**ATTACHMENT 5 - Lexmark cloud services AGREEMENT WITH CFM SCHEDULE**

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

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

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

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

The Parties agree as follows:

Section 1. Definitions

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

* 1. **“Client Components”** means the software client component(s) in object code form that Customer is permitted to download, install and use in connection with the Cloud Services and includes all additional client components, upgrades, enhancements and new version releases of any of the foregoing that may be provided by Lexmark from time to time and any accompanying documentation.
  2. **“Cloud Services”** means the software as a service offering made available to Customer under an applicable Schedule to this Agreement.
  3. **“Confidential Information”** means any information that is not generally available to the public or that a Party is obligated to keep confidential (e.g., pursuant to a contractual or other obligation owing to a third party). Confidential Information does not include any information that (a) was known to the recipient prior to receiving the same from the discloser; (b) is independently developed by the recipient without reliance on any Confidential Information of the discloser; (c) is acquired by the recipient from another source without restriction as to use or disclosure; or (d) is or becomes generally known to the public through no fault or action of the recipient.
  4. **“Customer”** means the person or legal entity lawfully obtaining from Lexmark the rights to use the Cloud Services under this Agreement and having no further right to distribute or resell the Cloud Services.
  5. **“Customer Content”** means any information, data, or other content provided to Lexmark, its affiliates and their respective agents by or on behalf of Customer or an End User, for use in connection with the Cloud Services. Customer Content excludes usage data, in aggregated, anonymized or other de-identified form, derived from the use of the Cloud Services.
  6. **“Documentation”** means the administrative and End User documentation for the Cloud Service that is made available by Lexmark to Customer under this Agreement.
  7. **“End User”** means any person or entity authorized by Customer to access or use the Cloud Services or Client Components.
  8. **“Initial Subscription Term”** means the initial term for which subscriptions to the Cloud Services specified in an applicable Schedule have been ordered.
  9. **“IPR” or “Intellectual Property Rights”** means any patent, copyright, trademark, trade secret or other intellectual property right.
  10. **“Lexmark Services”** means the professional, implementation, training and other services ordered by Customer and provided by Lexmark to Customer**.**
  11. **“Licensed Software”** means the software applications, updates and upgrades that Customer is authorized to download, install and/or use which are governed by an end user license agreement provided with the software applications and/or which can be automatically downloaded with the software application and which may be used without the Cloud Services.
  12. **“Schedule”** means a written document entered into by the Parties pursuant to this Agreement that (a) identifies the Cloud Services and Lexmark Services subject to this Agreement, (b) describes the Parties obligations in connection with the Cloud Services and (c) describes the fees, charges or other compensation to be paid to Lexmark for such Cloud Services and Lexmark Services.
  13. **“Term”** means the time period commencing on the Effective Date and ending upon the expiration or termination of this Agreement.
  14. **“Territory”** means United States.

Section 2. Cloud Services; Client Components

* 1. **Initial Cloud Services.** The initial Cloud Services under this Agreement are identified in attached Schedule 1. The parties may add other Cloud Services to this Agreement by executing additional Schedules, numbered successively. Additional Schedules will be effective and become part of this Agreement upon the date indicated in such additional Schedule.
  2. **Lexmark Responsibilities.** Subject to the terms and conditions of this Agreement, together with the State’s Participating Addendum and the NASPO ValuePoint Master Agreement associated herewith, and all applicable Schedules and the payment of all applicable fees, Lexmark will (i) provide the Cloud Services to Customer in accordance with laws and government regulations applicable to Lexmark’s provision of its Cloud Services to its customers generally (i.e., without regard to laws particular to Customer’s business); (ii) provide support for the Cloud Services; (iii) maintain its ISO 27001 certification; and (iv) use commercially reasonable efforts to make the Cloud Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Lexmark shall give advance notice via a web-based dashboard currently located at **https://cloud.lexmark.com/status**, and (b) any unavailability caused by circumstances beyond Lexmark’s reasonable control, including, without limitation, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Lexmark employees), Internet service provider failure or delay, non-Lexmark software, or denial of service attack.
  3. **Access by End Users.** The Cloud Services will be accessible to Customer’s End Users, except that Lexmark may restrict or deny access to any End User who (a) violates this Agreement, or (b) engages in any activity detrimental to the Cloud Services, Licensed Software, Lexmark computer systems or any other End User, as determined by Lexmark in its sole discretion.
  4. **License.** Subject to the terms and conditions of this Agreement and all applicable Schedules and the payment of all applicable fees, Lexmark grants Customer a nonexclusive, nontransferable license to (a) download, reproduce, install and use copies of the Client Components solely in connection with the permitted use of the applicable Cloud Services; and (b) use the Documentation as reasonably necessary in connection with the use of the Cloud Services.
  5. **Restrictions.** Customer will not directly or indirectly: (a) sublicense, sell, lend, rent, lease, give, transfer, assign or otherwise dispose of all or any portion of the Client Components or Documentation or otherwise use the Cloud Services, Client Components or Documentation to process the data of any person or entity other than Customer; (b) remove, obscure, or alter any notice of copyright, trademark, trade secret, or other proprietary right related to the Client Components or Documentation; (c) engage in, permit or fail to prevent any unauthorized use of the Cloud Services, Client Components or Documentation. Furthermore, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding these limitations, Customer will not directly or indirectly: (d) modify or create any derivative work based upon any Cloud Service, Client Components or Documentation; or (e) reverse engineer, disassemble or decompile any of the Client Components or attempt to discover or recreate the source code to any Client Components.
  6. **Client Component Backups.** Upon installing the Client Components as permitted herein, Customer may retain any installers and executables that Lexmark has made available but use them only for backup purposes. Customer may make one copy of the Client Components in machine-readable form for the purpose of backup in the event the installers or executables are damaged or destroyed, and one copy of the Documentation for backup purposes only; provided, that any backup copy of the Client Components and Documentation must include all copyright, trademark, and other proprietary notices contained on the original.
  7. **Third Party Software Notice.** Portions of any Client Components provided to Customer by Lexmark constituting third party software, including software provided under a public license, (“Third Party Software”) may be subject to the terms and conditions of certain software license agreements. Such software license agreements are set forth in a file accompanying the documentation for such Client Component. Unless stated otherwise therein, the use of such Third Party Software will be governed exclusively by the terms and conditions of such software license agreements.

Section 3. Customer Responsibilities; Restrictions

* 1. **Responsibilities.** Customer (i) is solely responsible for providing and maintaining at its own expense all equipment, hardware, software and services necessary to connect to, access and use the Cloud Services, including, without limitation, the equipment, hardware, software and services described in the Documentation; (ii) is solely responsible for ensuring the security and confidentiality of all user identifications and passwords and will notify Lexmark of any unauthorized use of any user identification or password or any other breach of security known to Customer; (iii) will use commercially reasonable efforts to prevent unauthorized access to or use of Cloud Services and Client Components and will promptly notify Lexmark of any such unauthorized access or use; (iv) will promptly deploy updated Client Components provided by Lexmark; and (v) use Cloud Services and Client Components only in accordance with this Agreement, Documentation, Schedules and applicable laws and government regulations.
  2. **Cooperation.** In connection with receiving support for the Cloud Services, Customer will (i) provide all data and information requested by Lexmark in connection with the support issue being experienced with the Cloud Services or Client Components; (ii) provide timely access, remotely and/or onsite, to Customer’s facilities; and (iii) otherwise cooperate with and perform the activities requested by Lexmark (e.g., facilitate reboots of relevant workstations and printers, etc.) to assist Lexmark in resolving support issues. In the event, Customer refuses to cooperate with Lexmark, Customer acknowledges and accepts that denial of such cooperation may negatively affect the timeliness and/or ability of Lexmark to provide support.
  3. **Restrictions.** Customer shall not (i) make the Cloud Services or Client Components available to anyone other than End Users; (ii) sell, resell, rent or lease the Cloud Services; (iii) use the Cloud Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or Intellectual Property Rights; (iv) use the Cloud Services to store or transmit uses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Cloud Services; or (vi) attempt to gain unauthorized access to the Cloud Services or their related systems or networks. In addition to any other remedies allowed by law, any prohibited action or prohibited use of Cloud Services or Client Components as described herein by Customer will void any warranty and support obligations of Lexmark for the Cloud Services and Client Components.

Section 4. Fees; Payments

* 1. **Fees.** Each Schedule sets forth the applicable fees. All fees are stated in United States dollars. Upon renewal of the Subscription for the applicable Cloud Services, Lexmark may adjust the Cloud Services fees by issuing a fees update notice, providing that the fee does not exceed NASPO ValuePoint Master Agreement pricing, and the Customer agrees to such fee changes. Fee changes may only occur once every 12 months, and shall be effective, with Customer approval, no earlier than sixty (60) days after the date of a fees update notice.
  2. **Invoices.** Lexmark will billCustomer for all fees and charges in accordance with the applicable Schedule.
  3. **Taxes.** The fees, reimbursable expenses, compensation and other amounts payable to Lexmark under this Agreement do not include any taxes, customs, duties, fees or other charges assessed or imposed by any governmental authority. With regard to such amounts, Customer will pay or reimburse Lexmark for applicable charges, or provide certificates or other evidence of exemption; provided, however, that Lexmark will be responsible for paying any income taxes imposed on Lexmark with respect to such amounts.
  4. **Payments.** Customer shall pay to Lexmark the Cloud Services fees, Lexmark Services fees and any other applicable fees due, as stated in a Schedule, within forty-five (45) calendar days of the Lexmark invoice date. Initial Cloud Services fees will be invoiced when the login credentials are made available to Customer. Implementation service fees, if any, will be invoiced upon completion of installation services provided by Lexmark. The total fees payable by Customer to Lexmark for the Cloud Services and Lexmark Services shall be set forth in the Schedule.
  5. **Overdue Payments.** In the event that Customer delays payment of any fees properly due under this Agreement, Customer shall be liable for an interest charge on such overdue fees, commencing on the 46th day that such fees become due and payable, at a monthly rate of 1% of the outstanding balance pursuant to the requirements and limitations of §24-30-202(24)(a), C.R.S.

Section 5. Proprietary Rights

* 1. **Ownership.** Customer acknowledges that, as between Customer and Lexmark, the Cloud Services, Licensed Software, Client Components and Documentation constitute and/or involve valuable IPR of Lexmark, and Customer will not contest or challenge Lexmark ownership thereof or of any associated IPR. No title to or ownership of any Cloud Services, Licensed Software, Client Components or Documentation, or any IPR in or to any Software Service, Licensed Software, Client Components or Documentation, is transferred to Customer under this Agreement. Without limiting the generality of the foregoing, Lexmark reserves all of its right, title and interest (including, without limitation, any and all IPR) in and to the Cloud Services, Licensed Software, Client Components and the Documentation.
  2. **Protection of Proprietary Rights.** Customer will take appropriate steps and precautions for the protection of the Cloud Services, Client Components and Documentation and associated IPR. Without limiting the generality of the foregoing, Customer will: (a) keep all Client Components and Documentation secured; (b) include in any copy of the Client Components or Documentation made by Customer appropriate notices of Lexmark's ownership and IPR in the same; and (c)  otherwise use good faith efforts to prevent any unauthorized use by any individual accessing the Cloud Services or Client Components through Customer. Customer will not remove or obscure in any manner, the Lexmark logos and IPR rights designations as they appear in or on the Cloud Services, Client Components or Documentation, including, but not limited to, the media, underlying code, displayed screens or documentation.

**Section 6. Customer Content**

* 1. **Customer Content.** Except for the license granted under Section 6.2, Customer reserves all of its ownership rights in the Customer Content and all associated IPR.
  2. **License to Lexmark.** Customer hereby grants to Lexmark a non-exclusive, non-transferable, royalty-free license during the Term to translate, transmit, transfer, reproduce, and use Customer Content to the extent reasonably necessary to perform its obligations under this Agreement. Without limiting the foregoing, Lexmark may display and distribute Customer Content to Customer in connection with the provision of the Cloud Services.
  3. **Customer Content Backups.** Customer assumes all risk, responsibility and liability (if any) for any loss or damage for failure to maintain adequate backup copies of the Customer Content. Upon termination or expiration of the applicable Schedule, Lexmark will not perform any data backup for the Cloud Services covered by such applicable Schedule.

Section 7. Reserved

Section 8. Feedback

Customer grants to Lexmark and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its products or services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or End Users relating to the operation of the Cloud Services.

Section 9. Insurance

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

(a) Worker’s Compensation Insurance as required by law

(b) Employer’s Liability Insurance with a limit of no less than $1,000,000.;

(c) Commercial General Liability Insurance with a limit of no less than $1,000,000 per occurrence and $2,000,000 aggregate limit, including contractual liability, bodily injury or property damage;

(d) Technologies Errors and Omissions Insurance (cyber liability) with a limit of no less than $5,000,000; and

(e) Umbrella Liability Insurance with a limit of no less than $5,000,000.

* 1. **Reserved**

Section 10. Confidentiality

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

Section 11. Indemnification

* 1. **Lexmark Indemnification.** Lexmark will defend and indemnify Customer from any third party claim that the Cloud Services or Client Components provided to Customer pursuant to this Agreement infringes or misappropriates any copyright or trade secret or any U.S. patent or trademark, provided that: (a) Customer promptly notifies Lexmark of the claim; (b) Lexmark has sole control over the defense and settlement of the claim; (c) Customer provides such assistance in the defense of the claim as Lexmark may reasonably request; and (d) Customer complies with any settlement or court order made in connection with the claim (e.g., relating to the future use of the Cloud Services).
  2. **Reserved**
  3. **Customer Responsibility.** Customer is solely responsible and liable for: (a) Customer’s use of the Cloud Services in any unlawful manner or in a manner not authorized by this Agreement or the applicable Schedule; (b) an allegation that the Customer Content provided by Customer infringes, misappropriates or otherwise violates any IPR of any third party; or constitutes defamation, invasion of privacy or the violation of any right of publicity or other similar right of any third party; (c) any inaccuracies or defects in the Customer Content or other materials furnished by Customer hereunder; or (d) an allegation that Customer’s provision of Customer Content or use of Customer Content with the Cloud Services violates any law, including any applicable data protection law or privacy law.
  4. **Right to Participate.**  In no event will an indemnifying Party admit liability on behalf of the indemnified Party without the indemnified Party’s prior written consent.

Section 12. Warranties; Disclaimers of Liability

* 1. **Third Party Items.** LEXMARK MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATERIALS OR ITEMS FURNISHED BY OR ON BEHALF OF CUSTOMER OR ANY END USER.
  2. **Service Level Warranty.** Lexmark will use commercially reasonable efforts to continuously monitor and to make the Cloud Services available to Customer ninety-nine percent (99.0%) of the time measured at monthly intervals, excluding downtimes caused by interruptions beyond the reasonable control of Lexmark and times allocated for emergency or scheduled maintenance. In the event the Cloud Services experience downtime in excess of the service level specified above in any calendar month, Customer will receive from Lexmark a credit against the succeeding month's subscription fees for the Cloud Services in an amount equal to the ratio of the number of hours of excess downtime to the total number of hours in the month in which the excess downtime occurred multiplied by the subscription fees payable for the month in which the excess downtime occurred; provided, that Customer is not in breach of any of its obligations under this Agreement and Customer gives Lexmark written notice of the noncompliance within thirty (30) days after the date of such noncompliance.
  3. **Service Level Warranty Remedies.** If the Cloud Services cannot be accessed for more than one hundred eighty hours, excluding scheduled maintenance, during any twelve-month period during the Term, or any extension thereof, provided that such inability shall not be due to the failure of Customer’s equipment or facilities, or improper use of the Cloud Services or Client Components, then Customer will have the right to terminate the applicable Schedule for the affected Cloud Services on fifteen (15) days prior written notice.
  4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE SERVICE LEVEL CREDITS DESCRIBED IN THIS AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF THE CLOUD SERVICES OR LEXMARK TO ACHIEVE THE SERVICE LEVELS OR PERFORMANCE REQUIREMENTS SET FORTH HEREIN.
  5. THE FOREGOING WARRANTIES ARE SUBJECT TO THE LIMITATIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT.
  6. Exclusions. Lexmark warranties and duties under Sections 2.2 and 12.2 do not apply to any noncompliance resulting from any: (a) use not in accordance with this Agreement or the Documentation; (b) modification, damage, misuse or other action of Customer, any End User or any third party; or (c) combination with any goods or other items provided by Customer, any End User or any third party except for those operating system and database combinations for which the Cloud Services was specifically designed to operate and any other components specified in the applicable Schedule.
  7. THE CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, SERVICE OUTAGES, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR DUE TO RESTRICTIONS CAUSED BY LAWS AND REGULATIONS OF VARIOUS COUNTRIES. LEXMARK IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
  8. **Reserved**
  9. **Reserved**
  10. **Reserved**

Section 13. Term, Suspension, and Termination

* 1. **Duration.** The Term will continue until every Schedule under this Agreement expires or is otherwise terminated under this Agreement.
  2. **Cloud Services Suspension.** If any charge owed by Customer to Lexmark is more than thirty (30) days overdue, Lexmark may, without limiting its other rights and remedies, suspend the Cloud Services until such amounts are paid in full, provided Lexmark has given Customer at least (ten) days prior notice that its account is overdue in accordance with the Section 14.3 below.
  3. **Notice of Material Breach.** In the event of a material breach under this Agreement by a Party, the other Party may give the breaching Party written notice of the material breach (including, but not necessarily limited to, a description of the Cloud Services with respect to which the breach has occurred, a statement of the facts relating to the breach, the provisions of this Agreement that are in breach, and the action required to cure the breach) and the other Party's intent to terminate the Agreement and/or the applicable Cloud Services pursuant to this paragraph if the breach is not cured within thirty (30) days after the breaching Party's receipt of such notice (or such later date as may be specified in such notice).
  4. **Termination Following Breach.** If the breaching Party fails to cure any material breach specified in any notice under this Section within thirty (30) days after receipt of such notice (or such later date as may be specified in such notice), then the terminating Party may terminate the Agreement.
  5. **Survival.** Sections 7, 11.3, 11.4, and 14 of this Agreement, all accrued payment obligations under this Agreement and all other provisions of this Agreement that may reasonably be construed as surviving the expiration or termination of this Agreement will survive the expiration or termination of the Term.

Section 14. Miscellaneous

* 1. **Compliance with Laws.** Each Party will comply with all applicable laws, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities having jurisdiction in connection with its activities under this Agreement.
  2. **Relationship of the Parties.** Each Party is an independent contractor and not a partner or agent of the other. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the Parties or as imposing any partnership or agency obligations or liability upon either Party. Further, neither Party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other Party. Lexmark reserves the right to promote, market and solicit sales, licenses and other offerings of its products or services without restriction, either directly or through others, at any time during or after the termination or expiration of the term of this Agreement.
  3. **Notices.** Except for notices relating to the availability of the Cloud Services or subscription fee increases, any notice or other communication under this Agreement given by either Party to the other Party will be deemed to be properly given if given in writing and delivered in person, sent via postal mail, properly addressed and stamped with the required postage, to the intended recipient at its address specified in this Agreement. Notice will be deemed effective upon the earlier of (a) actual delivery to the Party or (b) receipt by facsimile transmission with operator confirmation, or read receipt if sent via email. Either Party may from time to time change its address for purposes of this paragraph by giving the other Party notice of the change in accordance with this paragraph.
  4. **Assignment.** Customer will not assign (whether voluntarily, involuntarily, by operation of law or otherwise) this Agreement or any of its rights under this Agreement, in whole or in part, without the prior written consent of Lexmark, which will not be unreasonably withheld. Any assignment in violation of the foregoing will be null and void.
  5. **Nonwaiver.** The failure of either Party to insist upon or enforce performance by the other Party of any provision of this Agreement, or to exercise any right or remedy under this Agreement or otherwise by law, will not be construed as a waiver or relinquishment of such Party's right to assert or rely upon the provision, right, or remedy in that or any other instance.
  6. **Severability.** If any term or provision of this Agreement is for any reason deemed illegal or invalid, such illegality or invalidity will not affect the validity of the remainder of this Agreement, and each such term or provision will be valid and enforceable to the fullest extent permitted by law.
  7. **Excused Performance.** Neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond such Party's reasonable control (excluding payment obligations). Further, Lexmark will not be in breach of its obligations under this Agreement as a result of delays resulting from the failure of Customer to provide any material or information reasonably necessary for Lexmark to perform its obligations hereunder.
  8. **Applicable Law and Venue.** The Parties expressly agree that this Agreement and any claim or controversy arising out of or relating to rights and obligations of the Parties under it will be governed by and construed in accordance with the substantive laws of the Customer without reference to its rules relating to choice of law. The United Nations "Convention on Contracts for the International Sale of Goods" or any similar or successor convention or law, will not apply to the Agreement or transactions under the Agreement.
  9. **Amendment.** Additional or inconsistent pre-printed terms, acknowledgements, confirmations, and other communications, whether or not signed or accepted, will not supplement or supersede the terms of this Agreement or Schedule unless so agreed in a separate, signed amendment specifically referencing this Agreement. Except as otherwise expressly provided herein, no amendment, modification or waiver of any provision of this Agreement will be valid unless set forth in a written instrument, duly executed by the Parties, that specifically references this Agreement.
  10. **Reserved**
  11. **Conflicting Terms.** In the event of any conflict or inconsistency between this Agreement and any Schedule or Exhibit to this Agreement, the terms and conditions of the Schedule or Exhibit will control.
  12. **Export Restrictions.** The services and any data provided by Lexmark (collectively, the “Controlled Items”) may be subject to United States, EU or other export control jurisdictions. The Controlled Items may not be shipped, transferred, re-exported into any country, or used for any purpose prohibited by any applicable international and national legal instruments that apply to the Controlled Items, including the U.S. Export Administration Regulations. Moreover, software may not be exported, re-exported, or downloaded by any person or entity subject to U.S. or international sanctions regardless of location. Customer agrees that it will not export or re-export the Controlled Items without first having obtained applicable government export licenses or permissions*.*
  13. **Authority.** Customer represents that it has the authority to enter into this Agreement and that by doing so Customer will not violate any law or pre-existing agreement to which Customer is a party. Customer represents that this Agreement is signed by an authorized officer or agent of Customer.
  14. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which, taken together, will constitute one and the same document. Original signatures of this Agreement transmitted and received via facsimile, electronic transmission of a scanned document (e.g., PDF), or other process of complete and accurate reproduction will have the same legal effect, validity and enforceability as manually executed signatures; will be deemed original signatures; and will bind the parties to the same extent as manual signatures.
  15. **Reserved**

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

**LEXMARK INTERNATIONAL, INC.**

Name (Printed):

Signature:

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CUSTOMER**

Name (Printed):

Signature:

Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE 1**

**LEXMARK CLOUD FLEET MANAGEMENT SERVICES SCHEDULE**

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

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

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

1. Subscription Term.

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

1. Fees; Payments.
   1. Initialization Fees. Upon execution of this CFM Schedule, Customer will pay Lexmark the initialization fee set forth in Section 2 of this CFM Schedule, as a non-refundable fixed set-up fee for professional services. Fees for professional services beyond initialization shall be set forth in a Statement of Work as defined in Section 5. Further, no fees shall exceed the NASPO ValuePoint Master Agreement pricing.
   2. Subscription Fees. Subscription fees for each month of the Subscription Term will be calculated as indicated in Section 2 of this CFM Schedule.
   3. Invoicing. All fees will be invoiced following the incurrence of such fees, unless otherwise set forth in a Statement of Work as defined in Section 5.
2. Lexmark Services
   1. Subject to the terms and conditions of the Agreement and this CFM Schedule, Lexmark may provide Customer with Lexmark Services pursuant to Customer’s issuance to Lexmark of a purchase order for such Lexmark Services, including for the use of Lexmark’s project managers, solution architects and consultants for implementation services. Lexmark will provide Lexmark Services at Lexmark’s then current NASPO ValuePoint Master Agreement rates, or, not to exceed the same, as otherwise described in the applicable statement of work agreed upon by the parties (“Statement of Work”). Customer will pay Lexmark the fees for the Lexmark Services as provided in this CFM Schedule.
   2. Any modification to the Lexmark Services or any other aspect of a CFM Schedule, including any resultant changes to pricing or project schedules, will be made pursuant to a written change order that is signed by Lexmark and Customer. Each such change order will set forth in reasonable detail the nature of the change in the professional services or other aspect being changed, the recommended change in personnel or other deliverables, any change in Lexmark Services fees, and any other impact the change order will have on the CFM Schedule or Statement of Work.
   3. Lexmark may provide Customer additional Lexmark Services, as may be agreed to between Lexmark and Customer from time to time. Additional Lexmark Services will include any services provided by Lexmark for Cloud Services or Client Components support or performance issues caused by or resulting from Customer’s failure to comply with its responsibilities as described in this Agreement. In each such event, Lexmark will invoice Customer for all Lexmark Services fees for such additional Lexmark Services as provided in this Agreement, providing such Services are listed in the NASPO ValuePoint Master Agreement.
   4. Each Lexmark Services engagement between Lexmark and Customer will be a separate and distinct transaction from Customer’s purchase of Cloud Services, and Customer’s payment obligations with respect to the Cloud Services are wholly independent of and not contingent upon Lexmark’s performance of any Lexmark Services.
   5. Additional or inconsistent pre-printed terms, acknowledgements, confirmations, and other communications, whether or not signed or accepted, will not supplement or supersede the terms of this Agreement and/or applicable Statement of Work unless so agreed in a separate, signed amendment specifically referencing this Agreement or such Statement of Work.
3. Cloud Services Training.
   1. Lexmark will make standard online training for the Cloud Services (the “Product Training”) available to Customer. For Customers desiring to purchase advanced Product Training, Customer will issue an order for such Product Training to Lexmark as provided in Section 5.1 of this CFM Schedule. The Product Training will be provided via online tools by a trained and/or certified Lexmark professional. Customer will pay Lexmark for such advanced Product Training at Lexmark’s then current NASPO ValuePoint Master Agreement rates.
4. Licensed Software Distribution.
   1. Any Licensed Software and Documentation that is available through the Cloud Services for download and/or distribution is the copyrighted work of Lexmark and/or its licensors. Subject to the terms and conditions of this Agreement and the CFM Schedule, Lexmark grants Customer a personal, nonexclusive, non-transferable license in the Licensed Territory to distribute the Licensed Software to its End Users for use solely on or in connection with Lexmark products.
   2. Copying or reproducing the Licensed Software to any other server or location for further reproduction or redistribution is prohibited except in accordance with this Agreement.
   3. Customer may distribute a copy of the Licensed Software to Customer’s End Users provided Customer follows all of Lexmark’s direction and procedures for downloading and distributing the Licensed Software.
   4. Customer shall not create derivative works of the Licensed Software or attempt to decompile or reverse-engineer the Licensed Software, except as and only to the extent expressly permitted to do so by applicable law for the purposes of inter-operability, error correction, and security testing. If Customer has such statutory rights, Customer will notify Lexmark in writing of any intended reverse engineering or reverse compilation.
   5. The Licensed Software and the corresponding software license may be downloaded using the Printer Enrollment Tool. Use of the Licensed Software is subject to the license terms of the license agreement that accompanies or is provided with the Licensed Software.
      1. In the event that Customer desires to have Licensed Software installed on a non-Customer controlled printer or device, Customer shall (i) obtain the express authorization of such device’s owner or authorized user to have such Software installed on such printers or other devices, and (ii) provide a copy of the applicable end user software license to such device’s owner or authorized user concurrent with the distribution of the Licensed Software.
      2. Reserved.
   6. Although it is not obligated to do so, in the event Lexmark provides or makes available any error corrections or updates to the Licensed Software, Licensee agrees to provide such error corrections or updates to its End Users in accordance with Section 7.5 of this CFM.
   7. Lexmark reserves the right to terminate Customer’s right to distribute the Licensed Software in the event Lexmark, in its sole opinion, believes an infringement claim appears likely or is made about the Licensed Software.
5. Termination of CFM Schedule.
   1. This CFM Schedule may be terminated by Lexmark upon thirty (30) days’ written notice to Customer.
   2. Immediately upon expiration or termination of the Subscription Term, Customer will no longer have access to the Cloud Services. Further, Customer will immediately: (a) cease using all Client Components and Documentation; and (b) uninstall the Client Components.
   3. Furthermore, (i)  the Parties will cooperate to effect an orderly, efficient, effective and expeditious termination of the Parties' respective activities under this Agreement; (ii) Lexmark will destroy Customer Content (as it then currently exists excluding Usage Data) in the possession or under the control of Lexmark; (iii) Lexmark will have no obligation to perform under this Agreement after the effective date of the termination; and (iv) Customer will pay to Lexmark any current or past-due amounts for the Cloud Services provided under this CFM Schedule prior to the effective date of the termination.
   4. This CFM Schedule may be terminated by Customer with thirty (30) days’ notice to Lexmark.

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

**LEXMARK INTERNATIONAL, INC.**

Name (Printed):

Signature:

Title:

Date:

**CUSTOMER**

Name (Printed):

Signature:

Title:

Date: