

**PARTICIPATING ADDENDUM
to NASPO ValuePoint
Copiers & Managed Print Services
Administered by the State of Colorado
with Lexmark International, Inc.
Master Agreement No. 140601
And
The State of Colorado
Contract # 162442**

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, acting by and through the State Purchasing & Contracts Office (the “State”). This Participating Addendum covers usage of the **Copiers & Managed Print Services** 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 Chief Procurement Officer. The specific Goods and Services provided under the Master Agreement are listed in **Exhibit D (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.** 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.** **§3.1.12** under Price and Rate Guarantee Period, shall be modified as follows:

“All-inclusive Cost Per Copy (CPC) programs may 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. **§4.3.9(d)**, under Open Market Items, shall be modified as follows:
“NSP items shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all NSP items in a single Order is \$10,000.
- iii. **§4.4.3(b)**, under Standard Service Levels shall be modified as follows:
“The Service Level Agreement (SLA) shall adhere to the following requirements.”
- iv. **§4.4.3(c)(iv)**, under Meter Read Invoicing, shall be deleted in its entirety.
- v. **§4.4.3(d)(ii)**, under Service Level Calculations, shall be deleted in its entirety.
- vi. **§4.5.5(k)**, under Leasing Overview shall be modified as follows:
“The length of any Renewal Term shall not exceed 12 months, providing the Renewal Term does not exceed the Useful Life of the Equipment.”
- vii. **§4.6.2**, Sensitive Information – “Sensitive Information” shall have the meaning as prescribed to it in **§4**, Definitions, of Exhibit A).
- viii. **§4.6.5(b)**, under Hard Drive Removal and Surrender, 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.”
- ix. **§4.7.3**, under Equipment Demonstration Requirements, shall be modified as follows:
“Upon request by a Purchasing Entity, showroom Equipment for Group B may be converted to a purchase or lease, providing the following conditions are met.”
Subsections (a), (b) and (c) shall not be modified.
- x. **§4.11.10** under Warranty Requirements, shall be deleted in its entirety.
- xi. **§4.11.11(d)**, 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.”
- xii. **§5.1.3**, under Ordering and Invoicing Specifications, shall be modified as follows:
“Contractor shall provide a centralized billing option for Leasing and Managed Print Services, upon request by a Purchasing Entity.”
- xiii. **§5.1.4**, under Ordering and Invoicing Specifications, shall be modified as follows:
“Authorized Dealers may invoice the Purchasing Entity directly, with Purchasing Entity’s prior approval.”
- xiv. **§5.1.6**, under Ordering and Invoicing Specifications, shall be modified as follows:

“Contractor shall bill property tax separately, unless otherwise requested by a Purchasing Entity.”

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, \$1 Buyout Lease, Straight Lease, and Short-Term Lease. The lease terms available for an FMV Lease, \$1 Buyout Lease and Straight Lease are 12, 18, 24, 36, 48, and 60 months. The lease term available for a Short-Term Lease is a maximum of 12 months.

B. The State has reviewed and approved the terms and conditions in the Contractor’s documents, which are attached hereto as **Attachment 1 through Attachment 7**, and incorporated by reference. In addition, **Attachments B and J** of the Master Agreement have also been reviewed and approved by the State. Purchasing Entities are still advised however, to conduct their own internal review of Contractor’s documents prior to entering into any type of Order.

Attachment I of the Master Agreement has not been reviewed or approved by the State; therefore, Purchasing Entities are encouraged to review the language in the Apple EULA prior to ordering and/or using the software associated with the agreement.

With the exception of **Exhibits B and C**, and **Attachments B, I, and J** of the Master Agreement, no other Contractor documents are permissible under this Participating Addendum unless mutually agreed to in writing by Contractor and the State, or as otherwise stated in the Master Agreement. Should there be a conflict between the terms and conditions of this Participating Addendum, and any terms of the aforementioned Exhibits and Attachments, this Participating Addendum shall govern.

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 and the Master Agreement, shall prevail.

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, 3rd Floor
Denver, CO 80203
Phone: 303-866-5671
E-mail: nikki.pollack@state.co.us

Primary Contact for the Contractor:

Mary Beth Carter
Lexmark International, Inc.
740 West New Circle Road
Lexington, KY 40550
Phone: 859-232-2116
E-mail: marybeth.carter@lexmark.com

Each individual identified in this **§5** of the Participating Addendum shall be the primary contact of the designated Party. All notices required or permitted to be given under this Participating Addendum

shall be in writing and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party's primary contact at the address set forth above or **(iii)** 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.

6. SUBCONTRACTORS

The Contractor is authorized to use Subcontractors to provide sales and service support to any Purchasing Entity, per **Exhibit D**, Authorized Dealers by State, of the Master Agreement. 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 (and governed by the prices and other terms and conditions) under the Master Agreement and this Participating Addendum unless the parties to the Order agree in writing that another contract or agreement applies to such Order or the terms of that Order control to the extent that they conflict with the terms of the Master Agreement or this Participating Addendum.

8. ORDER OF PRECEDENCE AND ATTACHED EXHIBITS AND ATTACHMENTS

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 **§20** of Exhibit A, State Specific Terms;
- B.** Exhibit B, Information Technology Specific Terms;
- C.** The provisions of this Participating Addendum;
- D.** All other sections of Participating Addendum Exhibit A, State Specific Terms;
- E.** Participating Addendum Exhibit C, Statement of Work;
- F.** Participating Addendum Exhibit D, Price Lists; and
- G.** Participating Addendum Attachment 1 through Attachment 7, with equal precedence.

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, §19** or the main body of this Participating Addendum.

THE PARTIES HERETO HAVE EXECUTED THIS PARTICIPATING ADDENDUM

<p style="text-align: center;">CONTRACTOR Lexmark International, Inc.</p> <p>By: Mark Deicher Title: _____</p> <p style="text-align: center;"><i>Mark Deicher</i> Senior Contract Manager</p> <p style="text-align: center;">Signature _____</p> <p style="text-align: center;">Date: <u>7/6/2020</u></p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Personnel and Administration State Purchasing and Contracts Office Kara Veitch, Executive Director</p> <p style="text-align: center;"><i>John Chapman</i></p> <p style="text-align: center;">By: John Chapman, State Purchasing Manager</p> <p style="text-align: center;">Date: <u>7/6/2020</u></p>
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<p>STATE OF COLORADO Jared S. Polis, GOVERNOR Governor's Office of Information Technology Theresa M. Szczurek, Ph.D., Chief Information Officer and Executive Director</p> <p style="text-align: center;"><i>Laura Calder</i></p> <p>By: _____</p> <p style="text-align: center;"><input type="checkbox"/> Laura Calder, Chief Financial Officer</p> <p style="text-align: center;">Date: <u>7/6/2020</u></p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

§24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Participating Addendum is not valid until signed and dated below by the State Controller or an authorized delegate.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: <i>Clark Bolser</i></p> <p style="text-align: center;">Clark Bolser</p> <p>Name: _____</p> <p style="text-align: center;">Delegate</p> <p style="text-align: center;">Date: <u>7/6/2020</u></p> <p style="text-align: center;">Effective Date: _____</p>
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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 **Copiers and Managed Print Services** to Purchasing Entities. The Contractor was selected as a result of **RFP-NP-18-001**.

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 the NASPO ValuePoint Master Agreement #140601. Unless this Participating Addendum is terminated earlier, as described herein, or the Lead 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, per §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. 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.

D. 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 §14.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 §14.

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 payment 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 attached to this Contract:
 - i.** Attachment 1, Lexmark Master Lease Agreement Terms and Conditions;
 - ii.** Attachment 2, Lexmark MPS Statement of Work Template;
 - iii.** Attachment 3, Lexmark Maintenance Agreement;
 - iv.** Attachment 4, Lexmark Software Finance Agreement Terms and Conditions;
 - v.** Attachment 5, Lexmark Software License Agreement Terms and Conditions;
 - vi.** Attachment 6, Lexmark Software Limited Warranty and License Agreement Terms and Conditions; and
 - vii.** Attachment 7, Lexmark EULA.
- 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. **“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”).
- I. **“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.
- J. **“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.
- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- L. **“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.
- M. **“Effective Date”** means the date on which this Participating Addendum is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Participating Addendum. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- N. **“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.
- O. **“Exhibits”** means the following exhibits attached to this Contract:
 - i. Exhibit A, State Specific Terms;
 - ii. Exhibit B, Information Technology Provisions;
 - iii. Exhibit C, Statement of Work; and
 - iv. Exhibit D, Price Lists.
- P. **“Extension Term”** means the period defined in §3.B.
- Q. **“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.
- R. **“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.

- S. **“Initial Term”** means the time period defined in §3.A of this **Exhibit A**.
- T. **“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.
- U. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- V. **“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.
- W. **“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.
- X. **“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.
- Y. **“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.
- Z. **“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.
- AA. **“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.
- BB. **“State Confidential Information”** means any 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.

CC. “State Fiscal Rules” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.

DD. “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.

EE. “State Records” means any State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

FF. “Subcontractor” means third parties, if any, engaged by Contractor pursuant to §19.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.

GG. “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.

HH. “Work” means the Goods delivered and Services performed pursuant to this Contract.

II. “Work Product” means the tangible and intangible results of the Work created by Contractor solely and exclusively for the State, 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 Exhibit 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.D.** 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 with 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 to whom the sale was made;

- 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; and
- 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 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, which are purchased or made available under this Participating Addendum. The State and the Contractor shall agree upon the scope and detail of such reports. 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 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.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, and other materials directly 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, without undue delay upon reasonable written notice from the State. Audits and inspections shall be subject to any reasonable conditions Contractor may impose to protect the confidentiality, integrity, and availability of its data and systems.

C. Monitoring

The State, in its discretion, may monitor Contractor’s performance of its obligations under this Participating Addendum using reasonable 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 or Contractor’s business.

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 directly 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. The State shall not submit the following types of data to Contractor without its prior written consent; 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 agree to 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.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with 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 confirms it will protect 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 promptly and reasonably cooperate with the State regarding recovery, and remediation, as determined by the State. If the State can establish that Contractor or any of Contractor's agents, employees, assigns or Subcontractors is the sole proximate 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 reasonable steps to reduce the risk of incurring a similar type of Incident in the future as advised by the State, which may include, but is not limited to, developing and implementing a remediation plan that is shared with the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, as it applies to the State and its Purchasing Entities only, to the extent that such requested modifications do not increase the security risk or the cost of providing Services under this Agreement, and to the extent that such modifications do not negatively impact Contractor's security or Contractor's customers' security or confidentiality. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such

analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. 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 mutually acceptable manner and form, 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.

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 concerning the actual or apparent conflict constitutes a breach of this Participating Addendum.

D. Contractor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Contract. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Contractor employs or contracts with any State employee, any former State employee within six months following such employee's

termination of employment with the State, or any immediate family member of such current or former State employee. Contractor shall provide a disclosure statement as described in §11.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Contract. Contractor may also be subject to such penalties as are allowed by law.

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. Insurance companies approved by the State shall issue all insurance policies required by this Participating Addendum.

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, data breach management exposure, and any loss of income or extra expense as a result of actual 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 claim; 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 claim; 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 claim; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The State shall be named 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

Coverage required of Contractor and each Subcontractor shall be primary 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. Contractor agrees that its insurance policies and certificates shall contain standard cancellation language. Should any of the policies be cancelled prior to the expiration thereof, notification shall be provided in accordance with policy provisions and by Contractor's insurance broker(s).

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 following 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. 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 §14 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.

14. 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 §13, 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.D.

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 **§13** and the dispute resolution process in **§15** 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 **§14.A.ii** above, all remedies listed here in **§14.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 for any unfulfilled Order, Purchasing Entity must provide notice of default to Contractor with a reasonable period to cure the default. If Contractor is unable to cure the default, and the Purchasing Entity must re-procure the Products, Services or Deliverables, and the re-procurement is due to Contractor's breach, Contractor will pay reasonable re-procurement costs as Order termination damages only, and the Order is then terminated. Purchasing Entities shall only pay Contractor for accepted Products, Services and Deliverables received as of the date of termination. A Purchasing Entity may withhold payment that may be due Contractor until Contractor corrects its Work in accordance with the Contract terms.

- 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.
- c. A Purchasing Entity may deny payment to Contractor for Work not performed, or that due to Contractor's actions or inactions, cannot be performed; provided, that any denial of payment shall be equal to the value of the obligations not performed.

15. 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 §15.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 §24-101-301(30), 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.

16. INTELLECTUAL PROPERTY RIGHTS

A. Ownership

No transfer of ownership of any intellectual property will occur under this Participating Addendum.

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 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 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.

17. 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. 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 paid and completed Products, Services, and Deliverables to the appropriate Purchasing Entity at the State or Purchasing Entity's request.

18. 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.

19. 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

Except for Authorized Dealers, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of 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 §19.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 the same agreement.

G. Entire Understanding

This Participating Addendum and the Master Agreement represent 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. 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.

J. Modification

Except as otherwise provided in this Participating Addendum, 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.

K. 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.

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, if 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 §19.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. 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 reasonable attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any third party claim of bodily injury, including death, or tangible or real property damage to the extent proximately caused, as determined by a court of competent jurisdiction in a final adjudication, by a negligent 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 reasonable attorneys' fees and costs) incurred by the State in relation to any third party claim to the extent proximately caused by an 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 reasonable 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 has no obligation for any claim of infringement arising from: **(a)** Contractor's compliance with the State or third-party designs, specifications, instructions, or technical information; **(b)** modifications made by any party other than Contractor; **(c)** the State's non-compliance with applicable documentation; **(d)** use of products, services or deliverables for purposes not contemplated by this Agreement or applicable documentation (including distribution to third parties); **(e)** the State's use or combination of products, services, or deliverables with products, software, or services that are not provided by Contractor; or **(f)** a product, service, or deliverable that is not at the most current release level if the most current release level is non-infringing. If Contractor determines that any products, services, or deliverables infringe or are reasonably likely to infringe any third-party's intellectual property rights, it shall have the right, in its sole discretion and as the State's sole remedy, to procure for the State the right to use the infringing intellectual property on the same terms as contained in the Agreement, modify the infringing intellectual property so as to make it non-infringing while retaining substantially equivalent performance, replace the infringing intellectual property with non-infringing substantially equivalent intellectual property, or refund a pro rata portion of the amounts paid by the State under the Agreement.

- iv.** Indemnifying party's indemnification obligations are conditioned upon the indemnified party: **(a)** promptly notifying the indemnifying party of any claim in writing; **(b)** cooperating with the indemnifying party in the defense of the claim; and **(c)** granting the indemnifying party sole control of the defense and settlement of the claim, provided any settlement that would impose any monetary or injunctive obligation upon the indemnified party shall be subject to such party's prior written approval.

20. 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 that conflict 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.

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.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with

an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT B, 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”). The parties acknowledge and agree, however, that this section constitutes notice of the ongoing existence and occurrence of attempted but unsuccessful Incidents for which no further notice shall be required. Such unsuccessful Incidents shall include, but not be limited to, pings and other broadcast attacks on Contractor’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of State Confidential Information.

- 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 www.oit.state.co.us/about/policies. Contractor will comply with all applicable laws, rules, and regulations. If Contractor determines it is unable to comply with any of the State's policies, procedures, or guidelines, it will promptly notify the State and the parties will work together in good faith to develop a mutually acceptable alternative. If the parties are unable to agree on a mutually acceptable alternative within 30 days after notification, the State may terminate the maintenance-related portion of the Agreement directly affected by Contractor's inability to comply with the policies, procedures, and guidelines.
- D. Subject to any reasonable conditions, Contractor may impose to protect the confidentiality, integrity, and availability of its data and systems, 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, and cause its Subcontractors to perform, background checks 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.
 - 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 maintained by Contractor in the ordinary course of business.

- 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.
- E. If Contractor processes, handles, or transmits information provided to a state agency by the Social Security Administration (SSA) or has authority to perform on the state agency's behalf, the state agency should clearly state the specific roles and functions of the Contractor within the agreement. Any Order placed with the Contractor must contain non-disclosure language as it pertains to SSA-provided information.

3. DELIVERY AND ACCEPTANCE

- A. Contractor shall provide and maintain a quality assurance system consistent with ISO 9001 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 under normal and proper use. 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 nonconformity 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. If Contractor is unable to re-perform, repair, or replace such Work or Deliverable, Contractor shall refund to the State all amounts paid for such Work or Deliverable.
- 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.
- D. This warranty does not apply (i) to consumable parts, parts listed as accessories, or parts designed to diminish in function over time unless a failure is due to a defect in materials or workmanship; (ii) to cosmetic damage or defects caused by normal wear and tear or aging of the Work or Deliverable; (iii) to damage caused by use with non-Contractor products; (iv) to damage caused by operating the Work or Deliverables outside the permitted or intended uses or environments described by Contractor; (v) to damage caused by service performed by anyone who is not a representative of Contractor or a Contractor Authorized Dealer; (vi) to a product or part that has been modified without the written permission of Contractor; and (vii) if any Contractor serial number has been removed or defaced. This warranty does not extend to any other equipment to which this Work or Deliverable may be attached or connected or to any third party software.

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 <http://oit.state.co.us/ois>. Contractor will comply with all applicable laws, rules, and regulations. If Contractor determines it is unable to comply with any of the State's

policies, procedures, or guidelines, it will promptly notify the State and the parties will work together in good faith to develop a mutually acceptable alternative. If the parties are unable to agree on a mutually acceptable alternative within 30 days after notification, the State may terminate the maintenance-related portion of the Agreement directly affected by Contractor's inability to comply with the policies, procedures, and guidelines.

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, provided that State shall not submit data subject to the above obligations to Contractor without its prior written consent.

iii. To the extent applicable, Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. To the extent applicable, Contractor shall make commercially reasonable efforts to 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 and available at <https://www.w3.org/TR/WCAG21/>.

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 including the performance of security audit and penetration tests, as requested by OIS.

iv. All audits and tests shall be subject to any reasonable conditions and restrictions Contractor may impose to protect the confidentiality, integrity, and availability of its data and systems, shall be conducted during Contractor's regular business hours, after reasonable advance written notice to Contractor, with minimal disruption to Contractor's business. Audits shall be limited to once each year unless the State has credible evidence that a violation of the Agreement has occurred.

D. To the extent Contractor controls or maintains information systems used in connection with State Records, Contractor will provide OIS with summaries 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, insofar as possible, 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 insofar as possible. Contractor will charge the State no more than a reasonable charge to perform such assistance, such charges to be set forth in a quote and agreed to in writing by the parties, or as set forth in an applicable change control provision of the Agreement.

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.

ATTACHMENT B.1 TO EXHIBIT B – IRS PUBLICATION 1075**I. PERFORMANCE**

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- 1) All work will be done under the supervision of the contractor or the contractor's employees.
- 2) 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.
- 3) 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.
- 4) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her 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 IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her 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 agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- 6) All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features 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 Federal tax information.
- 7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- 8) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- 9) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS:

- 1) Each officer or employee of any person 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 IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- 2) 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 such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] 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 section 7213A and 7431.
- 3) Additionally, it is incumbent upon the contractor to 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 contractors 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 agency 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.

III. INSPECTION:

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

ATTACHMENT B.2 – HIPAA BUSINESS ASSOCIATE ADDENDUM

This **Exhibit B.2 – HIPAA Business Associate Addendum** (“Addendum”) is part of that certain contract, CMS # 162442 (“Contract”), by and between Lexmark International, Inc. (“Contractor”) and the State of Colorado (“State”). In the event of a conflict or inconsistency between the Contract and its Exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified in §8 of the main body of the Contract. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Contract and its Exhibits. For purposes of this Addendum, the State is referred to as “Covered Entity” or “CE” and Contractor is referred to as “Associate.” Unless the context clearly requires a distinction between the Contract document and this Addendum, all references herein to “the Contract” or “this Contract” include this Addendum.

RECITALS

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 USC §1320d-1320d-8 (“HIPAA”) as amended by the American Recovery and Reinvestment Act of 2009 (“ARRA”)/HITECH Act (PL 111-005), and its implementing regulations promulgated by the US Department of Health and Human Services, 45 CFR Parts 160, 162, and 164 (the “HIPAA Rules”) and other applicable laws, as amended.
- C. As part of the HIPAA Rules, the CE is required to enter into a written contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, §§160.103, 164.502(e), and 164.504(e) of the Code of Federal Regulations (“CFR”) and contained in this Addendum.

The parties agree as follows:

1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Rules at 45 CFR Parts 160, 162, and 164, as amended. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the provisions of this Contract, the HIPAA Rules shall control. Where the provisions of this Contract differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Contract shall control.
- b. “Protected Health Information” or “PHI” means 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, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- c. “Protected Information” shall mean PHI provided by CE to Associate or created, received, maintained, or transmitted by Associate on CE’s behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment, and health

care operations, Protected Information under this Contract does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access, and amendment of Associate's PHI.

- d. "Subcontractor" shall mean a third party to whom Associate delegates a function, activity, or service that involves CE's Protected Information, in order to carry out the responsibilities of this Addendum.

2. Obligations of Associate.

- a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under this Contract and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Rules if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in **Attachment B.2** to this Addendum. Associate accepts full responsibility for any penalties incurred as a result of Associate's breach of the HIPAA Rules.
- b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Rules if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Contract; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 CFR § 164.502(j)(1). To the extent that Associate discloses Protected Information to a third-party Subcontractor, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances through execution of a written agreement with such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that such third party will notify Associate within two (2) business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in **Attachment B.2**.
- c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Contract. Associate shall comply with the requirements of the HIPAA Security Rule at 45 CFR §§ 164.308, 164.310, 164.312, and 164.316. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Associate shall review, modify, and update the documentation of, its safeguards as needed to ensure continued provision of reasonable and appropriate protection of Protected Information.
- d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Contract within five (5) business days of becoming aware of such use or disclosure.

- e. Associate's Rights. If Associate uses one or more Subcontractors or agents to provide services under the Contract, and such Subcontractors or agents receive or have access to Protected Information, each Subcontractor or agent shall sign an agreement with Associate containing the same provisions as this Addendum and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from such Subcontractors or agents in the event of any violation of such Subcontractor or agent agreement. The agreement between Associate and the Subcontractor or agent shall ensure that the Subcontractor or agent agrees to at least the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.
- f. Access to Protected Information. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate shall make Protected Information maintained by Associate or its agents or Subcontractors in such Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the HIPAA Rules, including, but not limited to, 45 CFR §164.524. If such Protected Information is maintained by Associate in an electronic form or format, Associate must make such Protected Information available to CE in a mutually agreed upon electronic form or format.
- g. Amendment of PHI. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate or its agents or Subcontractors shall make such Protected Information available to CE for amendment within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, and shall incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the HIPAA Rules, including, but not limited to, 45 CFR §164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or Subcontractors, Associate must notify CE in writing within five (5) business days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or Subcontractors shall be the responsibility of CE.
- h. Accounting Rights. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate and its agents or Subcontractors shall make available to CE within ten (10) business days of notice by CE, the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the HIPAA Rules, including, but not limited to, 45 CFR §164.528. In the event that the request for an accounting is delivered directly to Associate or its agents or Subcontractors, Associate shall within five (5) business days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.
- i. Governmental Access to Records. Associate shall keep records and make its internal practices, books, and records relating to the use and disclosure of Protected Information available to the Secretary of the US Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's or Associate's compliance with the HIPAA Rules. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with

providing such Protected Information to the Secretary when the Secretary is investigating CE. Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of Associate's policies, procedures, or practices to determine whether Associate is complying with the HIPAA Rules, and permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including Protected Information, that are pertinent to ascertaining compliance.

- j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use, and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Rules including, but not limited to 45 CFR §§164.502(b) and 164.514(d).
- k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to Protected Information.
- l. Retention of Protected Information. Except upon termination of the Contract as provided in Section 4(d) of this Addendum, Associate and its Subcontractors or agents shall retain all Protected Information throughout the term of this Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.
- m. Associate's Insurance. Associate shall maintain insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Contract (e.g. occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
- n. Notice of Privacy Practices. Associate shall be responsible for reviewing CE's Notice of Privacy Practices, available on CE's external website, to determine any requirements applicable to Associate per this Contract.
- o. Notification of Breach. During the term of this Contract, Associate shall notify CE within two (2) business days of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall not initiate notification to affected individuals per the HIPAA Rules without prior notification and approval of CE. Information provided to CE shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed during the breach. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- p. Audits, Inspection, and Enforcement. Within ten (10) business days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies, and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing, and location of such an inspection; and (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the

course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies, and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract.

- q. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of Protected Information transmitted pursuant to the Contract, in accordance with the standards and requirements of the HIPPA Rules.
- r. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 CFR §164.522, Associate will restrict the use or disclosure of an individual's Protected Information. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of CE.

- a. Safeguards During Transmission. CE shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of Protected Information transmitted pursuant to the Contract, in accordance with the standards and requirements of the HIPAA Rules.
- b. Notice of Changes. CE maintains a copy of its Notice of Privacy Practices on its website. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent that it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of PHI, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR §164.522.

4. Termination.

- a. Material Breach. In addition to any other provisions on the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of this Contract and shall provide grounds for immediate termination of this Contract by CE pursuant to the provisions of the Contract covering termination for cause, if any. If the Contract contains no express provisions regarding termination for cause, the following terms and conditions shall apply:
 - (1) Default. If Associate refuses or fails to timely perform any of the provisions of this Contract, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Contract. Associate shall continue performance of this Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

- (2) Associate's Duties. Notwithstanding termination of this Contract, and subject to any directions from CE, Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.
 - (3) Compensation. Payment for completed supplies delivered and accepted by CE shall be at the Contract Price. In the event of a material breach under paragraph 4a, CE may withhold amounts due Associate as CE deems necessary to protect CE against loss from third-party claims of improper use or disclosure and to reimburse CE for the excess costs incurred in procuring similar goods and services elsewhere.
 - (4) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this Contract had been terminated for convenience, as described in this Contract.
 - b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract pursuant to Section 4(a), then CE shall take reasonable steps to cure such breach or end such violation. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either (i) terminate the Contract, if feasible or (ii) if termination of this Contract is not feasible, CE shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services. If Associate knows of a pattern of activity or practice of a Subcontractor or agent, that constitutes a material breach or violation of the Subcontractor's or agent's obligations under the written agreement between Associate and the Subcontractor or agent, Associate shall take reasonable steps to cure such breach or end such violation, if feasible.
 - c. Judicial or Administrative Proceedings. Either party may terminate the Contract, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
 - d. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this subsection, upon termination of this Contract, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.
 - (2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d), and 2(e) of this Addendum to such Protected

Information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Injunctive Relief. CE shall have the right to injunctive and other equitable and legal relief against Associate or any of its Subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this Contract or applicable law.
6. No Waiver of Immunity. 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, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq. or the Federal Tort Claims Act, 28 USC §2671 et seq. as applicable, as now in effect or hereafter amended.
7. Limitation of Liability. Any limitation of Associate's liability in the Contract shall be inapplicable to the terms and conditions of this Addendum.
8. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Contract or the HIPAA Rules will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.
9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to the HIPAA Rules relating to certification of its security practices, CE or its authorized agents or contractors may, at CE's expense, examine Associate's facilities, systems, procedures, and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with the HIPAA Rules or this Addendum.
10. Amendment.
 - a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules and other applicable laws relating to the confidentiality, integrity, availability, and security of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information and that it is Associate's responsibility to receive satisfactory written assurances from Associate's Subcontractors and agents. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Rules or other applicable laws. CE may terminate this Contract upon thirty (30) days' written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section, or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules.
 - b. Amendment of Attachment B.2. Attachment B.2 may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.
11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any Subcontractors, employees, or agents assisting Associate in the performance of its obligations under the

Contract, available to CE, at no cost to CE up to a maximum of thirty (30) hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of the HIPAA Rules or other laws relating to security and privacy or PHI, except where Associate or its Subcontractor, employee, or agent is a named adverse party.

12. No Third-Party Beneficiaries. Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. Together, the Contract and this Addendum shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules. The parties agree that any ambiguity in this Contract shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. This Contract supersedes and replaces any previous separately executed HIPAA addendum between the parties.
14. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 4(d) ("Effect of Termination") and Section 12 ("No Third-Party Beneficiaries") shall survive termination of this Contract and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate. This Addendum shall remain in effect during the term of the Contract including any extensions.
15. Representatives and Notice.
 - a. Representatives. For the purpose of the Contract, the individuals identified elsewhere in this Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties' respective representatives for purposes of this Contract. Either party may from time to time designate in writing new or substitute representatives.
 - b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

State/Covered Entity Representative

Contractor/Business Associate Representative

Name: _____

Name: _____

Title: _____

Title: _____

Department and Division: _____

Department and Division: _____

Address: _____

Address: _____

ATTACHMENT B.3 – HIPAA BAA ATTACHMENT

This **Attachment B.3 – HIPAA BAA Attachment** is part of that certain contract, CMS # 162442 (“Contract”), by and between Lexmark International, Inc. (“Contractor”) and the State of Colorado acting by and through the Governor’s Office of Information Technology (“State” or “OIT”). In the event of a conflict or inconsistency between the Contract and its Exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified in §8 of the main body of the Contract. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Contract and its Exhibits.

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the Contract, and is effective as of the Effective Date of the Contract (the “Attachment Effective Date”). This Attachment may be amended from time to time.

1. Additional Permitted Uses. In addition to those purposes set forth in the Addendum, Associate may use Protected Information as follows: N/A
2. Additional Permitted Disclosures. In addition to those purposes set forth in the Addendum, Associate may disclose Protected Information as follows: N/A
3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract: Refer to Exhibit C of the Master Agreement
4. Receipt. Associate’s receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows, and Associate’s obligations under the Addendum shall commence with respect to such PHI upon such receipt: Ongoing throughout life of Contract
5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: N/A
6. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]* N/A

ATTACHMENT B.4 – FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICES SECURITY ADDENDUM

Legal Authority for and Purpose and Genesis of the Security Addendum

Traditionally, law enforcement and other criminal justice agencies have been responsible for the confidentiality of their information. Accordingly, until mid-1999, the Code of Federal Regulations Title 28, Part 20, subpart C, and the National Crime Information Center (NCIC) policy paper approved December 6, 1982, required that the management and exchange of criminal justice information be performed by a criminal justice agency or, in certain circumstances, by a noncriminal justice agency under the management control of a criminal justice agency.

In light of the increasing desire of governmental agencies to contract with private entities to perform administration of criminal justice functions, the FBI sought and obtained approval from the United States Department of Justice (DOJ) to permit such privatization of traditional law enforcement functions under certain controlled circumstances. In the Federal Register of May 10, 1999, the FBI published a Notice of Proposed Rulemaking, announcing as follows:

1. Access to CHRI [Criminal History Record Information] and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized. In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity

and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to properly perform services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

Consistent with such intent, Title 28 of the Code of Federal Regulations (C.F.R.) was amended to read:

§ 20.33 Dissemination of criminal history record information.

- a) Criminal history record information contained in the Interstate Identification Index (III) System and the Fingerprint Identification Records System (FIRS) may be made available:
 - 1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies.
 - 2) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and
 - 3) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

This Security Addendum, appended to and incorporated by reference in a government-private sector contract entered into for such purpose, is intended to insure that the benefits of privatization are not attained with any accompanying degradation in the security of the national system of criminal records accessed by the contracting private party. This Security Addendum addresses both concerns for personal integrity and electronic security which have been addressed in previously executed user agreements and management control agreements.

A government agency may privatize functions traditionally performed by criminal justice agencies (or noncriminal justice agencies acting under a management control agreement), subject to the terms of this Security Addendum. If privatized, access by a private contractor's personnel to NCIC data and other CJIS information is restricted to only that necessary to perform the privatized tasks consistent with the government agency's function and the focus of the contract. If privatized the contractor may not access, modify, use or disseminate such data in any manner not expressly authorized by the government agency in consultation with the FBI.

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CHS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as "security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information."

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1. Definitions

- 1.1.** Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.
- 1.2.** Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

2. Responsibilities of the Contracting Government Agency

- 2.1.** The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CHS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).

3. Responsibilities of the Contractor

- 3.1.** The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

4. Security Violations

- 4.1.** The CGA must report security violations to the CHS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.
- 4.2.** Security violations can justify termination of the appended agreement.

4.3. Upon notification, the FBI reserves the right to:

- a.** Investigate or decline to investigate any report of unauthorized use;
- b.** Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CJA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5. Audit

- 5.1.** The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6. Scope and Authority

- 6.1.** This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.
- 6.2.** The following documents are incorporated by reference and made part of this agreement: **(1)** the Security Addendum; **(2)** the NCIC 2000 Operating Manual; **(3)** the CJIS Security Policy; and **(4)** Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.
- 6.3.** The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CHS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.
- 6.4.** This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.
- 6.5.** All notices and correspondence shall be forwarded by First Class mail to:

Assistant Director
Criminal Justice Information Services Division, FBI
1000 Customer Hollow Road
Clarksburg, West Virginia 26306

**FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES
SECURITY ADDENDUM**

CERTIFICATION

I hereby certify that I am familiar with the contents of **(1)** the Security Addendum, including its legal authority and purpose; **(2)** the NCIC Operating Manual; **(3)** the CJIS Security Policy; and **(4)** Title 28, Code of Federal Regulations, Part 20, and agree to be bound by their provisions.

I recognize that criminal history record information and related data, by its very nature, is sensitive and has potential for great harm if misused. I acknowledge that access to criminal history record information and related data is therefore limited to the purpose(s) for which a government agency has entered into the contract incorporating this Security Addendum. I understand that misuse of the system by, among other things: accessing it without authorization; accessing it by exceeding authorization; accessing it for an improper purpose; using, disseminating or re-disseminating information received as a result of this contract for a purpose other than that envisioned by the contract, may subject me to administrative and criminal penalties. I understand that accessing the system for an appropriate purpose and then using, disseminating or re-disseminating the information received for another purpose other than execution of the contract also constitutes misuse. I further understand that the occurrence of misuse does not depend upon whether or not I receive additional compensation for such authorized activity. Such exposure for misuse includes, but is not limited to, suspension or loss of employment and prosecution for state and federal crimes.

Printed Name/Signature of Contractor Employee

Date

Printed Name/Signature of Contractor Representative

Date

Organization and Title of Contractor Representative

Date

EXHIBIT C, STATEMENT OF WORK

1. GOODS AND/OR SERVICES

Contractor shall provide Goods and Services per §4, Statement of Work, of the Master Agreement, contract # 140601, 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 D, PRICE LISTS

1. Contractor has been awarded the following categories:

- Group B – MFD, A4
- Group D – Single-function Printers
- Managed Print Services (MPS)

2. The price lists are located on the State’s dedicated contract 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 on the dedicated state website.

3. Pricing

The price lists contain Ceiling Prices. 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 an Authorized Dealer to charge an amount greater than the Ceiling Price for any Order.

ATTACHMENT 1, LEXMARK MASTER LEASE AGREEMENT TERMS AND CONDITIONS

LESSEE: _____

Master Lease Agreement

This Master Lease Agreement ("Agreement") is dated as of this

_____, 20____, and is by and between Lexmark Financial Services, LLC, 1111 Old Eagle School Road, Wayne, Pennsylvania 19087 ("Lessor") and the Lessee identified above ("Lessee").

The words "you" and "your" refer to the "Lessee" and the words "we", "us" and "our" refer to the Lessor. Please read your copy of this Agreement carefully and feel free to ask us any questions you may have about it.

1. LEASE: This Agreement establishes the general terms and conditions under which we may from time to time lease Equipment (as hereinafter defined) to you. The terms of this Agreement shall be deemed to form a part of each Schedule (the form of which is attached hereto as Exhibit A) executed by you and us which references this Agreement. "Equipment" shall mean all items of equipment described in any Schedule. You may issue Purchase Orders that incorporate by reference this Master Lease Agreement and if so incorporated by reference, each such Purchase Order will constitute a Schedule for the purposes of this Master Lease Agreement. Each Schedule shall constitute a separate Lease Agreement ("Lease") incorporating all of the terms of this Agreement. In the event of a conflict between the provisions of this Lease and the provisions of this Agreement, the provisions of the Lease shall prevail, providing they do not conflict with the applicable leasing language in the NASPO ValuePoint Master Agreement, in which case, the NASPO ValuePoint Master Agreement language shall prevail.

2. TERM AND RENT: This Agreement shall become effective upon acceptance and execution by us and shall remain effective at least until the expiration of the last Lease term under any Schedule. Each Lease is effective on the date that it is accepted and signed by us, and the term of each Lease begins on that date or any later date that we designate (the "Commencement Date") and continues thereafter for the number of months indicated on the Lease. Lease Payments will be due as invoiced by us until the balance of the Lease Payments and any additional Lease Payments or expenses chargeable to you under the Lease are paid in full. Your obligation to pay the Lease Payments and other Lease obligations are absolute and unconditional and are not subject to cancellation, reduction, setoff or counterclaim, except as otherwise stated in this Agreement. All payments will be made to us at the above address we indicate in writing. **THIS AGREEMENT AND ALL LEASES ARE NON-CANCELABLE except as** specified under the NASPO ValuePoint Master Agreement Non-appropriation of Funds clause, Section 4.5.7(f). The amount of each Lease Payment is based on the supplier's best estimate of the Equipment cost including (if applicable), any installation, other related costs and estimated sales or use tax, and per the pricing in the NASPO ValuePoint Master Agreement. The Lease Payments will be adjusted proportionately upward or downward if the actual total cost of the Equipment or taxes is more or less than the estimate, but at no time will the pricing exceed that in the NASPO ValuePoint Master Agreement.

3. LATE CHARGES/DOCUMENTATION FEES: If a Lease Payment is not made within 15 days of the due date, you will pay us a late charge of 1% of the total amount due.

4. DELIVERY AND ACCEPTANCE: The costs of delivery and installation of the Equipment are included in the cost of the Equipment. If requested, you will sign a separate Equipment delivery and acceptance certificate.

5. SELECTION OF EQUIPMENT/DISCLAIMER OF WARRANTIES: You have selected the Equipment and the supplier from whom we agree to purchase the Equipment at your request. We are not the manufacturer of the Equipment and we are leasing the Equipment to you "AS-IS". You have selected the Equipment and we MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. We transfer to you for the term of a Lease all warranties, if any, made by the manufacturer. YOU ALSO ACKNOWLEDGE THAT NO ONE IS AUTHORIZED TO WAIVE

OR CHANGE ANY TERM, PROVISION OR CONDITION OF THIS AGREEMENT OR ANY LEASE AND EXCEPT FOR THE MANUFACTURER WARRANTIES, MAKE ANY REPRESENTATION OR WARRANTY ABOUT A LEASE OR THE EQUIPMENT. WE SHALL NOT BE LIABLE FOR ANY DELAYS IN MAKING DELIVERIES OR REPAIRS NOR IN ANY EVENT FOR SPECIAL, RESULTING OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT OCCASIONED BY ANY BREACH OF WARRANTY OR REPRESENTATION OR RESULTING FROM THE USE OR PERFORMANCE OF THE EQUIPMENT. YOUR OBLIGATION TO PAY IN FULL ANY AMOUNT DUE UNDER A LEASE WILL NOT BE AFFECTED BY ANY DISPUTE, CLAIM, COUNTERCLAIM, DEFENSE OR OTHER RIGHT WHICH YOU MAY HAVE OR ASSERT AGAINST THE SUPPLIER OR THE EQUIPMENT MANUFACTURER.

6. TITLE, PERSONAL PROPERTY, LOCATION AND INSPECTION: Unless you have a \$1.00 purchase option, we will have title to the Equipment. If you have a \$1.00 purchase option and/or the Lease is deemed to be a security agreement, you grant us a security interest in the Equipment and all proceeds thereof. You have the right to use the Equipment for the full Lease term provided you comply with the terms and conditions of the Lease. Although the Equipment may become attached to real estate, it remains personal property and you agree not to permit a lien to be placed upon the Equipment or to remove the Equipment without our prior written consent. If we feel it is necessary, you agree to provide us with waivers of interest or liens, from anyone claiming any interest in the real estate on which any item of Equipment is located. We also have the right, at reasonable times, to inspect the Equipment.

7. USE, MAINTENANCE AND REPAIR: You are required, at your own cost and expense, to keep the Equipment in good repair, condition and working order, except for ordinary wear and tear, and you will supply all parts and servicing required. All replacement parts used or installed and repairs made to the Equipment will become our property. You may, with our prior written consent, make modifications to the Equipment; provided such modifications do not reduce the value or usefulness of the Equipment or result in the loss of any warranty or any certification necessary for the maintenance of the Equipment and such modifications must be easily removable without causing damage to the Equipment. Before returning the Equipment, you agree to remove such modifications and restore the Equipment to its original condition. If you fail to remove such modifications, we are deemed the owner of such modifications. IN THE EVENT THE LEASE PAYMENTS INCLUDE THE COST OF MAINTENANCE AND/OR SERVICE BEING PROVIDED BY THE SUPPLIER AND/OR THE MANUFACTURER, YOU ACKNOWLEDGE THAT WE ARE NOT RESPONSIBLE FOR PROVIDING THIS AGREEMENT AND ANY REQUIRED MAINTENANCE AND/OR SERVICE FOR THE EQUIPMENT. YOU WILL MAKE ALL CLAIMS FOR SERVICE AND/OR MAINTENANCE SOLELY TO THE SUPPLIER. AND/OR MANUFACTURER AND SUCH CLAIMS WILL NOT AFFECT YOUR OBLIGATION TO MAKE ALL REQUIRED LEASE PAYMENTS.

8. ASSIGNMENT: YOU AGREE NOT TO TRANSFER, SELL, SUBLEASE, ASSIGN, PLEDGE OR ENCUMBER EITHER THE EQUIPMENT OR ANY RIGHTS UNDER THIS AGREEMENT AND ANY LEASE WITHOUT OUR PRIOR WRITTEN CONSENT (WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD). You agree that we may not sell, assign or transfer any Lease without notice to you, and if we do, the new owner or assignee will have the same rights and benefits that we now have but will not have to perform any of our obligations and that the rights of the new owner or assignee will not be subject to any claims, defenses, or set-offs that you may have against us. Any such assignment, sale or transfer of a Lease or the Equipment will not relieve us of our obligations to you under the Lease.

9. REDELIVERY AND RENEWAL: Upon at least sixty (60) days but not more than ninety (90) days prior to the expiration of the Lease term, we shall advise you of the end of the Lease term options available to you in writing (email will be sufficient for a writing). Provided you have given thirty (30) days written notice, you shall exercise your option to i) purchase the Equipment, ii) renew the Lease on a month to month basis, or iii) return (or make available) the Equipment to us in good repair, condition and working order, ordinary wear and tear excepted. If you fail to notify us, you will immediately make the Equipment available to us, in as good repair, condition and working order, ordinary wear and tear excepted.

10. LOSS OR DAMAGE: You are responsible for the risk of loss or destruction of, or damage to the Equipment while the Equipment is in your possession. No such loss or damage relieves you from any obligation under a Lease. You agree to promptly notify us in writing of any loss or destruction or damage to the Equipment and you will, at our option, (a) repair the Equipment to good condition and working order, (b) replace the Equipment with like Equipment in good repair, condition and working order, acceptable to us and

transfer clear title to such replacement Equipment to us, such Equipment shall be subject to the Lease and be deemed the Equipment, or (c) pay to us the present value of the total of all unpaid Lease Payments for the full Lease term, plus the estimated fair market value of the Equipment at the end of the originally scheduled Lease term or any End of Lease Option price stated on the Lease ("Residual"), with the accelerated Lease Payments and the Residual discounted at the lesser of (a) a per annum interest rate equivalent to that of a U.S. Treasury constant maturity obligation (as reported by the U.S. Treasury Department) that would have a repayment term equal to the remaining Lease term, all as reasonably determined by us, or (b) 3% per annum (the "Present Value Rate"), whereupon the Lease shall terminate. All proceeds of insurance received by us as a result of such loss or damage will be applied, where applicable, toward the replacement or repair of the Equipment or the payment of your obligations.

11. TAXES: You agree to pay all license and registration fees, sale and use taxes, personal property taxes and all other taxes and charges, relating to the ownership, leasing, rental, sale, purchase, possession or use of the Equipment. If we are required to file and pay property tax, you agree to either (a) reimburse us for all personal property and other similar taxes and governmental charges associated with ownership, possession, or use of the Equipment when billed by jurisdictions; or (b) remit to us each billing period a pro-rated equivalent of such taxes and governmental charges not to exceed 0.363% of the Equipment cost per month as part of the Lease Payment. You agree that if we pay any taxes or charges on your behalf, you will reimburse us for all such payments.

12. INSURANCE: During the term of each Lease, you are responsible for providing protection of the Equipment from damage, destruction or loss of any kind. If the Equipment is damaged, destroyed or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense. You agree to cooperate with us and any insurer in the placement of coverage and any claims thereunder. You will provide property insurance to cover the Equipment through self-insurance or otherwise.

13. DEFAULT: You are in default of this Agreement and any Lease if any of the following occurs: a) you fail to pay any Lease Payment or other sum within forty-five (45) days of when due; b) you breach any representation warranty or other obligation under this Agreement and this failure continues for forty-five (45) days after we notify you of default; c) any guarantor dies, stops doing business as a going concern or transfers all or substantially all of such guarantor's assets, make an assignment for the benefit of creditors and/or you become insolvent or unable to pay your debts when due; you stop doing business as a going concern; you merge, consolidate, transfer all or substantially all of your assets; you make an assignment for the benefit of creditors or you undergo a substantial deterioration in your financial condition; or d) you, voluntarily file or have filed against you involuntarily, a petition for liquidation, reorganization, adjustment of debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator is appointed for you or it or a substantial part of your or its assets.

14. REMEDIES: We have the following remedies if a default should occur: a) Upon written notice, declare the entire balance of the unpaid Lease Payments for the full term immediately due and payable; and you agree to compensate us, by paying, the sum of: (i) all past due and current Lease Payments (or other periodic payments) and charges due under the applicable Lease Agreement (ii) the present value of all remaining Lease Payments (or other periodic payments) and charges for the remainder of the term of such Lease, discounted at the rate of four percent (4%) per annum; and (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the initial term of such Lease (or any renewal thereof); and with respect to any software, (i) immediately terminate your right to use the software including the disabling (on-site or by remote communication) of any software; (ii) demand the immediate return and obtain possession of the software and re-license the software at a public or private sale; and/or (iii) cause the software supplier to terminate the software license, support and other services under the software license; b) Charge you interest on all monies due us at the rate of one percent (1%) per month from the date of default until paid; and c) Require that you return the Equipment to us and in the event you fail to return the Equipment, enter upon the premises peaceably with or without legal process where the Equipment is located and repossess the Equipment. Such return or repossession of the Equipment will not constitute a termination of a Lease unless we expressly notify you in writing. In the event the Equipment is returned or repossessed by us and unless we have terminated the Lease, we will sell or re-rent the Equipment to any persons with any terms we determine, at one or more public or private sales, with or without notice to you, and apply the net proceeds after deducting the costs and expenses of such sale or re-rent, to your obligations with you remaining liable for

any deficiency and with any excess being retained by us. The credit for any sums to be received by us from any such rental shall be discounted to the date of the agreement at six percent (6%) per year. You agree that any delay or failure to enforce our rights under this Agreement or any Lease does not prevent us from enforcing any rights at a later time.

15. PURCHASE OPTION: Upon expiration of the Lease term, provided you are not in default, you shall have the option to purchase all but not less than all of the Equipment on the terms as indicated in the End of Lease Options checked off on the Lease. We will use our reasonable judgment to determine the Equipment's fair market value for all FMV purchase options which shall be based on the Equipment remaining in place.

16. RESERVED.

17. WARRANTY OF BUSINESS PURPOSE: You warrant and represent that the Equipment will be used for business purposes, and not for personal, family or household purposes.

18. UCC FILINGS AND FINANCIAL STATEMENTS: You authorize us to file a financing statement with respect to the Equipment signed by us where permitted by the Uniform Commercial Code ("UCC") and grant us the right to sign such financing statement on your behalf. The filing of a financing statement is not to be construed as evidence that any security interest was intended to be created, but only to give public notice of our ownership of the Equipment. If a Lease is deemed at any time to be one intended as security then you grant us a security interest in the Equipment and the proceeds from the sale, rent or other disposition of the Equipment. If we feel it is necessary, you agree to submit financial statements (audited if available) on a quarterly basis.

19. NOTICE: Written notices will be deemed to have been given when delivered personally, via e-mail or deposited in the United States mail, postage prepaid, addressed to the recipient at its address above or at any other address subsequently provided in writing.

20. UCC — ARTICLE 2A PROVISIONS: You agree that each Lease is a Finance Lease as that term is defined in Article 2A of the UCC. You acknowledge that we have given you the name of the Supplier of the Equipment. We hereby notify you that you may have rights under the contract with the Supplier and you may contact the Supplier for a description of any rights or warranties that you may have under this supply contract. You also waive any and all rights and remedies granted you under Sections 2A-508 through 2A-522 of the UCC including, but not limited to: the right to repudiate the Lease and reject the Equipment; the right to cancel the Lease; the right to revoke acceptance of the Lease; the right to grant a security interest in the Equipment in your possession and control for any reason; or the right to recover damages for any breach of warranty.

21. CHOICE OF LAW: This Agreement and each Lease was made in the State of Colorado; and they are to be performed in the State of Colorado. This Agreement and each Lease shall in all respects be interpreted and all transactions subject to this Agreement and each Lease and all rights and liabilities of the parties under this Agreement and each Lease shall be determined and governed as to their validity, interpretation, enforcement and effect by the laws of the State of Colorado. You consent to and agree that non-exclusive jurisdiction, personal or otherwise, over you and the Equipment shall be with the Courts of the City and County of Denver with respect to any provision of this Agreement or any Lease. YOU ALSO IRREVOCABLY WAIVE YOUR RIGHT TO A TRIAL BY JURY.

22. SEVERABILITY; WAIVERS: No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provision of this Agreement and each Lease which for any reason may be held unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Agreement and each Lease.

23. FACSIMILE DOCUMENTATION: You agree, upon our request, to submit the original of this Agreement and any schedules to the Lessor via overnight courier the same day of the facsimile or other electronic transmission of the signed Agreement and such schedules. Both parties agree that this Agreement and any schedules signed by you, whether manually or electronically, and submitted to us by facsimile or other electronic transmission shall, upon execution by us (manually or electronically, as applicable), be binding upon the parties. This lease may be executed in counterparts and any facsimile, photographic and/or other electronic transmission of this lease which has been manually or electronically signed by you when manually or electronically countersigned

by us or attached to our original signature counterpart and/or in our possession shall constitute the sole original chattel paper as defined in the UCC for all purposes (including any enforcement action under paragraph 22) and will be admissible as legal evidence thereof. Both parties waive the right to challenge in court the authenticity of a faxed, photographic, or other electronically transmitted or electronically signed copy of this Agreement and any schedule.

24. NON-APPROPRIATION: (Applicable only if the Lessee is a State or political subdivision of a State) You are obligated only to pay such Lease Payments under any Schedule to this Agreement as may lawfully been made from funds budgeted and appropriated for that purpose during your then current fiscal year. In the event you have requested and sufficient funds shall not be appropriated or are not otherwise legally available to pay the Lease Payments required to be paid in the next fiscal year, the Schedule shall be deemed to be terminated at the end of the current fiscal year. You agree to deliver written notice to us of such termination, but failure to give such notice shall not extend the Lease Schedule term beyond the current fiscal year. If a Schedule is terminated in accordance with this Section, you agree to peaceably deliver the Equipment to us at the location or locations specified by us.

ATTACHMENT 2, LEXMARK MPS STATEMENT OF WORK TEMPLATE

TEMPLATE STATEMENT OF WORK
for
NASPO VALUEPOINT MASTER AGREEMENT # 140601
PARTICIPATING ADDENDUM # 162442
between
LEXMARK INTERNATIONAL, INC.
and
PURCHASING ENTITY

This Statement of Work (the “SOW”), effective as of _____ (the “Effective Date”), is intended to be one of several Statements of Work to become effective under NASPO ValuePoint Master Agreement # 140601 / Participating Addendum # between Lexmark International, Inc. (“Lexmark”) and _____ (“Customer” or “Purchasing Entity”) 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

“Assessment Services” means the services as described in Section 4.0 of this SOW.

“Asset Management Services” means the services described in Section 8.0 of this SOW.

“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 agreed upon holiday provided in writing each year of the Initial Term), unless otherwise specifically agreed herein.

“Consumables” means Lexmark toner cartridges and other supply items, excluding Media.

“Consumables Management” means the services as described in Section 9.0 of this SOW.

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

“Deployment and Governing Principles” means as defined in Section 4.0.

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

“Install Protocol” means Lexmark’s installation partner has confirmed installation of Output Device is complete in accordance with Section 5.6.

“Initial Term” means as defined in the Master Service Agreement.

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

“Maintenance Services” means as services as described in Section 10.0 of this SOW.

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

“Media” means paper, check stock, transparencies, labels, envelopes, and any other item not included in the definition of Consumables, as outlined above.

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

“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 or Customer collectively.

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

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

“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 Lexmark will provide Output Devices, Consumables, and Services as defined herein and in accordance with the Agreement and this SOW to Customer. The Services to be provided by Lexmark include the following:

- a) Governance
- b) Assessment Services
- c) Implementation Services
- d) Training Services
- e) Asset Management Services
- f) Consumables Management
- g) Maintenance Services

3.0 GOVERNANCE

3.1 Project Governance

- 3.1.1 Lexmark may, in the normal course of business, use subcontractors or agents to provide any or all of the Services outlined herein.
- 3.1.2 Lexmark will appoint a project manager as the primary point-of-contact to Customer for coordination of Output Device installation and implementation of Services and a Customer Operations Manager (COM) for the ongoing delivery of Services during steady state. Customer shall appoint a project manager as the primary point-of-contact to Lexmark for coordination and delivery of Services.
- 3.1.3 Services will be implemented in an agreed upon timeframe utilizing an agreed upon project plan. The project managers for each Party shall agree upon the project plan. It is a Lexmark

responsibility to schedule the Customer contract launch meeting for an agreed upon time, date and location. As part of the project plan, Lexmark will assist Customer in developing a communication strategy whereby Customer will communicate program elements and benefits to Customer users. All changes to the project plan or the Services will be governed by the Change Control Process as defined in Section 3.1.5 and 3.1.6.

- 3.1.4 The agreed upon project plan will detail a planning phase, which is representative of the time required for Lexmark and Customer to set up the infrastructure and processes in order prior to Operational Readiness. It is contemplated that Operational Readiness will occur within _____ days from the Effective Date.
- 3.1.5 The Parties may desire to modify the scope of effort herein during the Initial Term. The Party desiring to modify this SOW shall fill out and submit to the other Party, a Change Request Form substantially as outlined in Attachment C hereto. The Change Request Form shall describe the required change, the reason for the change, and the effect the change is expected to have on the project.
- 3.1.6 Completed Change Request Forms should be submitted from the requesting project manager to the project manager of the other Party for review and consideration. Customer and Lexmark agree to review the proposed modification and will either accept, modify or reject the requested change within five (5) Business Days. Authorized representatives of Customer and Lexmark must agree in writing on any adjustment in price resulting from an agreed upon change in scope, prior to implementing the change.
- 3.1.7 Customer agrees to participate in Lexmark deployment survey process in order to provide feedback on Lexmark performance.

4.0 ASSESSMENT SERVICES (OPTIONAL)

- 4.1 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 and Governing Principles to the Customer Locations, Existing Devices, and data points covered by the scope of this Agreement. Deployment and Governing Principles for future state design will consider such factors as:
 - a) Physical layout
 - b) Work environment
 - c) People to device ratio
 - d) Volume
- 4.2 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 collected 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 and Governing Principles,

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

4.3 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 type, placement, and count based on Deployment and Governing Principles.

4.4 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,
- 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.

5.0 IMPLEMENTATION SERVICES

- 5.1** Customer will provide Lexmark with written authorization in the form of a purchase order as described in Section 11.2 to begin Implementation Services including the provision of all Output Devices.
- 5.2** The locations and timing of the installation during Business Days will be agreed to in writing between the Customer and Lexmark. Customer will provide Lexmark with contact details of all key Customer personnel responsible for implementation at each Customer Location.
- 5.3** If Customer delays, postpones, reschedules, or cancels any scheduled installation with less than five (5) Business Days' notice, Customer will be invoiced for any charges incurred by Lexmark on a pass-through basis.

5.4 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) Connection of the Output Devices to the Customer network,
- f) Dunnage and pallet removal.

5.5 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 4.0 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,
- c) 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,
- d) 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,
- e) Installation of the printer queues and Printer Drivers,
- f) Signing and providing to Lexmark, the site readiness document as specified in the project plan.

5.6 For the purpose of implementing an "Install Protocol" to begin Services, Customer shall acknowledge acceptance of installation and asset information at time of install. Lexmark will ask Customer to sign a Lexmark-provided acceptance document at point and time of install. Dependent upon the nature and length of the implementation, Customer will be provided a report of installed Output Devices upon completion of the rollout.

5.7 At the expiration or termination of the Initial Term of an Output Device, Customer will ship the Output Devices at Lexmark's expense, to locations specified by Lexmark, within twenty (20) Business 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,
- d) Freight carrier return tracking information including carrier name & tracking number.

6.0 DRIVER DEPLOYMENT

6.1 With respect to Printer Drivers:

- a) Lexmark will provide the Printer Drivers and recommended Printer Drivers configurations for Customer,
- b) Customer will be responsible for distributing the Printer Drivers to the appropriate workstations,
- c) Customer will be responsible for all workstation software including the loading of Printer Driver(s) for Managed Output Devices and Existing Devices.

7.0 TRAINING SERVICES

7.1 Prior to installation of Output Devices, Lexmark will provide Frequently Asked Questions (“FAQ”) and Quick Reference Guide (“QRG”) documentation on Output Devices in electronic format for Customer to distribute to end users.

7.2 End User Training

7.2.1 Lexmark will provide a 1 hour training session at each Customer Location at the time of installation where floor-standing Output Devices have been installed, including basic operational functionality of the Output Device, toner and paper replenishment, walkup FAX and copy, and how to print an Output Device test/setup page.

7.2.2 Customer shall ensure that all appropriate personnel will attend and actively participate in the training.

7.3 Help Desk Training

7.3.1 Lexmark will provide:

- a) Training in the local language,
- b) Training covering basic functionality and troubleshooting of Managed Output Devices,

7.3.2 Customer will provide:

- a) At least ten (10) Business Days’ notice to allow for the creation of custom training materials,
- b) Access to at least one each of the Managed Output Device types,
- c) PC projection system,
- d) Access to LAN connectivity with internet access,
- e) Access to Web conferencing software,
- f) Conference room space appropriate for the number of attendees.

8.0 ASSET MANAGEMENT SERVICES

8.1 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 hierarchy level data (“CHL”),
- b) Customer Location physical address information,
- c) Key contact information including email and phone numbers,

d) IP address or Host name.

8.2 Lexmark cannot provide Services until Customer fulfills obligations as outlined in Section 8.1 and upon Operational Readiness.

8.3 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 in accordance with a form provided by Lexmark.

8.4 LEXMARK DATA COLLECTION MANAGER

8.4.1 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.

8.4.2 Customer and Lexmark 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. If a virtual hardware platform is implemented, at the time of any incident affecting the operations of LDCM, Lexmark and Customer will attempt to resolve the incident and if unable to, LDCM will be installed on network connected hardware. Customer will either obtain support from Lexmark on that platform if the issue is replicated, or make the move to the network connected hardware permanent if the issue is not replicated.

8.4.3 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.

8.4.4 The continuation of Services may require manual processes to be implemented by both Customer and Lexmark upon mutual agreement. Any changes will be addressed using the change control process as described in Section 3.1.5 and 3.1.6.

8.4.5 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.

8.4.6 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.

- 8.4.7 Customer will provide Lexmark with secure remote access to the LDCM for Lexmark to perform troubleshooting and maintenance tasks. Customer will provide Lexmark outbound access to the internet from the LDCM server via port 443 to transmit data to the Lexmark operations team via HTTPS. Customer will also provide Lexmark physical access to the LDCM server upon request.
- 8.4.8 Firewalls, if any, 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 firewall(s). Lexmark will be responsible for aggregation of data if the information has to be collected on multiple instances.
- 8.4.9 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.
- 8.4.10 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, the Customer agrees to assist Lexmark in updating the embedded firmware of the Managed Output Devices.

9.0 CONSUMABLES MANAGEMENT

9.1 Lexmark will:

- a) When technically possible, detect the need for Consumables for Managed Output Devices via the LDCM,
- b) Validate the alert against a set of business rules ensuring Consumables are ordered and shipped only for Managed Output Devices, intending to avoid duplicate orders,
- c) Provide a manual order process for Consumables via a Lexmark web portal in the event automated order generation is not technically possible.

9.2 Customer will:

- a) Provide Lexmark updated contact information for key Customer supplies personnel for the duration of this SOW,
- b) Receive all Consumables 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 toner cartridges to Lexmark for recycling as cartridges are licensed for one use by Customer,
- e) Return all used toner cartridges to Lexmark via the Lexmark Cartridge Collection Program,
- f) Not grant, bargain, sell or otherwise convey toner cartridges provided by Lexmark to any third party.

9.3 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 Initial Term or any Renewal

Term of the SOW, 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 multiplied by the Price per Page for the applicable Managed Output Device, as indicated for each Managed Output Device in Attachment A, and per the pricing in the NASPO ValuePoint Master Agreement. 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.

9.3.1 Color Managed Output Devices are subject to the same reconciliation process for each of the four color cartridges utilized.

10.0 MAINTENANCE SERVICES

10.1 Lexmark will provide a Next Business Day (where available) on-site restore Maintenance Service support model for Managed Output Devices.

10.2 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) Escalate 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:
 - o Managed Output Device serial number,
 - o Managed Output Device model type,
 - o Error code message as seen on the Managed Output Device user panel,
 - o 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.

10.3 Lexmark will:

- a) Provide a toll free and designated call routing number to Customer for Maintenance Services,
- b) Determine the specific cause of the Managed Output Device incident,
- c) Initially, provide for resolution of the incident remotely, or,
- d) Schedule technician arrival on-site on the next Business Day (where available),
- e) Resolve incident through on-site repair or replace the Managed Output Device at Lexmark discretion,
- f) Be responsible for the shipping charges related to the exchange and the return of the original Managed Output Device replaced,
- g) Ship and install preventative maintenance kits in accordance with Lexmark-recommended maintenance kit intervals.

10.5 For incidents received prior to the local cutoff time (at the location of the Managed Output Device), if Lexmark is unable to resolve an incident via telephone, Lexmark shall dispatch a service

technician to the Customer Location for next Business Day arrival to repair or replace the relevant Managed Output Device. For calls received after the local cutoff time, Lexmark will dispatch a service technician for arrival on the second Business Day to repair or replace the relevant Managed Output Device.

- 10.6** Lexmark reserves the right to service exchange Managed Output Devices with new or refurbished Output Devices. All shipments for service exchange of Managed Output Devices will be based on the availability of replacement Output Devices and shall be shipped to Customer via the most expedient means available; Lexmark will arrange for courier-service pick up of the original Managed Output Device for shipment to Lexmark.
- 10.7** 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.
- 10.8** Next Business Day ("NBD") restore service is not available in all areas. Locations may be subject to review. Customer Locations where Lexmark cannot provide a NBD service response are listed in Attachment B along with the service level target.
- 10.9** 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.

11.0 FEES AND PRICING

- 11.1** Ordering will 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 Master Service Agreement and Statement of Work dated _____, 20____."
 - m) Authorized signature on the PO.
- 11.2** Customer will provide Lexmark with an annual PO no later than December for the annuity billing of the following year. If the Customer fails to meet this obligation, Lexmark will invoice for the Services, and the initial invoice date will serve as the start date for the agreed upon payment terms.
- 11.3** Customer agrees to order, install, and designate as a Managed Output Device a total minimum of number Output Devices under this SOW within a designated number of months from the Effective Date. If Customer fails to meet this obligation, Lexmark reserves the right to adjust pricing, in

accordance with the pricing in the NASPO ValuePoint Master Agreement. Lexmark agrees to review all such changes with Customer prior to such changes being implemented.

11.4 Lexmark will bill Customer per the terms of the Agreement. Such billing shall be retroactive to:

- a) The installation date of an Output Device,
- b) The date of Managed Output Device acceptance for an Existing Device designated as a Managed Output Device.

11.5 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.

11.6 Each month, for an Existing Device designated as a Managed Output Device, Lexmark will bill Customer for:

- a) The applicable Managed Output Device Recurring Charge for Services,
- b) Actual Volume produced on each Managed Output Device at the applicable Price per Page.

11.7 In the event that an Output Device is delivered to Customer but not installed within ten (10) Business Days, through no fault of Lexmark's, that Output Device shall be subject to invoicing as described in Section 11.5.

11.8 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 Attachment A may be made on mutual agreement of the Parties via the change control process defined in Section 3.1.5 and 3.1.6, and in accordance with NASPO ValuePoint Master Agreement pricing.

11.9 In the event that an Output Device is delivered to Customer but not installed within ten (10) Business Days, through no fault of Lexmark's, that Output Device will be deemed accepted and shall be subject to invoicing as described in Section 11.0 Fees and Pricing.

11.10 Pricing is as indicated in Attachment A - Pricing. Recurring Charges are specific to the model of Managed Output Device indicated. Any changes required to Attachment A may be made on mutual agreement of the Parties via the change control process defined in Section 3.1.5 and 3.1.6.

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

<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: Change Request Process Form

Change Request Number:	To be assigned by Lexmark
Requester Name:	
Requester Company Name:	
Date Requested:	
Response Requested By:	
Change Requested: Describe the change requested (the area of the project plan /schedule being modified, and the benefits of making the change)	Requestor to provide written explanation as to the change that is being requested and the benefits that making this change would provide.
Resources Required:	Lexmark to complete this section
Estimated Schedule Impact:	Lexmark to complete this section
Estimated Cost Impact:	Lexmark to complete this section
Date Change Request Received:	
Change Request Received by:	
Change Request Receipt Company:	
Request Accepted: (State next steps)	
Request Rejected: (State reason for rejection)	

ATTACHMENT D: Reporting

Name of Report	Description of report	Frequency of delivery
Impression Report – Device Utilization Report	This report shows Managed Output Device location, make, model, serial number, asset tag number, IP address, installation date, start date, starting page count, and volume for the specified time periods.	Monthly
Acquisition Report	This report contains the same fields as the Retirement/End of Term Register. It is used to show all Managed Output Devices active in the asset database during the specified time period under the Agreement.	Monthly
Asset Register	This report contains the same fields as the Retirement/End of Term Register. It is used to show all Managed Output Devices actively registered in the asset database under the Agreement.	Monthly
Billing Detail Report	This report shows the number of pages printed per Managed Output Device for the billing period as stated herein. This report also shows the variable amount Customer owes Lexmark for the pages printed on each Managed Output Device.	Monthly
Change Management Report	This report keys on the Managed Output Device serial number. If other fields tied to the asset record, such as IP address, location or org level, change, the Managed Output Device is listed on the report as a new install, move, IP change, hot spare, or removed.	Monthly
Missing Meter Read Report	This report lists all Managed Output Devices under contract where Meter Reads have not been reported. Separate reports are generated for Managed Output Devices whose Meter Reads are collected electronically as opposed to those Managed Output Devices whose Meter Reads are collected manually.	Monthly
Retirement/End of Term Register	This report provides detail on Managed Output Devices at the end of their deployment or contractual life during a specified time period. It shows the organizational hierarchy, location of the Managed Output Device, manufacturer, model, serial number, asset tag number, date and volume at last lifetime page count, IP address, installation date, start date, contract length, end date, and physical address.	Monthly

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. If we do not receive timely meter reads, then we may estimate them.

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 at any time 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 applicable SLA.

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. Failure to return the defective Equipment will result in a charge for the exchange machine. 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, 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 to compensate us.

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 NASPO ValuePoint 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.

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 due date; (b) you fail to observe or perform any other term, covenant, or condition of this Agreement and such failure continues for fifteen (15) days following receipt of written notice from us; or (c) a petition is filed by or against you under any bankruptcy or insolvency law.

If you are in default we may, at our option, do one or more of the following: (a) terminate this Agreement or any 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 (but not more than the lawful maximum rate) 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. **LIABILITY.** Our liability for actual damage from any cause will be limited to the greater of \$25,000 or the MSRP value of the Equipment that caused the damage. Neither party will be liable for any consequential, punitive, indirect, or incidental damage, including lost profits or savings. This limitation of liability shall apply only in excess of any insurance to be maintained under Section 12 of Exhibit A to the Participating Addendum, and no insurance policy shall be interpreted as being subject to any limitations of liability to this Agreement.
- 9. **NOTICES.** All notices and communications must be in writing and sent by certified mail, return receipt requested, 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.

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 State of Colorado.

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 SOFTWARE FINANCE AGREEMENT TERMS AND CONDITIONS

SOFTWARE FINANCE AGREEMENT

1. Agreement: You ("Obligor") agree to pay us ("Payee"), pursuant to this Agreement, the installment payments identified above for the System (defined as the equipment ("Equipment"), software ("Software") and the right to receive consulting, maintenance and other related services (collectively, "Support") listed above). Obligor is deemed to have unconditionally and irrevocably accepted the System on the date Obligor signs the delivery and acceptance certificate (the "Commencement Date"). The Agreement starts on the Commencement Date and the installment payments ("Payments") shall be payable in advance beginning on the Commencement Date or any later date designated by Payee and thereafter until all amounts are fully paid. OBLIGOR'S OBLIGATION TO PAY ALL PAYMENTS AND ANY OTHER SUMS DUE HEREUNDER SHALL BE ABSOLUTE, UNCONDITIONAL AND NONREFUNDABLE, AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SETOFF, DEFENSE, CLAIM, COUNTERCLAIM, INTERRUPTION, DEFERMENT OR RECOUPMENT, FOR ANY REASON WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY CLAIM THAT ANY SUPPLIER OR LICENSOR FAILED TO PERFORM, OR HAS BREACHED ANY OF ITS REPRESENTATIONS

OR WARRANTIES OR COVENANTS, UNDER ANY SOFTWARE AGREEMENT OR THE EXPIRATION, REVOCATION OR TERMINATION IN WHOLE OR IN PART OF ANY SOFTWARE AGREEMENT FOR ANY REASON OR ANY LICENSE OR THE LICENSES GRANTED UNDER ANY SOFTWARE AGREEMENT AND/OR ANY RELATED MAINTENANCE, SUPPORT AND/OR OTHER SERVICES AGREEMENT HAVE BEEN REVOKED OR OTHERWISE TERMINATED FOR ANY REASON. Accordingly, in the event of any breach or default under any Software Agreement, Obligor's sole remedy shall be against the licensor ("Licensor") under the Software Agreement. Obligor acknowledges and agrees that the License fee(s) ("License Fee") specified in Software Agreement was fully earned by Licensor when the Licensed Software was delivered and that the fee for Services ("Service Fee"), if any, specified in any Software Agreement will be fully earned in advance on the applicable payment due date set forth in the Software Agreement; provided, however, that Obligor may still pursue any warranty claims against Licensor (but not against Payee or any Assignee (defined below)) in accordance with the terms and conditions of the Software Agreement. Obligor will pay Payee a late charge of 1% of the payment, on any payment not made within 45 days of the due date.

2. Ownership: Obligor owns the System and grants Payee a security interest in the System and all proceeds thereof.

3. Warranty Disclaimer; Use and Maintenance: PAYEE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OF THE DESIGN OR CONDITION OF THE LICENSED SOFTWARE, ITS DURABILITY, OR NONINFRINGEMENT, THE QUALITY OF THE SERVICES OR THE MATERIAL OR WORKMANSHIP OF THE LICENSED SOFTWARE, OR THE CONFORMITY OF THE LICENSED SOFTWARE OR SERVICES TO THE PROVISIONS OR SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO, AND PAYEE HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES. To the extent made to Payee, we transfer to Obligor any manufacturer or provider warranties for the System. Obligor is required at Obligor's cost to keep the System in good working condition and to pay for all supplies and repairs. If the System includes the cost of Support provided by a third party, Obligor agrees that Payee is not responsible to provide the Support and Obligor will make all Support claims against the third party.

4. Assignment: Obligor may not transfer, sell, sublease, sublicense, assign, pledge hypothecate or otherwise transfer, dispose of or relinquish possession or control of or encumber either the System or any rights herein without our prior written consent (which consent shall not be unreasonably withheld). Obligor acknowledges and agrees that Payee and any Assignee may not sell, grant a security interest in, assign or otherwise transfer (collectively Transfer"), in whole or in part, this Agreement or any of its interests, rights or obligations with respect thereto, including without limitation any or all Payments and other sums due or to become due hereunder, to such third party as Payee or such Assignee, as applicable, in its discretion may select (each Payee transferee or assignee, together with any subsequent transferees or assignees, herein referred to as

“Assignee”) without notice to Obligor. Each Assignee shall have, to the extent provided in any Transfer document, Payee’s rights, powers, privileges and remedies with respect thereto, but shall not be obligated to Obligor to observe or perform any duty, covenant or condition required to be observed or performed by Payee or any Licensor or Supplier. No Transfer shall relieve Payee from any of its obligations to Obligor. OBLIGOR SHALL NOT ASSERT AGAINST ASSIGNEE ANY CLAIMS, DEFENSE, COUNTERCLAIM OR SETOFF THAT OBLIGOR MAY AT ANY TIME HAVE AGAINST PAYEE OR ANY SUPPLIER OR LICENSOR. Obligor shall pay Payee, or Assignee, as applicable, all amounts due and payable under this Agreement, but shall pursue any claims under any Software Agreement against only Licensor. Obligor agrees that, upon receipt of notice from Payee, or Assignee, as applicable, (i) it shall be bound by such Transfer, (ii) Payments shall be made to Assignee, (iii) Obligor shall promptly comply with, and (if requested) acknowledge in writing, such instructions, (iv) Assignee shall have and be entitled to exercise any and all rights and remedies of Payee hereunder, and (v) all references herein to Payee shall include Assignee. Unless a default has occurred and is continuing, neither Payee nor its Assignees will interfere with Obligor’s quiet enjoyment or use of the Licensed Software in accordance with the Software Agreement’s terms and conditions.

5. Risk of Loss and Insurance: Obligor is responsible for all System risk of loss and damage, while in Obligor’s possession, and if any loss or damage occurs Obligor is nonetheless required to satisfy all of Obligor’s obligations hereunder. Obligor will keep the System insured against all risks of loss or damage for an amount equal to its replacement cost. Obligor will list Payee as the sole insurance loss payee and give Payee written proof of insurance satisfactory to Payee. If Obligor does not provide such insurance, Obligor agrees that Payee has the right, but not the obligation, to obtain such insurance.

6. Taxes: Obligor is responsible for and agrees to pay when due, either directly or as reimbursement to Payee, all taxes (i.e., sales, use and personal property taxes) and charges in connection with the purchase, ownership and use of the System except for taxes or charges included in the Total Financed Amount.

7. Default and Remedies: Obligor is in default under this Agreement if: (i) Obligor fails to pay any amount within forty-five (45) days of when due; (ii) any representation or warranty made by Obligor proves to be false in any material respect when made; (iii) a material breach by Obligor of any provision of this Agreement (other than a breach covered by (i) above) where Obligor fails to correct such breach within forty-five 45 days of its receipt of written notice thereof; or (iv) Obligor shall commit an act of bankruptcy or become or be adjudicated insolvent or bankrupt or make an assignment for the benefit of creditors or become unable or admit in writing its inability to pay its debts as they become due, or a trustee receiver or liquidator shall be appointed for Obligor, or for a substantial part of its property, with or without its consent, or bankruptcy, arrangement, reorganization, composition, readjustment, liquidation, insolvency, dissolution or similar proceedings under any present or future statute, law or regulation shall be instituted by or against Obligor, Obligor shall file an answer admitting the material allegations of a petition filed against it in any such proceeding, or Obligor shall cease doing business as a going concern, or Obligor shall, without Payee’s prior consent, sell, transfer, pledge or otherwise dispose of all or any substantial part of its assets, or consolidate or merge with any other entity. If Obligor is in default Payee may: (i) declare the entire balance of unpaid payments for the full term immediately due and payable to Payee; (ii) and with respect to any software (a) immediately terminate your right to use the software including the disabling (on-site or by remote communication) of any software; (b) demand the immediate return and obtain possession of the software and re-license the software supplier at a public or private sale; and/or (c) cause the software supplier to terminate the software license, support and other services under the software license, support and other services under the software license; (iii) charge overdue account charges up to a maximum rate of one percent (1%) per month from the date of default until paid (iii) require that Obligor immediately return the System to Payee or Payee may peaceably repossess it if Obligor fails to return it to Payee, (iv) cause any Software or Support provider to terminate, as applicable, all of Obligor’s rights to use or have available, as applicable, any or all of any or all Software and/or Support and/or (v) pursue any rights or remedies available at law or in equity. Any return or repossession will not be considered a termination or cancellation of this Agreement. If the System is returned or repossessed Payee will sell, rent or otherwise dispose of the System at terms Payee determines, at one or more public or private sales, with or without notice to Obligor, and apply the net proceeds (after deducting any related expenses) to Obligor’s obligations. Obligor remains liable for any deficiency with any excess being retained by Payee. All remedies are cumulative and not exclusive. Except as expressly provided herein, Obligor hereby waives grace, demand, presentment for payment, notice of non-payment, protest and notice of protest, notice of dishonor or default, notice of intent to accelerate, notice of acceleration and diligence in collecting and bringing of lawsuit and/or other enforcement action. Obligor agrees

that neither Payee nor any Assignee nor Licensor shall be required to license, lease, transfer or use any Licensed Software in mitigation of any damages resulting from Obligor's default.

8. Representations, Warranties and Covenants: Obligor represents and warrants to Payee, and any Assignee, as applicable, that (a) the Obligor is duly organized, validly existing and in good standing under the applicable laws of its jurisdiction of organization; (b) this Agreement is a genuine, legal, valid and binding obligation of Obligor, enforceable against Obligor in accordance with its terms, subject to applicable bankruptcy and other similar laws affecting creditor's rights generally, and the execution, delivery and performance of this Agreement will not violate or create a default under any law (including any applicable usury law, regulation, judgment, order, instrument, agreement or charter document binding on Obligor or its property; (c) this Agreement has been duly authorized, executed by Obligor's duly authorized representative(s), and delivered and (e) any and all financial information furnished to Payee, and any Assignee, as applicable, by Obligor is and will be true and correct in all material respects and prepared in accordance with generally accepted accounting principles. Obligor acknowledges that (a) it has independently ordered the Licensed Software and Services, if any, from Licensor based on its own judgment, and expressly disclaims any reliance upon statements made to Obligor by Payee or any Assignee, if any, with respect to such Licensed Software and, if any, Services; and (b) this Agreement is separate and distinct from the Software Agreement with Licensor, and the terms and conditions of such Software Agreement are not incorporated into nor made a part hereof.

9. Miscellaneous: This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. OBLIGOR CONSENTS TO JURISDICTION, PERSONAL OR OTHERWISE, IN ANY STATE OR FEDERAL COURT IN COLORADO. OBLIGOR AND PAYEE HEREBY WAIVE A TRIAL BY JURY IN ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT. Obligor agrees that the System will only be used for business purposes and not for personal, family or household use. Obligor agrees that this Agreement may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Agreement by Obligor when manually countersigned by Payee or attached to Payee's original signature counterpart and/or in Payee's possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. At Payee's option, Payee may require a manual signature. Payee may inspect the System during the Agreement term. This Agreement constitutes the complete and exclusive agreement of Obligor and Payee with respect to the subject matter hereof and supersedes all prior oral or written understandings, including, without limitation any inconsistent terms set forth in the Software Agreement. No term or provision of this Agreement may be amended, waived, discharged, or terminated except by a written instrument signed by Obligor and Payee, or, as applicable, Assignee thereof. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and in no way will be affected, impaired or invalidated. This Agreement has been entered into in connection with a Software License, Services and Maintenance Agreement (as amended, extended or replaced from time to time, each a "Software Agreement") between Obligor and Licensor. The terms of the Software Agreement remain unchanged and in full force and effect, except as otherwise provided for herein. In the event that Licensed Software from Licensor does not perform as warranted or in the event of any other dispute or default under the Software Agreement, Obligor shall be entitled to pursue against the Licensor all of Obligor's rights and remedies arising under the Software Agreement, and nothing in this Agreement shall diminish or waive any rights and remedies which Obligor may have against Licensor under the Software Agreement. All obligations under this Agreement shall survive any termination of the licenses and Services relating to the Licensed Software. IN NO EVENT SHALL PAYEE OR ASSIGNEE HAVE ANY LIABILITY, NOR SHALL OBLIGOR HAVE ANY REMEDY AGAINST PAYEE OR OBLIGOR, FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER FORESEEABLE OR NOT, FOR ANY LOSS OF PROFITS OR SAVINGS, LOSS OF USE OR ANY OTHER COMMERCIAL LOSS. OBLIGOR ACKNOWLEDGES THAT PAYEE AND/OR ASSIGNEE DID NOT (i) SELECT, MANUFACTURE, DISTRIBUTE OR LICENSE THE LICENSED SOFTWARE COVERED BY THE SOFTWARE AGREEMENT, NOR (ii) SELECT NOR PROVIDE OR AGREE TO PROVIDE THE SERVICES THEREUNDER AND THE OBLIGOR HAS MADE THE SELECTION OF SUCH SOFTWARE AND SERVICES BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON STATEMENTS MADE BY ASSIGNEE OR ITS AGENTS. Obligor agrees to execute and deliver any instrument, furnish any information or perform any other act reasonably necessary or convenient to carry out the provisions of this Agreement.

ATTACHMENT 5, LEXMARK SOFTWARE LICENSE AGREEMENT TERMS AND CONDITIONS

PLEASE READ CAREFULLY BEFORE USING AND INSTALLING THIS SOFTWARE PROGRAM: EXCEPT AS SPECIFIED IN THE PARTICIPATING ADDENDUM WITH THE STATE OF COLORADO, WHICH TERMS CONTROL, BY CHECKING THE BOX NEXT TO LEXMARK SOFTWARE LICENSE AND THEN PRESSING THE ACCEPT BUTTON, INSTALLING OR USING THE SOFTWARE, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT. IF YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT IN CONJUNCTION WITH YOUR EMPLOYMENT ON BEHALF OF YOUR EMPLOYER, A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ENTITY TO THIS SOFTWARE LICENSE AGREEMENT. IF YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR EMPLOYER, SUCH COMPANY OR OTHER LEGAL ENTITY THAT WILL USE THE SOFTWARE PROGRAM, DO NOT CHECK THE BOX NEXT TO LEXMARK SOFTWARE LICENSE OR PRESS THE ACCEPT BUTTON. EXCEPT TO THE EXTENT THE SOFTWARE PROGRAM IS SUBJECT TO A SEPARATE WRITTEN SOFTWARE LICENSE AGREEMENT BETWEEN YOU (OR THE EMPLOYER, COMPANY OR OTHER LEGAL ENTITY UPON WHOSE BEHALF YOU ARE ACTING) AND LICENSOR, THIS SOFTWARE LICENSE AGREEMENT WILL SUPERSEDE ANY AND ALL AGREEMENTS GOVERNING ANY LICENSES OF THE SOFTWARE PROGRAM PREVIOUSLY GRANTED BY LICENSOR (AND ITS PREDECESSORS IN INTEREST) TO YOU (OR THE EMPLOYER, COMPANY OR OTHER LEGAL ENTITY UPON WHOSE BEHALF YOU ARE ACTING).

FIRMWARE UPDATES

FIRMWARE UPDATES MAY MODIFY PRINTER SETTINGS AND CAUSE COUNTERFEIT AND/OR UNAUTHORIZED PRODUCTS, SUPPLIES, PARTS, MATERIALS (SUCH AS TONERS AND INKS), SOFTWARE, OR INTERFACES TO STOP WORKING.

RETURN PROGRAM AGREEMENT TERMS

Your Lexmark device is subject to the Lexmark Return Program agreement terms, which can be found at www.lexmark.com/printerlicense.

SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Software License Agreement") is a legal agreement between you (either an individual or a single entity, and includes, if applicable your family group and family members whose Google accounts are joined together for the purpose of creating a family group) and Lexmark International, Inc. (if you are located in the United States) and Lexmark International Technology Sarl and its Affiliates (if you are located in any country other than the United States) ("Licensor") that to the extent your Licensor product or Software Program is not otherwise subject to a written software license agreement between you and Licensor or its suppliers, governs your use of any Software Program provided by Licensor for trial evaluation or use in connection with your Licensor product. The term "Software Program" includes machine-readable instructions, audio/visual content (such as images and recordings), and associated media, printed materials and electronic documentation, whether incorporated into, distributed with or for use with your Licensor product.

- 1. DISCLAIMER AND LIMITATION OF WARRANTIES. LICENSOR AND ITS SUPPLIERS PROVIDE THE SOFTWARE PROGRAM "AS IS" AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ABSENCE OF VIRUSES, ALL WITH REGARD TO THE SOFTWARE PROGRAM. LICENSOR: (a) UNDERTAKES NO RESPONSIBILITY FOR THE**

QUALITY OF THE SOFTWARE PROGRAM AND (b) ASSUMES NO RESPONSIBILITY THAT THE SOFTWARE PROGRAM WILL BE FIT FOR ANY PARTICULAR PURPOSE FOR WHICH YOU MAY BE ACQUIRING IT, EXCEPT AS OTHERWISE PROVIDED IN THIS DISCLAIMER.

This Agreement is to be read in conjunction with certain statutory provisions, as that may be in force from time to time, which imply warranties or conditions or impose obligations on Licensor that cannot be excluded or modified. If any such provisions apply, then to the extent Licensor is able, Licensor hereby limits its liability for breach of those provisions to one of the following: providing you a replacement copy of the Software Program or reimbursement of the greater of the price paid for the Software Program or five U.S. dollars (or the equivalent in local currency).

The Software Program may include internet links to other software applications and/or Internet sites hosted and operated by third parties unaffiliated with Licensor. You acknowledge and agree that Licensor is not responsible in any way for the hosting, performance, operation, maintenance, or content of, such software applications and/or Internet sites.

2. LIMITATION OF REMEDY. ANY AND ALL LIABILITY OF LICENSOR UNDER THIS SOFTWARE LICENSE AGREEMENT IS EXPRESSLY LIMITED TO THE GREATER OF THE PRICE PAID FOR THE SOFTWARE PROGRAM AND FIVE U.S. DOLLARS (OR THE EQUIVALENT IN LOCAL CURRENCY).

IN NO EVENT WILL LICENSOR, ITS SUPPLIERS, SUBSIDIARIES, OR RESELLERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, LOST SAVINGS, OR INTERRUPTION OF USE), IN CONNECTION WITH THE SOFTWARE PROGRAM, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM (a) THE USE OR INABILITY TO USE THE SOFTWARE PROGRAM, (b) THE COST OF PROCURING SUBSTITUTE SOFTWARE, OR (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR CONTENT, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), AND EVEN IF LICENSOR, OR ITS SUPPLIERS, AFFILIATES, OR REMARKETERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY YOU BASED ON A THIRD-PARTY CLAIM, EXCEPT TO THE EXTENT THIS EXCLUSION OF DAMAGES IS DETERMINED LEGALLY INVALID. THE FOREGOING LIMITATIONS APPLY EVEN IF THE ABOVE-STATED REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

SOME JURISDICTIONS DO NOT ALLOW EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE OTHER RIGHTS.

3. LICENSE GRANT. Licensor grants you the following rights, provided you comply with all terms and conditions of this Software License Agreement:
 - a. Use. Except as provided below, you may Use one (1) copy of the Software Program. The term "Use" means storing, loading, installing, executing, or displaying the Software Program. Copies or versions of Software Program which are identified as trial, test or evaluation copies or versions ("Trial Versions") may be Used by Licensee for internal evaluation purposes only and shall not be relied upon in any manner by Licensee. If Licensor has licensed the Software Program to you for concurrent use or use with a specified and limited number of devices, you must limit the number of authorized users or copies/devices to the number specified in your agreement with

b. Copying. You may make one (1) copy of the Software Program solely for purposes of backup, archiving, or installation, provided the copy contains all of the original Software Program's proprietary notices. You may not copy the Software Program to any public or distributed network.

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automatically terminated. You may not rent, sublicense, or assign the Software Program except to the extent provided in this Software License Agreement. Unless specifically authorized in writing by Licensor, Trial Versions may not be transferred to another end-user.

9. **UPGRADES.** To Use a Software Program identified as an upgrade, you must first be licensed to the original Software Program identified by Licensor as eligible for the upgrade. After upgrading, you may no longer use the original Software Program that formed the basis for your upgrade eligibility. Trial Versions of the Software Program are not eligible for upgrades.
10. **ADDITIONAL SOFTWARE.** This Software License Agreement applies to updates or supplements to the original Software Program provided by Licensor unless Licensor provides other terms along with the update or supplement.
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(k) **CHOICE OF LANGUAGE.** The original of this Agreement has been written in English, which will be the controlling language in all respects. Any translations into any other language are for reference only and will have no legal or other effect.

(l) **PERSONAL DATA; CONSENT TO PROCESS AND TRANSFER.** You agree to comply with all applicable laws and regulations including, but not limited to, laws pertaining to the collection and use of personal data. You agree that Licensor, its affiliates, and agents may collect and process information (including any personal data) you provide or that is gathered or generated by the Software Program in relation to (i) any support services performed in connection with the Software Program and requested by you, (ii) enabling any functionality of the Software Program or services provided by Licensor, or (iii) enabling Licensor to perform any other services related to the Software Program as you and Licensor may agree. Licensor agrees to process the information only to the extent necessary to provide such services or enable the functionality of the Software Program. You represent that you have obtained or will obtain from individuals whose personal data Licensor is permitted to access under this Agreement any consents or authorizations related to processing of their personal data that are required by applicable law. You agree that Licensor may transfer your information to the United States or other countries for processing in accordance with this Section.

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