

PARTICIPATING ADDENDUM
to NASPO ValuePoint
Multi-Function Devices and Related Software, Services and
Cloud Solutions
Administered by the State of Colorado
with Lexmark International, Inc.
Master Agreement No. 188733
And
The State of Colorado
Contract # 194863

1. PARTIES AND SCOPE

This Participating Addendum, including all of its attached exhibits and other documents incorporated by reference (the “Participating Addendum”), is entered into by and between **Lexmark International, Inc.** (the “Contractor”), and the State of Colorado (the “State”). This Participating Addendum covers participation in the **Multi-Function Devices and Related Software, Services and Cloud Solutions** Master Agreement led by the State of **Colorado** (the “Master Agreement”), for use by State agencies and other entities located in Colorado which are authorized by law to utilize State contracts with the prior approval of the State Purchasing Director. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit C (Price Lists)** of this agreement.

2. PARTICIPATION

Agencies, political subdivisions and other entities (including cooperatives) authorized by the State’s statutes to use State contracts may make purchases under this Participating Addendum as of its Effective Date. Issues of interpretation and eligibility for participation are solely within the authority of the Chief Procurement Officer.

3. STATE MODIFICATIONS TO MASTER AGREEMENT AND APPLICABILITY

A. To the extent not modified by this Participating Addendum and all its exhibits, the Master Agreement and all its terms and conditions shall apply to this Participating Addendum. If any term of this Participating Addendum conflicts with the Master Agreement, then this Participating Addendum shall control for all transactions between the State and the Contractor under this Participating Addendum. All terms defined in the Master Agreement shall have the meaning given to them in the Master Agreement, except for those terms specifically defined differently in this Participating Addendum.

B. The following modifications shall be made to the Master Agreement with respect to Contractor’s performance pursuant to this Participating Addendum:

i. §VI.6.1.6, under Pricing, Payment & Leasing, shall be modified as follows:

“All-inclusive Cost Per Copy (CPC) programs shall be offered upon request by the

Purchasing Entity, but pricing must not exceed Master Agreement pricing. Contractor must provide the Purchasing Entity with their pricing breakdown which enables the Purchasing Entity to easily compare the pricing in the CPC structure against the pricing in the Master Agreement.”

- ii. **§VII.7.6**, under Ordering and Invoicing Specifications, shall be modified as follows:
 - “All Orders pursuant to this Participating Addendum, shall contain the following:
 - 7.6.1 Name of Purchasing Entity;
 - 7.6.2 The name, phone number, and address of Purchasing Entity representative;
 - 7.6.3 Order date;
 - 7.6.4 Description of the Product and/or Service ordered;
 - 7.6.5 Model number;
 - 7.6.6 Price;
 - 7.6.7 The Master Agreement number;
 - 7.6.8 This Participating Addendum number; and
 - 7.6.9 Any additional information requested by the Purchasing Entity.”
- iii. **§VII.7.8**, under Ordering and Invoicing Specifications, shall be modified as follows:
 - “At the request of the Purchasing Entity, Contractor shall provide a centralized billing option.”
- iv. **§VII.7.12**, under Ordering, shall be modified as follows:
 - “Contractor and/or Authorized Dealers may not estimate meter reads if a Purchasing Entity fails to submit the required information within the specified time-frame. The acquisition of timely meter readings shall be the Contractor and/or Authorized Dealer’s responsibility alone.”
- v. **§VII.7.14**, under Ordering, shall be modified as follows:
 - “Contractor, Third-Party leasing companies, and/or Authorized Dealers, shall bill property tax separately, unless otherwise requested by a Purchasing Entity.”
- vi. **§X.10.11**, under Warranty, shall be modified as follows:
 - “It will be at the discretion of the Purchasing Entity to negotiate additional warranty requirements with the Contractor.”
- vii. **§X.10.12.4**, under Lemon Clause, shall be modified as follows:
 - “This clause shall take precedence over any other warranty or Services clauses associated with the Master Agreement.”
- viii. **§II.A.3.4**, under Open Market Items of Exhibit A, Statement of Work, Ancillary Product and Service Offerings, shall be modified as follows:
 - “NSP items shall be offered to a Purchasing Entity as a stand-alone option, and the

maximum allowable amount of any NSP item in a single Order is \$5,000.”

- ix. **§III.D.11**, under Leasing Overview of Exhibit A, Statement of Work, shall be modified as follows:

“The length of a Renewal Term shall be at the discretion of the Purchasing Entity, but at no time shall the Renewal Term exceed the Useful Life of the Device.”

- x. **§IV.A.2**, under Standard Service Levels of Exhibit A, Statement of Work, shall be modified as follows:

“The Service Level Agreement (SLA) shall adhere to the following requirements:”

- xi. **§IV.A.3.4**, under Meter Read Invoicing of Exhibit A, Statement of Work, shall be deleted in its entirety.

- xii. **§IV.A.4.1 (a.)** under Service Level Calculations of Exhibit A, Statement of Work, shall be modified as follows:

“At the discretion of the Purchasing Entity, Contractor shall produce reports that can be measured against the required SLA components.”

- xiii. **§IV.A.4.1 (b.)** under Service Level Calculations of Exhibit A, Statement of Work, shall be deleted in its entirety.

- xiv. **§IV.D.3**, under Device Demonstration Requirements of Exhibit A, Statement of Work, shall be modified as follows:

“Upon request by a Purchasing Entity, showroom Devices for Group B shall be converted to a purchase or lease providing the following conditions are met:”

- xv. **§IV.F.2.**, under Sensitive Information of Exhibit A, Statement of Work, shall have the meaning as prescribed to it in **§4**, Definitions of Exhibit A, State Specific Terms, to this Participating Addendum.

- xvi. **§IV.F.5.2**, under Hard Drive Removal and Surrender of Exhibit A, Statement of Work, shall be modified as follows:

“At the Purchasing Entity’s discretion, Contractor shall remove the hard drive from the applicable Device and provide the Purchasing Entity with custody of the hard drive before the Device is removed from the Purchasing Entity’s location, moved to another location, or any other disposition of the Device. The Purchasing Entity shall then be responsible for securely erasing or destroying the hard drive.”

4. EQUIPMENT, SERVICE, AND SOFTWARE OPTIONS

- A. A Purchasing Entity may purchase or lease Equipment and software under this Participating Addendum. Financing options include a Fair Market Value (FMV) Lease, Capital Lease, and Straight Lease. The lease terms available are 24, 36, 48 and 60 months.
- B. The State has reviewed and approved the terms and conditions in the Contractor’s documents, which are attached hereto as **Attachments 1 through 6** and **Exhibit H**, and incorporated by reference. Purchasing Entities are still advised however, to conduct their own internal review

of Contractor's documents prior to entering into any type of Order.

With the exception of the aforementioned Attachments and Exhibit, any other Contractor software documents, which are **not** incorporated into the Master Agreement or the Participating Addendum, nor have they been reviewed or approved by the State, no other Contractor documents are permissible under this Participating Addendum unless mutually agreed to in writing by Contractor and the State. Should there be a conflict between the terms and conditions of this Participating Addendum or the Master Agreement, and any terms in the Contractor's documents, this Participating Addendum and the Master Agreement shall govern according to the order of precedence set forth in **§8** below.

- C. In the event the Purchasing Entity receives or obtains copies of the language in any of the Exhibits or Attachments referenced in **§4.B.** above, and the language varies from what is listed in said Exhibits and/or Attachments, the language in the Exhibits and Attachments incorporated into this Participating Addendum shall prevail.
- D. A Purchasing Entity shall be solely responsible for the review and approval of all of Contractor's software documents not attached to this Participating Addendum, including, but not limited to: End User License Agreements, Click-Wrap Agreements and third-party software agreements.

5. PRIMARY CONTACTS AND PERSONNEL RESPONSIBILITIES

The primary contacts for this Participating Addendum are the individuals named in this section. Either Party may change its primary contacts or primary contacts contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum. The Contractor's primary contact shall be ultimately responsible for ensuring that all Goods are delivered and all Services are completed in accordance with this Participating Addendum.

Primary Contact for the State:

Nikki Pollack
Colorado State Purchasing & Contracts Office
1525 Sherman Street, 5th Floor
Denver, CO 80203
(303) 866-5671
nikki.pollack@state.co.us

Primary Contact for the Contractor:

Angela Schlegel
Lexmark International, Inc.
740 W. New Circle Road
Lexington, KY 40550
720-415-8704
Angela.schlegel@lexmark.com

Each individual identified in this **§5** of the Participating Addendum shall be the primary contact of the designating Party. All notices required or permitted to be given under this Participating Addendum shall be in writing and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's primary contact at the address set forth above or **(C)** as an email with read receipt requested to the primary contact at the email address, if any, set forth above. If a Party delivers a notice to another through email and the email is undeliverable then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's primary contact at the address set forth above. Unless otherwise provided in this Participating Addendum, notices shall be effective upon delivery of the written notice.

In addition to the primary contact in this section, the Contractor shall also provide an individual who is ultimately responsible for the creation and submission of the quarterly volume report

described in **Exhibit A** of this Participating Addendum. This individual, as named in this section, shall ensure that all required quarterly volume reports are accurate and delivered by the appropriate due date for that quarterly volume report. The Contractor may change this individual or their contact information by notice submitted to the other party in writing no later than 5 days following the date on which the change occurs, without a formal amendment to this Participating Addendum.

Individual Responsible for Quarterly Volume Report Creation and Submission:

Name: Carol Carollo
Lexmark International, Inc.
740 W. New Circle Road
Lexington, KY 40550
Phone Number: (212)880-2825
Email: carol.carollo@lexmark.com

6. SUBCONTRACTORS

The Contractor is authorized to use Subcontractors to provide sales and service support to any Purchasing Entity. All such approved Subcontractors authorized in the State of Colorado, are listed in the Colorado tab of the Lexmark Dealer List, which can be obtained on the State dedicated website and/or the NASPO ValuePoint website. The Contractor's Subcontractor's participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum, as appropriate.

7. ORDERS

Any Order placed by a Purchasing Entity in the State of Colorado for a Good or Service available under this Participating Addendum shall be deemed to be a sale under the Master Agreement and this Participating Addendum. Any Order placed by a Purchasing Entity under this Participating Addendum shall be governed by the prices and other terms and conditions embodied in the Master Agreement as modified by this Participating Addendum (1) unless the Master Agreement (as modified) expressly provides that a certain term may be negotiated in an Order, in which case the Order's term shall control; or (2) to the extent that the terms of an Order do not conflict with the Master Agreement (as modified).

8. ORDER OF PRECEDENCE

All of the exhibits listed in this section are attached to this Participating Addendum and are incorporated herein by reference. In the event of a conflict or inconsistency between this Participating Addendum and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- A.** Colorado Special Provisions in **§21 of Exhibit A**, State Specific Terms
- B.** **Exhibit E**, Information Technology Provisions
- C.** **Exhibit G**, Safeguarding Requirements for Federal Tax Information, as applicable
- D.** **Exhibit D**, HIPAA Business Associate Agreement, as applicable
- E.** The provisions of this Participating Addendum
- F.** All other sections of **Exhibit A**, State Specific Terms
- G.** **Exhibit B**, Statement of Work

H. Exhibit C, Price Lists

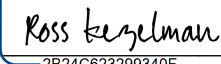
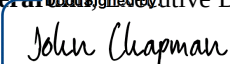
I. Exhibit F, PII Certification, as applicable

J. Attachment 1 through Attachment 6, with equal precedence

K. Exhibit H, Sample D&A Certificate

Notwithstanding anything to the contrary herein, the State and Purchasing Entities shall not be subject to any provision incorporated in any terms and conditions appearing on Contractor's or Subcontractor's website, any provision incorporated into any click-through or online agreements, or any provisions incorporated into any other document or agreement between the Parties that **(i)** requires the State to indemnify or hold harmless Contractor or any other party, **(ii)** is in violation of State law as, regulations, rules, fiscal rules, policies, or other State requirements as deemed solely by the State or **(iii)** is contrary to any of the provisions incorporated into **Exhibit A, §20** or the main body of this Participating Addendum.

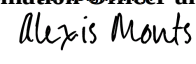
THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

CONTRACTOR Lexmark International, Inc. Name: Ross Kezelman Title: Senior Government Contracts Manager By: <u></u> 2B24C623299340F... Date: <u>10/16/2024</u>	STATE OF COLORADO Jared Polis, Governor Department of Personnel and Administration State Purchasing and Contracts Office Tony Gherardini, Executive Director By: <u></u> EF45AFDEB51E414... Sherri Maxwell, Chief Procurement Officer, or John Chapman, State Purchasing Manager Date: <u>10/16/2024</u>
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STATE OF COLORADO
Governor's Office of Information Technology

In accordance with §24-30-202, C.R.S., if this Contract is for a Major Information Technology Project, this Contract is not valid until signed and dated below by the Chief Information Officer or an authorized delegate.

STATE CHIEF INFORMATION OFFICER
David Edinger, Chief Information Officer and Executive Director

By: 
4235987998F1488...

Name & Title: Alexis Monts CFO

Date: 10/16/2024

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

In accordance with §24-30-202, C.R.S., this Participating Addendum is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: 
2A9C40DF49BF4D5...

Name & Title: Amanda Carroll Central Contracts specialist
Controller Delegate

Effective Date: 10/16/2024

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EXHIBIT A, STATE SPECIFIC TERMS

1. AUTHORITY

Authority to enter into this Participating Addendum exists in the Colorado Procurement Code, §24-102-202, C.R.S. and 1 CCR 101-9 R-24-102-202-01., and its associated rules.

2. PURPOSE

The Parties are entering into this Participating Addendum for the Contractor to provide **A4 MFD, Single-function Printers, Software, Supplies, Managed Print Services, Software Related Services, and Specialty Printers** to Purchasing Entities. The Contractor was selected as a result of **RFP-NP-23-001**.

3. TERM

A. Initial Term - Work Commencement

The Parties' respective performances under this Participating Addendum shall commence on the Effective Date and shall be co-terminus with NASPO ValuePoint Master Agreement **188733**. Unless this Participating Addendum is terminated earlier, as described herein, or the State cancels its participation as described in the Master Agreement (the "Term"), the term of the Participating Addendum shall follow the Master Agreement initial term and will be automatically extended beyond the initial term if the Master Agreement term is extended (See **§3.B.**).

B. Extension of Term

If the term of NASPO ValuePoint Master Agreement is extended for any reason, the Term of this Participating Addendum shall be automatically modified to account for that extension, so long as such extension complies with the Colorado Procurement Code.

C. End of Term Extension

If this Participating Addendum approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor's primary contact listed in **§5** of the Participating Addendum and in accordance with **§5** of this Participating Addendum, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Participating Addendum in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Participating Addendum.

D. Order Term

Orders may only be placed prior to the expiration or earlier termination of this Participating Addendum, but may have a delivery date or performance period that extends no longer than 120 calendar days following that expiration or earlier termination date. Regardless of whether this Participating Addendum has expired or has been terminated, the Contractor shall comply with all Orders that extend past the expiration or termination, as described in this section, and all requirements of this Participating Addendum necessary to complete outstanding Orders shall survive the expiration or termination of this Participating Addendum.

until all Orders are complete.

E. Early Termination in the Public Interest

The State is entering into this Participating Addendum to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Participating Addendum by the State for breach by Contractor, which shall be governed by §15.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §5 of this Participating Addendum. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Participating Addendum, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in §15.

iii. Payments

If the State terminates this Participating Addendum in the public interest, the Purchasing Entities shall pay Contractor according to their orders with the Contractor. The sum of any and all payments shall not exceed the maximum amount payable to Contractor under each order.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “Administration Fee”** means the fee that is due to the State for the administration of this Participating Addendum, as described in §7.A. of this **Exhibit A**.
- B. “Attachments”** means the following attachments included in this Contract:
 - i. Attachment 1**, Lexmark Sample Customer PO
 - ii. Attachment 2**, Lexmark Equipment Lease Form
 - iii. Attachment 3**, Lexmark Maintenance Agreement
 - iv. Attachment 4**, Lexmark Statement of Work Template
 - v. Attachment 5**, Lexmark Master Cloud Services Agreement with CFM Schedule
 - vi. Attachment 6**, Lexmark Extended Warranty Terms and Conditions
- C. “Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.

- D.** “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E.** “**Ceiling Price**” means the maximum price a Contractor or a Subcontractor may charge for a Good or Service under this Participating Addendum.
- F.** “**Chief Procurement Officer**” means the individual to whom the Executive Director of the Department of Personnel & Administration has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the State.
- G.** “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended, and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- H.** “**Click-Wrap Agreement**” means a type of electronic signature that involves a Purchasing Entity clicking a simple button to accept the agreement.
- I.** “**Confidential Information**” means any and all information that is normally considered confidential in nature, and includes, but is not limited to, all State Records not subject to disclosure under the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S. (“CORA”).
- J.** “**Contract**” means this Participating Addendum, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- K.** “**Contract Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by a Purchasing Entity for Orders placed under this Participating Addendum.
- L.** “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- M.** “**Deliverable**” means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State or Purchasing Entity by Contractor.
- N.** “**Effective Date**” means the date Contract is signed by the State Controller or their designee.
- O.** “**End of Term Extension**” means the time period defined in **§3.C.** of this **Exhibit A.**
- P.** “**End User License Agreement**” (**EULA**) means a legal contract between a software supplier and a customer or end user, which specifies in detail the rights and restrictions which apply to the use of the software.
- Q.** “**Environmentally Preferable Products**” means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose, as defined in §24-103-904, C.R.S.
- R.** “**Exhibits**” means the following exhibits attached to this Contract:
- i.** **Exhibit A**, State Specific Terms.
 - ii.** **Exhibit B**, Statement of Work.
 - iii.** **Exhibit C**, Products and Price List

- iv. **Exhibit D**, HIPAA Business Associate Agreement, as applicable
 - v. **Exhibit E**, Information Technology Provisions
 - vi. **Exhibit F**, PII Certification, as applicable
 - vii. **Exhibit G**, Safeguarding Requirements for Federal Tax Information, as applicable
 - viii. **Exhibit H**, Sample D&A Certificate
- S. **“Extension Term”** means the time period defined in **§3.B**.
- T. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Participating Addendum and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- V. **“Initial Term”** means the time period defined in **§3.A**. of this **Exhibit A**.
- W. **“Order”** means any delivery order, purchase order, contract, agreement or other binding document used by a Purchasing Entity to order the Goods and Services described in this Participating Addendum from the Contractor, and shall include any modification to such a document.
- X. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- Y. **“Purchasing Entity”** means any entity or organization that has been authorized by the State to place Orders with the Contractor, and may include, without limitation, agencies of the State, government supported institution of higher education within the State, political subdivisions of the State, authorized non-profit organizations and other authorized entities.
- Z. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- AA. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- BB. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth,

mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S. "PII" shall also mean "personal identifying information" as set forth at § 24-74-102, et. seq., C.R.S.

- CC. "Sensitive Information"** means privileged or proprietary information that, if compromised through alteration, corruption, loss, misuse, or unauthorized disclosure, could cause serious harm to the organization owning it.
- DD. "Services"** means the services to be performed by Contractor as set forth in this Participating Addendum, and shall include any services to be rendered by Contractor in connection with the Goods.
- EE. "State Confidential Information"** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PCI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- FF. "State Fiscal Rules"** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- GG. "State Fiscal Year"** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- HH. "State Records"** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- II. "Subcontractor"** means third-parties, if any, engaged by Contractor pursuant to **§20.B.** to aid in performance of the Work. The term "Subcontractor" includes, without limitation, any dealers, distributors, partners or resellers engaged by the Contractor to perform the Work.
- JJ. "Tax Information"** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- KK. "Total Value of the Contract"** means the total amount spent under all Orders by all Purchasing Entities through use of this Participating Addendum, either through issuance of an additional Contract or Purchase Order.
- LL. "Work"** means the Goods delivered and Services performed pursuant to this Contract.
- MM. "Work Product"** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes,

studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Participating Addendum that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

5. STATEMENT OF WORK

Contractor shall complete the Work as described in this Participating Addendum and in accordance with the provisions of **Exhibits B and C**, the Master Agreement, and with any Purchasing Entity's Order. Contractor personnel shall work cooperatively with State and Purchasing Entity staff to ensure the completion of the Work.

A. Ordering and Order Fulfillment

i. Ordering

- a. Contractor shall provide a complete and accurate Internal Revenue Service form W9 to the State prior to accepting an Order from any Purchasing Entity. Upon a request by a Purchasing Entity, Contractor shall provide a complete and accurate Internal Revenue Service form W9 to that Purchasing Entity.
- b. Each Purchasing Entity may complete an Order in accordance with its own rules and policies, as available to Contractor, using the appropriate documentation for that organization to issue an Order.
- c. Contractor shall communicate directly with each Purchasing Entity related to that Purchasing Entity's Orders.
- d. Contractor shall ensure that all Orders it accepts have the proper information contained in them for Contractor to be able to comply with all reporting requirements of this **Exhibit A**.
- e. If Contractor provides for Ordering through an internet-based portal or electronic catalog, Contractor shall maintain all of Contractor's necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog.
- f. Contractor's internet-based portal and electronic catalogs shall clearly designate that they are part of this Participating Addendum and shall have a link to the State's designated web location, as determined by the State. Contractor shall ensure that all Environmentally Preferable Products are clearly listed on internet-based portal and electronic catalogs.
- g. If Contractor provides an internet-based portal or electronic catalog, Contractor shall also provide paper catalogs or catalogs on other digital media upon request by a Purchasing Entity.
- h. If Contractor's catalog will be either hosted on or accessed through the State's eCommerce system, when available, then Contractor shall comply with all policies, procedures and directions from the State in relation to hosting its catalog on or making its catalog accessible through that system. Contractor shall ensure that all information made available through the State's eCommerce system is

accurate and complies with this Participating Addendum.

6. PAYMENTS TO CONTRACTOR

A. Payments Under Orders

- i. Contractor shall allow the State and Purchasing Entities to use a procurement card or other credit card to make payments under any Order, in addition to any other payment procedure available to the State or Purchasing Entity.
- ii. The State shall not pay any amount to Contractor under this Participating Addendum unless the State issues an Order, at which time it shall pay Contractor in accordance with that Order. The State shall not be responsible for payment under any Order that is issued by a Purchasing Entity that is not the State, and the Contractor shall seek no payment or other compensation from the State for any Work performed under any Order issued by a Purchasing Entity that is not the State.

B. Payment Procedures

i. Invoices

Contractor shall invoice each Purchasing Entity in accordance with that Purchasing Entity's Order. Contractor shall not invoice the State under any Order unless the State issued that Order. Contractor shall allow 45 days for the State and Purchasing Entities to pay an invoice following the receipt of the invoice, unless the State or a Purchasing Entity specifically agrees to a shorter time in an Order. State law and regulations provide that State payments made within 45 days are not considered delinquent, and unless otherwise agreed, State Purchasing Entities will pay interest on any unpaid balance beginning on the 45th day at the rate of 1% per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are the subject of a good faith dispute regarding the obligation to pay all or a portion of the liability. Contractor shall invoice State Ordering Entities separately for accrued interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest rate. (§ 24-30-202(24), C.R.S., as amended.)

ii. Payment Disputes

Unless different procedures are specified in an Order, if Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the Purchasing Entity issuing the Order in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by that Purchasing Entity. The Purchasing Entity will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the Purchasing Entity's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the Purchasing Entity has concluded its review, and the Purchasing Entity shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iii. Available Funds-Contingency-Termination of Order

Purchasing Entities, except for authorized non-profit entities, are prohibited by law

from making commitments beyond the term of the current Purchasing Entity's Fiscal Year. Payment to Contractor beyond the current Purchasing Entity's Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (See Colorado Special Provision). If federal funds, non-State funds or funds from any other source constitute all or some of the Contract Funds, the Purchasing Entity's obligation to pay Contractor shall be contingent upon such funding continuing to be made available for payment. Orders under this Participating Addendum shall be made only from Contract Funds, and the Purchasing Entity's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other Purchasing Entity funds are not appropriated, or otherwise become unavailable to fund an Order under this Participating Addendum, the Purchasing Entity may, upon written notice, terminate the Order, in whole or in part, without incurring further liability. The Purchasing Entity shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination of Order. A State Purchasing Entity Order termination shall otherwise be treated as if the Order was terminated in the public interest as described in **§3.E.** of this **Exhibit A.**

The Purchasing Entity may effect such termination by giving Contractor a written notice of termination, to the Contractor's primary contact in accordance with **§5** of the Participating Addendum, and by paying to Contractor any amounts which are due and have not been paid through the last day of the Fiscal Year for which appropriated funds are available. The Purchasing Entity shall endeavor to give notice of such termination not less than 30 days prior to the day of non-availability of funds, and shall notify Contractor of any anticipated termination.

iv. Discount and Delinquency Period

Any applicable cash discount period or delinquency period for the amounts shown on an invoice shall begin on the date the Purchasing Entity's approves of the invoice, or from the date of receipt of acceptable Goods or Services at the specified destination by an authorized Purchasing Entity representative, whichever is later.

7. PAYMENTS TO STATE

A. Administrative Fees

- i.** Each State Fiscal Year quarter, Contractor shall, using a form as directed by the State, calculate an Administrative Fee equal to 1% of the total sales made under Orders during that State Fiscal Year quarter. Contractor shall pay the State the Administrative Fee for each State Fiscal Year quarter within 45 days following the end of that State Fiscal Year quarter.
- ii.** Contractor shall remit all administrative fees to the State's primary contact identified in **§5** of the Participating Addendum and with the payee as "State of Colorado."

8. REPORTING – NOTIFICATION

A. Volume Reporting

The State will use a centralized method of tracking volume. Contractor shall provide a quarterly volume report to the State's primary contact identified in **§5** of this Participating Addendum within 30 calendar days following the end of the State Fiscal Year quarter that the report covers. The quarterly volume report shall be submitted in a form as directed by

the State, which may be modified by the State from time to time. The quarterly volume report shall contain, at a minimum, all of the following:

- i. A summary volume report that includes, but is not limited to, all of the following for the quarter that the report covers:
 - a. The total spent by each type of Purchasing Entity under this Participating Addendum.
 - b. The total of the list price of all items purchased by each type of Purchasing Entity under this Participating Addendum.
 - c. The total estimated price savings for each type of Purchasing Entity under this Participating Addendum, calculated as the total list price of all items purchased by each type of Purchasing Entity minus the total spent for that type of Purchasing Entity.
 - d. The total paid through the use of a procurement card or credit card for each Purchasing Entity under this Participating Addendum.
 - e. The total sales of environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, for each Purchasing Entity under this Participating Addendum.
 - f. The amount of the total administrative fee due to the State.
 - g. Any additional summary information as requested by the State.
- ii. A detail report that includes, but is not limited to, all of the following for each sale that occurred during the quarter that the report covers:
 - a. The name of the Purchasing Entity who the sale was made to.
 - b. The date of the sale.
 - c. A listing of each item purchased in the sale, including the name of the item, the quantity of the item, and the unit price for the item.
 - d. Any other detail information as requested by the State.

B. Additional Operational Reporting

Upon request by the State, the Contractor shall provide operational reporting that includes all detailed and summary transaction, historical or payment information related to the State or any of the Purchasing Entities as requested by the State. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

C. Environmentally Preferable Product Reporting

Upon request by the State, the Contractor shall provide detailed reporting on environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, that are purchased or made available under this Participating Addendum. The scope and detail of such reports shall be agreed upon by the State and the Contractor. The Contractor shall provide all such additional reports within 10 Business Days following the State's request for that information, unless the State agrees to a longer period of time in writing.

D. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Participating Addendum or may affect Contractor's ability to perform its obligations under this Participating Addendum, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's primary contact identified in §5 of the Participating Addendum .

E. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State's primary contact in accordance with §5 of the Participating Addendum and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Participating Addendum. This section shall not apply if the Participating Addendum Funds include any federal funds.

F. SOC 1 Type II Annual Report

If Contractor performs Work for any of the State's IT systems that impact the State's Comprehensive Annual Financial Report as determined by the Colorado Office of the State Controller, Contractor, on an annual basis, shall deliver to the State, at Contractor's sole cost and expense, Contractor's System and Organization Controls 1 Type II Report ("SOC 1 Type II Report") prepared by a qualified independent audit firm with respect to the Statement on Standards for Attestation Engagements, Reporting on Controls at a Service Organization (SSAE) as promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants, as amended, from time to time.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records") performed by the Contractor and any Subcontractors, that are required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 3 years after the date this Participating Addendum expires or is terminated, **(ii)** final payment under this Participating Addendum is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Participating Addendum using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Participating Addendum or the Work, whether the audit is conducted by Contractor or a third party.

E. Periodic Business Reviews

- i. The State may schedule periodic business reviews to review Contractor's performance under this Participating Addendum.
- ii. Contractor shall ensure personnel assigned to the Participating Addendum are available for these meetings with the State as scheduled by the State.
- iii. Contractor's primary contact designated in §5 of this the Participating Addendum shall be available for all regularly scheduled meetings between Contractor and the State, unless the State has granted prior, written approval otherwise.

10. CONFIDENTIAL INFORMATION-STATE RECORDS**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Participating Addendum, permitted by law or approved in Writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract , if applicable. Contractor shall immediately forward any request or demand for State Records to the State's primary contact as identified in §5 of the Participating Addendum.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Participating Addendum. Contractor shall ensure all such agents,

employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Participating Addendum, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Participating Addendum, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that neither Contractor nor any of Contractor's agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third

parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit F** on an annual basis Contractor's duty and obligation to certify as set forth in **Exhibit F** shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Participating Addendum. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Participating Addendum.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Participating Addendum, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Participating Addendum.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Participating Addendum.

12. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Participating Addendum and until all orders for goods or Services or both have been delivered and accepted, regardless of whether this Participating Addendum has expired or has been terminated. All insurance policies required by this Participating Addendum shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' Compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment. Insurance must stay in place and in effect even if the contract terms expires, until all product or terms of the contract are completed and satisfied up to 120 days after contract term expires.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$2,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The State shall be named included as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

H. Primacy of Coverage

The coverages required of Contractor and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Contractor or the State.

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-

renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §5 of the Participating Addendum within 7 days of Contractor's receipt of such notice.

J. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Participating Addendum shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Participating Addendum such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Participating Addendum, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Participating Addendum within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Participating Addendum within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Participating Addendum, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. LIMITATION OF CONTRACTOR'S LIABILITY TO STATE

The liability of Contractor, its Subcontractors, and their respective personnel to the State for any claims, liabilities, or damages relating to this Contract shall be limited to damages, including but not limited to direct losses, consequential, special, indirect, incidental, punitive or exemplary loss, loss of State Records or unauthorized disclosure of State Confidential Information, not to exceed three (3) times the Total Value of the Contract or \$1,000,000.00, whichever is greater.

No limitation on Contractor's liability to the State under this Section shall limit or affect:

- A.** Contractor's indemnification obligations to the State under this Contract;
- B.** Any claims, losses, or damages for which coverage is available under any insurance required under this Contract;
- C.** Claims or damages arising out of bodily injury, including death, or damage to tangible

property of the State; or

- D.** Claims or damages resulting from the recklessness, bad faith, or intentional misconduct of Contractor or its Subcontractors

14. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §15 for that Party. Notwithstanding any provision of this Participating Addendum to the contrary, the State, in its discretion in order to protect the public interest of the State, need not provide notice or a cure period and may immediately terminate this Participating Addendum in whole or in part or institute any other remedy in this Participating Addendum; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

15. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Participating Addendum and fails to cure such breach, the State, following the notice and cure period set forth in §14, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Participating Addendum or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Participating Addendum or any part of this Participating Addendum. Contractor shall continue performance of this Participating Addendum to the extent not terminated, if any.

If after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Participating Addendum had been terminated in the public interest under §3. E.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and neither the State nor any Purchasing Entity shall be liable for costs incurred by Contractor after the suspension of performance.

b. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Participating Addendum is deemed by the State to be contrary to the public interest or the State's best interest.

c. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, at the option of and as approved by the State or Purchasing Entity **(i)** secure that right to use such Work for the State, Purchasing Entity and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the Purchasing Entity.

B. Contractor's Remedies

If the State is in breach of any provision of this Participating Addendum and does not cure such breach, Contractor, following the notice and cure period in **§14** and the dispute resolution process in **§166** shall have all remedies available at law and equity. If a Purchasing Entity is in breach of a provision of an Order, Contractor shall have all remedies available to it under that Order and available at law and equity.

C. Purchasing Entity's Remedies

- i.** If Contractor is in breach under any provision of an Order by a Purchasing Entity, the Purchasing Entity shall have all of the remedies listed in that Order, all remedies listed in **§15.A.ii** above, all remedies listed here in **§15.C** and all other remedies available by law or equity. The Purchasing Entity may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.
- ii.** If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

iii. Payments and Damages

- a.** Notwithstanding anything to the contrary, Purchasing Entities shall only pay Contractor for accepted Work received as of the date of termination. A Purchasing Entity may withhold any amount that may be due Contractor as the Purchasing Entity deems necessary until Contractor corrects its Work or to protect itself against loss including, without limitation, loss as a result of outstanding liens and costs incurred by the Purchasing Entity in procuring from third parties replacement Work as cover.
- b.** Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State or appropriate Purchasing Entity for any damages sustained by the State or Purchasing Entity in connection with any breach by Contractor, and the Purchasing Entity may withhold payment to Contractor for the purpose of mitigating the Purchasing Entity's damages.

A Purchasing Entity may deny payment to Contractor for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

16. DISPUTE RESOLUTION

A. Order Disputes, Termination and Resolution

- i.** If a dispute related to an Order arises between Contractor and a Purchasing Entity, Contractor shall meet with the Purchasing Entity to attempt to resolve the issue. If Contractor is unable to resolve the issue with the Purchasing Entity, then Contractor may request assistance from the State by submitting a request in writing, which includes the pertinent information about the dispute and the assistance sought by Contractor, in accordance with §5 of the Participating Addendum. Nothing in this section shall be interpreted as limiting the rights or obligations of Contractor, the State or any Purchasing Entity under this Contract of any Order.
- ii.** A Purchasing Entity may terminate an Order if it determines that Contractor was in breach of that Order. Termination of an Order shall not terminate any other Order or this Participating Addendum.
- iii.** If a Purchasing Entity gives Contractor notice of breach or terminates an Order because of Contractor's breach of that Order, Contractor shall provide notice to the State of that breach or termination within 5 Business Days following Contractor's receipt of that notice of breach or termination.

B. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Participating Addendum which cannot be resolved by the designated Participating Addendum primary contacts, as identified in §5 of the Participating Addendum, or through a dispute on an Order shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

C. Resolution of Controversies arising under this Participating Addendum

If the initial resolution described in §16.B. fails to resolve the dispute within ten (10) Business Days, Contractor shall submit any alleged breach of this Participating Addendum by the State to the Procurement Official of the State Purchasing and Contracts Office as described in in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the Purchasing Entity and its successors and assigns, the entire right,

title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product under an Order. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the Purchasing Entity to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the Purchasing Entity, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the Purchasing Entity a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product created under that Purchasing Entity’s Order and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The Purchasing Entity may assign and license its rights under this license.

ii. Patents

In addition, Contractor grants to the Purchasing Entity (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product created under an Order. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the Purchasing Entity.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Participating Addendum, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, “State Materials”). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Participating Addendum without the prior written consent of the State. Upon termination of this Participating Addendum for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing

materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

18. OBLIGATIONS AND RIGHTS IN THE EVENT OF TERMINATION OF ORDER OR CONTRACT

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to Purchasing Entities all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Participating Addendum's terms. At the request of the State, Contractor shall assign to the appropriate Purchasing Entity all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the appropriate Purchasing Entity has an interest. At the State or Purchasing Entity's request, Contractor shall return materials owned by the Purchasing Entity that Contractor possesses at the time of any termination. Contractor shall deliver all completed Work Product to the appropriate Purchasing Entity at the State or Purchasing Entity's request.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-102-206, 24-106-103, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Participating Addendum are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Participating Addendum.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Participating Addendum shall comply with all applicable

federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Participating Addendum.

C. Binding Effect

Except as otherwise provided in **§20.A.**, all provisions of this Participating Addendum, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Participating Addendum and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Participating Addendum are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Participating Addendum to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Participating Addendum may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Participating Addendum represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Participating Addendum. Prior or contemporaneous additions, deletions, or other changes to this Participating Addendum shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Participating Addendum, and excluding Price Lists and Dealer Lists, any modification to this Participating Addendum shall only be effective if agreed to in a formal amendment to this Participating Addendum, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Participating Addendum, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Participating Addendum to a statute, regulation, State Fiscal Rule, fiscal

policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Participating Addendum.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

L. Severability

The invalidity or unenforceability of any provision of this Participating Addendum shall not affect the validity or enforceability of any other provision of this Participating Addendum, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Participating Addendum in accordance with the intent of this Participating Addendum.

M. Survival of Certain Contract Terms

Any provision of this Participating Addendum that imposes an obligation on the Contractor or a Purchasing Entity after termination or expiration of this Participating Addendum shall survive the termination or expiration of this Participating Addendum and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Participating Addendum. Contractor shall honor any tax exemption that any Purchasing Entity has, and shall not charge any Purchasing Entity any excise, sales, or use taxes from which that Purchasing Entity is exempt.

O. Third Party Beneficiaries

Except for a Purchasing Entity and/or the Parties' respective successors and assigns described in **§20.A**, this Participating Addendum does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Participating Addendum and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Participating Addendum are incidental to this Participating Addendum, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Participating Addendum, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Participating Addendum and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Contractor shall perform its obligations under this Participating Addendum in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Participating Addendum, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Participating Addendum, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Participating Addendum.

T. Accessibility

- A.** Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- B.** The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

U. Indemnification**i. General Indemnification**

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Participating Addendum.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or

omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Contractor under this Contract (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor's obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or Contractor's subsidiaries or affiliates; **(b)** specified by Contractor to work with the IP Deliverables; **(c)** reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or **(d)** is reasonably expected to be used in combination with the IP Deliverables.

iv. Accessibility Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor's failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions,

contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this Contract. Contractor shall **(i)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(ii)** provide proof thereof when requested by the State, and **(iii)** be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or

beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

EXHIBIT B - STATEMENT OF WORK

1. GOODS AND/OR SERVICES

Contractor shall provide Goods and Services per **Exhibit A, Statement of Work**, of the **Master Agreement**, contract #188733, or as otherwise indicated in §3, State Modifications to Master Agreement and Applicability, of the Participating Addendum.

2. OTHER PROJECT REQUIREMENTS

A. Delivery of Goods and Performance of Services

- i.** Contractor shall provide all Goods and perform all Services described in each Order.
- ii.** Unless specifically agreed to otherwise in an Order, Contractor shall deliver all Goods under an Order in good, working and undamaged condition. All Goods shall be free on board ("F.O.B.") destination to the location specified in the Order.
- iii.** If a good in an Order is out of stock, Contractor may only provide a substitute good if it has notified the Purchasing Entity for that Order, in writing, that the good is out of stock and has received the Purchasing Entity's approval to provide the substitute good. Purchasing Entities may request additional information comparing the substitute good with the original good in the Purchasing Entity's sole discretion.

B. Additional Terms

Any additional terms and conditions on any invoice, statement, Contractor time sheet, website, electronic license or use agreement or any other form, including, without limitation, terms regarding indemnification, limitation of liability, cancellation fees, choice of law and binding arbitration shall be void and unenforceable except to the extent that they are specifically included in this Participating Addendum or an Order. The signature of any employee of a Purchasing Entity on any such form shall be effective to establish receipt of Goods or completion of Services and shall not make any term of that form enforceable.

EXHIBIT C - PRICE LISTS

1. Contractor has been awarded the following categories:

- Group B – A4 MFD
- Group D - Single-function Printers
- Group G - Software
- Group H - Supplies
- Group I – Managed Print Services
- Sub-Group D1 – Specialty Printers
- Sub-Group G1 – Software Related Services

2. The price lists are located on the NASPO ValuePoint website, and are incorporated into this Participating Addendum by reference. Changes in product and pricing must be approved by the Lead State and shall be effective when published to the NASPO ValuePoint website at <https://naspovaluepoint.org/portfolio/multi-function-devices-and-related-software-services-and-cloud-solutions/>

3. **Pricing**

A. Price Lists

The State may also publish any pricing information under this Participating Addendum, including, without limitation the pricing information shown in this **Exhibit C**, on the State's website and any other website as the State determines is necessary or efficient to facilitate the use of this Participating Addendum by Purchasing Entities.

B. Price Decreases and Ceiling Prices

The prices listed in this **Exhibit C** are Ceiling Prices, and Contractor may offer lower prices to Purchasing Entities, and Purchasing Entities may negotiate lower prices with Contractor, without the review or approval of the State. Contractor shall not allow a Subcontractor to charge an amount greater than the Ceiling Price for any Order.

B. Environmentally Preferable Purchasing

- i. Contractor shall provide training regarding the environmentally preferable products, as defined in the State's Environmentally Preferable Purchasing Policy, that are purchased or made available under this Participating Addendum. This training shall be provided at no additional cost, unless otherwise agreed upon by the Parties, and shall be presented at a time and in a manner as agreed upon by the Parties.
- ii. The State reserves the right to request additional provisions and requirements to ensure this Participating Addendum is in compliance with all State regulations and policies, including all sustainable purchasing and environmentally preferable purchasing policies or executive orders.

EXHIBIT D - HIPAA BUSINESS ASSOCIATE AGREEMENT (AS APPLICABLE WITH PURCHASING ENTITY)

This HIPAA Business Associate Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as “Covered Entity” and the Contractor is referred to as “Business Associate”. Unless the context clearly requires a distinction between the Contract and this Agreement, all references to “Contract” shall include this Agreement.

1. Purpose

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information (“PHI”). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) enacted under the American Recovery and Reinvestment Act of 2009 (“ARRA”) Pub. L. No. 111-5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and all other applicable laws and regulations, all as may be amended.

2. Definitions

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

- a. Business Associate. “Business Associate” shall have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and shall refer to Contractor.
- b. Covered Entity. “Covered Entity” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and shall refer to the State.
- c. Information Technology and Information Security. “Information Technology” and “Information Security” shall have the same meanings as the terms “information technology” and “information security”, respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

3. Obligations and Activities of Business Associate

a. Permitted Uses and Disclosures

- i. Business Associate shall use and disclose PHI only to accomplish Business Associate’s obligations under the Contract.

- ii. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
 - iii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
 - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
 - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
 - iv. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
- b. Minimum Necessary.** Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).
- c. Impermissible Uses and Disclosures**
- i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
 - ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.
- d. Business Associate's Subcontractors**
- i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.
 - ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
 - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- e. Access to System.** If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available at <http://oit.state.co.us/about/policies>.

- f. Access to PHI.** Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.

g. Amendment of PHI

- i.** Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
- ii.** Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.

- h. Accounting Rights.** Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.

i. Restrictions and Confidential Communications

- i.** Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
 - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
 - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
- ii.** Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
- iii.** Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.

- j. Governmental Access to Records.** Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.

k. Audit, Inspection and Enforcement

- i.** Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.
- ii.** Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct

would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

l. Appropriate Safeguards

- i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
- ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
- iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
- iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

m. Safeguard During Transmission

- i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
- ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

n. Reporting of Improper Use or Disclosure and Notification of Breach

- i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.
- ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
- iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.
- iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.

o. Business Associate's Insurance and Notification Costs

- i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:
 - A. loss of PHI data;
 - B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and
 - C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
 - ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
 - iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
 - iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.
- p. Subcontractors and Breaches**
- i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
 - ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.
- q. Data Ownership**
- i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
 - ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.
- r. Retention of PHI.** Except upon termination of this Agreement as provided in Section 5 below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 2.h above, for a period of six years.

4. Obligations of Covered Entity

a. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.

b. Notice of Changes

- i.** Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.
- ii.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. Termination

a. Breach

- i.** In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.
- ii.** Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

b. Effect of Termination

- i.** Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.
- ii.** If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- iii.** If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. Injunctive Relief

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to

prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

7. Limitation of Liability

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

8. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

9. Certification

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

10. Amendment

- a.** Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
 - i.** In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
 - ii.** Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.
 - iii.** Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
 - iv.** Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
 - A.** Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
 - B.** Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.

- b.** Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

11. Assistance in Litigation or Administrative Proceedings

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

12. Interpretation and Order of Precedence

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

13. Survival

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.

APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

This Appendix (“Appendix”) to the HIPAA Business Associate Agreement (“Agreement”) is an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to “Contract” or “Agreement” shall include this Appendix.

1. Purpose

This Appendix sets forth additional terms to the Agreement. Any sub-section of this Appendix marked as “Reserved” shall be construed as setting forth no additional terms.

2. Additional Terms

- a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
 - i. Reserved.
- b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
 - i. Reserved.
- c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:
 - i. Reserved.
- d. Definition of Receipt of PHI. Business Associate’s receipt of PHI under this Contract shall be deemed to occur, and Business Associate’s obligations under the Agreement shall commence, as follows:
 - i. Reserved.
- e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate’s use and disclosure of PHI under the Contract:
 - i. Reserved.
- f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:
 - i. Reserved.

EXHIBIT E - INFORMATION TECHNOLOGY PROVISIONS

This Exhibit regarding **Information Technology Provisions** (the “Exhibit”) is an essential part of the agreement between the State and Contractor as described in the Contract to which this Exhibit is attached. Unless the context clearly requires a distinction between the Contract and this Exhibit, all references to “Contract” shall include this Exhibit.

1. PROTECTION OF SYSTEM DATA

- A. In addition to the requirements of the main body of this Contract, if Contractor or any Subcontractor is given access to State Information Technology resources or State Records by the State or its agents in connection with Contractor’s performance under the Contract, Contractor shall protect such Information Technology resources and State Records in accordance with this Exhibit. All provisions of this Exhibit that refer to Contractor shall apply equally to any Subcontractor performing work in connection with the Contract.
- B. The terms of this Exhibit shall apply to the extent that Contractor’s obligations under this Contract include the provision of Information Technology goods or services to the State. Information Technology is computer-based equipment and related services designed for the storage, manipulation, and retrieval of data, and includes, without limitation:
 - i. Any technology, equipment, or related services described in §24-37.5-102(2), C.R.S.;
 - ii. The creation, use, processing, disclosure, transmission, or disposal of State Records, including any data or code, in electronic form; and
 - iii. Other existing or emerging technology, equipment, or related services that may require knowledge and expertise in Information Technology.
- C. Contractor shall, and shall cause its Subcontractors to meet all of the following:
 - i. Provide physical and logical protection for all hardware, software, applications, and data that meets or exceeds industry standards and the requirements of this Contract.
 - ii. Maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), annual security testing, and improvements or enhancements consistent with evolving industry standards.
 - iii. Comply with State and federal rules and regulations related to overall security, privacy, confidentiality, integrity, availability, and auditing.
 - iv. Provide that security is not compromised by unauthorized access to workspaces, computers, networks, software, databases, or other physical or electronic environments.
 - v. Promptly report all Incidents, including Incidents that do not result in unauthorized disclosure or loss of data integrity, to a designated representative of the State’s Office of Information Security (“OIS”).
 - vi. Comply with all rules, policies, procedures, and standards issued by the Governor’s Office of Information Technology (“OIT”), including change management, project lifecycle methodology and governance, technical

standards, documentation, and other requirements posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>

- D.** Subject to Contractor's reasonable access security requirements and upon reasonable prior notice, Contractor shall provide the State with scheduled access for the purpose of inspecting and monitoring access and use of State Records, maintaining State systems, and evaluating physical and logical security control effectiveness.
- E.** Contractor shall perform current background checks in a form reasonably acceptable to the State on all of its respective employees and agents performing services or having access to State Records provided under this Contract, including any Subcontractors or the employees of Subcontractors. A background check performed within 30 days prior to the date such employee or agent begins performance or obtains access to State Records shall be deemed to be current.
 - i.** Upon request, Contractor shall provide notice to a designated representative for the State indicating that background checks have been performed. Such notice will inform the State of any action taken in response to such background checks, including any decisions not to take action in response to negative information revealed by a background check.
 - ii.** If Contractor will have access to Federal Tax Information under the Contract, Contractor shall agree to the State's requirements regarding Safeguarding Requirements for Federal Tax Information and shall comply with the background check requirements defined in IRS Publication 1075 and §24-50-1002, C.R.S.

2. DATA HANDLING

- A.** Contractor may not maintain or forward these State Records to or from any other facility or location, except for the authorized and approved purposes of backup and disaster recovery purposes, without the prior written consent of the State. Contractor may not maintain State Records in any data center or other storage location outside the United States for any purpose without the prior express written consent of OIS.
- B.** Contractor shall not allow remote access to State Records from outside the United States, including access by Contractor's employees or agents, without the prior express written consent of OIS. Contractor shall communicate any request regarding non-U.S. access to State Records to the Security and Compliance Representative for the State. The State shall have sole discretion to grant or deny any such request.
- C.** Upon request by the State made any time prior to 60 days following the termination of this Contract for any reason, whether or not the Contract is expiring or terminating, Contractor shall make available to the State a complete download file of all State data.
 - i.** This download file shall be made available to the State within 10 Business Days of the State's request, shall be encrypted and appropriately authenticated, and shall contain, without limitation, all State Records, Work Product, and system schema and transformation definitions, or delimited text files with documents, detailed schema definitions along with attachments in its native format.
 - ii.** Upon the termination of Contractor's provision of data processing services, Contractor shall, as directed by the State, return all State Records provided by the State to Contractor, and the copies thereof, to the State or destroy all such State

Records and certify to the State that it has done so. If any legal obligation imposed upon Contractor prevents it from returning or destroying all or part of the State Records provided by the State to Contractor, Contractor shall guarantee the confidentiality of all State Records provided by the State to Contractor and will not actively process such data anymore. Contractor shall not interrupt or obstruct the State's ability to access and retrieve State Records stored by Contractor.

- D. The State retains the right to use the established operational services to access and retrieve State Records stored on Contractor's infrastructure at its sole discretion and at any time. Upon request of the State or of the supervisory authority, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Exhibit in accordance with the terms of this Contract.

3. DELIVERY AND ACCEPTANCE

- A. Contractor shall provide and maintain a quality assurance system acceptable to the State for any Work or Deliverables under this Contract and shall provide to the State only such Work or Deliverables that have been inspected and found to conform to the specifications identified in this Contract and any applicable solicitation, bid, offer, or proposal from which this Contract results.
- B. Contractor's delivery of any Work or Deliverables to the State shall constitute certification that such Work or Deliverable has been determined to conform to the applicable specifications, and Contractor shall make records of such quality assurance available to the State upon request during the term of the Contract or at any time within three years following expiration or termination of the Contract.
- C. For any Work or Deliverables other than the purchase or license of commercially available goods or software, acceptance of the Work or Deliverable shall require affirmative written communication from the State to the Contractor that such Work or Deliverable has been accepted by the State. Such communication shall be provided within a reasonable time period from the delivery of the Work or Deliverable and shall not be unreasonably delayed or withheld. Acceptance by the State shall be final, except in cases of Contractor's failure to conduct proper quality assurance, latent defects that could not reasonably have been detected upon delivery, or Contractor's gross negligence or willful misconduct.

4. WARRANTY

- A. Notwithstanding the acceptance of any Work or Deliverable, or the payment of any invoice for such Work or Deliverable, Contractor warrants that any Work or Deliverable provided by Contractor under this Contract shall be free from material defects and shall function in material accordance with the applicable specifications. Contractor warrants that any Work or Deliverable shall be, at the time of delivery, free from any harmful or malicious code, including without limitation viruses, malware, spyware, ransomware, or other similar function designed to interfere with or damage the normal operation of Information Technology resources. Contractor's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work or Deliverable.
- B. Upon notice during the warranty term of any defect or material nonconformity, Contractor shall submit to the State in writing within 10 business days of the notice one or more recommendations for corrective action with sufficient documentation for the State to

ascertain the feasibility, risks, and impacts of each recommendation. The State's remedy for such defect or material non-conformity shall be:

- i.** Contractor shall re-perform, repair, or replace such Work or Deliverable in accordance with any recommendation chosen by the State. Contractor shall deliver, at no additional cost to the State, all documentation required under the Contract as applicable to the corrected Work or Deliverable; or
 - ii.** Contractor shall refund to the State all amounts paid for such Work or Deliverable, as well as pay to the State any additional amounts reasonably necessary for the State to procure alternative goods or services of substantially equivalent capability, function, and performance.
- C.** Any Work or Deliverable delivered to the State as a remedy under this section shall be subject to the same quality assurance, acceptance, and warranty requirements as the original Work or Deliverable. The duration of the warranty for any replacement or corrected Work or Deliverable shall run from the date of the corrected or replacement Work or Deliverable.

5. COMPLIANCE

- A.** In addition to the compliance obligations imposed by the main body of the Contract, Contractor shall comply with:
 - i.** All Colorado Office of Information Security (OIS) policies and procedures which OIS has issued pursuant to §§24-37.5-401 through 406, C.R.S. and 8 CCR §1501-5 and posted at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>
 - ii.** All information security and privacy obligations imposed by any federal, state, or local statute or regulation, or by any specifically incorporated industry standards or guidelines, as applicable based on the classification of the data relevant to Contractor's performance under the Contract. Such obligations may arise from:
 - a.** Health Information Portability and Accountability Act (HIPAA).
 - b.** IRS Publication 1075.
 - c.** Payment Card Industry Data Security Standard (PCI-DSS).
 - d.** FBI Criminal Justice Information Service Security Addendum.
 - e.** CMS Minimum Acceptable Risk Standards for Exchanges.
 - f.** Electronic Information Exchange Security Requirements and Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration.
- B.** Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards and guidelines applicable to Contractor's performance under the Contract.
- C.** Contractor shall allow the State reasonable access and shall provide the State with information reasonably required to assess Contractor's compliance. Such access and information shall include:
 - i.** An annual SOC2 Type II audit including, at a minimum, the Trust Principles of Security, Confidentiality, and Availability, or an alternative audit recommended

by OIS; or

- ii. The performance of security audit and penetration tests, as requested by OIS.

- D. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with the results of all security assessment activities when conducted on such information systems, including any code-level vulnerability scans, application level risk assessments, and other security assessment activities as required by this Contract or reasonably requested by OIS. Contractor will make reasonable efforts to remediate any vulnerabilities or will request a security exception from the State. The State will work with Contractor and OIS to prepare any requests for exceptions from the security requirements described in this Contract and its Exhibits, including mitigating controls and other factors, and OIS will consider such requests in accordance with their policies and procedures referenced herein.

6. TRANSITION OF SERVICES

Upon request by the State prior to expiration or earlier termination of this Contract or any Services provided in this Contract, Contractor shall provide reasonable and necessary assistance to accomplish a complete transition of the Services from Contractor to the State or any replacement provider designated solely by the State without any interruption of or adverse impact on the Services. Contractor shall cooperate fully with the State or any successor provider and shall promptly take all steps required to assist in effecting a complete transition of the Services designated by the State. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services in this Contract.

7. LICENSE OR USE AUDIT RIGHTS

- A. To the extent that Contractor, through this Contract or otherwise as related to the subject matter of this Contract, has granted to the State any license or otherwise limited permission to use any Contractor Property, the terms of this section shall apply.
- B. Contractor shall have the right, at any time during and throughout the Contract Term, but not more than once per Fiscal Year, to request via written notice in accordance with the notice provisions of the Contract that the State audit its use of and certify as to its compliance with any applicable license or use restrictions and limitations contained in this Contract (an "Audit Request"). The Audit Request shall specify the time period to be covered by the audit, which shall not include any time periods covered by a previous audit. The State shall complete the audit and provide certification of its compliance to Contractor ("Audit Certification") within 120 days following the State's receipt of the Audit Request.
- C. If upon receipt of the State's Audit Certification, the Parties reasonably determine that: (i) the State's use of licenses, use of software, use of programs, or any other use during the audit period exceeded the use restrictions and limitations contained in this Contract ("Overuse") and (ii) the State would have been or is then required to purchase additional maintenance and/or services ("Maintenance"), Contractor shall provide written notice to the State in accordance with the notice provisions of the Contract identifying any Overuse or required Maintenance and request that the State bring its use into compliance with such use restrictions and limitations.

**EXHIBIT F - PII CERTIFICATION (AS APPLICABLE WITH PURCHASING
ENTITY)**

**STATE OF COLORADO
THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII
THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: _____
Printed Name: _____
Date: _____

EXHIBIT F - PII CERTIFICATION (AS APPLICABLE WITH PURCHASING ENTITY)**STATE OF COLORADO
THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO
PII THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of entity / organization) (the "Organization"), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT G - SAFEGUARDING REQUIREMENTS FOR FEDERAL TAX INFORMATION (AS APPLICABLE WITH PURCHASING ENTITY)

If, and only to the extent, that Contractor accesses, receives, or processes Federal Tax Information on behalf of State, this Addendum shall apply. This Addendum regarding Safeguarding Requirements for Federal Tax Information (“Addendum”)¹ is an essential part of the agreement between the State and Contractor as described in the Contract to which this Addendum is attached. Unless the context clearly requires a distinction between the Contract and this Addendum, all references to “Contract” shall include this Addendum.

1. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by Contractor’s employees with the following requirements:

- A.** All work will be done under the supervision of the Contractor or the Contractor’s employees.
- B.** The Contractor and the Contractor’s employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075 and Colorado Revised Statutes 24-50-1002.
- C.** Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- D.** All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- E.** The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of Contractor’s computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any FTI remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- F.** Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the State or the State’s designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State or the State’s designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- G.** All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features

¹ The language of this Addendum is derived from IRS Publication 1075, *Tax Information Security Guidelines For Federal, State and Local Agencies*, Exhibit 7 – Safeguarding Contract Language, “Contract Language for Technology Services.” This Addendum is not exhaustive of all requirements contained in Publication 1075. By agreeing to this Addendum, Contractor agrees to comply with all applicable requirements in Publication 1075 or described on the website of the IRS Safeguards Program, located at www.irs.gov/privacy-disclosure/safeguards-program.

of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

- H. No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the State, by and through the contracting agency and the Office of Information Technology, and the IRS.²
- I. The Contractor will maintain a list of employees' authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- J. The Contractor will not use live FTI in a test environment or utilize a cloud computing model that receives processes, stores, or transmits FTI without express written authorization from the State.³
- K. The Contractor will maintain the confidentiality of all taxpayer information provided by the State or learned in the course of Contractor's duties under this Contract in accordance with safeguards set forth under Colorado Revised Statutes § 39-21-113(4), as amended.
- L. The Contractor agrees to comply with the following additional requirements in performance of this Contract:

None

- M. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

2. CRIMINAL/CIVIL SANCTIONS

- A. Each officer or employee of any person⁴ to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- B. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any

² see IRS Publication 1075, Exhibit 6 – Contractor 45-Day Notification Procedures.

³ see IRS Publication 1075, Section 9 and <https://www.irs.gov/privacy-disclosure/use-of-live-fti-in-system-testing> .

⁴ The term "person" is used in this Section 2 as it is used in Title 26 of the United States Code and related regulations. The term "person" means a person or entity, including "an individual, a trust, estate, partnership, association, company or corporation." 26 U.S.C. § 7701(a)(1).

such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- C. Additionally, Contractor shall inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractor by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- D. Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding FTI. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches.⁵ For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. INSPECTION

The IRS and the State, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process, or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

⁵ see IRS Publication 1075, Section 10 or www.irs.gov/privacy-disclosure/reporting-improper-inspections-or-disclosures.

EXHIBIT H – SAMPLE D&A CERTIFICATE

**NASPO VALUEPOINT MASTER AGREEMENT NO. 188733
AND THE STATE OF COLORADO PARTICIPATING ADDENDUM NO. 194863
WITH LEXMARK INTERNATIONAL, INC.**

To: Insert Name of Contractor or Authorized Dealer

Pursuant to the provisions of the Master Agreement and Participating Addendum, Purchasing Entity hereby certifies and warrants that (a) all Equipment described in the Order has been delivered and installed; (b) Purchasing Entity has inspected the Equipment, and all such testing as it deems necessary has been performed by Purchasing Entity and/or Contractor to the Satisfaction of Purchasing Entity; and (c) Purchasing Entity accepts the Equipment for all purposes of the Order.

Insert name of Purchasing Entity

By: _____

Title: _____

Date: _____

ATTACHMENT 1 – LEXMARK SAMPLE CUSTOMER PO

Remittance address may be requested by the customer here so it could also be: **PO Box 41602, Philadelphia, PA 19101-1602** per remit to address depicted in the NASPO contract. Either one is acceptable. This cannot be the local dealer address.

SAMPLE CUSTOMER PURCHASE ORDER

PO number must be on the Order Form

Purchase Order Number: **3208002386**

Date: 3/31/2019

TO: **Lexmark Financial Services, LLC**
C/O (Insert the Dealer's Name)
 1111 Old Eagle School Road
 Wayne PA 19087
 Attn: Sales Rep Name (999)996-9999 X 100

DELIVER TO: Customer Name
 1111 Main Street
 Somewhere, State 99999
 Attn: POC @ (999)999-9999

BILL TO:
Customer Name
 Accounting/Accounts Payable Dept.
 1111 Main Street
 Somewhere, State 99999

For more information regarding this purchase order, call

Point of Contact Name at (999) 999-9999

IMPORTANT CONDITIONS OF ORDER

Any Important Note can be initiated by the customer here as long as it does not conflict with Contract T&C's

Purchase Order Must reference Lease term in months– Description should include the accessories and/or the item numbers being ordered.

QTY	DESCRIPTION	QUANTITY	UNIT PRICE	EXTENSION
	"This purchase order incorporates the terms and conditions of the NASPO ValuePoint Master Agreement and Participating Addendum number, [REDACTED]. The terms and conditions of the Lease Agreement govern and control leasing transactions which we have read and expressly agree to be bound by, as the controlling terms over any preprinted or written terms stated on this purchase order."			
1	36-month FMV Lease of two (2) each – Lexmark C6000, PFU-602, HT-504, DF-622 Doc Feeder, PH-102 Preview Kit, HD-514 HDD, IC 413 Controller, RU-509 Relay Unit, EFI Fiery Option Bundle, FD-503 Folding Unit, FS-521 Finisher, Basic Professional Service & Professional Services - Training.			
1	Above 36 month Lease Includes upgrade/buyout for existing lease # -001-234567 of \$10,000			
	Included line item for buyouts/upgrades with language, current lease number and total dollar amount of buyout to satisfy current lease and equipment return costs			
	Order Total: =====>			

STATE SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes.

Most Public Entities will have a sales tax exemption statement incorporated within their standard PO format if they are exempt. **HOWEVER, the customer's actual tax exempt certificate must be on file.** Please include with initial PO. PO should also be signed by authorized agent.

ATTACHMENT 2 – LEXMARK EQUIPMENT LEASE FORM

Lexmark International, Inc.

Attn: Order Processing
740 W. New Circle Road
Lexington, KY 40550

NASPO ValuePoint Master Agreement Number: 188733
State of Colorado Participating Addendum Number: 194863

CUSTOMER INFORMATION	Full Legal Name of Purchasing Entity				Phone Number					
	Billing Address				Purchase Order/Requisition Number:					
	City State Zip				Send Invoice to Attention of:					
EQUIPMENT INFORMATION (use separate form for each unique equipment order)	Quantity	Equipment Make	Model No.	Serial Number	Description w/Accessories (attach Schedule if necessary)					
	Equipment Location (if different than billing)				City	State	Zip			
	Delivery Contact				Phone Number	email Address				
PAYMENT INFORMATION	Term (check one)		New ☐ Coterminous ☐		If Coterminous, Original Purchase Order/Req Number: _____					
	Lease or Rental Type (check)		FMV Lease ☐ \$1 Buyout Lease ☐ Straight Lease ☐							
	Does this Lease include an upgrade/downgrade of a Device with a remaining lease or rental balance?		Yes ☐ No ☐		If Yes, Amount: \$ _____ (Attach Schedule with Equipment information)					
	Does this Lease include a trade in or a third party buyout?		Yes ☐ No ☐		If Yes, Serial Number of Device: _____					
	Term in Months	Equipment Payment	PLUS	Maintenance Payment	EQUALS	Total Payment	B&W Impressions		Color Impressions	
							Monthly Copy Allowance	Overage Rate	Monthly Copy	Overage Rate
Note: Lexmark International, Inc. Leasing information, including Terms & Conditions, are in the State of Colorado Master Agreement, Exhibit A, Contract # 188733. Signature on this form by both Parties constitutes binding acceptance to ALL terms and conditions in the Master Agreement, and ALL terms and conditions in the Participating Addendum.										
AUTHORIZED CUSTOMER SIGNATURE	Printed Name					ACCEPTED BY LEXMARK INTERNATIONAL, INC.	Printed Name			
	Title						Title			
	Signature						Signature			
	Date						Date			

ATTACHMENT 3 – LEXMARK MAINTENANCE AGREEMENT



The parties to this MAINTENANCE AGREEMENT (“Agreement”) are:

Lexmark (“we”, “our”, or “us”)

Lexmark International, Inc.
740 West New Circle Road
Lexington, KY 40550

A Delaware corporation
EIN 06-1308215

Attn: Director, Contracts

Customer (“you” or “your”)

Customer for Life
Address
City, State Zip

A State corporation
EIN 12-3456789

Attn: Contact name

1. **TERM.** This Agreement is effective as of **Date** and will remain in effect so long as any Schedule Term is continuing.

2. DEFINITIONS

“Charges” means one or both of the following as set forth in Exhibit A: (i) a fixed periodic payment (“Recurring Charge”) and (ii) a variable payment based on consumption or wear factors (“Usage Charge”).

“Equipment” means the Lexmark-branded office imaging equipment listed on a Schedule. Equipment also includes parts, replacements, and accessories provided by us.

“Schedule” means an asset registration acceptance summary substantially in the form of Exhibit B signed by you and accepted by us. Each Schedule is an independent agreement and incorporates and is subject to the terms of this Agreement.

“Schedule Term” means the duration of a Schedule commencing on the start date specified on the Schedule and continuing for the stated number of months and any extension or renewal period which we agree to in writing.

“SLA” means the service level agreement specified in Exhibit A for maintaining the Equipment, including time to first call and resolution.

3. **METER READS.** We may install automated data collection tools consisting of hardware and/or software to obtain periodic meter readings from the Equipment of the actual page volumes produced. If we are unable to obtain automated meter reads or we agree to obtain the data manually then you will provide us with true and accurate meter reads at the times and in the manner we specify.

4. MAINTENANCE SERVICE

You will:

- (a) Use the Equipment in the manner for which it was intended and in conformity with the manufacturer’s instructions.
- (b) Provide adequate space, suitable electrical service, maintain proper environmental requirements, and adequate surge protection.
- (c) Allow us access to inspect or repair the Equipment upon five (5) business days’ advance notice, during

normal business hours and will not relocate the Equipment without our written consent.

- (d) Perform all user-required procedures described in the applicable Equipment manuals in a timely manner.
- (e) Call the Lexmark Technical Support Center when Equipment service is required and assist the technician in diagnosing the problem.

We will:

- (f) Provide all parts (including maintenance kits, if required) and labor to make repairs or adjustments necessary to keep the Equipment in good working order as a result of normal usage or defects in materials or workmanship. Parts required for repairs may be new or remanufactured.
- (g) Dispatch a Lexmark-certified technician when service is required who will respond, on average, in accordance with the SLA listed in the NASPO ValuePoint Master Agreement ("Master Agreement").

We will not be responsible for repairs or replacement due to alteration, misuse, unauthorized relocation or servicing of the Equipment, or the use of supplies, parts, or accessories not provided by us.

Maintenance service is not a guarantee of uninterrupted or error-free functioning of the Equipment. If we are unable to repair or maintain the Equipment we will replace such Equipment with an identical product or, at our option, a product of equal or greater capability.

For select models of Equipment that require service, we may, at our option, ship you an exchange machine of equal or greater capability. You will return the defective Equipment to us by packing it in the materials for the exchange machine, attaching the prepaid shipping label to the box, and arranging for pickup by or delivery to the designated carrier. Any replacement Equipment that we provide may be new or an equivalent, and the defective Equipment will become our property.

5. **SUPPLIES.** If supply items are included in a Recurring Charge or a Usage Charge, as indicated in Exhibit A, then the following provisions will apply:

- (a) All consumable items (except paper and staples) required by the Equipment for normal printing operation will be provided by us and installed by you.
- (b) We may detect the need for consumables via our data collection tools, validate that need within our systems, ship the consumables, and provide email notification of such shipment to you. You will assist us in keeping shipping contact information up to date.
- (c) Toner cartridges are licensed for one use. You agree to return all used toner cartridges to us using the packaging and prepaid shipping labels provided by us. You agree not to sell the toner cartridges provided by us or permit them to be used in any device other than the Equipment.
- (d) At our option, we may provide toner cartridges produced with totally new parts or used parts.
- (e) Toner cartridge yields are determined by us in accordance with ISO standards which approximate 5% toner coverage on a single side of an A4 sheet of paper. A duplexed A4 page and an A3 page each count as two impressions. Realized cartridge yields may be lower due to greater print density, premature cartridge replacement, or other factors beyond our control.
- (f) We reserve the right to terminate the supply of toner cartridges in the event we determine, after due enquiry and in our reasonable discretion, that the quantity of toner cartridges shipped is excessive given the volume of pages billed due to fraud, misuse, or breach of this Agreement.
- (g) If we relied on historical page volume or coverage information provided by you as a basis for this Agreement and your actual page volume or coverage is greater by 10% or more during the first six months of a Schedule Term then we may, at our option, adjust applicable Charges, provided that such adjustments shall be commensurate with the excess page volume or coverage.

6. **PAYMENTS.** We will invoice Charges at the frequency and rates specified in Exhibit A together with applicable taxes. This pricing shall not exceed the pricing listed in the Master Agreement. You will pay us within 30 days from the date of each invoice. After forty-five (45) days, we may assess overdue account charges up to a maximum rate of one (1) percent per month on the outstanding balance pursuant to the requirements and limitations of §24-30-202(24)(a), C.R.S.
7. **DEFAULT AND REMEDIES.** You will be in default under this Agreement if: (a) you fail to remit to us any payment within forty-five (45) days of the invoice date; (b) you fail to observe or perform any other material term, covenant, or condition of this Agreement and such failure continues for thirty (30) days following receipt of written notice from us; or (c) a petition is filed by or against you under any bankruptcy or insolvency law.

In the event of your uncured default we may, at our option, do one or more of the following: (a) terminate this Agreement or the applicable Schedule; (b) suspend or terminate maintenance services and/or the provisions of supplies; or (c) collect all past due and current Charges together with interest at the rate of 1% per month on any amounts that are more than 45 days delinquent.

These remedies are cumulative, in addition to any other rights or remedies available at law or in equity, and may be exercised concurrently or separately. Any failure or delay to exercise any right shall not operate as a waiver of any other right or future right.

8. **RESERVED.**
9. **NOTICES.** All notices and communications must be in writing and sent by postal mail or by overnight courier to the other party at its respective address above and shall be effective on the day received.
10. **MISCELLANEOUS.** In the event of a conflict between this Agreement and a Schedule, the Schedule shall take precedence over this Agreement, providing the Schedule does not conflict with the terms and conditions in the State’s Participating Addendum or the Master Agreement.

This Agreement may not be modified other than by written agreement of the parties. Any provision of this Agreement which for any reason may be held unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective without invalidating the remaining provisions of this Agreement.

This is the entire agreement we have with you on the subject matter hereof and is subject to the laws of the Purchasing Entity.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed and delivered by a duly authorized representative as of the date first above written.

Lexmark International, Inc.

Customer for Life

Authorized Signer

Authorized Signer

Name

Name

Title

Title

Exhibit A – Pricing

Exhibit B
Asset Registration Acceptance Summary

ATTACHMENT 4 – LEXMARK STATEMENT OF WORK TEMPLATE

NASPO MASTER AGREEMENT # /
PARTICIPATING ADDENDUM #
between
LEXMARK INTERNATIONAL, INC.
and
PURCHASING ENTITY

This Statement of Work (the “SOW”), effective as of the date of last signature at the end of Section 13.0 below (the “Effective Date”), is intended to be one of several Statements of Work to become effective under NASPO ValuePoint Master Agreement (“Master Agreement”) # / Participating Addendum # between Lexmark International, Inc. (“Lexmark”) and _____ (“Customer”) dated _____ (the “Agreement”). Each Statement of Work, in conjunction with the terms of the Agreement shall constitute a separate agreement, distinct from any other. The terms of this Statement of Work shall not apply to or become part of another Statement of Work, except that the terms of the Agreement shall pertain to all.

1.0 DEFINITIONS

“Actual Volume” means the number of printed Pages actually produced on a Managed Output Device in accordance with this SOW.

“Assessment Services” means the services as described in Section 5.0 of this SOW.

“Asset Management Services” means the services described in Section 9.0 of this SOW.

“Asset Term” means, as to each Output Device, the period beginning on the date of its installation and continuing for the number of months indicated in [Table].

“Business Day” means the time between 8:00 AM and 5:00 PM in the time zone where the Services will be performed, on any day (other than a Saturday, Sunday, or statutory holiday), unless otherwise specifically agreed herein.

“Consumables” means Lexmark toner cartridges (manufactured from new and/or refurbished components) and other supply items, excluding media (E.g. paper, check stock, transparencies, labels, envelopes, etc.).

“Consumables Management” means the services as described in Section 9.5 of this SOW.

“Customer Locations” means the locations listed in Attachment B to this SOW.

“Customer Replaceable Unit” or “CRU” means Consumables and trays where the Customer is responsible for providing the labor to physically change out the replacement part supplied by Lexmark.

“Deployment Principles” means as defined in Section 5.0.

“End of Service Life” (EOSL) means the date upon which Lexmark will no longer have spare parts available and will no longer be able to provide Maintenance Services as described in this SOW.

“Existing Devices” means existing Customer printers and multi-function devices not provided to Customer under this SOW.

“Lexmark Data Collection Manager” (LDCM) means the hardware, software, applications, and firmware used by Lexmark for the collection of printer information.

“Maintenance Services” means services as described in Section 11.0 of this SOW.

“Managed Output Device” means a networked Output Device or Existing Device subject to the Services as described herein.

“Meter Read” means the lifetime Page count information that is obtained from each Managed Output Device.

“Operational Readiness” means the date that Lexmark is operationally ready to provide Asset Management Services, Consumables, and Maintenance Services in relation to Managed Output Devices.

“Output Device” means a new Lexmark printer or multi-function device provided by Lexmark or Lexmark authorized agents under this SOW.

“Page” means an image on one side of a single sheet of paper.

“Party” means Lexmark or Customer individually; “Parties” means Lexmark and Customer collectively.

“Price per Page” means a price per Page made on a Managed Output Device.

“Printer Drivers” means the required Printer Drivers to support Output Devices.

“Proactive Device Notification Services” means the services described in Attachment D of this SOW.

“Recurring Charge” means the monthly charge specific to a Managed Output Device billed by Lexmark and to be paid by Customer during the Asset Term.

“Service Issue” means a ticket opened with Lexmark’s technical support center to restore functionality (excluding Consumables) with a Managed output Device at a Customer Location.

“Services” means those services as described in Section 2.1 of this SOW.

“SOW Term” means the period of time commencing on the Effective Date and ending on MM/DD/YY unless terminated sooner in accordance with the Agreement. The provisions of this SOW and the Agreement shall survive with respect to any Asset Term in effect as of the termination date.

“Staging” means space provided by the Customer, at the same site of installation of the Output Device.

“TSC Support Hours” means the time between 6:00 AM and 6:00 PM in the Pacific time zone, on any day (other than a Saturday, Sunday, or statutory holiday), where Lexmark’s Technical Service Center (“TSC”) is available for Customer to contact in support of Maintenance Services.

“Yield” means the number of Pages that are capable of being printed from a single toner cartridge as determined by Lexmark specifications.

2.0 SERVICES OVERVIEW

- 2.1** As of the Effective Date of this SOW, Lexmark will provide Output Devices, Consumables, and Services as defined herein in order to assist Customer in the ongoing management of both Output Devices and Existing Devices designated as Managed Output Devices across Customer Locations. The Services to be provided by Lexmark include the following:

- a) Project Management
- b) Steady-State Governance
- c) Assessment Services
- d) Implementation Services
- e) Driver Deployment
- f) Training Services
- g) Asset Management Services
- h) Consumables Management
- i) Maintenance Services
- j) Additional Services and Solutions

3.0 PROJECT MANAGEMENT

- 3.1** Lexmark may, in the normal course of business, use subcontractors or agents to provide any or all of the Services outlined herein.
- 3.2** Lexmark will appoint a project manager as the primary point-of-contact to Customer for implementation of Services. Customer shall appoint a project manager as the primary point-of-contact to Lexmark for coordination and delivery of Services.
- 3.3** Services will be implemented in an agreed upon timeframe utilizing an agreed upon project plan. Parties will agree on a cadence for project status calls and ensure proper resources are made available. The agreed upon project plan will detail a planning phase, which is representative of the time required for Lexmark and End User to set up the infrastructure and processes prior to Operational Readiness.
- 3.4** All changes to the project plan, Services and/or scope of effort described herein will be governed by the change control process as defined in Section 3.5 and 3.6.
- 3.5** The Parties may desire to modify the scope of effort or add / remove devices from the Agreement during the SOW Term. Any desired changes will be documented in an amendment to the Agreement.
- 3.6** Completed amendments will be submitted to the Customer for review and consideration. The Customer agrees to review the proposed amendment and will either accept and sign, edit, or reject the requested amendment within five (5) Business Days. Authorized representatives of the Parties must agree in writing on any adjustment in price, resulting from a change in the scope of Services, prior to implementing the change.
- 3.7** Customer agrees to participate in Lexmark deployment survey process in order to provide feedback on Lexmark performance.

4.0 STEADY-STATE GOVERNANCE

- 4.1** Lexmark governance process includes monthly operational summaries of performance as well as strategic business reviews.
- 4.2** Lexmark will provide Customer access to visualizations and summaries of Customer data in the form of charts and graphs related to Managed Output Devices, Pages printed, IMAC (installs, moves, adds, and changes) activity, Customer incidents escalated to Lexmark for support, and

billing. The visualizations and associated data will be available via the Customer Governance Portfolio (“CGP”) defined in Attachment C.

- 4.3 Any Customer requests for reports outside the CGP shall be made in accordance with Sections 3.6 and 3.7 and may be subject to additional charges.
- 4.4 In order to provide continuous improvement to Customer under this SOW, Lexmark and Customer will conduct Strategic Business Reviews (“SBR”) in order to identify and implement improvements.
- 4.5 This requires Customer line of business and process owner’s attendance to discuss business process optimization opportunities.
- 4.6 Customer also agrees to participate in annual customer satisfaction survey process in order to provide feedback on Lexmark performance.

5.0 ASSESSMENT SERVICES (OPTIONAL)

- 5.1 Lexmark will develop recommendations on how Customer may effectively transition from its current output environment to a desired future state. Lexmark assessments will apply an agreed upon set of Deployment Principles to the Customer Locations, Existing Devices, and data points covered by the scope of this Agreement. Deployment Principles for future state design will consider such factors as:
 - a) Rule of availability
 - b) Proximity to users
 - c) Total cost of ownership
 - d) Physical layout
 - e) Work environment
 - f) Key applications
 - g) People to device ratio
 - h) Volume
- 5.2 Lexmark will perform Assessment Services for all Customer Locations listed in Attachment B. Physical site surveys will be conducted at specific Customer Locations specified as “On-Site” in Attachment B on a schedule to be determined and agreed to in writing by and between Lexmark and Customer in the project plan (Section 3.3). Remote surveys may be conducted in lieu of physical site surveys at Customer Locations specified as “Remote” in Attachment B or where mutually agreed. Lexmark will provide to Customer the deliverables as outlined in Section 5.3.
- 5.3 For On-Site assessment locations, Lexmark shall:
 - a) Collect specific data points relative to the Customer Locations, Existing Devices and network infrastructure,
 - b) Map locations of in-scope Existing Devices,
 - c) Analyze the information collected from the Existing Devices and information provided by Customer relevant to Existing Devices. If actual or reliable data is not readily available, various estimation methods may be used to complete the survey,
 - d) Generate future state recommendations for Output Device type, placement, and count based on Deployment Principles,

- e) Perform on-site work with Customer's personnel participation during Customer's normal Business Day hours unless prior arrangements are made with Parties.

5.4 For Remote assessment locations, Lexmark will:

- a) Assist Customer in defining process to collect data on Existing Devices (i.e. surveys, software, phone interviews, etc.),
- b) Analyze Customer provided data on Existing Devices; if actual or reliable data is not readily available, various estimation methods might be used to complete the survey,
- c) Generate future state recommendations for Output Device types, placement, and count based on Deployment Principles.

5.5 Customer will perform the following in relation to Assessment Services:

- a) All tasks reasonably necessary to enable Lexmark access to Customer Locations or information necessary to perform Assessment Services as described herein,
- b) Provide points of contact with whom Lexmark will conduct site visits,
- c) Provide headcount for each Customer Location,
- d) Current state floor plans – Customer will provide Lexmark with current floor plan maps which specify office and cube locations for all in-scope locations and floors. The floor plans shall (i) when possible, clearly label the location of current power outlets, data jacks, and voice jacks, and (ii) be provided in electronic format,
- e) Future state approval – Customer will define (with Lexmark assistance) and conduct approval process for submitted future state plans. The definition will include who is involved in approvals (by role, not name), turnaround time for approvals, and exception policies. Customer will conduct the approval process in the mutually agreed upon time frames and provide formal sign off on future state,
- f) Site validation - Customer will define (with Lexmark assistance) and conduct the validation process. Customer will verify space, furniture, network and power requirements for the installation location of each future state Output Device. Customer shall notify Lexmark of any required changes to the installation location of future state Output Devices (moves, additional furniture required, etc.). Customer will then perform any work required to ensure network and power requirements are met prior to installation,
- g) Site Readiness - Customer will notify Lexmark project manager that all necessary validation work has been completed and the Customer Location is ready for Lexmark to install,
- h) Notify Lexmark through the change request process in 3.5 and 3.6 when requesting to deviate from future state site packs that have been approved by Parties.

6.0 IMPLEMENTATION SERVICES

- 6.1** Customer will provide Lexmark with written authorization in the form of a purchase order as described in Section 13.2 to begin Implementation Services including the provision of all Output Devices.
- 6.2** The locations and timing of the installation of Output Devices during Business Days will be agreed to in writing per Section 3.3 between the Parties. Customer will provide Lexmark with contact

details of all key Customer personnel responsible for implementation at each Customer Location.

6.3 Reserved.

6.4 Lexmark will be responsible for:

- a) Delivery of the Output Devices to the Staging area, and then to each Output Device's designated location within the same building,
- b) Assembly of the Output Devices,
- c) Testing of the Output Devices by printing a test/setup page,
- d) Configuration of the IP address and/or hostname provided by Customer,
- e) Configuration of device firmware and security as agreed upon by Customer,
- f) Connection of the Output Devices to the Customer network,
- g) Dunnage and pallet removal.

6.5 Customer will be responsible for:

- a) Supplying Lexmark with appropriate documentation and/or contact(s) responsible for coordinating installation of the Output Device and knowledgeable of Output Device locations in accordance with the approved future state as outlined in Section 5.0 in order for Lexmark to perform the installation(s) at each Customer Location,
- b) Preparing the physical site for the installation of Output Devices including providing required electrical requirements - i.e. 110V/220V 20-amp circuit, appropriate network cables and phone cables, appropriate network drops and fax line located near and for the networked Managed Output Devices, and an appropriate, structurally sound surface upon which to place the Managed Output Device, including floor spaces needed for each Output Device (specifics to be provided by Lexmark during project governance),
- c) Payment of all subsequent transportation, logistics and/or restocking charges for additional shipping, delivery, and/or storage should Customer refuse delivery at any Customer Location for a mutually agreed shipment delivered during a Business Day,
- d) Supplying a Staging location at each Customer Location designated for Output Device installation, where Output Devices can be unboxed, assembled, configured and potentially tested at least five (5) Business Days prior to the start of the installation. Such space shall be of appropriate square footage to accommodate the number of Output Devices designated for installation at that location. Staging is also applicable to the Customer's Existing Devices being de-installed at the time of Output Device installation,
- e) Supplying IP address and/or hostname details, to Lexmark in writing no later than five (5) Business Days prior to the first installation of Output Devices, and no later than five (5) Business Days prior to any subsequent installations,
- f) Installation of any printer queues or Printer Drivers,
- g) Providing to Lexmark any site readiness documents specified in the project plan.

6.6 An Output Device will be designated as a Managed Output Device upon completion of installation.

6.7 Except for Output Devices purchased by Customer, at the expiration or termination of the Asset Term of an Output Device, Customer will ship the Output Devices to locations specified by

Lexmark within thirty (30) calendar days of de-installation. Customer will provide Lexmark the following shipping documentation for each Output Device returned:

- a) Model of Output Device,
- b) Serial number of Output Device,
- c) Destination address.

6.8 Hard disk drive removal:

- 6.8.1 For a Lexmark Managed Output Device or a Lexmark Existing Device that Parties have mutually agreed to decommission and have Lexmark remove from a Customer Location, Lexmark will remove the hard disk drive and leave the hard disk drive with an onsite Customer representative, unless Customer requests that Lexmark take possession of the hard disk drive, at which point Lexmark will scrub the hard drive in accordance with the requirements in the Master Agreement. Customer will acknowledge receipt via signature on a Lexmark-provided form.

7.0 DRIVER DEPLOYMENT

- 7.1 With respect to Printer Drivers, Lexmark will provide the Printer Drivers and recommended Printer Drivers configurations for Customer.
- 7.2 Customer will be responsible for distributing the Printer Drivers to the appropriate workstations, and for all workstation software.

8.0 TRAINING SERVICES

- 8.1 Prior to installation of Output Devices, Lexmark will provide Quick Reference Guide (“QRG”) documentation on Output Devices in electronic format for Customer to distribute to end users.
- 8.2 End User Training
- 8.2.1 Lexmark will provide up to one hour of free training at each Customer Location at the time of installation where Output Devices have been installed.
- 8.2.2 Customer shall ensure that all appropriate personnel will attend and actively participate in the training.
- 8.3 Help Desk Training
- 8.3.1 Lexmark will provide:
- a) up to two (2) 4-hour help desk training sessions on mutually agreed to dates and times.
 - b) Lexmark will provide electronic copies of the training materials for Customer’s use
- 8.3.2 Customer will provide a suitable environment and equipment necessary to facilitate training, either in-person or virtually.
- 8.4 Training requested in addition to that described in Section 8.0 is available at an additional charge, per the pricing in the Master Agreement.

9.0 ASSET MANAGEMENT SERVICES

- 9.1 Customer will provide to Lexmark, in electronic format, the data which is necessary for Lexmark to build an asset management database for all Managed Output Devices. Customer will provide such

data to Lexmark within ten (10) Business Days of the Effective Date. Managed Output Device data Lexmark requires assistance with include, but are not limited to:

- a) Customer Location physical address information,
- b) Key contact information including emails and phone numbers,
- c) IP address or Host name.

9.2 Services will begin once Customer fulfills obligations as outlined in Section 9.1 and Operational Readiness has been confirmed by Lexmark.

9.3 Customer is responsible for and will notify Lexmark in writing of all Managed Output Device relocations, removals, and changes within five (5) Business Days of such device changes.

9.4 LEXMARK DATA COLLECTION MANAGER

- 9.4.1 Lexmark's ability to provide the Services requires the full functionality of the LDCM. Lexmark's ability to provide Services requires that all Managed Output Devices are attached to the network where the LDCM will reside. Customer agrees to actively assist Lexmark in its efforts to deploy the LDCM such that it is fully functional within twenty (20) Business Days of the Effective Date. When technically possible over Customer's network the LDCM will electronically capture, Meter Read information, network address, device alerts including toner low messages, and serial number for all Managed Devices configured for automated data collection in the Lexmark asset management system.
- 9.4.2 Parties agree to install LDCM and the Lexmark Remote Management extension ("LRMe") on a dedicated computing platform meeting the minimum specifications as outlined in the Lexmark-provided LDCM Reference Guide.
- 9.4.3 Customer acknowledges and understands that at the time of any incident there may be a potential loss of or delay in the provision of Services to Customer as provided by Lexmark pursuant to this SOW as LDCM is a critical component in the provision of the Services. Accordingly, until such time that an incident is resolved all affected Services to be provided by Lexmark under this SOW will be supplied by Lexmark on a commercially reasonable basis and any service levels contained in this SOW or the Agreement relating to the provision of the Services will not apply.
- 9.4.4 The continuation of Services may require manual processes to be implemented by Parties upon mutual agreement. Any changes will be addressed using the change control process as described in Section 3.5 and 3.6.
- 9.4.5 Prior to the installation of LDCM on a virtual hardware platform, a defined test period will be determined by the Parties. The performance of LDCM will be monitored by Lexmark and Customer will be advised in writing of any issues or problems found by Lexmark during this period such that Customer has an opportunity to address these prior to actual implementation.
- 9.4.6 Lexmark does not license the LDCM to Customer or any subcontractor of Customer and Customer agrees to not use, copy, decompile, distribute, or otherwise disclose such LDCM and to ensure compliance of any Customer subcontractor to this provision.

- 9.4.7 Customer will provide Lexmark with secure remote access to the LDCM upon request for Lexmark to perform troubleshooting and maintenance tasks. Customer will provide outbound access to the internet from the LDCM server via port 443 to transmit data collected by LDCM to the Lexmark operations team via HTTPS.
 - 9.4.8 Certain situations, for example, a segmented network within the Customer network, may require the installation of additional LDCM servers since a single server solution may not be able to query all Managed Devices across the Customer network. Lexmark may also recommend the use of cloud based agents in addition to or instead of additional LDCM servers. Lexmark will be responsible for aggregation of data if the information has to be collected on multiple instances.
 - 9.4.9 Customer acknowledges and understands that Lexmark in the normal course of business will release updated versions of the LDCM software. Customer agrees to assist Lexmark in maintaining the LDCM(s) in Customer's environments such that the version of LDCM software in place is no more than two revisions downlevel.
 - 9.4.10 Customer acknowledges and understands that Lexmark in the normal course of business will release updated versions of embedded firmware for the Managed Output Devices. If the embedded firmware version limits Managed Output Device functionality or prevents Lexmark from providing the Services, Lexmark may update the LDCM or require Managed Output Device firmware to be updated. If Lexmark determines a firmware update is required for the ongoing provision of Services, Customer agrees to update the firmware, with Lexmark assistance, of the affected Managed Output Devices.
- 9.5 Customer acknowledges that Lexmark may not be able perform certain Services if Customer changes Managed Output Device configuration settings impacting data collection (e.g. the SNMP community string, username, password, or PIN on the web page of a Managed Output Device) without providing prior notification to Lexmark.

10.0 CONSUMABLES MANAGEMENT

- 10.1 Lexmark will:
- a) When technically possible, detect the need for Consumables for Managed Output Devices,
 - b) Ship Consumables to Customer,
 - c) In addition, provide a manual order process for Managed Output Devices via a Lexmark web portal to enable Customer ordering of Consumables at their discretion.
- 10.2 Customer will:
- a) Provide Lexmark with contact information for key Customer supplies personnel for the duration of this SOW, updating such information as necessary for Lexmark's performance of the Services
 - b) Receive all CRU's and install them in the Managed Output Devices at Customer Locations,
 - c) Utilize only Lexmark-branded Consumables for the duration of this SOW,
 - d) Return all used Lexmark-branded toner cartridges to Lexmark for recycling via Lexmark Cartridge Collection Program ("LCCP"). Utilize the LCCP container or bulk

methods, where available, to enable standardized sustainability reporting.

- e) Not grant, bargain, sell or otherwise convey toner cartridges provided by Lexmark to any third party, as cartridges are licensed for one use by Customer.
- f) Pay for expedited shipping charges if expedited shipping was requested by Customer.

10.3 Price per Page rates are based on Consumables yields computed using International Organization of Standardization (ISO) standards. On a monthly basis, Lexmark will compare the Yield for Consumables shipped against Actual Volume (of Pages) produced on Managed Output Devices and report any differences to Customer. On a semi-annual basis during the SOW Term, if the Yield (for the Consumables shipped) exceeds the Actual Volume, Lexmark will bill and Customer will pay an additional fee equal to the amount of such excess Pages (Yield) multiplied by the Price per Page for the applicable Managed Output Device, as indicated for each Managed Output Device in Attachment A. This reconciliation will also be performed at the expiration or termination of this Agreement and any amounts due to Lexmark based on the reconciliation will be paid by Customer to Lexmark in accordance with the terms of the Agreement, and pricing per the Master Agreement. Manual orders (including buffer stock) for Consumables will be excluded from this calculation.

10.4 For Managed Output Devices where it is not technically feasible to detect the need for Consumables, Customer shall place a manual order for the Consumable and Lexmark shall invoice Customer for the purchase price of the Consumable. Consumables purchased by Customer using a manual order process are excluded from reconciliation calculations referenced in Section 10.3.

11.0 MAINTENANCE SERVICES

11.1 Lexmark will provide a Next Business Day (“NBD”) restore Maintenance Service (where available) as described in this Section 11.0 for Lexmark-branded Managed Output Devices. Service levels for specific locations will be listed in Attachment B: Customer Locations.

11.2 For Maintenance Services, Lexmark will:

- a) Provide a toll free and designated call routing number to Customer for Maintenance Services,
- b) During TSC Support Hours, staff the toll-free number as described above or if Lexmark is not reached live, call the Customer contact requesting Maintenance Service,
- c) Determine the specific cause of the Managed Output Device Service Issue,
- d) Initially, provide for resolution of the Service Issue remotely, or, if Lexmark is unable to resolve via telephone, Lexmark shall schedule and dispatch a service technician to the Customer Location to repair or replace the Managed Output Device as further described herein,
- e) Resolve Service Issue remotely, through on-site repair, or replace the Managed Output Device at Lexmark discretion.

11.3 Customer will:

- a) Determine if an incident reported by an end user is due to a Managed Output Device failure,
- b) Log all Managed Output Device incidents in Customer incident management system,
- c) Resolve incidents not directly related to Managed Output Devices without Lexmark assistance,

- d) Clear all paper jams,
- e) Create a Service Issue by escalating Customer incidents that cannot be resolved by Customer to the Lexmark technical support center providing all information captured in the Customer's help desk including, but not limited to, the following:
 - i. Managed Output Device serial number,
 - ii. Managed Output Device model type,
 - iii. Error code message as seen on the Managed Output Device user panel,
 - iv. Clear written description of the fault found in local language.
- f) Participate in the Managed Output Device diagnosis process with the Lexmark technical support center,
- g) Provide suitable on-site access to Lexmark service technician.

11.4 With respect to Lexmark-branded Managed Output Devices:

- a) The device will be repaired within the timeframe indicated in Attachment B: Customer Locations or if required, the Parties can discuss the need for a replacement Managed Output Device.
- b) Lexmark will ship and install preventative maintenance kits for Lexmark-branded Managed Output Devices in accordance with Lexmark recommended maintenance kit intervals.

11.5 Lexmark will provide the following service level target:

11.5.1 For Service Issues received prior to the local cutoff time of 5:00PM (at the location of the Managed Output Device), Lexmark will address within the timeframe indicated in Attachment B: Customer Locations.

11.5.2 For Service Issues received after the local cutoff time of 5:00PM (at the location of the Managed Output Device), Lexmark will address within the timeframe indicated in Attachment B: Customer Locations plus one Business Day, or sooner if commercially reasonable.

11.5.3 Next Business Day ("NBD") on-site Maintenance Service is not available in all areas. Customer Locations in a second Business Day ("2BD") or third Business Day ("3BD") area are indicated as such in Attachment B: Customer Locations. For the avoidance of doubt, the applicable service level target for each Customer Location is indicated in Attachment B: Customer Locations.

11.6 If during the Asset Term of a Managed Output Device provided by Lexmark or Lexmark authorized agents under this SOW, Lexmark deems the device to be unrepairable, the device will be replaced with the caveats listed below:

- a) Lexmark shall replace with a new Managed Output Device of equal or greater value,
- b) All shipments will be based on the availability of replacement Managed Output Device and shall be shipped to Customer via the most expedient means available,
- c) Lexmark will arrange for pick-up of the original Managed Output Device for return shipment to Lexmark.

11.7 If the Managed Output Device includes features, the Maintenance Service covers the features only when installed on the Managed Output Device model for which they were designed.

- 11.8** Maintenance Service is not a guarantee of uninterrupted or error-free functioning of Managed Output Devices. Maintenance Service does not include repair of failures caused by use not in conformance with Lexmark published specifications or by non-authorized parties to include but not limited to:
- a) Misuse, neglect and/or any other physical damage intentional or accidental.
 - b) Modifications or additions to the device unauthorized by Lexmark.
 - c) Inappropriate operating environment and conditions including temperature, air quality and humidity, that fail to meet technical specifications.
 - d) Printing materials not authorized by Lexmark.
 - e) Maintenance or repair work performed by Customer or providers not authorized by Lexmark.
 - f) The use of non Lexmark-provided supplies (including, but not limited to, toner cartridges, accessories, installations and replacement parts).
 - g) Issues with Customer's network infrastructure.
- 11.9** Predictive Services: In conjunction with Maintenance Services, Lexmark will implement Predictive Services on compatible Lexmark-branded Managed Output Devices.
- a) Lexmark will:
 - i. Monitor Customer Managed Output Devices for cues that indicate a potential upcoming service issue and attempt to resolve,
 - ii. Proactively create service request tickets as pending issues are detected and predicted.
 - b) Customer will:
 - i. Provide Lexmark electronic access to Managed Output Devices through a secure remote connection or other means for optimal capability to reduce resolution time.
 - ii. Provide ability for Lexmark to use a secure remote connection to make adjustments to Managed Output Device settings as well as restart the device as needed in the effort to resolve service issues proactively.

12.0 ADDITIONAL SERVICES AND SOLUTIONS

- 12.1** Lexmark will assist Customer with the installation and integration of the following additional services and solution applications:
- a) Proactive Device Notification, in accordance with Attachment D.

13.0 FEES AND PRICING

- 13.1** Ordering under this Agreement shall be conducted via purchase order ("PO") issued by Customer to Lexmark prior to implementation or installation activities. The PO must include the information listed below:
- a) PO number,
 - b) PO date of issuance,

- c) Vendor name and address,
 - d) Ship-to address, including contact name and phone number,
 - e) Bill-to address, including contact name and phone number,
 - f) If product, then product part number and specific product description,
 - g) Specific quantity of each item,
 - h) Unit price per part number or per service,
 - i) Extended unit price by part number/service (quantity x unit price),
 - j) Shipping - in accordance with the Agreement and SOW,
 - k) Payment - in accordance with the Agreement and SOW,
 - l) The words: "All terms and conditions are in accordance with the Master Service Agreement and the Statement of Work dated _____, 20____."
 - m) Authorized signature on the PO.
- 13.2** If Customer chooses to renew their service agreement after the initial 12-month term, they will provide Lexmark with a PO no later than the month prior to the end of their current fiscal year end for the billing of the following fiscal year.
- 13.3** Available Output Device accessories are listed at Lexmark's Master Agreement price list.
- 13.4** Lexmark will bill Customer per the terms of the Agreement. Such billing shall be retroactive to:
- a) The acceptance date of an Output Device,
 - b) The date an Existing Device is designated as a Managed Output Device.
- 13.5** Reserved
- 13.6** Pricing is as indicated in Attachment A - Pricing. Recurring Charges and Price per Pages are specific to the Managed Output Device model. Any changes required to the pricing of Attachment A may be made only upon mutual agreement of the Parties via the change control process defined in Section 3.5 and 3.6., and providing the pricing does not exceed Master Agreement pricing.
- 13.7** Each month, for an Output Device, Lexmark will bill Customer for:
- a) The applicable Output Device Recurring Charge for hardware and Services,
 - b) Actual Volume produced on each Output Device at the applicable Price per Page. The charge for Actual Volume begins with the first Page produced on the Output Device.
- 13.8** Non-networked Managed Output Devices shall not be included in the Price per Page billing model and shall instead be billed on a per cartridge pricing basis provided in Attachment A: Pricing.

IN WITNESS WHEREOF, Lexmark and Customer have caused this Statement of Work to be executed by their respective authorized representatives as of the last date written below.

<u>Customer:</u> PURCHASING ENTITY NAME	<u>Lexmark:</u> LEXMARK INTERNATIONAL, INC.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT A: Pricing

ATTACHMENT B: Customer Locations

Address	City	State	Zip	Country	Service level target	Site survey

ATTACHMENT C: CUSTOMER GOVERNANCE PORTFOLIO REPORTS

This is a list of reports available on reporting.lexmark.com. Reports cover the previous 13 months from the current month and are not downloadable.

Report	Description
Consumables Summary	In this summary we will show you the monthly consumables transaction history to include LDCM (automated), web (manual), and trending related to consumables transactions.
Customer Metrics Scorecard	This is a summary of key performance metrics for agreed upon service level agreements and includes trend information for fleet availability, service response, resolution, and restore rates, predictive service rates (if this service is chosen), remote fix rates, and consumables delivery and shipment metrics.
Fleet Summary	This summary will show you asset details such as agreements, age, products, locations, and monthly meter read information.
Invoice Summary	This summary shows monthly history of pages printed and spend with a breakdown of mono, mono on color, and color pages printer per month both at an aggregate level and at the individual device level. You can also view a summary of spend by MPS recurring, MPS toner – stand alone, and MPS usage.
IMAC Summary	This is a summary of install, move, add, and change (IMAC) events per month and a table of each IMAC event over a 13-month period.
Service Summary	Dashboard that shows the total number of service incidents per month broken out by field service fixes and remote fixes. Also includes a table with detail by incident. Dashboard that shows the number of service incidents per month broken out by service incident category. Summary report with tables that show the Top 10 assets based on field service fix incidents and remote fix incidents. Summary report that shows subcategories of predictive service incident resolution type: remote (predictive), remote (non-predictive), field service (predictive), and field service (non-predictive).

ATTACHMENT D: PROACTIVE DEVICE NOTIFICATION

Proactive Device Notification (“PDN”) displays the latest known service request and toner order status on the operator panel of a Lexmark Managed Output Device. Lexmark will provide PDN for PDN-supported Lexmark Managed Output Devices when technically possible and when the following conditions are met:

- a) Operational Readiness has been achieved,
- b) All required LDCM’s are installed with LRMe and configured in accordance with Lexmark-provided minimum specifications.
- c) Lexmark Managed Output Devices need to be accessible via the network using SNMP, mDNS, HTTP and HTTPS protocols.
- d) Device authentication credentials to allow Lexmark to post messages to the device.

The agreed upon project plan specified in Section 3.3 will detail the actions required above, the specific timeline for those actions, and the personnel responsible for ensuring PDN is implemented and functioning properly.

ATTACHMENT 5 – LEXMARK MASTER CLOUD SERVICES AGREEMENT WITH CFM SCHEDULE

This Lexmark Master Subscription Agreement (the “Agreement”) is made and entered into effective as of _____, _____ (the “Effective Date”) by and among _____, having its principal place of business at _____, (“Customer”) and Lexmark International, Inc., having offices at 740 West New Circle Road, Lexington, KY (“Lexmark”), each also referred to individually as a “Party” or collectively as the “Parties.”

WHEREAS, Customer desires to procure certain Cloud Services of Lexmark (as defined herein); and

WHEREAS, Lexmark is willing to provide the Cloud Services to Customer under the terms and conditions contained herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

The Parties agree as follows:

Section 1. Definitions

For purposes of this Agreement, the following terms will have the respective meanings indicated below:

1.1 “Client Components” means the software client component(s) in object code form that Customer is permitted to download, install and use in connection with the Cloud Services and includes all additional client components, upgrades, enhancements and new version releases of any of the foregoing that may be provided by Lexmark from time to time and any accompanying documentation.

1.2 “Cloud Services” means the software as a service offering made available to Customer under an applicable Schedule to this Agreement.

1.3 “Confidential Information” means any information that is not generally available to the public or that a Party is obligated to keep confidential (e.g., pursuant to a contractual or other obligation owing to a third party). Confidential Information does not include any information that (a) was known to the recipient prior to receiving the same from the discloser; (b) is independently developed by the recipient without reliance on any Confidential Information of the discloser; (c) is acquired by the recipient from another source without restriction as to use or disclosure; or (d) is or becomes generally

known to the public through no fault or action of the recipient.

1.4 “Customer” means the person or legal entity lawfully obtaining from Lexmark the rights to use the Cloud Services under this Agreement and having no further right to distribute or resell the Cloud Services.

1.5 “Customer Content” means any information, data, or other content provided to Lexmark, its affiliates and their respective agents by or on behalf of Customer or an End User, for use in connection with the Cloud Services. Customer Content excludes usage data, in aggregated, anonymized or other de-identified form, derived from the use of the Cloud Services.

1.6 “Documentation” means the administrative and End User documentation for the Cloud Service that is made available by Lexmark to Customer under this Agreement.

1.7 “End User” means any person or entity authorized by Customer to access or use the Cloud Services or Client Components.

1.8 “Initial Subscription Term” means the initial term for which subscriptions to the Cloud Services specified in an applicable Schedule have been ordered.

1.9 “IPR” or “Intellectual Property Rights” means any patent, copyright, trademark, trade secret or other intellectual property right.

1.10 “Lexmark Services” means the professional, implementation, training and other services ordered by Customer and provided by Lexmark to Customer.

1.11 “Licensed Software” means the software applications, updates and upgrades that Customer is authorized to download, install and/or use which are governed by an end user license agreement provided with the software applications and/or which can be automatically downloaded with the software application and which may be used without the Cloud Services.

1.12 “Schedule” means a written document entered into by the Parties pursuant to this Agreement that (a) identifies the Cloud Services and Lexmark Services subject to this Agreement, (b) describes the Parties obligations in connection with the Cloud Services and (c) describes the fees, charges or other compensation to be paid to

Lexmark for such Cloud Services and Lexmark Services.

1.13 “Term” means the time period commencing on the Effective Date and ending upon the expiration or termination of this Agreement.

1.14 “Territory” means United States.

Section 2. Cloud Services; Client Components

2.1 Initial Cloud Services. The initial Cloud Services under this Agreement are identified in attached Schedule 1. The parties may add other Cloud Services to this Agreement by executing additional Schedules, numbered successively. Additional Schedules will be effective and become part of this Agreement upon the date indicated in such additional Schedule.

2.2 Lexmark Responsibilities. Subject to the terms and conditions of this Agreement, together with the State’s Participating Addendum and the NASPO ValuePoint Master Agreement associated herewith, and all applicable Schedules and the payment of all applicable fees, Lexmark will (i) provide the Cloud Services to Customer in accordance with laws and government regulations applicable to Lexmark’s provision of its Cloud Services to its customers generally (i.e., without regard to laws particular to Customer’s business); (ii) provide support for the Cloud Services; (iii) maintain its ISO 27001 certification; and (iv) use commercially reasonable efforts to make the Cloud Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Lexmark shall give advance notice via a web-based dashboard currently located at <https://cloud.lexmark.com/status>, and (b) any unavailability caused by circumstances beyond Lexmark’s reasonable control, including, without limitation, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Lexmark employees), Internet service provider failure or delay, non-Lexmark software, or denial of service attack.

2.3 Access by End Users. The Cloud Services will be accessible to Customer’s End Users, except that Lexmark may restrict or deny access to any End User who (a) violates this Agreement, or (b) engages in any activity detrimental to the Cloud Services, Licensed Software, Lexmark computer systems or any other End User, as determined by Lexmark in its sole discretion.

2.4 License. Subject to the terms and conditions of this Agreement and all applicable Schedules and the payment of all applicable fees, Lexmark grants Customer a nonexclusive, nontransferable license to (a) download, reproduce, install and use copies of the Client Components solely in connection with the

permitted use of the applicable Cloud Services; and (b) use the Documentation as reasonably necessary in connection with the use of the Cloud Services.

2.5 Restrictions. Customer will not directly or indirectly: (a) sublicense, sell, lend, rent, lease, give, transfer, assign or otherwise dispose of all or any portion of the Client Components or Documentation or otherwise use the Cloud Services, Client Components or Documentation to process the data of any person or entity other than Customer; (b) remove, obscure, or alter any notice of copyright, trademark, trade secret, or other proprietary right related to the Client Components or Documentation; (c) engage in, permit or fail to prevent any unauthorized use of the Cloud Services, Client Components or Documentation. Furthermore, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding these limitations, Customer will not directly or indirectly: (d) modify or create any derivative work based upon any Cloud Service, Client Components or Documentation; or (e) reverse engineer, disassemble or decompile any of the Client Components or attempt to discover or recreate the source code to any Client Components.

2.6 Client Component Backups. Upon installing the Client Components as permitted herein, Customer may retain any installers and executables that Lexmark has made available but use them only for backup purposes. Customer may make one copy of the Client Components in machine-readable form for the purpose of backup in the event the installers or executables are damaged or destroyed, and one copy of the Documentation for backup purposes only; provided, that any backup copy of the Client Components and Documentation must include all copyright, trademark, and other proprietary notices contained on the original.

2.7 Third Party Software Notice. Portions of any Client Components provided to Customer by Lexmark constituting third party software, including software provided under a public license, (“Third Party Software”) may be subject to the terms and conditions of certain software license agreements. Such software license agreements are set forth in a file accompanying the documentation for such Client Component. Unless stated otherwise therein, the use of such Third Party Software will be governed exclusively by the terms and conditions of such software license agreements.

Section 3. Customer Responsibilities; Restrictions

3.1 Responsibilities. Customer (i) is solely responsible for providing and maintaining at its own expense all equipment, hardware, software and services necessary to connect to, access and use

the Cloud Services, including, without limitation, the equipment, hardware, software and services described in the Documentation; (ii) is solely responsible for ensuring the security and confidentiality of all user identifications and passwords and will notify Lexmark of any unauthorized use of any user identification or password or any other breach of security known to Customer; (iii) will use commercially reasonable efforts to prevent unauthorized access to or use of Cloud Services and Client Components and will promptly notify Lexmark of any such unauthorized access or use; (iv) will promptly deploy updated Client Components provided by Lexmark; and (v) use Cloud Services and Client Components only in accordance with this Agreement, Documentation, Schedules and applicable laws and government regulations.

3.2 Cooperation. In connection with receiving support for the Cloud Services, Customer will (i) provide all data and information requested by Lexmark in connection with the support issue being experienced with the Cloud Services or Client Components; (ii) provide timely access, remotely and/or onsite, to Customer's facilities; and (iii) otherwise cooperate with and perform the activities requested by Lexmark (e.g., facilitate reboots of relevant workstations and printers, etc.) to assist Lexmark in resolving support issues. In the event, Customer refuses to cooperate with Lexmark, Customer acknowledges and accepts that denial of such cooperation may negatively affect the timeliness and/or ability of Lexmark to provide support.

3.3 Restrictions. Customer shall not (i) make the Cloud Services or Client Components available to anyone other than End Users; (ii) sell, resell, rent or lease the Cloud Services; (iii) use the Cloud Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or Intellectual Property Rights; (iv) use the Cloud Services to store or transmit uses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Cloud Services; or (vi) attempt to gain unauthorized access to the Cloud Services or their related systems or networks. In addition to any other remedies allowed by law, any prohibited action or prohibited use of Cloud Services or Client Components as described herein by Customer will void any warranty and support obligations of Lexmark for the Cloud Services and Client Components.

Section 4. Fees; Payments

4.1 Fees. Each Schedule sets forth the applicable

fees. All fees are stated in United States dollars. Upon renewal of the Subscription for the applicable Cloud Services, Lexmark may adjust the Cloud Services fees by issuing a fees update notice, providing that the fee does not exceed NASPO ValuePoint Master Agreement pricing, and the Customer agrees to such fee changes. Fee changes may only occur once every 12 months, and shall be effective, with Customer approval, no earlier than sixty (60) days after the date of a fees update notice.

4.2 Invoices. Lexmark will bill Customer for all fees and charges in accordance with the applicable Schedule.

4.3 Taxes. The fees, reimbursable expenses, compensation and other amounts payable to Lexmark under this Agreement do not include any taxes, customs, duties, fees or other charges assessed or imposed by any governmental authority. With regard to such amounts, Customer will pay or reimburse Lexmark for applicable charges, or provide certificates or other evidence of exemption; provided, however, that Lexmark will be responsible for paying any income taxes imposed on Lexmark with respect to such amounts.

4.4 Payments. Customer shall pay to Lexmark the Cloud Services fees, Lexmark Services fees and any other applicable fees due, as stated in a Schedule, within forty-five (45) calendar days of the Lexmark invoice date. Initial Cloud Services fees will be invoiced when the login credentials are made available to Customer. Implementation service fees, if any, will be invoiced upon completion of installation services provided by Lexmark. The total fees payable by Customer to Lexmark for the Cloud Services and Lexmark Services shall be set forth in the Schedule.

4.5 Overdue Payments. In the event that Customer delays payment of any fees properly due under this Agreement, Customer shall be liable for an interest charge on such overdue fees, commencing on the 46th day that such fees become due and payable, at a monthly rate of 1% of the outstanding balance pursuant to the requirements and limitations of §24-30-202(24)(a), C.R.S.

Section 5. Proprietary Rights

5.1 Ownership. Customer acknowledges that, as between Customer and Lexmark, the Cloud Services, Licensed Software, Client Components and Documentation constitute and/or involve valuable IPR of Lexmark, and Customer will not contest or challenge Lexmark ownership thereof or of any associated IPR. No title to or ownership of any Cloud Services, Licensed Software, Client Components or Documentation, or any IPR in or to any Software Service, Licensed Software, Client

Components or Documentation, is transferred to Customer under this Agreement. Without limiting the generality of the foregoing, Lexmark reserves all of its right, title and interest (including, without limitation, any and all IPR) in and to the Cloud Services, Licensed Software, Client Components and the Documentation.

5.2 Protection of Proprietary Rights. Customer will take appropriate steps and precautions for the protection of the Cloud Services, Client Components and Documentation and associated IPR. Without limiting the generality of the foregoing, Customer will: (a) keep all Client Components and Documentation secured; (b) include in any copy of the Client Components or Documentation made by Customer appropriate notices of Lexmark's ownership and IPR in the same; and (c) otherwise use good faith efforts to prevent any unauthorized use by any individual accessing the Cloud Services or Client Components through Customer. Customer will not remove or obscure in any manner, the Lexmark logos and IPR rights designations as they appear in or on the Cloud Services, Client Components or Documentation, including, but not limited to, the media, underlying code, displayed screens or documentation.

Section 6. Customer Content

6.1 Customer Content. Except for the license granted under Section 6.2, Customer reserves all of its ownership rights in the Customer Content and all associated IPR.

6.2 License to Lexmark. Customer hereby grants to Lexmark a non-exclusive, non-transferable, royalty-free license during the Term to translate, transmit, transfer, reproduce, and use Customer Content to the extent reasonably necessary to perform its obligations under this Agreement. Without limiting the foregoing, Lexmark may display and distribute Customer Content to Customer in connection with the provision of the Cloud Services.

6.3 Customer Content Backups. Customer assumes all risk, responsibility and liability (if any) for any loss or damage for failure to maintain adequate backup copies of the Customer Content. Upon termination or expiration of the applicable Schedule, Lexmark will not perform any data backup for the Cloud Services covered by such applicable Schedule.

Section 7. Reserved

Section 8. Feedback

Customer grants to Lexmark and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its products or services any suggestion, enhancement request, recommendation, correction or other feedback

provided by Customer or End Users relating to the operation of the Cloud Services.

Section 9. Insurance

9.1 In addition or supplementation to the insurance requirements of the State's Participating Addendum, Lexmark will provide and keep in full force and effect during the Term of this Agreement at least the following kinds and minimum amounts of insurance:

- (a) Worker's Compensation Insurance as required by law
- (b) Employer's Liability Insurance with a limit of no less than \$1,000,000.;
- (c) Commercial General Liability Insurance with a limit of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate limit, including contractual liability, bodily injury or property damage;
- (d) Technologies Errors and Omissions Insurance (cyber liability) with a limit of no less than \$5,000,000; and
- (e) Umbrella Liability Insurance with a limit of no less than \$5,000,000.

9.2 Reserved

Section 10. Confidentiality

10.1 The recipient will protect the Confidential Information of the discloser against any unauthorized use or disclosure to the same extent that the recipient protects its own Confidential Information of a similar nature against unauthorized use or disclosure but will not use less than reasonable efforts to do so. Each Party reserves ownership of its own Confidential Information. The recipient will use Confidential Information of the discloser solely for the purposes for which it is provided by the discloser and will not publish or disclose, display or distribute Confidential Information of the discloser to any third party. This paragraph will not be interpreted or construed to prohibit: (a) any use or disclosure that is necessary for recipient's performance of its obligations under this Agreement; (b) any use or disclosure required by applicable law (e.g., pursuant to applicable securities laws or legal or regulatory process); provided, that the recipient uses reasonable efforts to give the discloser reasonable advance notice thereof (e.g., so as to afford the discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure); or (c) any use or disclosure made with the prior written consent of the discloser. Upon request, the recipient will destroy all Confidential Information of the discloser, together with all copies thereof.

10.2 Reserved

Section 11. Indemnification

11.1 Lexmark Indemnification. Lexmark will defend and indemnify Customer from any third party claim that the Cloud Services or Client Components provided to Customer pursuant to this Agreement infringes or misappropriates any copyright or trade secret or any U.S. patent or trademark, provided that: (a) Customer promptly notifies Lexmark of the claim; (b) Lexmark has sole control over the defense and settlement of the claim; (c) Customer provides such assistance in the defense of the claim as Lexmark may reasonably request; and (d) Customer complies with any settlement or court order made in connection with the claim (e.g., relating to the future use of the Cloud Services).

11.2 Reserved

11.3 Customer Responsibility. Customer is solely responsible and liable for: (a) Customer's use of the Cloud Services in any unlawful manner or in a manner not authorized by this Agreement or the applicable Schedule; (b) an allegation that the Customer Content provided by Customer infringes, misappropriates or otherwise violates any IPR of any third party; or constitutes defamation, invasion of privacy or the violation of any right of publicity or other similar right of any third party; (c) any inaccuracies or defects in the Customer Content or other materials furnished by Customer hereunder; or (d) an allegation that Customer's provision of Customer Content or use of Customer Content with the Cloud Services violates any law, including any applicable data protection law or privacy law.

11.4 Right to Participate. In no event will an indemnifying Party admit liability on behalf of the indemnified Party without the indemnified Party's prior written consent.

Section 12. Warranties; Disclaimers of Liability

12.1 Third Party Items. LEXMARK MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATERIALS OR ITEMS FURNISHED BY OR ON BEHALF OF CUSTOMER OR ANY END USER.

12.2 Service Level Warranty. Lexmark will use commercially reasonable efforts to continuously monitor and to make the Cloud Services available to Customer ninety-nine percent (99.0%) of the time measured at monthly intervals, excluding downtimes caused by interruptions beyond the reasonable control of Lexmark and times allocated for emergency or scheduled maintenance. In the event the Cloud Services experience downtime in excess of the service level specified above in any calendar

month, Customer will receive from Lexmark a credit against the succeeding month's subscription fees for the Cloud Services in an amount equal to the ratio of the number of hours of excess downtime to the total number of hours in the month in which the excess downtime occurred multiplied by the subscription fees payable for the month in which the excess downtime occurred; provided, that Customer is not in breach of any of its obligations under this Agreement and Customer gives Lexmark written notice of the noncompliance within thirty (30) days after the date of such noncompliance.

12.3 Service Level Warranty Remedies. If the Cloud Services cannot be accessed for more than one hundred eighty hours, excluding scheduled maintenance, during any twelve-month period during the Term, or any extension thereof, provided that such inability shall not be due to the failure of Customer's equipment or facilities, or improper use of the Cloud Services or Client Components, then Customer will have the right to terminate the applicable Schedule for the affected Cloud Services on fifteen (15) days prior written notice.

12.4 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE SERVICE LEVEL CREDITS DESCRIBED IN THIS AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF THE CLOUD SERVICES OR LEXMARK TO ACHIEVE THE SERVICE LEVELS OR PERFORMANCE REQUIREMENTS SET FORTH HEREIN.

12.5 THE FOREGOING WARRANTIES ARE SUBJECT TO THE LIMITATIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT.

12.6 Exclusions. Lexmark warranties and duties under Sections 2.2 and 12.2 do not apply to any noncompliance resulting from any: (a) use not in accordance with this Agreement or the Documentation; (b) modification, damage, misuse or other action of Customer, any End User or any third party; or (c) combination with any goods or other items provided by Customer, any End User or any third party except for those operating system and database combinations for which the Cloud Services was specifically designed to operate and any other components specified in the applicable Schedule.

12.7 THE CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, SERVICE OUTAGES, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR DUE TO RESTRICTIONS CAUSED BY LAWS AND REGULATIONS OF VARIOUS COUNTRIES. LEXMARK IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER

DAMAGE RESULTING FROM SUCH PROBLEMS.

12.8 Reserved

12.9 Reserved

12.10 Reserved

Section 13. Term, Suspension, and Termination

13.1 Duration. The Term will continue until every Schedule under this Agreement expires or is otherwise terminated under this Agreement.

13.2 Cloud Services Suspension. If any charge owed by Customer to Lexmark is more than thirty (30) days overdue, Lexmark may, without limiting its other rights and remedies, suspend the Cloud Services until such amounts are paid in full, provided Lexmark has given Customer at least (ten) days prior notice that its account is overdue in accordance with the Section 14.3 below.

13.3 Notice of Material Breach. In the event of a material breach under this Agreement by a Party, the other Party may give the breaching Party written notice of the material breach (including, but not necessarily limited to, a description of the Cloud Services with respect to which the breach has occurred, a statement of the facts relating to the breach, the provisions of this Agreement that are in breach, and the action required to cure the breach) and the other Party's intent to terminate the Agreement and/or the applicable Cloud Services pursuant to this paragraph if the breach is not cured within thirty (30) days after the breaching Party's receipt of such notice (or such later date as may be specified in such notice).

13.4 Termination Following Breach. If the breaching Party fails to cure any material breach specified in any notice under this Section within thirty (30) days after receipt of such notice (or such later date as may be specified in such notice), then the terminating Party may terminate the Agreement.

13.5 Survival. Sections 7, 11.3, 11.4, and 14 of this Agreement, all accrued payment obligations under this Agreement and all other provisions of this Agreement that may reasonably be construed as surviving the expiration or termination of this Agreement will survive the expiration or termination of the Term.

Section 14. Miscellaneous

14.1 Compliance with Laws. Each Party will comply with all applicable laws, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities having jurisdiction in connection with its activities under this Agreement.

14.2 Relationship of the Parties. Each Party is an independent contractor and not a partner or agent

of the other. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the Parties or as imposing any partnership or agency obligations or liability upon either Party. Further, neither Party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other Party. Lexmark reserves the right to promote, market and solicit sales, licenses and other offerings of its products or services without restriction, either directly or through others, at any time during or after the termination or expiration of the term of this Agreement.

14.3 Notices. Except for notices relating to the availability of the Cloud Services or subscription fee increases, any notice or other communication under this Agreement given by either Party to the other Party will be deemed to be properly given if given in writing and delivered in person, sent via postal mail, properly addressed and stamped with the required postage, to the intended recipient at its address specified in this Agreement. Notice will be deemed effective upon the earlier of (a) actual delivery to the Party or (b) receipt by facsimile transmission with operator confirmation, or read receipt if sent via email. Either Party may from time to time change its address for purposes of this paragraph by giving the other Party notice of the change in accordance with this paragraph.

14.4 Assignment. Customer will not assign (whether voluntarily, involuntarily, by operation of law or otherwise) this Agreement or any of its rights under this Agreement, in whole or in part, without the prior written consent of Lexmark, which will not be unreasonably withheld. Any assignment in violation of the foregoing will be null and void.

14.5 Nonwaiver. The failure of either Party to insist upon or enforce performance by the other Party of any provision of this Agreement, or to exercise any right or remedy under this Agreement or otherwise by law, will not be construed as a waiver or relinquishment of such Party's right to assert or rely upon the provision, right, or remedy in that or any other instance.

14.6 Severability. If any term or provision of this Agreement is for any reason deemed illegal or invalid, such illegality or invalidity will not affect the validity of the remainder of this Agreement, and each such term or provision will be valid and enforceable to the fullest extent permitted by law.

14.7 Excused Performance. Neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition

beyond such Party's reasonable control (excluding payment obligations). Further, Lexmark will not be in breach of its obligations under this Agreement as a result of delays resulting from the failure of Customer to provide any material or information reasonably necessary for Lexmark to perform its obligations hereunder.

14.8 Applicable Law and Venue. The Parties expressly agree that this Agreement and any claim or controversy arising out of or relating to rights and obligations of the Parties under it will be governed by and construed in accordance with the substantive laws of the Customer without reference to its rules relating to choice of law. The United Nations "Convention on Contracts for the International Sale of Goods" or any similar or successor convention or law, will not apply to the Agreement or transactions under the Agreement.

14.9 Amendment. Additional or inconsistent pre-printed terms, acknowledgements, confirmations, and other communications, whether or not signed or accepted, will not supplement or supersede the terms of this Agreement or Schedule unless so agreed in a separate, signed amendment specifically referencing this Agreement. Except as otherwise expressly provided herein, no amendment, modification or waiver of any provision of this Agreement will be valid unless set forth in a written instrument, duly executed by the Parties, that specifically references this Agreement.

14.10 Reserved

14.11 Conflicting Terms. In the event of any conflict or inconsistency between this Agreement and any Schedule or Exhibit to this Agreement, the terms and conditions of the Schedule or Exhibit will

control.

14.12 Export Restrictions. The services and any data provided by Lexmark (collectively, the "Controlled Items") may be subject to United States, EU or other export control jurisdictions. The Controlled Items may not be shipped, transferred, re-exported into any country, or used for any purpose prohibited by any applicable international and national legal instruments that apply to the Controlled Items, including the U.S. Export Administration Regulations. Moreover, software may not be exported, re-exported, or downloaded by any person or entity subject to U.S. or international sanctions regardless of location. Customer agrees that it will not export or re-export the Controlled Items without first having obtained applicable government export licenses or permissions.

14.13 Authority. Customer represents that it has the authority to enter into this Agreement and that by doing so Customer will not violate any law or pre-existing agreement to which Customer is a party. Customer represents that this Agreement is signed by an authorized officer or agent of Customer.

14.14 Counterparts. This Agreement may be executed in any number of counterparts, all of which, taken together, will constitute one and the same document. Original signatures of this Agreement transmitted and received via facsimile, electronic transmission of a scanned document (e.g., PDF), or other process of complete and accurate reproduction will have the same legal effect, validity and enforceability as manually executed signatures; will be deemed original signatures; and will bind the parties to the same extent as manual signatures.

14.15 Reserved

IN WITNESS WHEREOF, Lexmark and Customer have caused this Master Cloud Services Agreement to be executed by their respective authorized representatives as of the date first written above.

LEXMARK INTERNATIONAL, INC.

Name (Printed): _____
Signature: _____
Title: _____
Date: _____

CUSTOMER

Name (Printed): _____
Signature: _____
Title: _____
Date: _____

SCHEDULE 1**LEXMARK CLOUD FLEET MANAGEMENT SERVICES SCHEDULE**

This Lexmark Cloud Fleet Management Services Schedule (this “CFM Schedule”), effective as of _____ (the “Effective Date”) is incorporated into and constitutes a material part of the Lexmark Cloud Services Agreement (the “Agreement”) between Lexmark International, Inc. (“Lexmark”) and _____ (“Customer”). The Parties agree as follows:

1. Definitions.

- 1.1** Unless otherwise stated to the contrary herein, all capitalized terms used in this Schedule shall have the meaning ascribed to them in the Agreement.
- 1.2 “Output Device”** means any solution-enabled output device (e.g., printer, multi-function device) at which the print job generated by the Cloud Services is permitted to be printed, viewed, displayed or produced under this Agreement.
- 1.3 “Subscription Term”** means the Initial Subscription Term and any subsequent renewal period for which subscriptions to the Cloud Services specified in an applicable Schedule have been ordered.

2. Cloud Services.

Cloud Services	Lexmark Cloud Fleet Management (CFM)
Client Components	Printer Agent Fleet Agent Local Agent Printer Enrollment Tool
Output Devices	Supported Lexmark printers or enabled Output Device
Initialization Fee	\$0.00
Monthly Subscription Fee	\$0.00
Initial Subscription Term	12 months

3. Subscription Term.

This Schedule will begin on the Effective Date and will continue for the Initial Subscription Term and will automatically terminate unless the Customer gives Lexmark notice at least thirty (30) days prior to the end of the then-current period, of their intent to renew.

4. Fees; Payments.

- 4.1 Initialization Fees.** Upon execution of this CFM Schedule, Customer will pay Lexmark the initialization fee set forth in Section 2 of this CFM Schedule, as a non-refundable fixed set-up fee for professional services. Fees for professional services beyond initialization shall be set forth in a Statement of Work as defined in Section 5. Further, no fees shall exceed the NASPO ValuePoint Master Agreement pricing.
- 4.2 Subscription Fees.** Subscription fees for each month of the Subscription Term will be calculated as indicated in Section 2 of this CFM Schedule.
- 4.3 Invoicing.** All fees will be invoiced following the incurrence of such fees, unless otherwise set forth in a Statement of Work as defined in Section 5.

5. Lexmark Services

- 5.1** Subject to the terms and conditions of the Agreement and this CFM Schedule, Lexmark may provide Customer with Lexmark Services pursuant to Customer's issuance to Lexmark of a purchase order for such Lexmark Services, including for the use of Lexmark's project managers, solution architects and consultants for implementation services. Lexmark will provide Lexmark Services at Lexmark's then current NASPO ValuePoint Master Agreement rates, or, not to exceed the same, as otherwise described in the applicable statement of work agreed upon by the parties (“Statement of Work”). Customer will pay Lexmark the fees for the Lexmark Services as provided in this CFM Schedule.

- 5.2** Any modification to the Lexmark Services or any other aspect of a CFM Schedule, including any resultant changes to pricing or project schedules, will be made pursuant to a written change order that is signed by Lexmark and Customer. Each such change order will set forth in reasonable detail the nature of the change in the professional services or other aspect being changed, the recommended change in personnel or other deliverables, any change in Lexmark Services fees, and any other impact the change order will have on the CFM Schedule or Statement of Work.
- 5.3** Lexmark may provide Customer additional Lexmark Services, as may be agreed to between Lexmark and Customer from time to time. Additional Lexmark Services will include any services provided by Lexmark for Cloud Services or Client Components support or performance issues caused by or resulting from Customer's failure to comply with its responsibilities as described in this Agreement. In each such event, Lexmark will invoice Customer for all Lexmark Services fees for such additional Lexmark Services as provided in this Agreement, providing such Services are listed in the NASPO ValuePoint Master Agreement.
- 5.4** Each Lexmark Services engagement between Lexmark and Customer will be a separate and distinct transaction from Customer's purchase of Cloud Services, and Customer's payment obligations with respect to the Cloud Services are wholly independent of and not contingent upon Lexmark's performance of any Lexmark Services.
- 5.5** Additional or inconsistent pre-printed terms, acknowledgements, confirmations, and other communications, whether or not signed or accepted, will not supplement or supersede the terms of this Agreement and/or applicable Statement of Work unless so agreed in a separate, signed amendment specifically referencing this Agreement or such Statement of Work.

6. Cloud Services Training.

- 6.1** Lexmark will make standard online training for the Cloud Services (the "Product Training") available to Customer. For Customers desiring to purchase advanced Product Training, Customer will issue an order for such Product Training to Lexmark as provided in Section 5.1 of this CFM Schedule. The Product Training will be provided via online tools by a trained and/or certified Lexmark professional. Customer will pay Lexmark for such advanced Product Training at Lexmark's then current NASPO ValuePoint Master Agreement rates.

7. Licensed Software Distribution.

- 7.1** Any Licensed Software and Documentation that is available through the Cloud Services for download and/or distribution is the copyrighted work of Lexmark and/or its licensors. Subject to the terms and conditions of this Agreement and the CFM Schedule, Lexmark grants Customer a personal, nonexclusive, non-transferable license in the Licensed Territory to distribute the Licensed Software to its End Users for use solely on or in connection with Lexmark products.
- 7.2** Copying or reproducing the Licensed Software to any other server or location for further reproduction or redistribution is prohibited except in accordance with this Agreement.
- 7.3** Customer may distribute a copy of the Licensed Software to Customer's End Users provided Customer follows all of Lexmark's direction and procedures for downloading and distributing the Licensed Software.
- 7.4** Customer shall not create derivative works of the Licensed Software or attempt to decompile or reverse-engineer the Licensed Software, except as and only to the extent expressly permitted to do so by applicable law for the purposes of inter-operability, error correction, and security testing. If Customer has such statutory rights, Customer will notify Lexmark in writing of any intended reverse engineering or reverse compilation.
- 7.5** The Licensed Software and the corresponding software license may be downloaded using the Printer Enrollment Tool. Use of the Licensed Software is subject to the license terms of the license agreement that accompanies or is provided with the Licensed Software.
- 7.5.1** In the event that Customer desires to have Licensed Software installed on a non-Customer controlled printer or device, Customer shall (i) obtain the express authorization of such device's owner or authorized user to have such Software installed on such printers or other devices, and (ii) provide a copy of the applicable end user software license to such device's owner or authorized user concurrent with the distribution of the Licensed Software.
- 7.5.2** Reserved.
- 7.6** Although it is not obligated to do so, in the event Lexmark provides or makes available any error corrections or updates to the Licensed Software, Licensee agrees to provide such error corrections or updates to its End

Users in accordance with Section 7.5 of this CFM.

7.7 Lexmark reserves the right to terminate Customer's right to distribute the Licensed Software in the event Lexmark, in its sole opinion, believes an infringement claim appears likely or is made about the Licensed Software.

8. Termination of CFM Schedule.

8.1 This CFM Schedule may be terminated by Lexmark upon thirty (30) days' written notice to Customer.

8.2 Immediately upon expiration or termination of the Subscription Term, Customer will no longer have access to the Cloud Services. Further, Customer will immediately: (a) cease using all Client Components and Documentation; and (b) uninstall the Client Components.

8.3 Furthermore, (i) the Parties will cooperate to effect an orderly, efficient, effective and expeditious termination of the Parties' respective activities under this Agreement; (ii) Lexmark will destroy Customer Content (as it then currently exists excluding Usage Data) in the possession or under the control of Lexmark; (iii) Lexmark will have no obligation to perform under this Agreement after the effective date of the termination; and (iv) Customer will pay to Lexmark any current or past-due amounts for the Cloud Services provided under this CFM Schedule prior to the effective date of the termination.

8.4 This CFM Schedule may be terminated by Customer with thirty (30) days' notice to Lexmark.

IN WITNESS WHEREOF, Lexmark and Customer have caused this Lexmark Cloud Fleet Management Services Schedule to be executed by their respective authorized representatives as of the date first written above.

LEXMARK INTERNATIONAL, INC.

Name (Printed): _____

Signature: _____

Title: _____

Date: _____

CUSTOMER

Name (Printed): _____

Signature: _____

Title: _____

Date: _____

ATTACHMENT 6 – LEXMARK EXTENDED WARRANTY TERMS AND CONDITIONS

The terms and conditions of Lexmark Extended Warranty service, including Exchange service, On-site Repair and Upgrades, apply to products for which Lexmark has issued a Certificate of Registration for Lexmark Extended Warranty service, provided that the product was originally purchased or financed, for business use, from Lexmark, or a Lexmark Dealer. Coverage is provided in the United States and Puerto Rico. Payment terms are net thirty (30) days and payment must be received within forty-five (45) days of invoice date. The coverage period is as shown on the applicable Certificate of Registration for Extended Warranty service for each covered product. Extended Warranty service does not cover products that have been defaced, altered, or damaged beyond repair by non-Lexmark personnel or Lexmark Dealers.

If the covered product includes options (i.e. equipment accessories), those options are covered during the term of the Extended Warranty, only when installed on the product for which they were designed. To obtain service for an option covered under Extended Warranty service, it may be necessary to present the option with the entire product.

If the Customer sells a covered product they have purchased, before the Extended Warranty service expires, the warranty coverage may be transferred to the new owner by submitting written notification from the original owner to Lexmark at:

Lexmark International, Inc.
Lexmark Service, Dept. 331A/002-1
740 West New Circle Road
Lexington, Kentucky 40550

Lexmark Extended Warranty service is not a guarantee of uninterrupted or error-free use of a product. Extended Warranty service does not include repair of failures caused by Customer's misuse, neglect, accident, modification, unauthorized attachments, disaster, operation outside the specified operating environment or beyond the limits of the product's duty cycle, improper maintenance by the Customer, use of media outside of Lexmark specifications, failure caused by service of the product by non-authorized servicers, or failure caused by a product, including non-Lexmark authorized supply products or service parts. Lexmark does not warrant the durability or longevity of prints produced by any product.

Consumable and Repair Parts

Consumable Parts require periodic replacement based on printer usage in order to maintain optimum performance of the product. Maintenance kits and other consumable parts are available from Lexmark for certain models. Some products display a maintenance reminder message at specified intervals based on pages printed. If required, product documentation directs the customer to install a maintenance kit or to contact a service representative for kit installation. Maintenance kits and other consumable parts are available at an additional charge to the customer, per the pricing in the NASPO ValuePoint Master Agreement. These parts are outside the scope of both the Lexmark Base Warranty and Extended Warranty offerings. Installation of maintenance kit components is generally the Customer's responsibility. If, however, a particular maintenance kit is not considered "Customer

replaceable” by Lexmark, installation service will be included in the Extended Warranty. Lexmark is not responsible for failures caused by a Customer’s failure to timely install maintenance kits. Repair parts will be furnished on an exchange basis and may be new, equivalent to new or reconditioned. All returned parts and products become the property of Lexmark.

Payment / Cancellation

This Extended Warranty contract will void if payment is not received by Lexmark within forty-five (45) days of invoice. The Customer or Lexmark may terminate the Extended Warranty coverage at any time with three (3) months prior written notice. If Extended Warranty coverage is canceled in accordance with these terms, Lexmark will refund to the customer the remaining portion of the warranty price paid on a prorated basis after the notification period.

Additional Rights

Some states do not allow limitations on how long an implied service lasts, or do not allow the exclusion or limitation of incidental or consequential damages. If such laws apply, the limitations or exclusions contained in the terms and conditions of this Warranty Service may not apply.

This Warranty Service gives the Customer certain legal rights. The Customer may also have other legal rights which vary from state to state.

Extended Warranty Descriptions

Exchange Service

If the customer purchases Lexmark's Exchange Extended Warranty, defective printers covered under the warranty will be replaced with an exchange product from Lexmark. The exchange printer will be sent via next business day transportation (where available) for most laser printers and 3-5 day transportation for inkjet printers and consumer laser printers. (See documentation for specific details for your product model.) Unless specified by Lexmark, the Customer is required to return the defective product to Lexmark, in which case, the Customer must pack the product using the packing materials from the exchange product, attach the prepaid return shipping label, and deliver the packaged product to Lexmark’s designated shipper. Failure to return the defective product within thirty (30) business days of the Customer’s receipt of the exchange product will result in a Customer charge for the full price of the exchange product. The returned product becomes the property of Lexmark. Exchange products must be new or of equal or greater capabilities. The exchange product becomes the property of the Customer when the defective product is received by Lexmark, at which time the exchange product assumes the remainder of the Extended Warranty from the defective product. The returned product must not be encumbered.

On-site Service

If the customer purchases Lexmark’s On-site Extended Warranty, On-site service is provided at the Customer's business location. Next Business Day service will generally be provided if the request for service is received by 5:00 p.m., Customer local time, if the service location is within a 50 mile radius of a Lexmark Authorized Service Center (LASC) and overnight (A.M.) Lexmark parts delivery is available to the service location. One (1) additional business day may be required for service locations more than 50 miles from LASC and two (2) additional business days may be required for service in Hawaii and Alaska. Lexmark On-site Extended Warranty service is not available for all products.

Please contact Lexmark or review your product documentation to determine if this option is available for your product model.

Repair and Return Service

Certain models are eligible for repair and return of the defective product. If this option is available and the Customer chooses this option, the Customer is responsible for properly packing the product and delivering the product to the Lexmark designated carrier. Lexmark will provide packing materials if the original packing materials are no longer available. Contact Lexmark to determine if this Repair and Return option is available for your product model. The Repair and Return option generally provides for repair of the product and return to the Customer within 5-7 business days. If a returned product cannot be repaired using commercially reasonable efforts, Lexmark at its discretion may provide a new or refurbished replacement product.