

Contract Number CM1919

**PIGGYBACK AGREEMENT  
PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 4.3**

**Piggyback Contract Information**

Contract Name/Description: **Copiers, Printers, and Multi-Functional Printers**

Lead Contracting Agency: **University of South Florida**

Contract No.: **ITN 9-13-G**

Vendor/Awardee: **Ricoh Americas Corporation**

Award/Contract Date: **April 7, 2009**

Term: **Five year term, April 7, 2009 through April 6, 2014, with two one year renewals**

THIS AGREEMENT, made and entered into by and between **NASSAU COUNTY BOARD OF COUNTY COMMISSIONERS**, hereinafter called the "County" and the Vendor, referenced above.

WHEREAS, upon completion of a formal competitive solicitation and selection process, the Lead Contracting Agency entered into an agreement, hereinafter referred to as "Piggyback Agreement", with Vendor to provide goods and services; and

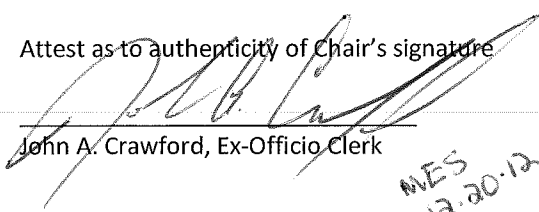
WHEREAS, the Nassau County Purchasing Policy, Ordinance 2009-09, allows piggybacking for the same commodity or service; and

WHEREAS, the parties desire to contract with Vendor under the terms of the Piggyback Agreement;

NOW, THEREFORE, the parties agree as follows:

1. The Vendor shall honor for Nassau County the same prices under the same terms and conditions as indicated in the Piggyback Agreement, attached hereto as Attachment "A" and incorporated by reference as if fully set forth herein. Additional terms or conditions whether submitted purposely or inadvertently, shall have no force or effect.
2. Nassau County shall obtain these goods and services from Copyfax, an authorized Ricoh dealer in the local area.
3. Notwithstanding any other provision of the piggyback contract to the contrary:
  - a. The term of this agreement shall be five (5) years beginning November 1, 2012 and ending October 30, 2017 with no provisions for extension or renewal.

Attest as to authenticity of Chair's signature

  
John A. Crawford, Ex-Officio Clerk

MES  
12.20.12

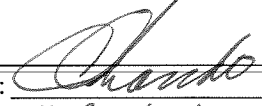
BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA

  
By: DANIEL B. LEEPER  
Its: Chair

Approved as to form by  
County Attorney

  
David A. Hallman

RICOH AMERICAS CORPORATION

  
By: Via President Financial Solutions  
Address: 5 Dedrick Place  
West Caldwell, NJ 07006

**RICOH**

**MASTER RESALE AGREEMENT  
WITH  
*THE UNIVERSITY OF SOUTH FLORIDA  
BOARD OF TRUSTEES***

**Ricoh Americas Corporation  
5 Dedrick Place  
West Caldwell, NJ 07006**

## MASTER AGREEMENT

This Master Resale Agreement ("Agreement"), identify by contract # USF-1972-40 made as of this <sup>7<sup>th</sup></sup> day of ~~March~~ <sup>APRIL</sup>, 2009 (the "Effective Date"), sets forth the terms and conditions upon which The University of South Florida Board of Trustees, with offices at 4202 East Fowler Avenue, Tampa, Florida ("USF") and Ricoh Americas Corporation, a Delaware corporation with offices at 5 Dedrick Place, West Caldwell, New Jersey 07006 ("Ricoh"), have agreed that USF Companies (as hereafter defined) may through the execution of Orders (as hereafter defined) acquire Products (as hereafter defined) from Ricoh on the terms and conditions set forth in this Agreement.

IN CONSIDERATION of the mutual covenants and undertakings contained herein, and intending to be legally bound, Ricoh and USF hereby agree as follows.

### 1. Definitions.

1.1 **Specific Words or Phrases.** For purposes of this Agreement, each word or phrase listed below shall have the meaning designated. Other words or phrases used in this Agreement may be defined in the context in which they are used, and shall have the respective meaning there designated.

(a) **"Control" or "Controls" or "Controlled"** when used with respect to a USF Company, means the power, whether directly or indirectly (by ownership of stock, share capital, the possession of voting power, contract or otherwise), to appoint and/or remove the majority of the members of the governing body of such USF Company, or otherwise exercise control over such entity's affairs and policies.

(b) **"USF"** means, for the general purposes of this Agreement, the entity designated above as "USF". However, for the particular purposes of any agreement that arises as a result of an Order, reference to "USF" shall be construed solely as a reference to the specific entity (either the entity designated above as "USF" or a USF Company) that executes that particular Order.

(c) **"USF Company"** means and includes USF and any entity that, from time to time during the term of this Agreement, directly or indirectly Controls, is Controlled by, or is under common Control with USF and which is eligible to participate/place orders under this Agreement. A list of those USF Companies and their locations is attached hereto as Schedule A and may be amended from time to time upon written agreement of the parties during the term of this Agreement as circumstances may require.

(d) **"Designated Servicer"** means a third-party entity which may be a Ricoh affiliate, or an independent dealer or distributor of Ricoh or an entity having a business relationship with Ricoh which is assigned Ricoh's obligations for the performance of all or any portion of this Agreement or an Order.

(e) **"Documentation"** means all documents and materials (in any language, format or medium) that are supplied by Ricoh to its commercial USFs to aid in the use and operation of the Products, and all modifications to such documents or materials that are made by or on behalf of Ricoh from time to time, including: (i) functional, technical and performance information, (ii) installation, configuration, administration, operation and maintenance procedures and instructions, and (iii) training guides and user manuals.

(f) **"Equipment"** means the machines and accessories supplied by Ricoh to USF as set forth in the attached Schedule B.

(g) **"Intellectual Property Rights"** means those rights arising from patents, trademarks, service marks, and copyrights.

(h) **"Lessor"** means a third party financial institution that leases or rents Products to USF.

(i) **"Maintenance Services"** consists of the support and maintenance services to be provided by Ricoh or a Designated Servicer in accordance with the requirements set forth in Section 5 of this Agreement.

(j) **"Order"** means a transactional document in the form(s) attached to this Agreement as Exhibits 1 through 4 inclusive of this Agreement, which are used for the acquisition of Products by USF from Ricoh or a Designated Servicer.

(k) **"Products"** means and includes the products and services made available to USF under this Agreement, including Equipment, Software, Maintenance Services and Professional Services.

(l) "**Professional Services**" means and includes such other and further services that may be provided by Ricoh or a Designated Servicer to USF, including but not limited to Facilities Management Services, Managed Print Services, Network Management Services, Processing Services or other services which are more fully described in a Statement of Work.

(m) "**Software**" means the standard operating and supervisory software integrated in the Equipment, together with any application software that is not otherwise covered by a separate license agreement, wherever resident and/or whatever media.

(n) "**Specifications**" means and includes: (i) the standard published specifications for the Products; and (ii) any additional description of the functional, technical, design and performance characteristics of the Products provided by Ricoh or a Designated Servicer to USF.

(o) "**Statement of Work**" means the agreement between a Ricoh and USF which describes the Professional Services to be provided by Ricoh.

## GENERAL TERMS AND CONDITIONS

2. **Acceptance.** This Agreement establishes the general terms and conditions, under which USF may, from time to time, acquire Products from Ricoh. This Agreement does not in and of itself constitute any agreement to purchase, rent, lease and/or license any Products, but sets forth the terms and conditions which are incorporated by reference into any Order for Products. Neither this Agreement nor any specific Order shall be valid unless signed by a duly authorized representative of USF and accepted in writing by a duly authorized representative of Ricoh. This shall be the sole and exclusive manner of acceptance.

3. **Orders.** USF may acquire the Products from Ricoh by executing and delivering to Ricoh an Order for acceptance. Purchases of Equipment or supplies shall be subject to the Order Agreement, Terms and Conditions of Purchase, attached hereto as Exhibit 1. USF and Ricoh may agree that USF shall lease Equipment from Ricoh or a Lessor, pursuant to the Order Agreement, Terms and Conditions for Lease, executed pursuant to this Agreement and attached hereto as Exhibit 2 and such Terms and Conditions for Lease take precedence over the terms and conditions of this Agreement, except where expressly stated herein. In addition, leases for Equipment will not be binding and valid until a Purchase Order is generated and delivered by and from the USF Purchasing Department. All USF Purchase Orders will reference this Agreement and any identification or contract number given by USF. Maintenance Services for Products shall be provided by Ricoh pursuant to the terms of a Maintenance Agreement in the form attached hereto as Exhibit 3. Any Professional Services provided by Ricoh to USF shall be provided pursuant to a Statement of Work. A basic description of the terms and conditions applicable to the provision of Professional Services to be provided to USF by Ricoh is set forth in Exhibit 4 attached hereto.

With respect to any Order:

(a) Ricoh or Lessor reserve the right to conduct such credit investigations and inquiries as deemed necessary and appropriate as a prior condition of acceptance of any Order and to reject any Order where the results of such investigation are unsatisfactory in the sole discretion of Ricoh or Lessor.

(b) Ricoh shall be permitted to assign or otherwise transfer the performance of all or a portion of its obligations to a Designated Servicer in Ricoh's discretion.

4. **Integration.** The terms of this Agreement shall be incorporated by reference into any Order; provided, however, that to the extent that there is any conflict between the terms of any Order and the terms of this Agreement, the terms of the Order shall control, except where expressly stated herein.

5. **Maintenance Services.** Ricoh or its Designated Servicer shall make Maintenance Services available to USF for Equipment (provided the Equipment was new when it was installed) and Software for a period of five (5) years from the date of installation of such Equipment.

6. **Pricing and Charges/Payment Terms.** The pricing and discounts (if applicable) for Products shall be as set forth in the attached Schedule B and shall be firm for a period of five (5) year from the Effective Date. Pricing for Maintenance Services may be adjusted by Ricoh on or after the third anniversary, each one-year anniversary of the Effective Date in an amount not to exceed five percent (5%). When Maintenance Services are part of an established lease agreement, then the pricing shall be firm for the entire lease period. If USF's Maintenance Services plan includes toner and if Ricoh is required to supply toner in quantities of more than ten percent (10%) over the standard yield for the specific type(s) of Equipment model(s), then USF will pay Ricoh for such excess toner according to Ricoh's then current standard supply cost pricing for same. Charges for Professional Services performed pursuant to an Order Agreement under this Agreement shall be set out in USF Statement of Work. Unless otherwise specified in any Order, payment to Ricoh for Products shall be net thirty (30) days from date of invoice. USF shall pay Ricoh interest on any past due payment at the highest rate permitted by applicable law, not to exceed 1.5% per month.

7. **Taxes.** USF is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased. Ricoh shall not charge USF for such taxes.

8. **Limited Warranties.**

(a) **Authority and Non-Infringement.** Ricoh represents and warrants to USF that Ricoh has all rights and authority required to enter into this Agreement and/or any Order hereunder, to convey to USF good, clear and marketable title to the Equipment, license rights for the Software, and to perform the Maintenance Services and Professional Services contemplated by this Agreement and/or any Statement of Work hereunder, free from all liens, claims, encumbrances, security interests and any other restrictions. Subject to the applicable terms and conditions of this Agreement and Order, so long as all of its obligations are satisfied, USF will be entitled to possess the Products and to use and enjoy the benefit of all Products without adverse interruption or disturbance by Ricoh or any entity asserting a claim of ownership under or through Ricoh. Ricoh further represents and warrants that the Equipment and all other materials of whatever nature furnished under this Agreement, and the use thereof by USF in accordance with the terms and conditions of this Agreement, will not infringe, misappropriate or violate the Intellectual Property Rights of any third party, or violate the laws, regulations or orders of any governmental or judicial authority.

(b) **Spare Parts.** Ricoh warrants to USF that all replacement parts shall equal or exceed the original manufacturer's specifications for such parts. Title to any replacement parts shall vest in the owner of the Equipment at the time of installation, at which time title to the parts so replaced shall revert back to Ricoh. Ricoh represents and warrants that for a minimum period of five (5) years from the date of installation of new Equipment, Ricoh will manufacture or procure spare parts for each Product acquired hereunder. Without prejudice to any other rights and remedies available to USF under this Agreement, in the event Ricoh cannot procure spare parts in accordance with this Section, Ricoh will replace the Equipment needing servicing with Equipment of substantially similar specifications at no additional cost to USF. Such Equipment may be new or refurbished equipment in Ricoh's sole discretion.

(c) **Availability of Maintenance Services.** Ricoh warrants to USF that for a minimum period of five (5) years after installation, Ricoh will make continuous Maintenance Services available to USF, provided such Equipment was new when installed.

(d) **Material and Workmanship.** Ricoh warrants to USF that at the time of delivery and for a period of ninety (90) days thereafter the Equipment (i) will be in good working order and substantially conform to the applicable Specifications, and (ii) will be free from any defects in material and workmanship. In addition, Ricoh will (at no additional charge) make available engineering changes or Software updates that are generally released by Ricoh during the term that Maintenance Services are being provided. If during such ninety (90) day period Ricoh receives notice as set forth above that the Product fails to operate in substantial conformity to the Specifications, Ricoh will (at no additional charge) furnish all materials and make all adjustments, repairs, and replacements required to correct the defect. The foregoing warranty shall not apply in the event the Product is (a) installed, wired, modified, altered, moved or serviced by anyone other than Ricoh or a Designated Servicer, or (b) and not installed, stored and utilized and/or maintained in a manner not consistent with Ricoh specifications or, (c) a defective or improper non-Ricoh accessory or supply or part is attached to the Equipment, or (d) the Equipment is relocated to any place where Ricoh or Ricoh authorized services are not available.

(e) **THE FOREGOING LIMITED WARRANTIES DO NOT APPLY TO CONSUMABLE PARTS INCLUDING, BUT NOT LIMITED TO DRUMS, CLEANING BRUSHES, FILTERS, HEAT AND OILER TUBES, PRESSURE PADS, LAMPS LENSES, FUSES, PAPER AND TONER. THE WARRANTIES EXPRESSED HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CORRECTION OF NON CONFORMITIES IN THE MANNER PROVIDED ABOVE SHALL CONSTITUTE FULFILLMENT OF ALL OBLIGATIONS OF RICOH WITH RESPECT TO OR ARISING OUT OF THE EQUIPMENT, WHETHER BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE.**

9. **Intellectual Property Rights.** Upon termination or expiration of an Order or the right of USF to use and possess the Equipment, for any reason, all rights of USF to the Software and all changes, modifications, customizations, or improvements made or developed with regard to the Software, granted under this Agreement shall terminate and immediately revert to Ricoh, and USF shall return to Ricoh the Software and all copies and portions thereof and remove the Software from its computers and its computer systems. USF acknowledges and agrees that the Software is Ricoh's property, is protected by copyright, trade secrets and trademark law, and contains valuable confidential, unpublished information developed or acquired by Ricoh at great expense. The Software, product names and other Ricoh materials and documentation, if any, are either patented, copyrighted, trademarked or otherwise proprietary to Ricoh. USF agrees not to remove any such notices and Product identification.

10. **Assignment.** Without Ricoh's prior written consent, USF shall not assign, transfer, pledge, hypothecate or otherwise dispose of or encumber this Agreement, any Order, the Equipment, Software or any interest therein; or sublet or lend the Equipment or Software or permit it to be used by anyone other than USF or USF's employees. Ricoh may assign this Agreement, any Order, any payments, or the Products (subject to USF's rights), in whole or in part, as collateral or otherwise, without notice to USF, to a Lessor or Designated Servicer. Payment by USF to an assignee shall constitute acknowledgment of such notice. Notwithstanding any such

assignment, Ricoh warrants that, upon full compliance with the terms of this Agreement by USF, USF shall quietly enjoy use of the Equipment, subject to the terms and conditions hereof.

11. **Limitation of Liability.** Ricoh shall have no liability to USF (or to any person or entity claiming through USF) for lost profits, loss of revenue, or for special, incidental, indirect, consequential or exemplary damages arising out of or in any manner connected with this Agreement or any Order, or the subject matter hereof or thereof, regardless of the form of action and whether or not Ricoh has been informed of, or otherwise might have anticipated, the possibility of such damages, provided, however, that the limitations of liability set forth in this Section 11 shall not apply to (i) damages resulting from the willful misconduct or gross negligence of Ricoh, or its personnel, or (ii) Intellectual Property infringement claims for which Ricoh has agreed to indemnify USF pursuant to this Agreement. In no event shall any liability of Ricoh to USF arising out of or in connection with the Professional Services provided by Ricoh or any Designated Servicer to USF exceed the amount paid by USF pursuant to the subject Terms and Conditions for Software/Professional Services.

12. **Excused Performance.** A party will be excused from a delay in performing, or a failure to perform, its obligations under this Agreement or any Order to the extent such delay or failure is caused by the occurrence of any contingency beyond the reasonable control, and without any fault, of such party. Such events include, but are not limited to, acts of God or the public enemy, fire, flood, shipwreck, strike or other labor dispute, government order, regulation, terrorist acts or acts of war. In such event, the performance times shall be extended for a period of time equivalent to the time lost because of the excusable delay. However, if an excusable delay continues more than sixty (60) days, the party not relying on the excusable delay may, at its option, terminate the affected Order in whole or in part, upon notice to the other party. In order to avail itself of the relief provided in this Section for an excusable delay, the party must act with due diligence to remedy the cause of, or to mitigate or overcome, such delay or failure.

13. **Term and Termination.**

(a) **Term.** This Agreement shall commence as of the Effective Date and shall remain in force for a period of five (5) years unless sooner terminated as provided for herein or by agreement of the parties. Each Order shall only become effective when duly signed on behalf of the parties thereto, and shall continue in effect thereafter through the date of termination specified in accordance with the provisions of that Order. Except as expressly set forth below, USF shall have no right to terminate payment obligations pursuant to a binding Order, such payment obligations being unconditional, non-cancelable and not subject to any right of offset or set-off.

(b) **Termination of Agreement.** This Agreement may be terminated by the parties as follows:

(i) **Termination for Cause by USF.** Only USF (and not any USF Company) shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to Ricoh in the event of the occurrence of any of the following: (i) Ricoh's material breach of any provision of the Agreement provided that such breach has not been cured within thirty (30) days after such notice; or (ii) if Ricoh shall be or become insolvent, shall call any meeting of creditors or have appointed a receiver or trustee over itself or its assets, or if any petition, proceeding or other action under any bankruptcy laws shall be filed by or instituted against Ricoh; or (iii) if USF issues an Invitation to Negotiate (or other competitive solicitation process) and issues a final award under such process.

(ii) **Termination for Cause by Ricoh.** Ricoh shall have the right to terminate the Master Agreement upon not less than thirty (30) days' prior written notice to USF in the event of the occurrence of any of the following:

(i) USF's material breach of any provision of this Agreement independent of any Order, provided that such breach has not been cured within thirty (30) days after such notice; or (ii) if USF shall be or become insolvent, shall call any meeting of creditors or have appointed a receiver or trustee over itself or its assets, or if any petition, proceeding or other action under any bankruptcy laws shall be filed by or instituted against USF

(c) **Effect of Termination or Expiration on Agreement.** Upon any termination or expiration of this Agreement:

(i) Unless USF provides Ricoh written notice to the contrary as provided for in this Section, any unfilled Order or portion thereof for the purchase or lease of Equipment or licensing Software shall automatically terminate with respect to that Equipment and Software for which delivery has not yet occurred and such Equipment and Software shall be made available by USF for return to Ricoh. In the event USF desires to maintain any outstanding Order for which delivery has not yet occurred notwithstanding the termination of this Agreement, USF shall provide Ricoh written notice thereof no later than ten (10) days after the effective date of termination of this Agreement and USF shall identify in such written notice the Orders thereof USF desires to maintain in effect,

(ii) Ricoh shall refund to USF Companies any payments made on account of future Maintenance

(iii) Services and Professional Services not performed as of the date of termination of such Services.

(iv) Termination of this Agreement shall not limit either party from pursuing any other remedies available to it by law or under the Agreement.

(d) **Non-appropriation; State Funding.** USF's continuing performance and obligations to pay under this Agreement or any Order that has a term greater than one year is subject to and contingent on annual appropriations from the legislature of the State of Florida. For purposes of this paragraph, a 'non-appropriation' shall include a reduction of USF general legislative appropriation

by greater than 5 percent in any one year. In such an event, USF may terminate this Agreement and any Orders upon thirty days written notice. This section shall retain precedence over the terms of any Order.

**14. Indemnification/Infringement.**

(a) Infringement Claims. Ricoh will defend, indemnify and hold harmless USF from all losses, damages, injuries, costs and expenses (including without limitation, court costs and reasonable attorneys fees) arising from a claim that any Product furnished by Ricoh infringes the Intellectual Property Rights of any third party, provided that USF complies with the procedure set forth below. In such event, Ricoh may, at its expense, either (i) modify such Products to make them non-infringing while retaining the same or equivalent functionality, (ii) obtain for or on behalf of USF a license to continue using such Products or (iii) replace the Products with substantially similar Products with the same or equivalent functionality. The foregoing indemnity shall not apply to the extent that the alleged infringement arises out of or relates to: (i) infringing property, information or data which is not provided by Ricoh; (ii) any act or omission of USF not authorized under this Agreement or the relevant Order (as applicable); (iii) the use of the Intellectual Property in combination with other software, materials, equipment or services which are not supplied by Ricoh; (iv) customized portions of a Product designed in accordance with written specifications provided by USF; or (v) alterations or amendments made to the Intellectual Property or Equipment which are not made by Ricoh.

(b) Personal Injury, Death and Property Damage Claims

Each party shall defend, indemnify and hold harmless the other party, the other party's affiliates, and their directors, officers, employees and agents (each, an "indemnified party") from all losses, damages, injuries, costs and expenses (including without limitation court costs and reasonable attorneys' fees) arising out of personal injury, death or damage to tangible property, suffered by the party claiming indemnification and directly and proximately caused by the acts or omissions of the other party (the "indemnifying party"), its affiliates and/or each of their directors, officers, employees or agents, arising out of or related to this Agreement, provided in each case that the indemnified party complies with the procedure set forth in subsection (c) below. Notwithstanding, USF cannot and will not indemnify Ricoh beyond the scope and limits allowed by section 768.28, Florida Statutes, which limits the liability of Florida State agencies to \$100,000 per claim, and \$200,000 per incident in the aggregate.

(c) Procedure. The following procedure shall be applicable to indemnification sought pursuant to this Section. The indemnified party shall promptly notify the indemnifying party of a claim to be subject to this Section; provided however, that failure to do so shall not preclude such party's right to indemnification if such failure does not materially prejudice the indemnifying party, and if such failure does materially prejudice the indemnifying party then the indemnified party's rights shall only be diminished to the extent of the prejudice. The indemnified party shall control the defense and/or settlement of the claim; provided, however, that upon receipt of notice of the claim, the indemnifying party shall have the right to assume control of the defense of the claim by providing the indemnified party notice of such assumption within thirty (30) days after receipt of notice of the claim. The indemnifying party's control of the defense shall include the right to compromise or settle such claim for money damages which the indemnifying party shall pay. Any other compromise or settlement must be approved by the indemnified party which consent shall not be unreasonably withheld conditioned or delayed. The indemnified party shall be reimbursed for its reasonable, direct out-of-pocket expenses, as incurred, including, without limitation, attorneys' fees, incurred either (i) as a result of such participation at the indemnifying party's request as described in the prior sentence, (ii) during the initial defense of the claim prior to the time the indemnifying party assumes control of the defense of the claim, or (iii) in connection with the defense of the claim in the event the indemnifying party does not assume control of the defense of the claim. If the indemnifying party does assume control of the defense, the indemnified party in any event may choose to participate in the defense and/or settlement with counsel of its own choosing at its own expense.

**15. Confidentiality.**

(a) "Confidential Information" means and refers to all tangible or intangible information and materials, in any form or medium (and without regard to whether the information or materials are owned by Ricoh, USF or by a third party), whether furnished or disclosed to either party, or otherwise obtained, accessed or observed, that satisfies at least one of the following criteria:

- (i) Information or materials related to a party or its affiliates or any of their respective USF's business, trade secrets, USFs (including identities, characteristics and activities), business plans, strategies, forecasts or forecast assumptions, operations, methods of doing business, records, pricing, finances, assets, technology (including software, data bases, data processing or communications networking systems), data or information or materials that reveal research, technology, practices, procedures, processes, methodologies, know how, or other systems or controls by which a party's products, services, applications, prices and methods of operations or doing business are developed, conducted or operated, and all information or materials derived therefrom or based thereon;
- (ii) Information or materials designated or identified as confidential by a party, whether by letter or by an appropriate proprietary stamp or legend, prior to or at the time such information or materials are disclosed;
- (iii) Information disclosed orally or visually, or written or other form of tangible information or materials

without an appropriate letter, proprietary stamp or legend, if it would be apparent to a reasonable person, familiar

with the business and the industry in which a party operates, that such information or materials are of a confidential or proprietary nature; or,

(iv) Any non-public, personal, financial or identifying information of an individual, including a party's USFs or employees.

(b) Duty of Care. During the term of this Agreement and for a period of three (3) years after expiration or termination of this Agreement, the party receiving ("Receiving Party") Confidential Information of the other party ("Disclosing Party") will exercise at least the same degree of care with respect to the Disclosing Party's Confidential Information that the Receiving Party exercises to protect its own Confidential Information; and, at a minimum, the Receiving Party will maintain adequate security measures to safeguard the Disclosing Party's Confidential Information from unauthorized disclosure, access, use and misappropriation. Without limiting the generality of the foregoing, the Receiving Party will only use or reproduce the Disclosing Party's Confidential Information to the extent necessary to enable the Receiving Party to fulfill its obligations or exercise its rights under this Agreement. In addition, the Receiving Party will disclose the Disclosing Party's Confidential Information only to those of the Receiving Party's personnel or those of its affiliates and/or a Designated Servicer who have a "need to know" such Confidential Information (and only to the extent necessary) in order to fulfill the purposes contemplated by this Agreement or an applicable Affiliate Agreement. If the Receiving Party becomes aware of any threatened or actual unauthorized access to, use or disclosure of, or any inability to account for, the Disclosing Party's Confidential Information, the Receiving Party will promptly notify the Disclosing Party thereof and will assist the Disclosing Party with its efforts to terminate such access, to curtail such threatened or actual unauthorized use or disclosure, or to recover such information or materials. The Receiving Party will be liable to the Disclosing Party for any non-compliance by its agents or Ricoh's to the same extent it would be liable for non-compliance by its employees.

(c) Exclusions. The obligations of confidentiality assumed under this Agreement shall not apply to the extent the Receiving Party can demonstrate that such information:

- (i) is or has become generally available to the public, without any breach by the Receiving Party of the provisions of this Agreement or any other applicable agreement between the parties;
- (ii) was rightfully in the possession of the Receiving Party, without confidentiality restrictions, prior to such party's receipt pursuant to this Agreement;
- (iii) was rightfully acquired by the Receiving Party from a third party who was entitled to disclose such information, without confidentiality or proprietary restrictions;
- (iv) was independently developed by the Receiving Party without using or referring to the Disclosing Party's Confidential Information; or,
- (v) is subject to a written agreement pursuant to which the Disclosing Party authorized the Receiving Party to disclose the subject information.

(d) Legally Required Disclosures. The obligations of confidentiality assumed under this Agreement shall not apply to the extent that the Receiving Party is required to disclose the Disclosing Party's Confidential Information under any applicable law, regulation or an order from a court, regulatory agency or other governmental authority having competent jurisdiction, provided that the Receiving Party:

- (i) promptly notifies the Disclosing Party of the order in order to provide the Disclosing Party an opportunity to seek a protective order;
- (ii) provides the Disclosing Party with reasonable cooperation in its efforts to resist the disclosure, upon reasonable request by the Disclosing Party and at the Disclosing Party's expense; and,
- (iii) disclose only the portion of the Disclosing Party's Confidential Information that is required to be disclosed under such law, regulation or order.

Notwithstanding, however, for any disclosures of information required by Chapter 119, Florida Statutes (Florida Public Records Act), USF retains the right to make an interpretation regarding its duties and obligations under the law. Any disclosure of information by USF pursuant to the Florida Public Records Act shall not be considered a breach of Section 15. Such a disclosure may include, without limitation, this Agreement and documents, papers, letters, or other material related thereto.

16. Software Installation or Service Acknowledgement and Release. If USF requests Ricoh to install Products on USF's computer hardware, peripherals, network hardware and network software (the "Computer"), USF acknowledges that Ricoh has no knowledge or control over the type of software currently on USF's Computer or the environment in which it operates and that some software, including the existing software on the USF's Computer, may contain configurations or algorithms which are incompatible with the Products. USF acknowledges that because of these and other factors, which are beyond the control of Ricoh, there are risks associated with the installation or service of the Products, including without limitation, the risk that data on the Computer may be damaged or deleted. USF acknowledges that it is advisable and the sole responsibility of the USF prior to installation or service of the Products to back up all data contained on the Computer which USF, in its sole discretion, deems necessary including, without limitation, all directories, sub-directories and partitions. If any data is damaged, or deleted, USF is responsible for restoring such data to the Computer. In consideration of Ricoh agreeing to perform such installation, USF agrees for itself, its employees, agents, successors and assigns, to hereby release and forever discharge Ricoh and its employees, agents, successors and assigns from any and



all claims, debts, liabilities, costs, expenses (including attorney's fees), damages, actions and causes of action of every kind and nature, in law and in equity, related to or arising from the installation, service, maintenance, function or use of the Products and the actions of any employees or agents of Ricoh related to the installation, maintenance function or use of the software or hardware.

17. **Effect of Headings.** The subject headings of the sections of this Agreement are included for purpose of convenience only, and shall not affect construction or interpretation of any of its provisions.

18. **Waiver.** The waiver of any breach or default under this Agreement by either party shall constitute a waiver only as to such particular breach or default and shall not constitute a waiver or other breach or default. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of a claim or right unless the waiver or renunciation is in writing and signed by an officer of the aggrieved party.

19. **Governing Law.** This Agreement shall be construed in accordance with and governed by the substantive laws of USF of Florida, without regard to its conflicts of laws principles.

20. **Notices.** Service of all notices required or permitted under this Agreement shall be sufficient, if given personally delivered or mailed to USF at its address set forth herein or to Ricoh Americas Corporation at 5 Dedrick Place, West Caldwell, New Jersey 07006, Attn: Legal Department, or at such other address as such party may provide in writing to the other party from time to time. Any such notice shall be effective when deposited in the United States mail, duly and properly addressed, certified mail return receipt requested with postage prepaid or when personally delivered.

20. **Severability.** If any provision or clause of this Agreement or any Order hereunder, or any application thereof to any person, entity or circumstance(s) is held to be invalid, unconscionable or unenforceable, such invalidity, unconscionability or unenforceability shall not affect any other provisions or applications of this Agreement or the subject Order which can be given effect without the invalid, unconscionable or unenforceable provision or application, and to this end the provisions and/or applications of this Agreement or such Order are declared to be severable, null and void, and of no legal force or effect.

21. **Entire Agreement.** This Agreement shall be comprised of this Agreement and the respective individual Order Agreements and Schedules, Exhibits and Statements of Work executed by Ricoh and USF. This Agreement supersedes all proposals, oral or written, and all other communications between the parties in relation to the subject matter of this Agreement. No other agreement or understanding exists between Ricoh and USF except as expressly set forth in this writing. USF agrees and acknowledges that it has not relied on any representation, warranty or provision not explicitly contained in this Agreement, whether in writing, electronically communicated or in oral form and that no "side letter" or "side agreements" exist between the parties. To the extent any such "side letters" or "side agreements" have been entered into, or contemplated, same are hereby deemed unenforceable, null and void and of no legal effect. These terms and conditions shall prevail, notwithstanding any additional or different terms and conditions of any purchase Order submitted by USF in respect to the Products to be provided hereunder. This writing constitutes the final written expression of all the terms of this Agreement and it is a complete and exclusive statement of those terms. No variation or modification of this Agreement, whether by USF purchase order or otherwise, and no waiver of any of the Agreement's provisions or conditions shall be binding unless in writing and signed by duly authorized agents of Ricoh and USF. Any and all representations, promises, warranties, or statements by Ricoh's agent, employee or representative that differ in any way from the terms of this written Agreement shall be given no force or effect.

IN WITNESS WHEREOF, the parties hereto, each acting with proper authority, have executed this Agreement as of the Effective Date.

RICOH AMERICAS CORPORATION

THE UNIVERSITY OF SOUTH FLORIDA  
BOARD OF TRUSTEES

By: *Christopher Chando*

By: *Tom DiBella*

Name: *Christopher Chando*

Name: Tom DiBella

Title: *Director Leasing*

Title: Director Purchasing &

*4/7/09*

Property Services

Approved as to  
Form and Legality  
*C. Mailberry*  
Attorney - USF

# RICOH

## Exhibit 1

### ORDER AGREEMENT TERMS AND CONDITIONS FOR PURCHASE

Order Agreement Pursuant to Master Agreement between  
Ricoh Americas Corporation and \_\_\_\_\_  
(the "Agreement")

USF:
Address:
Equipment location if different form above:

Quantity	Description	Price
----------	-------------	-------

Number of Payments	
Payment Amount	
Plus Tax	
Total Payment Amount	
Payment Frequency	
Contract Term	
1 <sup>st</sup> Payment Due	

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

Authorized Signature: \_\_\_\_\_

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

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

Cost Center Number: \_\_\_\_\_

This Order is subject to the terms and conditions of the Master Agreement dated \_\_\_\_\_, by and between Ricoh Americas Corporation and \_\_\_\_\_, which terms and conditions are incorporated herein by reference.

**TERMS AND CONDITIONS  
FOR PURCHASE OF RICOH EQUIPMENT**

Purchase of Equipment. Ricoh agrees to sell to USF and USF agrees to purchase from Ricoh the Equipment set forth on the first page hereof and any additional schedule attached thereto. USF promises to pay Ricoh an amount equal to the purchase price which is set forth in this Order in accordance with the terms and conditions herein plus the cost established for maintenance of the Equipment. USF authorizes Ricoh to insert in this Agreement the serial numbers of the Equipment when Ricoh so determines them

Use of Purchase Orders. The terms of any purchase order issued by USF shall not apply to purchases of Equipment hereunder. Product Prices, except as necessary to designate specific Equipment, quantities, delivery dates, and other similar terms that may vary from order to order, and the Agreement, to the extent applicable, shall be deemed incorporated in such purchase orders. The terms and conditions contained in any invoice, bill of lading, or other documents supplied by Ricoh are expressly rejected and superseded by this Agreement and shall not be included in any contract with USF.

Security Interest. USF hereby grants to Ricoh a purchase money security interest in and to the Equipment and proceeds thereof and all substitutions therefore to secure payment of the purchase price of the Equipment, until the purchase price is paid in full.

Payment Terms. Net forty (40) days from date of invoice.

# RICOH

## Exhibit 2

### ORDER AGREEMENT TERMS AND CONDITIONS FOR LEASE

Order Agreement Pursuant to Master Agreement between  
Ricoh Americas Corporation and \_\_\_\_\_  
(the "Agreement")

USF:
Address:
Equipment location if different form above:

Quantity	Description	Price
----------	-------------	-------

Number of Payments	
Payment Amount	
Plus Tax	
Total Payment Amount	
Payment Frequency	
Contract Term	
1 <sup>st</sup> Payment Due	

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

Authorized Signature: \_\_\_\_\_

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

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

Cost Center Number: \_\_\_\_\_

This Order Agreement does not constitute a binding acceptance by USF. A lease will not become valid and binding on USF unless a Purchase Order is generated and delivered by and from the USF Purchasing Department. All USF Purchase Orders will reference this agreement and any identification or contract number given by USF.

This Order is subject to the terms and conditions of the Master Agreement dated \_\_\_\_\_, by and between Ricoh Americas Corporation and \_\_\_\_\_, which terms and conditions are incorporated herein by reference.

**Exhibit 2 (Continued)**



## TERMS AND CONDITIONS OF LEASE AGREEMENT MASTER TERMS AND CONDITIONS OF LEASE AGREEMENT

417 LEASE OF EQUIPMENT. This Master Terms and Conditions of Lease Agreement (this "Lease Agreement") is executed pursuant to that certain Master Agreement dated 2017 (the "Master Agreement") between Ricoh Americas Corporation ("Ricoh") and the University of South Florida Board of Trustees, and establishes the general terms and conditions under which Ricoh or a third party Lessor assignee ("Lessor") may, from time to time, lease Equipment (as hereunder defined) to USF. If so assigned by Ricoh to a Lessor, the term "Ricoh" shall also mean and include such third party Lessor's assignee as to Ricoh's rights, remedies and entitlements hereunder and each Schedule (as hereunder defined) so assigned, but not Ricoh's obligations. The terms hereof shall be deemed to form a part of each Order Agreement for Lease (each, a "Schedule") executed by the parties which references this Lease Agreement. "Equipment" shall mean items of Equipment set out in any Schedule. Ricoh agrees to lease the Equipment to USF on the terms and conditions contained herein and as set forth on the Schedule. USF promises to pay to Ricoh an Equipment Payment and, if applicable, a Maintenance Payment (together the "Lease Payment") set forth in the Schedule. Each Schedule shall constitute a separate assignable lease agreement incorporating all of the terms hereof. In the event of a conflict between any of the Schedule and the provisions hereof, the provisions of the Schedule shall prevail.

2. **TERM AND LEASE.** This Lease Agreement shall become effective upon acceptance and execution by Ricoh and shall remain effective at least until the expiration of the Term of the last Schedule hereunder. You will sign a separate delivery and acceptance certificate and be responsible, at your own cost, to arrange for delivery and installation of the Equipment.

Each Schedule is effective on the date that it is accepted and signed by Ricoh, and the term of each Schedule begins on that date or any later date that Ricoh designates (the "Commencement Date") and continues for the term stated on the Schedule. As USF will have possession of the Equipment from the date of its delivery, if Ricoh accepts and signs the Schedule, USF will pay Ricoh interim rent for the period from the date the Equipment is delivered to USF and the Commencement Date, as reasonably calculated by Ricoh based on the Lease Payment, the number of days in that period, and a month of 30 days.

Lease Payments will be due as invoiced until the balance of the Lease Payments and any additional Lease Payments or expenses chargeable to USF under the Schedule are paid in full. **EXCEPT AS EXPRESSLY SET FORTH IN THE MASTER AGREEMENT, THIS LEASE AGREEMENT AND ALL SCHEDULES ARE NON-CANCELLABLE BY USF. USF'S OBLIGATION TO PAY THE LEASE PAYMENTS IS ABSOLUTE AND UNCONDITIONAL AND IS NOT SUBJECT TO CANCELLATION, REDUCTION, SETOFF OR COUNTERCLAIM EXCEPT AS STATED IN THE MASTER AGREEMENT.** All payments shall be made to Ricoh at the address indicated by Ricoh in writing.

3. **REPAIR AND MAINTENANCE.** If a Schedule includes repair and maintenance services, such services shall be provided pursuant to the terms of the Terms and Conditions for Maintenance Services as set forth in the Master Agreement between USF and Ricoh.

4. **TITLE, PERSONAL PROPERTY, LOCATION AND INSPECTION.** Unless USF has been granted a \$1.00 purchase option under the applicable Schedule, Ricoh owns the Equipment and USF has the right to lease the Equipment for the full Lease Term provided the USF complies with the terms and conditions of the Schedule and this Lease Agreement. For all purposes under the Schedule and this Lease Agreement, the Equipment is and shall remain personal property even though the Equipment may become attached to any real estate. USF agrees not to permit a lien to be placed upon the Equipment or to remove the Equipment from its place of installation without Ricoh's prior written consent, which consent shall not be unreasonably withheld, if Ricoh feels it is necessary, USF agrees to provide Ricoh with waivers and interest of liens, from anyone claiming any interest in the real estate on which any item of Equipment is located. Ricoh also has the right, at reasonable times, to inspect the Equipment.

5. **ASSIGNMENT.** WITHOUT PRIOR WRITTEN CONSENT OF RICOH, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD WITH RICOH ACTING AS A COMMERCIALLY REASONABLE AND PRUDENT LESSOR GIVEN ALL OF THE FACTS AND CIRCUMSTANCES THEN KNOWN TO RICOH, USF SHALL NOT (i) ASSIGN, TRANSFER, PLEDGE OR HYPOTHECATE THIS LEASE AGREEMENT OR ANY SCHEDULE, THE EQUIPMENT OR ANY PART THEREOF OR ANY INTEREST THEREIN OR (ii) SUBLET OR LEND THE EQUIPMENT OR PERMIT IT TO BE USED BY ANYONE OTHER THAN USF AND USF'S EMPLOYEES. Ricoh may assign this Lease Agreement or any Schedule and the Equipment to a Lessor and its rights, remedies and entitlements thereunder (but not Ricoh's obligations), at any time in whole or in part, without notice to the USF. USF shall not assert against any assignee Lessor, any claim or defense it may have against Ricoh, but rather shall assert the same only against Ricoh. No assignment of this Lease Agreement or any Schedule shall release Ricoh from any obligations Ricoh may have to USF. In the event this Lease Agreement or any Schedule is assigned by Ricoh to a Lessor, the following provisions are also applicable:

(a) **Selection of Equipment/Disclaimer of Warranties:** USF has selected the Equipment and the supplier from whom Lessor agrees to purchase the Equipment at USF's request. Lessor is not the manufacturer of the Equipment and Lessor is leasing the Equipment to USF "AS-IS". USF has selected the Equipment and Lessor MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Lessor transfers to USF for the term of a Schedule all warranties, if any, made by Ricoh. USF ALSO ACKNOWLEDGES THAT NO ONE IS AUTHORIZED TO WAIVE OR CHANGE ANY TERM, PROVISION OR CONDITION OF THIS LEASE AGREEMENT OR ANY SCHEDULE AND, EXCEPT FOR RICOH WARRANTIES, MAKE ANY REPRESENTATION OR WARRANTY ABOUT A SCHEDULE OR THE EQUIPMENT. LESSOR SHALL NOT BE LIABLE FOR ANY DELAYS IN MAKING DELIVERIES OR REPAIRS NOR IN ANY EVENT FOR SPECIAL, RESULTING OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT OCCASIONED BY ANY BREACH OF WARRANTY OR REPRESENTATION OR RESULTING FROM THE USE OR PERFORMANCE OF THE EQUIPMENT. USF'S OBLIGATION TO PAY IN FULL ANY AMOUNT DUE UNDER A SCHEDULE WILL NOT BE AFFECTED BY ANY DISPUTE, CLAIM, COUNTERCLAIM, DEFENSE OR OTHER RIGHT WHICH USF MAY HAVE OR ASSERT AGAINST RICOH.

IN THE EVENT THE PERIODIC PAYMENTS UNDER A SCHEDULE INCLUDES THE COST OF MAINTENANCE AND/OR SERVICE BEING PROVIDED BY RICOH, USF ACKNOWLEDGES THAT, IF THAT SCHEDULE IS ASSIGNED, THE ASSIGNEE LESSOR IS NOT RESPONSIBLE FOR PROVIDING SUCH MAINTENANCE AND/OR SERVICE FOR THE EQUIPMENT. USF WILL MAKE ALL CLAIMS FOR MAINTENANCE AND/OR SERVICE SOLELY AGAINST RICOH AND SUCH CLAIMS WILL NOT AFFECT USF'S OBLIGATION TO MAKE ALL PERIODIC PAYMENTS UNDER SUCH SCHEDULE TO THE ASSIGNEE LESSOR. USF FURTHER ACKNOWLEDGES THAT RICOH MAY INCREASE USF'S MAINTENANCE AND/OR SERVICE COSTS BY UP TO 10% ANNUALLY.

(b) **Use, Maintenance and Repair:** USF is required, at its own cost and expense, to keep the Equipment in good repair, condition and working order, except for ordinary wear and tear, and USF will supply all parts and servicing required. All replacement parts used or installed and repairs made to the Equipment will become Lessor's property. USF may, with Lessor's prior written consent, make modifications to the Equipment, provided such modifications do not reduce the value or usefulness of the Equipment or result in the loss of any warranty or any certification necessary for the maintenance of the Equipment and such modifications must be easily removable without causing damage to the Equipment. Before returning the Equipment, USF agrees to remove such modifications and restore the Equipment to its original condition. If USF fails to remove such modifications, Lessor is deemed the owner of such modifications.

(c) **Maintenance and Additional Copy Charge Administration:** USF acknowledges that Lessor, purely as an administrative convenience to USF and Ricoh, may bill, collect and otherwise administer Maintenance Payments on Ricoh's behalf and agrees that Lessor has no liability or responsibility for the performance thereof.

(d) The terms and conditions of this Lease Agreement are the only terms and conditions governing the Lease of the Equipment by USF and no other agreements between Ricoh and USF, including but not limited to the Master Agreement, will have any effect upon, or otherwise affect, the terms and conditions of this Lease Agreement.

6. **REDELIVERY AND RENEWAL.** Upon at least thirty (30) and not more than one hundred twenty (120) days written notice to Ricoh prior to the expiration of the initial Term or any Renewal Term of the applicable Schedule, USF at its option may (i) renew the Schedule for an additional term of at least two (2) year renewals; (ii) exercise any applicable purchase option as specified in the applicable Schedule; or (iii) return the Equipment, freight and insurance prepaid, to Ricoh in good repair, condition and working order, ordinary wear and tear excepted, in a manner and to a location designated by Ricoh. If USF fails to notify Ricoh or having notified Ricoh, USF fails to return the Equipment or exercise one of its other options provided herein, the applicable Schedule shall renew for consecutive sixty (60) day periods with Lease Payments in effect at the expiration of the initial Term of the Schedule.

7. **LOSS OR DAMAGE.** USF is responsible for the risk of loss or destruction of, or damage to the Equipment. No such loss or damage relieves USF from any obligation under a Schedule. USF agrees to promptly notify Ricoh in writing of an loss or destruction or damage to the Equipment and USF will, at Ricoh's option, (a) repair the Equipment to good condition and working order, (b) replace the Equipment with like equipment in good repair, condition and working order, acceptable to Ricoh and transfer clear title to such replacement equipment to Ricoh, and such Equipment shall be subject to the Schedule and be deemed the Equipment, or (c) pay to Ricoh the present value of the total of all unpaid Lease Payments for the full Schedule term, plus either the fair market value of the Equipment at the end of the Schedule term as reasonably determined by Ricoh or any End of Schedule Option price stated on the Schedule, whichever is greater (the "FMV"), with the accelerated Lease Payments and the FMV discounted at 5% per annum, plus reasonable costs of collection and attorneys' fees, whereupon the applicable portion of the Schedule shall terminate. All proceeds of insurance received by Ricoh as a result of such loss or damage will be applied, where applicable, toward the replacement or repair of the Equipment or the payment of USF's obligations. As between a Lessor and USF, Lessor is not responsible for any losses or injuries caused by the Equipment and USF will defend and indemnify such Lessor from any claims arising out of or related to the Equipment.

8. **TAXES.** USF is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased. Ricoh shall not charge USF for any such taxes.

9. **LATE CHARGES.** If any Lease Payment or any other amount payable under any Schedule is not paid within 10 days of when due, Ricoh may request in writing that USF pay an interest penalty (established pursuant to section 55.03(1), Florida Statutes) on the unpaid balance; however, interest of less than \$1.00 will not be paid.

10. **INSURANCE.** USF is a self-insured institution of the State of Florida, and its "self insurance" limitations are provided by law. USF is provided with comprehensive general liability insurance through the State Risk Management Trust Fund with limits of coverage up to a maximum of \$100,000 per person and \$200,000 in the aggregate per occurrence,

pursuant to the terms and limitations of Sections 768.28, Florida Statutes and Chapter 284, Part II, Florida Statutes. Worker's Compensation insurance is maintained in full compliance with Florida law. Otherwise, USF agrees to assume all risk of personal injury and property damage caused by the negligent acts or omissions of its officers, agents, and employees acting within the scope of their employment. This statement shall not be construed or interpreted as consent to be sued or as a waiver of the USF's sovereign immunity beyond that provided in section 768.28, Florida Statutes.

**11. DEFAULT.** USF is in default of this Lease Agreement and any Schedule if any of the following occurs: (a) USF fails to pay any Lease Payment or other sum due under any Schedule when due, or (b) USF breaches any warranty or other obligation under this Lease Agreement and fails to cure such breach within 15 days after notice from Ricoh, or (c) USF becomes insolvent or unable to pay its debts when due, or (d) USF stops doing business as a going concern, or (e) USF makes an assignment for the benefit of creditors or, (f) USF undergoes a substantial deterioration in its financial condition, or (g) USF, any guarantor or any partner shall voluntarily file or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment or debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator shall be appointed of its or substantial part of its assets.

**12. REMEDIES.** Ricoh shall have the following remedies if a default should occur: (a) Upon written notice, declare the entire balance of the unpaid Lease Payments and all amounts to become due under a Schedule for the full term thereof immediately due and payable as liquidated damages and not as a penalty and be entitled to receive all Lease Payments and any other amounts then accrued or accelerated under a Lease Schedule or any other agreement plus the FMV (as defined in Section 7) with all accelerated Lease Payments and the FMV discounted at 3% per annum, but only to the extent permitted by law; (b) Charge USF interest on all monies due Ricoh at the rate of eighteen percent (18%) per year from the date of default until paid, but in no event more than the maximum rate permitted by law; (c) Require that USF return the Equipment to Ricoh and in the event USF fails to return the Equipment, enter upon the premises peaceably with or without legal process where the Equipment is located and repossess the Equipment. Such return or repossession of the Equipment will not constitute a termination of a Schedule unless Ricoh expressly notifies USF in writing. In the event the Equipment is returned or repossessed by Ricoh and unless Ricoh has terminated the Schedule, Ricoh may sell or re-rent the Equipment to any persons with any terms Ricoh determines, at one or more public or private sales, with or without notice to USF, and apply the net proceeds after deducting the costs and expenses of such sale or re-rent USF's obligations to Ricoh with USF remaining liable for any deficiency and with any excess being retained by Ricoh. The credit for any sums to be received by Ricoh from any such rental shall be discounted to the date of the agreement at five percent (5%) per year.

USF is also required to pay (i) all expenses incurred by Ricoh in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment, and (ii) reasonable attorneys' fees.

USF agrees that any delay or failure to enforce Ricoh's rights under this Lease Agreement or any Schedule does not prevent Ricoh from enforcing any rights at a later time.

All Ricoh's remedies are cumulative, are in addition to any other remedies provided by law, and may, to the extent permitted by law, be exercised either concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy, or preclude the exercise of any other remedy. No failure on Ricoh's part to exercise any right or remedy and no delay in exercising any right or remedy shall operate as a waiver of any right or remedy or modify the terms of this Lease Agreement. A waiver of default shall not be construed as a waiver of any other or subsequent default.

**13. WARRANTY OF BUSINESS PURPOSE.** USF hereby warrants and represents that the Equipment will be used for business purposes, and not for personal, family or household purposes.

**14. UCC FILINGS AND FINANCIAL STATEMENTS.** USF authorizes Ricoh to file a financing statement with respect to the Equipment where permitted by the Uniform Commercial Code ("UCC"). The filing of financing statements is not to be construed as evidence that only a security interest was intended to be created, but is to give public notice of Ricoh's ownership of or other interest in the Equipment. If any Schedule is deemed at any time to be one intended as security then USF grants Ricoh a security interest in the Equipment and the proceeds from the sale, lease or other disposition of the Equipment.

**15. NOTICE.** Written notices will be deemed to have been given when delivered personally or the third day after being deposited in the United States mail, postage prepaid, addressed to such party at its address set forth in this Lease Agreement, in the Schedule or at such other address as such party may have subsequently provided to the other party in writing.

**16. CHOICE OF LAW.** This Lease Agreement and the Schedules are governed by and construed in accordance with the laws of Florida. USF consents to and agrees that personal jurisdiction over USF and subject matter jurisdiction over the Equipment shall be with the courts of Hillsborough County, Florida, or the applicable Federal District Court in Tampa, FL with respect to any provisions of this Lease Agreement.

**17. ENTIRE AGREEMENT; SEVERABILITY; WAIVERS.** This Lease Agreement and the Schedules contain the entire agreement and understanding. No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provisions of this Lease Agreement or any Schedule which for any reason may be held unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Lease Agreement.

**18. UCC - ARTICLE 2A PROVISIONS.** USF agrees that each Schedule is a Finance Lease as that term is defined in Article 2A of the UCC. USF acknowledges that Ricoh has given USF the name of the supplier of the Equipment. Ricoh hereby notifies USF that USF may have rights under the contract with the supplier and USF may contact the supplier for a description of any rights or warranties that USF may have under this Lease Agreement. USF also waives any and all rights and remedies granted USF under Sections 2A-508 through 2A-522 of the UCC including, but not limited to: the right to repudiate any Schedule and reject the Equipment; the right to cancel any Schedule; the right to revoke acceptance of any Schedule; the right to grant a security interest in the Equipment in USF's possession and control for any reason; or the right to recover damages for any breach of warranty.

**19. FACSIMILE DOCUMENTATION.** USF agrees that a facsimile copy of this Lease Agreement and any Schedules with facsimile signatures may be treated as an original for purposes of being admissible as evidence of this Lease Agreement or any Schedule. Furthermore, if USF elects to transmit any Schedule by facsimile, USF agrees that, if Ricoh elects to do so in its sole discretion, the only version of such Schedule(s) that will be the original for all purposes under the Uniform Commercial Code will be the version containing USF's facsimile signature and Ricoh's original signature, and USF waives notice of acceptance of such Schedule(s) and receipt of a copy of the originally signed Schedule(s).

USF: University of South Florida

Signature:   
Tom DiBella, Director Purchasing & Property

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

Date: 4/2/09

RICOH AMERICAS CORPORATION

Signature: 

Title: Director Leasing

Date: 4/2/09

### EXHIBIT 3

#### ORDER AGREEMENT TERMS AND CONDITIONS FOR MAINTENANCE SERVICES

**MAINTENANCE SERVICE.** Ricoh agrees to provide to the USF, during Ricoh's normal business hours which are Monday through Friday 8:00am to 5:00 pm except for state holidays, the maintenance service necessary to keep the Equipment in, or restore the Equipment to, good working order in accordance with Ricoh's policies then in effect. This maintenance service includes maintenance based upon the specific needs of individual Equipment, as determined by Ricoh, and unscheduled, on-call remedial maintenance. For each unscheduled service call requested by USF, Ricoh shall have a reasonable time within which to respond.

Maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by Ricoh. Maintenance parts will be furnished on an exchange basis, and the replaced parts become the property of Ricoh. Maintenance service provided under this Agreement does not assure uninterrupted operation of the Equipment.

If available, maintenance service requested and performed outside Ricoh's normal business hours will be charged to the USF at double (2x) Ricoh's currently applicable rate with a four (4) hour minimum portal to portal charge. Additional time beyond the four (4) hour minimum will be billed in six (6) minute intervals.

Example: After Hours Service charges on a Ricoh 6765 Copier (zone 1 - 0% Cost Differential Office) would be:

$\$149.00 \times 2 = \$298.00$

$\$298.00 \times 4 =$  \$1192.00 minimum billing

\$29.80 for each additional 6 minutes beyond the four (4) hour minimum.

**EXCLUSIONS TO MAINTENANCE SERVICE.** Maintenance service provided by Ricoh under this Agreement does not include:

- (a) Repair of damage or increase in service time caused by failure of the USF continually to provide a suitable installation environment with all facilities prescribed by Ricoh, including, but not limited to, the failure to provide, adequate electrical power, air-conditioning, or humidity-control;
- (b) Repair of damage or increase in service time caused by: accident, disaster (which shall include but not be limited to fire, flood, water, wind and lightning); transportation, neglect, power transients, abuse or misuse, failure of the USF to follow Ricoh's published operating instructions, and unauthorized modifications or repair of Equipment by persons other than authorized representatives of Ricoh;
- (c) Repair of damage or increase in service time caused by use of the Equipment for purposes other than those for which designed;
- (d) Replacement of parts, which are consumed in normal Equipment operation, unless specifically included;
- (e) Furnishing supplies or accessories, painting or refinishing the Equipment or furnishing the material therefor, inspecting altered Equipment, performing services connected with relocation of Equipment or adding or removing accessories, attachment or other devices;
- (f) Repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by use of incompatible supplies;
- (g) Complete unit replacement or refurbishment of the Equipment;
- (h) Electrical work external to the Equipment or maintenance of accessories, attachments, or other devices not furnished by Ricoh;
- (i) Increase in service time caused by USF denial of full and free access to the Equipment or denial of departure from USF's site.
- (j) Unless agreed herein, consumable supplies such as, but not limited to, paper, staples, developer, drum, toner, and fuser oil.

The foregoing items excluded from maintenance service, if performed by Ricoh, will be charged to the USF at Ricoh's applicable time and material rates and terms then in effect.

**MAINTENANCE TERM.** The maintenance agreement shall cover a one-year period beginning on the effective date listed on the Order, and will be automatically renewed for successive one-year periods at the then current maintenance charge for the Equipment listed on the Order until terminated by either party as provided herein.

**CHARGES.** USF agrees to pay the basic maintenance charge listed on the Order for the maintenance service on the Equipment covered by the Order beginning on the effective date. The effective date of the Order will be the date designated thereon or the day following the last day of Ricoh Equipment Warranty Period of the applicable Sales Agreement, whichever is later. The maintenance charge may be changed on each anniversary date of the Order.

Except for the applicable zone charge, there will be no additional charge for travel expense associated with the services performed during Ricoh's normal business hours, except that the actual travel expense and Ricoh's applicable hourly rates and terms then in effect shall be charged in those instances where the site at which the Equipment is located is not reasonably accessible by private automobile. In addition to the maintenance charges, the USF agrees to pay any tax now or hereafter imposed on or in connection with the sale, delivery, or furnishing of such services or materials described herein, exclusive of taxes based on net income.

**SERVICE WARRANTY.** Ricoh warrants to the USF that the maintenance service provided herein will be performed in accordance with industry practices, and material and parts furnished under a maintenance agreement will be free of defects in material and workmanship at the time of installation. If any failure to meet the foregoing warranty appears and written notice thereof is provided to Ricoh within the term of the applicable maintenance agreement, Ricoh will correctly re-perform the services identified, or repair or replace the defective material or part provided. The foregoing service warranty constitutes USF's sole and exclusive remedy.

**INVOICING.** The basic maintenance charge will be invoiced in advance. Payment shall be made within the terms stated on the invoice. If the Equipment is being leased or rented from Ricoh, the basic maintenance charge may be added to the periodic Lease or Rental charges.

**ACCESS.** USF shall grant to Ricoh service personnel full and free access to the Equipment to provide maintenance service and engineering changes thereon, subject only to the USF's security regulations.

**ENGINEERING CHANGES.** Engineering changes determined applicable by Ricoh, will be controlled and installed by Ricoh on Equipment covered by this Agreement. Engineering changes which provide additional capabilities to the Equipment covered herein will be made at the USF's request at Ricoh's applicable time and material rates and terms then in effect.

**EQUIPMENT TRANSFER.** Any transfer of Equipment covered by this Agreement to a person other than the USF listed herein, or to a location outside of Ricoh's normal servicing area, will exclude such Equipment from the terms of the maintenance agreement. Transfer of Equipment to a different zone within Ricoh's normal servicing area will result in an adjustment of charges to the applicable rate for the new zone.

**TERMINATION OF MAINTENANCE AGREEMENT.** With the exception of leases and rentals, each maintenance agreement may be terminated effective at the end of the first year, or thereafter by either party without incurring any liability to the other party as a result of such termination, provided thirty (30) days advance written notice of termination is given to the other party. Notwithstanding the above, either party may terminate a maintenance agreement for failure of the other to comply with any of its terms and conditions in the event such noncompliance is not cured within thirty (30) days after the provision of notice of such noncompliance. Maintenance Service performed by Ricoh after the termination of a maintenance agreement shall be charged to the USF at Ricoh's applicable time and material rates and terms then in effect. Ricoh may suspend performance under any maintenance agreement if USF is in default or in arrears in payments to Ricoh under this or any other agreement.

This Order is subject to the terms and conditions of the Master Agreement dated \_\_\_\_\_, by and between Ricoh Americas Corporation and \_\_\_\_\_, which terms and conditions are incorporated herein by reference.



## EXHIBIT 4

# RICOH

### ORDER AGREEMENT TERMS AND CONDITIONS FOR SOFTWARE/PROFESSIONAL SERVICES

#### Software Installation or Service Acknowledgment and Release.

If USF requests Ricoh to install certain software or hardware products (the "Products") on USF's computer hardware, peripherals, network hardware and network software (the "Computer"), USF acknowledges that Ricoh has no knowledge or control over the type of software currently on USF's Computer or the environment in which it operates and that some software, including the existing software on the USF's Computer, may contain configurations or algorithms which are incompatible with the Products. USF acknowledges that because of these and other factors, which are beyond the control of Ricoh, there are risks associated with the installation or service of the Products, including without limitation, the risk that data on the Computer may be damaged or deleted.

USF acknowledges that it is advisable and the sole responsibility of the USF prior to installation or service of the Products to back up all data contained on the Computer which USF, in its sole discretion, deems necessary including, without limitation, all directories, sub-directories and partitions. If any data is damaged or deleted, USF is responsible for restoring such data to the Computer.

In consideration of Ricoh agreeing to perform such installation, USF agrees for itself, its employees, agents, successors and assigns, to hereby release and forever discharge Ricoh and its employees, agents, successors and assigns from any and all claims, debts, liabilities, costs, expenses (including attorney's fees), damages, actions and causes of action of every kind and nature, in law and in equity, related to or arising from the installation, service, maintenance, function or use of the Products and the actions of any employees or agents of Ricoh related to the installation, maintenance function or use of the software or hardware.

#### Recruiting

If the USF either directly or indirectly hires a current or former Ricoh employee who is or was retained at USF's site, during or within six (6) months after said employee's period of assignment, USF will pay to Ricoh a placement fee of \$9,500 as compensation for screening, hiring, and training costs incurred. The obligations of this paragraph shall survive any termination of this Agreement.

#### Pricing and Terms

Pricing and terms contained herein are based on the current business requirements and information provided to Ricoh within the request for proposal and or the analysis process. Ricoh reserves the right to negotiate pricing and terms should the circumstances and business requirements change. The period during which Ricoh shall provide Professional Services to USF shall commence on the date set forth in USF Statement of Work and unless sooner terminated pursuant to the terms hereof shall continue through the termination date in USF Statement of Work (the "Professional Services Contract Period"). If necessary, any such changes will be: (i) documented in a change order or amendment; (ii) mutually agreed to; (iii) signed by both parties; and (iv) incorporated as part of this Agreement. Ricoh may, at any time following the expiration of one year from the Commencement Date, and on an annual basis thereafter, upon notice to USF, increase the monthly charge by an amount of up to five percent (5%) of the then-current charge to cover any increase by Ricoh in the price of the labor, consumables and maintenance service.

#### Independent Ricoh

Ricoh agrees that at no time shall Ricoh or any employee of Ricoh during the performance under this Agreement be deemed the agent or employee of USF in any respect. Ricoh is responsible for the day-to-day supervision of and agrees to arrange directly with all its employees for all salary and other compensation. Ricoh shall provide liability insurance covering damages caused or contributed to by its employees, all worker's compensation, medical coverage and any other similar items required by law, regulation or employment agreement. USF retains the right to request, for reasonable cause, the removal and or relocation of any Ricoh employee from performing services under this Agreement.

#### Termination and Remedies

The Professional Services Contract Period may not be terminated by either party except as expressly provided herein:

(a) Termination by Ricoh.

(1) Upon the occurrence of a USF Event of Default, as hereinafter defined, Ricoh shall have the right to exercise any one or more of the following remedies: (i) terminate the Professional Services Contract Period and immediately terminate all Professional Services under the Agreement; and (ii) pursue any other available remedy at law or in equity. In the event Ricoh terminates the Professional Services prior to the end of the Professional Services Contract Period by reason of the occurrence of a USF Event of Default, USF will reimburse Ricoh for any rebates, incentives of funding provided by Ricoh and shall pay Ricoh an amount equal to the Monthly Minimum Charge multiplied by the number of months remaining in the Professional Services Contract Period, not to exceed six (6) months as Early Termination Charges.

(2) For purposes hereof, each of the following occurrences shall constitute a "USF Event of Default": (i) USF fails to make timely payment of any amount due hereunder, and default continues for a period of ten (10) days after receipt of written notice of such default by USF; (ii) USF breaches any other term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such default by USF; (iii) USF files a petition in bankruptcy, or is adjudicated a bankrupt, or a petition in bankruptcy is filed against USF and not discharged within (30) thirty-days, or USF becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law, or a receiver is appointed for its assets or its business.

(b) Termination by USF. USF may terminate any Statement of Work upon thirty (30) days prior written notice.

(c) Termination Obligations. Upon termination of the Professional Services Contract Period by USF or Ricoh, USF shall remain obligated and shall continue to pay to Ricoh any charges for Equipment through the end of the Professional Services Contract Period as if the Professional Services Contract Period had not been terminated, whether USF retains the Equipment or not. Termination of the Professional Services Contract Period by USF or Ricoh shall not relieve USF of its obligation to pay to Ricoh any amounts due for Professional Services rendered prior to the effective date of termination.

This Order is subject to the terms and conditions of the Master Agreement dated \_\_\_\_\_, by and between Ricoh Americas Corporation and \_\_\_\_\_, which terms and conditions are incorporated herein by reference.

# **RICOH**

## Schedule A

List of USF Companies, Authorized Users, and Potential Authorized Users;

University of South Florida; all campus currently in operation and those that will open during the contract term. All colleges, schools, departments, institutes, agencies, center, administrative and service offices and medical or health locations, directly or indirectly under of South Florida umbrella or influence.

Furthermore any "Florida Interlocal" group and/or public agency including but not limited to: State government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, an independently elected county officer, any agency of the United States Government, a federally recognized Native America tribe, and any similar of any other state of the United States.

Also, the same may apply to similar groups outside USF of Florida, by private groups, and any corporations that the USF COMPUTER STORE gives theirs express consent for use.

## **Schedule B**

### **Products and Pricing**

Reference attached Ricoh Pricing Spreadsheet.

- Ricoh shall be the primary preferred vendor relationship on ALL PRODUCTS for USF to the extent Ricoh can provide the copying/faxing/printing/software/integrated digital solutions that provides the preferred requirements of USF's end users. If Ricoh cannot meet such requirements, in the sole discretion of USF's end users, alternate sources of Products may be used. With regard to currently installed non-Ricoh brands of copiers, faxes, printers, software, integrated digital solutions, professional services, USF shall endeavor to replace same as necessary as current rental and lease agreements expire, or as USF owned Equipment is replaced with Ricoh brands of Equipment through USF purchase(s). Nothing in this paragraph shall be construed to create an exclusive relationship.

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**EXHIBIT 5**

**Current Rebate Program / As of June 2008.**

## Amendment No. 1

**THIS AMENDMENT**, effective as of the date signed in the Master Resale Agreement, is by and between the University of South Florida Board of Trustees (“USF”) and Ricoh Americas Corporation (“Ricoh”) and amends Contract # USF-1972-40 (the “Contract”).

**WHEREAS** USF entered into the above referenced Contract with Ricoh for the provisioning of copying, faxing, printing, software, integrated digital solutions as well as Maintenance, and Supplies; and

**WHEREAS** USF desires to modify the terms of the Contract; and

**WHEREAS** Ricoh desires to continue providing office equipment, maintenance, supplies, and services under the Contract as hereby amended.

**NOW THEREFORE**, in consideration of the mutual promises contained below and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1.1 Definitions

The following additional terms are also defined:

- a. “Customer” means USF or other entity that will order products directly from the “Contractor” which is Ricoh under the Contract.
- b. “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.
- c. “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, or other authorized means).

### 1.2 Purchase Orders

Ricoh shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract number, shall be placed by the Customer directly with Ricoh, and shall be deemed to incorporate by reference the Contract and the terms and conditions. Any discrepancy between the Contract terms and the terms stated on Ricoh’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. Leases for USF are only valid when Purchase Orders are generated and delivered by and from the USF Purchasing Department. All USF Purchase Orders will reference this agreement and any identification or contract number given by USF.

### 1.3 Product Version

Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and Ricoh is willing to provide such model or version.

#### 1.4 Price Changes

The following provisions may apply.

- a. **Quantity Discounts.** Ricoh may offer additional discounts for one time delivery of large single orders. USF may receive additional price concessions on bulk or quantity purchases of any products offered under the Contract.
- b. **Best Pricing Offer.** During the Contract term, if the Customer becomes aware of better pricing offered by Ricoh for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
- c. **Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, Ricoh may conduct sales promotions involving price reductions for a specified lesser period. Ricoh shall submit to the Customer documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Upon approval, Ricoh shall provide conspicuous notice of the promotion.
- d. **Trade-In.** Customers may trade-in existing equipment when making purchases from the Contract of which there will be no cost for said removal. The removal of USF owned equipment must be approved by the USF Property Department and documentation must be given to Ricoh before any equipment will be removed from USF. Once the equipment release forms are given to Ricoh, then USF will not hold Ricoh liable for said equipment and the de-manufacturing of the equipment.
- e. **Equitable Adjustment.** The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond Ricoh's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects Ricoh that continued performance of the Contract would result in a substantial loss.

#### 1.5 Transaction Fee

Ricoh has entered into a separate Rebate Agreement with USF, and said agreement has been made part of this Master Resale Agreement as EXHIBIT 5. If other eligible groups outside of the direct oversight of USF, or groups that have been given expressed permission by the USF Computer Store, purchase, lease, or "piggy-back" from this agreement, then the USF Computer Store shall receive a 2 % rebate on all net sales of Hardware. USF will not receive credit for additional items such as service, parts, supplies, lease payments, network fees, professional service fees or any item or fee charged beyond the net sales price of the physical hardware sold. This 2% rebate will be administered just as and in the same sequence as the direct groups of USF.

#### 1.6 Packaging and Shipping

Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property. Furthermore, there will be no standard delivery or removal fees for equipment acquired through this agreement during the initial term of this agreement. If there should be an exception from a

standard delivery that would require extra curricular delivery equipment or means such as forklift, crane, sling, stair-climber, window removing, etc., then reasonable pass through charges could be accessed or USF could make such arrangements under its own means and liability.

### **1.7 Manufacturer's Name and Approved Equivalents**

Unless otherwise specified, Ricoh name, trade name, brand name, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Customer's prior approval, Ricoh may provide any product that meets or exceeds the applicable specifications. Ricoh shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Customer shall determine in its sole discretion whether a product is acceptable as an equivalent.

### **1.8 Inspection at Ricoh's Site**

The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of Ricoh to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

### **1.9 Safety Standards**

All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State of Florida or local government inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

### **1.10 Americans with Disabilities Act**

Ricoh should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

### **1.11 Literature**

Upon request, Ricoh shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

### **1.12 Transportation and Delivery**

Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. Ricoh, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Ricoh suspension.

### **1.13 Installation**

Where installation is required, Ricoh shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the purchase order. Ricoh's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used



in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Ricoh shall protect the site from damage and shall repair damages or injury caused during installation by Ricoh or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, Ricoh shall promptly restore the structure or site to its original condition. Ricoh shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

#### **1.14 Risk of Loss**

Until acceptance, risk of loss or damage shall remain with Ricoh. Ricoh shall be responsible for filing, processing, and collecting all damage claims. To assist Ricoh with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and Ricoh; and provide Ricoh with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Ricoh shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with Ricoh. Rejected product not removed by Ricoh within ten days shall be deemed abandoned by Ricoh, and the Customer shall have the right to dispose of it as its own property. Ricoh shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

#### **1.15 Invoicing and Payment**

Invoices shall contain the Contract number, purchase order number, and the appropriate Ricoh identification number. USF may require any other information from Ricoh that USF deems necessary to verify any purchase order placed under the Contract.

At the customer's option, Ricoh may be required to invoice electronically pursuant to guidelines of the USF Computer Store and or the USF Purchasing Department.

Payment shall be made in accordance with the Terms and Conditions of the Master Resale Agreement. Invoices that must be returned to Ricoh due to preparation errors will result in a delay in payment. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve Ricoh of its obligations to other Customers.

#### **1.16 Taxes**

USF does not pay Federal excise or sales taxes on direct purchases of tangible personal property. USF will not pay for any personal property taxes levied on Ricoh or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer on a purchase order or other special contract condition.

#### **1.17 Non Appropriation of Funds**

USF's continuing performance and obligations to pay under this Agreement or any Order that has a term greater than one year is subject to and contingent on annual appropriations from the legislature of the State of Florida. For purposes of this paragraph, a 'non-appropriation' shall include a reduction of USF general legislative appropriation by greater than 5 percent in any one year. In such an event, USF may terminate this Agreement and any Orders upon thirty days written notice. This section shall retain precedence over the terms of any Order.

### **1.18 Limitation of Liability**

For all claims against Ricoh under any individual purchase order, and regardless of the basis on which the claim is made, Ricoh's liability under a purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the purchase order, or two times the charges rendered by Ricoh under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the purchase order requires Ricoh to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. USF and Customer may, in addition to other remedies available to them at law or equity and upon notice to Ricoh, retain such monies from amounts due Ricoh as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. USF may set off any liability or other obligation of Ricoh or its affiliates to USF against any payments due Ricoh under any contract with USF.

### **1.19 Suspension of Work**

The Customer may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interests of USF to do so. The Customer shall provide Ricoh written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Ricoh shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by Ricoh, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract. Suspension of work shall not entitle Ricoh to any additional compensation.

### **1.20 Termination for Cause**

In addition to termination provisions in the Master Agreement, the Customer may terminate the Contract if Ricoh fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Ricoh shall continue work on any work not terminated. Except for defaults of sub contractors at any tier, Ricoh shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of Ricoh. If the failure to perform is caused by the default of a sub contractor at any tier, and if the cause of the default is completely beyond the control of both Ricoh and the sub contractor, and without the fault or negligence of either, Ricoh shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for Ricoh to meet the required delivery schedule. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

### **1.21 Force Majuro, Notice of Delay, and No Damages for Delay**

Ricoh shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Ricoh or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Ricoh's control, or for any of the foregoing that affect sub contractors or suppliers if no alternate source of supply is available to Ricoh. In case of any delay Ricoh believes is excusable, Ricoh shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates

or will create the delay first arose, if Ricoh could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date Ricoh first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE RICOH'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. Ricoh shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Ricoh shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to USF or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from Ricoh, provided that Ricoh grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by Ricoh for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

### 1.22 Scope Changes

The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of Ricoh, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

### 1.23 Advertising

Ricoh shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or USF as a reference, or otherwise linking Ricoh's name and either a description of the Contract or the name of USF or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract.

### 1.24 Assignment

Ricoh shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer; provided, Ricoh assigns to USF any and all claims it has with respect to the Contract under the antitrust laws of the United States and USF. In the event of any assignment, Ricoh remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Ricoh of its intent to do so.

### 1.25 Dispute Resolution

Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on Ricoh. The decision shall be final and conclusive unless within ten (10) days from the date of receipt, Ricoh files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to Ricoh's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to Ricoh's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Hillsborough County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

#### **1.26 Employees, Subcontractors, and Agents**

All Ricoh employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Ricoh shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer. USF may conduct, and Ricoh shall cooperate in, a security background check or otherwise assess any employee, subcontractors, or agent furnished by Ricoh. USF may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve Ricoh of its obligation to perform all work in compliance with the Contract. USF may reject and bar from any facility for cause any of Ricoh's employees, subcontractors, or agents.

#### **1.27 Security and Confidentiality**

Ricoh shall comply fully with all security procedures of USF and Customer in performance of the Contract. Ricoh shall not divulge to third parties any confidential information obtained by Ricoh or its agents, distributors, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of USF or Customer. Ricoh shall not be required to keep confidential information or material that is publicly available through no fault of Ricoh, material that Ricoh developed independently without relying on USF's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, Ricoh shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

#### **1.28 Ricoh Employees, Subcontractors, and Other Agents**

The Customer and USF shall take all actions necessary to ensure that Ricoh's employees, subcontractors and other agents are not employees of USF. Such actions include, but are not limited to, ensuring that Ricoh's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than USF of Florida.

#### **1.29 Insurance Requirements**

During the Contract term, Ricoh at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of Ricoh. Upon request, Ricoh shall provide certificate of insurance. The limits of coverage under each policy maintained by Ricoh shall not be interpreted as limiting Ricoh's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

#### **1.30 Warranty of Authority**

Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

#### **1.31 Warranty of Ability to Perform**

Ricoh warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish Ricoh's ability to satisfy its Contract obligations. Ricoh shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

### **1.32 Notices**

All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the person who signed this contract on behalf of USF. Notices to Ricoh shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

### **1.33 Modification of Terms**

The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and Ricoh. The Contract may only be modified or amended upon mutual written agreement of the Customer and Ricoh. No oral agreements or representations shall be valid or binding upon the Customer or Ricoh. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. Ricoh may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto Ricoh's order or fiscal forms or other documents forwarded by Ricoh for payment. The Customer's acceptance of product or processing of documentation on forms furnished by Ricoh for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

**AMENDMENT NO. 2 BY AND BETWEEN**  
**RICOH AMERICAS CORPORATION AND THE UNIVERSITY OF SOUTH FLORIDA BOARD**  
**OF TRUSTEES**

This Amendment No. 2, entered into this 29<sup>th</sup> day of December, 2009 shall amend and modify the Master Resale Agreement ("Agreement") by and between Ricoh Americas Corporation, a Delaware Corporation with its principal place of business located at 5 Dedrick Place, West Caldwell, NJ 07006 ("RicoH") and the University of South Florida Board of Trustees having offices at 4202 East Fowler Ave., Tampa, Florida ("USF").

WHEREAS, USF and Ricoh entered into the Agreement as of April 7, 2009 for the provisioning of copying, faxing, printing, software, integrated digital solutions as well as maintenance, and supplies; and

WHEREAS, the parties executed Amendment No.1 which modified the terms of the Agreement on April 7, 2009; and

WHEREAS, the parties further desire to modify the Agreement as more specifically hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree to amend the Agreement as follows:

1. The University of South Florida Invitation to Negotiate ("ITN #9-13-G") shall be made part of the Agreement. In the event of conflicting terms between the Agreement and ITN #9-13-G, the Agreement shall control.
2. In the General Conditions of the ITN #9-13-G, Section 22 (Liability) shall be replaced with the following: *"The vendor shall save and hold harmless the University, its officers, agents and employees against any and all claims by third parties for personal injury, death or damage to tangible property resulting from the vendor's gross negligence, and/or vendor's willful misconduct."*
3. Throughout the term of the contract the University shall have the option to negotiate additional terms and conditions of the contract in order to meet the needs of the University. Prior to the expiration of this Agreement and upon mutual agreement by both parties, the Agreement shall be renewed for two (2) additional one (1) year periods under the same terms, conditions and pricing if such is deemed by the University to be advisable and advantageous. Renewal of this Agreement is subject to appropriation of funds by the Legislature of the State of Florida.
4. Ricoh shall designate an individual to serve as the primary point of contact for all matters related to this Agreement.
5. Upon mutual agreement by both parties, the Equipment pricing shall be converted to a cost per copy ("CPC") or cost per print ("CPP") rate. CPC or CPP rates will require a minimum monthly volume commitment.
6. In Section 11 of the Agreement, the last sentence shall be deleted in its entirety and replaced with the following: *"The amount of any liability of either party, for one or more claims arising from*

or relating to this Agreement, shall not exceed, in the aggregate, the amount paid to Ricoh for the provision of products and the performance of services under this Agreement during the one-year period preceding the date on which the claim arose.”

7. Section 13d of the Agreement shall be modified as follows:

*“(d) Non-appropriation; State Funding. USF’s continuing performance and obligations to pay under this Agreement or any Order that has a term greater than one year is subject to and contingent on annual appropriations from the legislature of the State of Florida. In the event Customer is in default of the Lease Agreement and any Order Agreement because of such non-appropriation where (i) funds are not appropriated for a fiscal period subsequent to the one in which the Lease Agreement and any Order Agreement was entered into which are sufficient to satisfy all of Customer’s obligations under the Lease Agreement and any Order Agreement during said fiscal period; (ii) such non-appropriation did not result from any act or failure to act of Customer; (iii) Customer has exhausted all funds legally available for all payment due under the Lease Agreement or other due under any Order Agreement; and (iv) there is no other legal procedure by which payment can be made to Ricoh. Then, provided that (a) Customer has given Ricoh written notice of the occurrence of (i) above thirty (30) days prior to such occurrence; (b) Ricoh has received a written opinion from Customer’s counsel verifying the same within ten (10) days thereafter; and (c) Customer does not directly or indirectly purchase, rent or in any way acquire any services or Equipment supplied or provided for hereunder; upon receipt of the Equipment delivered to a location designated by Ricoh, at Customer’s expense, Ricoh’s remedies for such default shall be to terminate the Agreement at the end of the fiscal period during which notice is given; retain the advance payments, if any; and/or sell, dispose of, hold, use or rent the Equipment as Ricoh in its sole discretion may desire, without any duty to account to Customer.”*

8. The Master Terms and Conditions of Lease Agreement (“Lease Agreement”) in Exhibit 2 of the Agreement shall be modified as follows:

- a. In the second sentence of the third paragraph of Section 2 of the Lease Agreement, after “EXCEPT AS EXPRESSLY SET FORTH IN”, delete “THE MASTER AGREEMENT” and replace with “SECTION 20 OF THIS LEASE AGREEMENT”.
- b. After Section 19 of the Lease Agreement, add the following:

*“20. Non-appropriation; State Funding. USF’s continuing performance and obligations to pay under this Agreement or any Order that has a term greater than one year is subject to and contingent on annual appropriations from the legislature of the State of Florida. In the event Customer is in default of the Lease Agreement and any Order Agreement because of such non-appropriation where (i) funds are not appropriated for a fiscal period subsequent to the one in which the Lease Agreement and any Order Agreement was entered into which are sufficient to satisfy all of Customer’s obligations under the Lease Agreement and any Order Agreement during said fiscal period; (ii) such non-appropriation did not result from any act or failure to act of Customer; (iii) Customer has exhausted all funds legally available for all payment due under the Lease Agreement or other due under any Order Agreement; and (iv) there is no other legal procedure by which payment can be made to Ricoh. Then, provided that (a) Customer has given Ricoh written notice of the occurrence of (i) above thirty (30) days prior to such occurrence; (b) Ricoh has received a written opinion from Customer’s counsel verifying the same within ten (10) days thereafter; and (c) Customer does not*

directly or indirectly purchase, rent or in any way acquire any services or Equipment supplied or provided for hereunder; upon receipt of the Equipment delivered to a location designated by Ricoh, at Customer's expense, Ricoh's remedies for such default shall be to terminate the Agreement at the end of the fiscal period during which notice is given; retain the advance payments, if any; and/or sell, dispose of, hold, use or rent the Equipment as Ricoh in its sole discretion may desire, without any duty to account to Customer."

9. Schedule A of the Agreement shall not be applicable to this Amendment No.2 and any new pricing schedule without Ricoh's prior written consent.
10. The attached pricing schedule ("Schedule B-2") shall be made part of this Agreement and shall be used only by the University of South Florida to acquire Equipment.
11. In Section 1.3 (Product Version) of Amendment No. 1, delete "an earlier model or version" and replace with, "a used, reconditioned or demo model or version".
12. Section 1.4b of Amendment No. 1, shall be deleted in its entirety.
13. Section 1.24 of Amendment No. 1, shall be replaced in its entirety with the following: "Ricoh shall not transfer any of its maintenance obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer; provided, Ricoh assigns to USF any and all claims it has with respect to the Contract under the antitrust laws of the United States and USF. In the event of any transfer of rights, Ricoh will remain secondarily liable for performance its maintenance obligations, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written consent to Ricoh of its intent to do so."
14. In the event of conflicting terms between the Agreement, ITN #9-13-G, Amendment No. 1 and Amendment No. 2, the terms and conditions of Amendment No. 2 shall control. All other terms and conditions of the Agreement not superseded by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date it is duly executed by an authorized representative of each party of this Agreement.

University of South Florida Board of Trustees

Ricoh Americas Corporation

By: [Signature]

By: [Signature]

Name: GEORGE COTTER

Name: ALLEN A HANE

Title: ASSOC. DIR. PURCHASING

Title: SVP

Date: 12/16/09

Date: 12/29/09

Approved as to  
Form and Legality  
C. Mailberry  
Attorney - USF

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11/11/09 11:11:52