

Nomination Agreement

Nomination Agreement (“**Agreement**”) by and between Farallon Capital Management, LLC (“**Investor**”) and Toshiba Corporation (“**Toshiba**”) dated May 26, 2022.

1. BACKGROUND

- (a) Certain strategic alternatives for Toshiba are currently being considered by various parties (including but not limited to a potential tender or exchange offer, merger, consolidation, acquisition, sale of all or a material portion of assets or sale, spinoff, splitoff or other similar separation of one or more material business units (including potential roll-over), buyback, business combination transaction, demerger, recapitalization, reorganization, issuance of new equity or equity equivalent securities (including in a PIPE, convertible note, convertible preferred security or similar structure) or other extraordinary transaction involving Toshiba or its affiliates or its or their respective securities or a material amount of its or their assets or businesses) (each, an “**Extraordinary Transaction**”). As part of this, a special committee of the Toshiba board of directors (the “**Board**”) was established on 7 April 2022 to engage with potential investors and sponsors and to review strategic alternatives for Toshiba, potentially including an Extraordinary Transaction (the “**Special Committee**”).
- (b) This Agreement contains the terms subject to which Toshiba’s Nomination Committee will recommend Investor’s identified director candidate, Mr. Eijiro Imai (the “**Nominee**”), to join the Board slate that Toshiba will propose and recommend to its shareholders for their approval at the upcoming 183rd (2022) annual general shareholders meeting (“**AGM**”). Toshiba will propose and recommend the Nominee for election to the Board to, and solicit votes from, its shareholders in the same manner and with the same level of effort as Toshiba will use with respect to the remainder of the director candidates Toshiba puts forth for election at the AGM.
- (c) Certain provisions below apply solely to the period between the date that the Nominee is appointed to the Board and the earlier of the following: (i) on the date which is 14 days following such time as Toshiba makes, or causes to be made, any public announcement confirming Toshiba’s formal recommendation of or the execution by Toshiba or any of its subsidiaries of a binding Extraordinary Transaction; (ii) such time as the Special Committee (or any successor committee) or the Board determines that it is no longer pursuing a strategic review process, or if such process otherwise becomes inactive (and Toshiba shall promptly notify Investor in writing of such occurrence, provided, for the avoidance of doubt, that the giving of or failure to give such notice shall not affect the time of expiry); (iii) Toshiba’s 184th (2023) annual general meeting if the Nominee is not re-elected as a Toshiba director at that meeting; and (iv) on the date which is the earlier of: (A) 10 days following such date Nominee resigns or otherwise is no longer on the Board, and (B) Toshiba’s next announcement of quarterly or annual financial

results following such date Nominee resigns or otherwise is no longer on the Board (the “**Restricted Period**”), provided that the Restricted Period may be extended by mutual agreement of the parties in writing.

- (d) In the event that the Nominee is not elected to the Board at the AGM, then this Agreement shall immediately terminate and have no further force or effect, except as expressly provided therein.

2. **CONFIDENTIALITY**

- (a) Nominee shall keep confidential and not disclose any non-public information of Toshiba or any of Toshiba’s direct or indirect subsidiaries comprising *Juuyou Jouhou* (as defined in Article 27-36, Paragraph 1 of the Financial Instruments and Exchange Act (the “**Act**”)), any discussion or matter (including matters that relate to third party information) considered at or in respect of any resolution or meeting of Toshiba’s board or a Toshiba committee, any confidential information that relates to national security matters, any confidential matters or documents relating to third parties or containing confidential third party information in respect of which the Nominee learns in his capacity as a director of Toshiba that Toshiba or any of its direct or indirect subsidiaries owe obligations of confidentiality to such third party, legally privileged information of Toshiba or any of Toshiba’s direct or indirect subsidiaries, and such other information as identified as confidential by Toshiba’s board or a Toshiba committee from time to time (all such non-public information being “**Non-Public Information**”) which he learns in his capacity as a director of Toshiba to any third party, including Investor and its affiliates and funds, limited partnerships or other collective investment vehicles, entities or other persons which are managed or advised by such (together with Investor, “**Investor Affiliates**”). Notwithstanding the foregoing, the term “Non-Public Information” shall not include information that (i) is already in the Nominee’s or an Investor Affiliates’ possession prior to receiving such information from Toshiba or its representatives hereunder, provided that the source of such information is not known by such person to be subject to a legal, fiduciary or contractual obligation to Toshiba prohibiting such disclosure, (ii) is or becomes generally available to the public other than as a result of a disclosure by the Nominee or an Investor Affiliate in violation of the terms hereof, (iii) is or becomes available to the Nominee or an Investor Affiliate on a non-confidential basis from a source other than Toshiba or its representatives, provided that such source is not known by such person to be bound by a legal, fiduciary or contractual obligation to Toshiba prohibiting such disclosure or (iv) has been or is independently conceived or developed by the Nominee or an Investor Affiliate and which the Investor Affiliate can evidence was done so without reference to or use of any Non-Public Information.
- (b) Notwithstanding the foregoing, Nominee may share Non-Public Information at any time:
 - (i) as may be required by applicable laws, rules or regulations or at the formal request of any court of competent jurisdiction, governmental, regulatory or

supervisory authority having authority over the Nominee or an Investor Affiliate;

- (ii) other than Non-Public Information related to or containing any: (i) privileged matters; or (ii) national security matters; or (iii) trade secrets of Toshiba or any of its subsidiaries or investee companies, or any third party confidential information in respect of which Toshiba owes a duty of confidentiality to such third party if disclosure would be a breach of such duty (such Non-Public Information at (i) to (iii) inclusive being collectively “**Restricted Information**”), to the Investor’s Co-Chief Investment Officers and the Toshiba investment team of Investor and any Investor Affiliate who require the information for bona fide purposes in connection with Paragraph 2(b)(ii)(A); provided that:
 - (A) such Non-Public Information shall be used solely for the purpose of assisting the Nominee in his role as a director of Toshiba and related compliance matters or for monitoring and evaluating the Investor Affiliates’ (including through funds and accounts managed by them) investment in Toshiba; and
 - (B) such Non-Public Information will at all times be kept confidential (together with all analyses relating thereto) by the relevant recipient(s), except that such information may be shared among such persons specified in Paragraph 2(b)(ii) and as otherwise permitted herein;
- (iii) to the legal and compliance counsel acting on behalf of Nominee or any Investor Affiliate, including internal and outside counsel; provided that such counsel shall not disclose any Non-Public Information other than where required to do so in accordance with Paragraph 2(b)(i) or with Toshiba’s prior written consent; and
- (iv) to any other persons with Toshiba’s prior written consent.

3. **TRADING RESTRICTIONS AND CONFIRMATIONS**

- (a) During the Restricted Period each Investor Affiliate shall not conduct, agree to, or propose any **Trading** (*Baibai-Tou*, as defined in Article 27-36 of the Act) of any instruments relating to Toshiba’s shares or other securities (including *Joujou-Yukashouken-Tou* (as defined in the same Article) and other securities convertible or exchangeable into Toshiba shares) (“**Listed Securities**”).
- (b) For the avoidance of doubt, after the Restricted Period the Investor Affiliates shall not be subject to restriction under Paragraph 3(a), and shall be entitled to conduct, agree to, and propose Trading of the Listed Securities of Toshiba or its affiliates at any time subject to compliance with all applicable laws, rules, and regulations (including but not limited to with respect to insider information and trading),

including that no *Juuyou Jouhou* (as defined in Article 27-36, Paragraph 1 of the Act) is possessed by that Investor Affiliate at the relevant time.

- (c) Paragraphs 3(a) and 3(b) shall not restrict an Investor Affiliate's ability to: (1) participate in any Extraordinary Transaction; or (2) conduct Trading of their Toshiba Listed Securities as approved in writing by the Chairman of the Special Committee (or such other member of the Special Committee as a majority of the committee members (excluding the Nominee) select) in advance, with such approval not to be unreasonably withheld, conditioned or delayed.
- (d) Toshiba agrees to promptly adopt and implement (within no more than three months of the date of this Agreement), a director trading policy governing and permitting "trading windows" for director share trading that is aligned with global best practices and international standards (taking into consideration Japanese law, practices, and standards) (the "**Director Trading Policy**"), the terms of which Director Trading Policy will be subject to the approval of the Board after consultation and discussions with the Nominee and the Investor Affiliates. Toshiba shall consider in good faith any comments to the Director Trading Policy received from the Nominee or the Investor Affiliates.
- (e) Toshiba agrees to notify Investor in writing as promptly as practicable (and within no more than 24 hours) of the first date on which: (i) Toshiba permits members of the Board to trade in the securities of Toshiba (under the Director Trading Policy or otherwise) following such time as the Nominee is no longer a Toshiba director or the end of the Restricted Period; or (ii) Toshiba buys its own Listed Securities in the public market following such time as the Nominee is no longer a Toshiba director or the end of the Restricted Period.
- (f) For the avoidance of doubt, after the termination of the Restricted Period, to the extent Nominee remains on the Board, Nominee shall continue to comply with all company policies generally applicable to all other non-management directors.

4. **NO ROLL OVER**

- (a) During the Restricted Period, each Investor Affiliate shall not agree with nor discuss with any potential bidder or part of a bidder consortium in connection with an Extraordinary Transaction, a roll-over of any of an Investor Affiliate's respective Toshiba Listed Securities unless:
 - (i) that Extraordinary Transaction has been formally recommended by the Board and Special Committee; or
 - (ii) the Board and Special Committee has: (1) expressly agreed to permit any other shareholder to agree to roll-over its own Toshiba Listed Securities, or (2) otherwise waived the applicability of the process rules applicable to the Extraordinary Transaction being considered by the Special Committee in order to permit a roll-over.

5. **INCENTIVES**

No Investor Affiliate shall offer or provide to Nominee, and Nominee shall not accept or receive, any compensation or other benefits that: (i) are triggered by or contingent upon occurrence of any event specifically targeted at Toshiba which relates to the period of service of Nominee as a director of Toshiba; (ii) are triggered by the occurrence of an Extraordinary Transaction; or (iii) may fluctuate or vary solely based upon Toshiba's share price during the Nominee's term as a director of Toshiba except for those tied to overall performance of one or more Investor Affiliates.

6. **COMMITTEES**

Upon the Nominee's election to the Board, the Board shall take all necessary actions to appoint as a member the Nominee to the Special Committee and any other existing or newly formed Board committee that is charged with overseeing the consideration or implementation of strategic alternatives, including, but not limited to, an Extraordinary Transaction. Appointment is on an annual basis; upon each anniversary, subject to Board approval, the Nominee shall be reappointed and entitled to remain a member of such committees until they are disbanded or he resigns from the Toshiba board.

7. **BUDGET**

Toshiba shall reimburse Nominee for all reasonable costs and expenses, including reasonable and properly incurred legal and other professional advisor costs and expenses, incurred by Nominee in connection with the performance of his role as, and compliance with and proper discharge of his duties and obligations as, a director of the Board and member of the Special Committee (or any other committee to which he is appointed by Toshiba) , subject at all times to compliance with Toshiba's expenses policy and application of the same expenses processes across all Toshiba directors.

8. **RESIGNATION**

Nominee may resign from his position as a director of Toshiba at any time and for any reason as determined by Nominee in his sole and absolute discretion.

9. **D&O INSURANCE, LIMITATION OF LIABILITY AND INDEMNITY PROTECTION**

Toshiba agrees to include Nominee as an insured person in its current standard directors and officers liability insurance as maintained and renewed from time to time, pursuant to which Toshiba bears all insurance premiums for all of the insured and the insurance company indemnifies the insured against the cost of compensation for damages and disputes, etc. incurred by the insured due to claims for compensation of damages caused by actions taken in connection with Toshiba's business, such as shareholders' derivative actions and non-derivative suits, in relation to the execution of duties during the insurance period, except for those arising from the insured's private gain or criminal acts. Toshiba shall enter into a limited liability contract with Nominee to limit his liabilities to an amount which is the higher of JPY 10 million and the minimum liability amount stated in Article

425, Paragraph 1 of the Companies Act. Toshiba shall enter into an indemnity agreement with Nominee, pursuant to which Toshiba will indemnify Nominee for certain expenses and losses to the extent provided for by Article 430-2, Paragraph 1 of the Companies Act.

10. **DIRECTOR COMMUNICATIONS**

The Board may consider adopting and implementing a director communications policy, which policy may include restrictions generally applicable to all Board members with respect to statements to the media and other third parties relating to Toshiba and its directors and officers, among other things. Investor understands that while serving on the Board the Nominee would be subject to such company policy to the extent generally applicable to all other non-management directors.

11. **DISPUTES**

Until such time as the Nominee is no longer a Toshiba director, Investor shall procure that Nominee and each Investor Affiliate shall refrain from directly or indirectly (alone or in conjunction with others) instituting, soliciting, knowingly assisting or joining any litigation, arbitration or other proceeding against Toshiba or any of its: (i) then current directors, officers, or (ii) advisers acting in relation to an Extraordinary Transaction or the matters contemplated herein, (including derivative actions); provided, however, that for the avoidance of doubt the foregoing shall not prevent any Investor Affiliate from (a) bringing litigation to enforce the provisions of any agreement between it and Toshiba relating to the appointment of the Nominee, (b) making counterclaims with respect to any proceeding initiated by, or on behalf of, Toshiba, or any of its then current directors, officers, or advisers, against that Investor Affiliate, and (c) bringing bona fide commercial disputes that do not relate to the subject matter of any agreement pertaining to appointment of the Nominee.

12. **PUBLIC STATEMENTS**

- (a) The Investor Affiliates and Toshiba shall ensure that any descriptions of this Agreement to be made in public filings or public announcements by such party shall be consistent with the terms of this Agreement.
- (b) Investor acknowledges that Toshiba will, prior to the AGM, publicly disclose this Agreement (and any Japanese-language translation prepared by Toshiba) in its entirety on an AGM-related Toshiba website. Toshiba may also (in its discretion) disclose this Agreement and Toshiba's translation thereof in an appropriate filing with the Tokyo Stock Exchange

13. **RECUSAL & CONFLICTS**

- (a) During the Restricted Period (but not after such time Nominee no longer serves on the Board), the Nominee shall disclose to the Board or the Special Committee (including any successor thereto), as applicable, any actual or potential conflict of interest between the Nominee (including in his capacity as an employee of an Investor Affiliate), on the one hand, and Toshiba or its general shareholders, on the

other hand, to the extent constituting a “conflict of interest” (i) involving a “special interest” (*tokubetsu no rigai kankei*) of the Nominee (in line with the meaning set forth in Article 369, Paragraph 2 of the Companies Act); or (ii) having such a significant interest in the success or failure of the transaction constituting an Extraordinary Transaction being different from that of general shareholders of Toshiba as would constitute a “conflict of interest” as discussed under the Fair M&A Guidelines issued by the Japan Ministry of Economy, Trade and Industry on June 28, 2019 (as may be amended from time to time) in relation to any agenda items to be delivered and/or resolved at any Board or committee meeting (including but not limited to, any deliberations relating to an Extraordinary Transaction in which an Investor Affiliate is a potential bidder or part of a bidder consortium, or receipt of a formal offer (solicited or unsolicited) to join a roll-over, or active engagement with a third party to promote a roll-over other than for general shareholders).

- (b) During the Restricted Period (but not after such time Nominee no longer serves on the Board), to the extent the Chairman of the Special Committee or the Chairman of the Board determines that there is an actual or potential direct or indirect “conflict of interest” (as contemplated in Paragraph 13(a)) between the Nominee (including in his capacity as an employee of an Investor Affiliate), on the one hand, and Toshiba or its general shareholders, on the other hand then upon prior written notice to the Nominee:
 - (i) the Nominee shall recuse himself from any such deliberations of the Board or relevant committee;
 - (ii) the Nominee shall recuse himself from voting as a director on such matters; and
 - (iii) the Board may from time to time restrict the Nominee’s access to information regarding Toshiba, its affiliates or the Extraordinary Transaction (to the same extent it would for any other director of Toshiba, in accordance with applicable law, rules or regulations) in respect of that matter or those deliberations.
- (c) In relation to Paragraph 13(b), if the Nominee notifies that Chairman that he disagrees with the relevant Chairman’s determination then the Chairman’s determination shall become final (and (i), (ii), and (iii) shall become binding) only if and once the Chairman’s determination has received the support of a majority of the Board (excluding the Nominee) and outside Japanese legal counsel has opined in writing that such “conflict of interest” (as contemplated in Paragraph 13(a)) exists.

14. **TERMINATION**

This Agreement shall expire and the provisions thereunder shall have no further force or effect upon the termination of the Restricted Period; provided that the provisions of

Paragraphs 3(c) to (e) (inclusive), 8, 9, 11, and 15 and the confidentiality obligations set forth under Paragraph 2 shall survive:

- (a) in respect of any Non-Public Information other than Restricted Information, until the date which is 18 months following the date the Nominee resigns or otherwise no longer serves on the Board; or
- (b) in respect of Restricted Information, in perpetuity.

15. **MISCELLANEOUS**

- (a) To the extent there is any conflict between the terms of this Agreement and any Toshiba policy, whether existing on the date hereof or in the future, the terms of this Agreement will control.
- (b) Each party recognizes and acknowledges that any actual or threatened violations of this Agreement by any party or its affiliates, or its or their respective representatives (with respect to Investor, including the Nominee as if he were a party hereto) (as applicable) could cause irreparable injury to the other party for which money damages alone would be an insufficient remedy, and without prejudice to the rights and remedies otherwise available to such party, such party shall be entitled to seek relief by way of injunction, specific performance or otherwise without proof of actual damages if the other party or its affiliates, or its or their respective representatives (with respect to Investor, including the Nominee as if he were a party hereto) (as applicable), breaches or threatens to breach any of the provisions of this Agreement. It is further understood and agreed that no failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
- (c) Each party acknowledges and agrees that it shall be responsible for any breach of the terms of this Agreement by its affiliates, and its and their respective representatives (with respect to Investor, including the Nominee as if he were a party hereto) (as applicable).
- (d) No variation or amendment of this Agreement shall be valid unless it is in writing and duly executed by or on behalf of all of the parties hereto. Where any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction then such provision shall be deemed to be severed from this Agreement and, if possible, replaced with a lawful provision which, as closely as possible, gives effect to the intention of the parties and, where permissible, that shall not affect or impair the legality, validity or enforceability in that, or any other, jurisdiction of any other provision of this Agreement.
- (e) Investor may not assign any of its rights or obligations under this Agreement (whether by operation of law or otherwise) without the prior written consent of Toshiba. Any attempted or purported assignment in contravention of this provision shall be null and void.

- (f) The Investor Affiliates and the Nominee shall be entitled to rely on and enforce the terms of this Agreement.
- (g) The provisions of this Agreement shall be governed by and interpreted in accordance with the laws of Japan. Any dispute, controversy or claim arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the Tokyo District Court in the first instance.