

Nomination Agreement

Nomination Agreement (“**Agreement**”) by and between **Elliott Advisors (UK) Limited** (“**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, roll-over, business combination transaction, demerger, recapitalization, reorganization, buyback, 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 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 on which Toshiba’s Nomination Committee will recommend Mr. Nabeel Bhanji (the “**Nominee**”) to join the board slate that Toshiba will propose and recommend to its shareholders for their approval at the upcoming 183rd annual general shareholders meeting (“**AGM**”). Toshiba will propose and recommend the Nominee for election to the Toshiba 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) The obligations on the Nominee and the Investor Affiliates (defined below) contained in this Agreement will only become effective on and from the appointment of the Nominee to the Toshiba board at the AGM.
- (d) Certain provisions below apply solely to the period beginning on the date that the Nominee is appointed to the Toshiba board and ending on the earliest to occur of the following (the “**Restricted Period**”): (i) 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 agreement with respect to an Extraordinary Transaction; (ii) such time as the Special Committee (or any Successor Committee (as defined below)) or the Toshiba board determines that it is no longer pursuing a strategic review process, or if such process otherwise becomes inactive for more than 30 calendar days (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; (iv) 10 days following the date the Nominee resigns or is otherwise no longer on the Toshiba board; and (v) the date of Toshiba's next public announcement of quarterly or annual financial results immediately following the date the Nominee resigns or is otherwise no longer on the Toshiba board.

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 constituting *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 which the Nominee learns in his capacity as a director of Toshiba, but excluding any information that (a) is at the time of disclosure or becomes generally available to or known by the public, other than as a direct or indirect result of any breach of this Agreement; or (b) is or becomes known by or available to the Nominee or any Investor Affiliate or any of their respective employees, directors, or officers from a source that is not subject to a legal or contractual duty of confidentiality to Toshiba ("**Non-Public Information**"), to any third party, including the Investor, Elliott Investment Management L.P. ("**EIMLP**") and their respective affiliates and funds, limited partnerships, other collective investment vehicles or other persons, entities, partnerships or vehicles which are managed or advised (directly or indirectly) by the Investor or EIMLP (together with Investor and EIMLP, "**Investor Affiliates**").
- (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; or
 - (ii) provided that such Non-Public Information does not contain any: (i) legally privileged matters; or (ii) matters of national security or trade secrets of Toshiba or any of Toshiba's direct or indirect subsidiaries or investee companies; or (iii) third party confidential information in respect of which Toshiba owes a duty of confidentiality to such third party if disclosure pursuant to this Paragraph 2(b)(ii) would be a breach of such duty (such

Non-Public Information at (i) to (iii) inclusive being collectively “**Restricted Information**”), to Specified Elliott Personnel (as defined below); provided always that, and the Investor shall procure that: (A) any Specified Elliott Personnel who have access to the Non-Public Information will solely use the information 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) Non-Public Information will at all times be kept confidential (together with all analyses relating thereto) by the relevant recipient(s) and only disclosed in accordance with the permitted disclosures of the Nominee pursuant to the terms of this Agreement; or

- (iii) to the legal and compliance department of any Investor Affiliates and legal counsel acting on behalf of Nominee or any Investor Affiliate provided that, and the relevant Investor Affiliate shall procure 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 as may be required by applicable laws, rules or regulations or at the formal request of any court of competent jurisdiction, regulatory or supervisory authority having authority over the counsel or with Toshiba’s prior written consent; or
 - (iv) to any other third parties with Toshiba’s prior written consent.
- (c) Upon written request from the Nominee or an Investor Affiliate, Toshiba’s legal department will promptly provide, in good faith and without assuming any liability, its opinion as to whether any specified information provided to the Nominee comprises Restricted Information, based on consultation with legal counsel where appropriate.
- (d) “**Specified Elliott Personnel**” shall mean:
- (i) the Investor Affiliates and their respective directors, officers and employees who require the information for bona fide purposes in connection with Paragraph 2(b)(ii)(A); and
 - (ii) any Investor Affiliate’s agents, accountants, advisors, consultants and other professional representatives, in each case acting on behalf of an Investor Affiliate, provided that Toshiba has granted advance written consent to receipt of Non-Public Information by such agent, accountant, advisor, consultant or other professional representatives.

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) After the Restricted Period, the Investor Affiliates 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) and on the condition 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; (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 shall promptly adopt and implement (within no more than three months of the date of this Agreement) a director trading policy facilitating “trading windows” for director share trading by non-management directors 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 the Director Trading Policy will be subject to the approval of the Toshiba 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 shall notify the Investor in writing as promptly as practicable (and within no more than 24 hours) of:
 - (i) the first date following the date the Nominee resigns or otherwise ceases to be a Toshiba director on which (A) Toshiba permits any members of the Toshiba board to trade in any Listed Securities (under the Director Trading Policy or otherwise); or (B) Toshiba buys any of its own Listed Securities in public markets; and
 - (ii) the first date following termination of the Restricted Period on which (A) Toshiba permits any members of the Toshiba board to trade in any Listed Securities (under the Director Trading Policy or otherwise); or (B) Toshiba buys any of its own Listed Securities in public markets.

4. **NO ROLL OVER**

During the Restricted Period, each Investor Affiliate shall not agree with nor discuss with any potential bidder or member 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:

- (a) that Extraordinary Transaction has been formally recommended by Toshiba's board and Special Committee; or
- (b) Toshiba's 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**

The Toshiba board shall appoint the Nominee as a member of the Special Committee and any other committee of the Toshiba board which is established to engage with potential investors and sponsors and to review strategic alternatives for Toshiba (including any Extraordinary Transaction) (each a "**Successor Committee**"). Appointment is on an annual basis; upon each anniversary of the Nominee's appointment to such committees, subject to board approval at the time of such reappointment, 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 Toshiba 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 Toshiba board may consider adopting and implementing a director communications policy, which policy may include restrictions generally applicable to all Toshiba 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 Toshiba 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, or officers, or (ii) advisers (in their capacity as Toshiba's advisers) 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 its 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 of 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, DISCLOSURE & CONFLICTS**

- (a) During the Restricted Period and for as long as the Nominee remains a Toshiba director, the Nominee shall disclose to the Toshiba board or Special Committee (or Successor Committee), 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 a significant interest in the success or failure of the transaction constituting an Extraordinary Transaction which is different from that of general shareholders of Toshiba in relation to any agenda items to be delivered and/or resolved at the Toshiba board meeting 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) (a "**Conflict of Interest**").
- (b) Subject to Paragraph 13(c), if, during the Restricted Period, the Chairman of the Special Committee or the Chairman of the Toshiba board determines that there is an actual or potential direct or indirect 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 then:
 - (x) the Nominee shall recuse himself from any the deliberations of the Toshiba board or relevant Toshiba committee and from voting on the relevant agenda items that have given rise to the Conflict of Interest; and
 - (y) the Toshiba board may from time to time restrict the Nominee's access to information regarding the said agenda items (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) If the Nominee notifies the Chairman of the Special Committee or Chairman of the Toshiba board (as applicable) that he disagrees with the relevant Chairman's determination pursuant to Paragraph 13(b), then Paragraph 13(b)(x) and (y) shall not be effective and binding and the Nominee shall not be so recused or his access to information restricted until and only if the Chairman's determination has received the support of a majority of the Toshiba board (excluding the Nominee)

and outside Japanese legal counsel has opined in writing that such Conflict of Interest exists.

14. 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 prevail.
- (b) Each of the Investor and Toshiba recognizes and acknowledges that any actual or threatened violations of this Agreement by it or, in the case of Toshiba, its affiliates or, in the case of the Investor, the Nominee, any Investor Affiliate or any Specified Elliott Personnel (being the respective party's "**Representatives**") 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 Representatives breaches or threatens to breach any of the provisions of this Agreement. It is further understood and agreed that no failure or delay by the Investor or Toshiba 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 of the Investor and Toshiba acknowledges and agrees that it shall be responsible for any breach of the terms of this Agreement by its Representatives (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 applicable 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 jurisdiction or any other applicable jurisdiction of any other provision of this Agreement.
- (e) Neither party may assign any of its rights or obligations under this Agreement (whether by operation of law or otherwise) without the prior written consent of the other party. Any attempted or purported assignment in contravention of this provision shall be null and void.
- (f) 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.

- (g) The Investor Affiliates and the Nominee shall be entitled to rely on and enforce the terms of this Agreement.

15. **TERMINATION**

This Agreement shall automatically terminate and the provisions of this Agreement shall have no further force or effect upon the termination of the Restricted Period; provided that the provisions of Paragraphs 3(c) to 3(e) (inclusive), 8, 9, 11, and 14 shall survive termination of this Agreement 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 Toshiba board; or
- (b) in respect of Restricted Information, in perpetuity.