default under this Agreement if: (a) you fail to remit to us any payment within ten (10) days of the due date or breach any other obligation under this Agreement; (b) a petition is filed by or against you or any Guarantor under any bankruptcy or insolvency law; or (c) you default under any other agreement with us.

9. **REMEDIES.** If you default, we may do one or more of the following: (a) recover from you, AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY, the sum of (i) all past due and current Minimum Monthly Payments, Excess Per Image Charges and other charges; (ii) the present value of all remaining Minimum Monthly Payments, Excess Per Image Charges and other charges, discounted at the rate of 6% per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the Fair Market Value of the Equipment; (b) declare any other agreements between us in default; (c) require you to return all of the Equipment in the manner outlined in Section 12, or take possession of the Equipment, in which case we shall not be held responsible for any losses directly or indirectly arising out of, or by reason of the presence and/or use of any and all proprietary information residing on or within the Equipment, and to lease or sell the Equipment or any portion thereof; and to apply the proceeds, less reasonable selling and administrative expenses, to the amounts due hereunder; (d) charge you interest on all amounts due us from the due date until paid at the rate of 1-1/2% per month, but in no event more than the lawful maximum rate; (e) charge you for expenses incurred in connection with the enforcement of our remedies including, without limitation, repossession, repair and collection costs, reasonable attorneys' fees and court costs. These 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.

10. **END OF TERM OPTIONS; RETURN OF EQUIPMENT.** At the end of the Term and upon 30 days prior written notice to us, you shall either: (a) return all of the Equipment; or (b) purchase all of the Equipment AS-IS AND WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE, for the Fair Market Value, plus applicable sales and other taxes. This Agreement shall continue on a month-to-month basis and you shall pay us the same Minimum Monthly Payments, Excess Per Image Charges and other charges as applied during the Term until the Equipment is returned to us or you pay us the applicable purchase price (and taxes). If you are in default, (or a non-appropriation of funds occurs) or you do not purchase the Equipment at the end of the Term (or any month-to-month renewal term), you shall return all of the Equipment, freight and insurance prepaid at your cost and risk, to wherever we indicate in the continental United States, with all manuals and logs, in good order and condition (except for ordinary wear and tear from normal use), packed per the shipping company's specifications. You will pay us for any loss in value resulting from the failure to maintain the Equipment in accordance with this Agreement or for damages incurred in shipping and handling.

11. **ASSIGNMENT.** You may not assign or dispose of any rights or obligations under this Agreement or sub-lease the Equipment, without our prior written consent. We may, without notifying you, (a) assign this Agreement or our interest in the Equipment; and (b) release information we have about you and this Agreement to the manufacturer, supplier or any prospective investor, participant or purchaser of this Agreement. If we do make an assignment under subsection 13(a) above, our assignee will have all of our rights under this Agreement, but none of our obligations. You agree not to assert against our assignee claims, offsets or defenses you may have against us.

12. **MISCELLANEOUS.** Notices must be in writing and will be deemed given 5 days after mailing to your (or our) business address. You hereby represent that: (a) you are the entity indicated in this Agreement; (b) any documents required to be delivered in connection with this Agreement (collectively, the "Documents") have been duly authorized by you in accordance with all applicable laws, rules, ordinances, and regulations; (c) the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of your governing body, and hold the offices indicated below their signatures; (d) the Equipment is essential to the immediate performance of a governmental or proprietary function by you within the scope of your authority and shall be used during the Term only by you and only to perform such function; (e) you intend to use the Equipment for the entire Term and shall take all necessary action to include in your annual budget any funds required to fulfill your obligations each fiscal period during the Term; (f) you have complied fully with all applicable law governing open meetings, public bidding and appropriations, required in connection with this Agreement and the debt under applicable state law; (g) your obligations to remit Minimum Monthly Payments under this Agreement constitutes a current expense and not a debt under applicable state law; (h) this Agreement is binding on you and your successors and assigns; and (i) all financial information you have provided is true and a reasonable representation of your financial condition. You authorize us to file UCC financing statements. Any claim you have against us must be made within two (2) years after the event which caused it. If a court finds any provision of this Agreement to be unenforceable, all other terms shall remain in effect and enforceable. You authorize us to insert or correct missing information on this Agreement, including your proper legal name, serial numbers and any other information describing the Equipment. If you so request, and we permit in our sole discretion, you agree to pay a fee for such privilege. **THE PARTIES INTEND THIS TO BE A "FINANCE LEASE" UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE ("UCC"). YOU WAIVE ALL RIGHTS AND REMEDIES CONFERRED UPON A CUSTOMER BY ARTICLE 2A OF THE UCC.**

**AMENDMENT TO EQUIPMENT LEASE AGREEMENT**

**THIS AMENDMENT TO EQUIPMENT LEASE AGREEMENT is by and between Gila County, as Lessee, and KYOCERA MITA AMERICA, INC., as Lessor.**

**BACKGROUND**

**A. By that certain Equipment Lease Agreement, Attached dated May 23rd, 2011 by and between Lessor and Lessee, Lessor has agreed to extend financing to Lessee upon and subject to the terms and conditions set forth in the Equipment Lease Agreement ("Lease").**

**B. Lessor and Lessee desire to amend the terms and conditions of the Lease, upon and subject to the terms and conditions of this Amendment.**

**C. All capitalized terms not otherwise defined herein will have the meanings set forth in the Lease.**

**NOW, THEREFORE, in consideration of good and valuable consideration, the parties intending to be legally bound agree as follows:**

**1. EFFECT OF HANDWRITTEN CHANGES.** The Parties to the Lease acknowledge and agree that none of the hand-written (or typed, as the case may be) additions or deletions to the text of the terms and conditions of the Lease shall be enforceable. Each of the provisions in the Lease, as originally pre-printed on the front and/or back (or Pages 1 and/or 2) of the Lease, shall remain in full force and effect, except to the extent expressly set forth herein.

**2. LATE CHARGES.** Section 4 of the Lease shall be deleted in its entirety.

**3. EFFECTIVE DATE.** This Amendment is executed to be effective the same day as the Lease, and is incorporated into and made a part of the Lease.

**4. EFFECT OF AMENDMENT.** All terms and conditions of the Lease not expressly modified hereby remain in full force and are hereby ratified by the parties.

**IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment on the dates set forth below but effective as of the effective date of the Lease, as set forth above.**

**Name: GILA COUNTY BOARD OF SUPERVISOR**

**KYOCERA MITA AMERICA, INC.**

**By: \_\_\_\_\_**

**By: \_\_\_\_\_**

**Name: Michael A. Pastor**

**Name: \_\_\_\_\_**

**Title: Chairman**

**Title: \_\_\_\_\_**

**Date of Execution: \_\_\_\_\_**

**Date of Execution: \_\_\_\_\_**

**ATTEST:**

**APPROVED AS TO FORM:**

**\_\_\_\_\_  
Marian Sheppard, Chief Deputy Clerk of Board**

**\_\_\_\_\_  
Bryan B. Chambers, Chief Deputy County Attorney  
for Daisy Flores, County Attorney**

**Anti-Terrorism Warranty:** Pursuant to A.R.S. §35-397 the Supplier certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration Act and not on the Excluded Parties List.

**Legal Arizona Workers Act Compliance:** Firm hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Firm's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Firm shall further ensure that each subcontractor who performs any work for Firm under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Firm and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Firm's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Firm to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Firm shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

Firm shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Firm. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Firm's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Firm shall be entitled to an extension of time, but not costs.

**Cancellation:** This agreement is subject to cancellation pursuant to A.R.S. §38.511.

**GILA COUNTY:**

**GILA COUNTY BOARD OF SUPERVISORS**

\_\_\_\_\_  
Michael A. Pastor, Chairman, Board of Supervisors

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Marian Sheppard, Chief Deputy Clerk of the Board

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Bryan B. Chambers, Chief Deputy County Attorney  
for Daisy Flores, County Attorney

**KYOCERA MITA AMERICA, INC.**

  
\_\_\_\_\_  
Individual Authorized to Sign

David A Clark

\_\_\_\_\_  
Print Name

Government Accounts Manager

\_\_\_\_\_  
Title

6/7/11

\_\_\_\_\_  
Date