



# **NASPO ValuePoint Master Agreement Terms and Conditions**

## **For Copiers and Managed Print Services**

**A Contract for the NASPO ValuePoint Cooperative Purchasing Program  
Acting by and through the State of Colorado (Lead State)**

**Department of Personnel & Administration  
State Purchasing & Contracts Office  
1525 Sherman Street, 3<sup>rd</sup> Floor  
Denver, Co 80203**

And

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

**Master Agreement Number: 140601**

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## 1. NASPO VALUEPOINT MASTER AGREEMENT OVERVIEW

### 1.1. Parties

This Master Agreement is entered into by and between the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing & Contracts Office (hereinafter called the "Lead State"), and Lexmark International, Inc. (hereinafter called "Contractor"), for the procurement of A4 MFD's, Single-function Printers, Software, Supplies, Managed Print Services, and other Products and Services as approved per this Master Agreement, for the benefit of Participating States, Entity's, and Purchasing Entities. The Contractor and the Lead State hereby agree to the following terms and conditions.

### 1.2. Effective Date

This Master Agreement shall not be effective or enforceable until the date on which it is approved and signed (hereinafter called the "Effective Date") by the Colorado State Controller or designee.

### 1.3. Master Agreement Order of Precedence

1.3.1. Any Order placed under this Master Agreement shall consist of the following documents:

- a) A Participating Entity's Participating Addendum ("PA");
- b) NASPO ValuePoint Master Agreement Terms & Conditions, including all Exhibits;
- c) An Order issued against this Master Agreement;
- d) The Solicitation, RFP-NP-18-001 Copiers and Managed Print Services;
- e) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
- f) Contractor Supplemental Documents, including all Attachments.

1.3.2. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and shall be incorporated into this Master Agreement.

### 1.4. Term of this Master Agreement

1.4.1. **Initial Term-Work Commencement.** The Parties' respective performances under this Master Agreement shall commence on the Effective Date or August 1, 2019, whichever occurs later. This Master Agreement shall terminate on December 31, 2021, unless terminated sooner, as specified in §6.10, **Defaults and Remedies**, or extended further as specified in §1.4.2 below.

1.4.2. **Extension of Agreement.** This Master Agreement may be extended beyond the original Contract period for up to three (3) consecutive one (1) year additional terms, upon the mutual agreement of the Lead State and Contractor, by written Amendment. The total duration of this Master Agreement, including any extensions, shall not exceed five (5) years.

1.4.3. **Amendments.** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State.

1.4.4. **Cancellation.** This Master Agreement may be canceled by either party upon sixty (60) days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending Orders outstanding at the time of

cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, and rights attending any warranty or default in performance in association with any Order. Cancellation of this Master Agreement due to Contractor default may be immediate.

## 2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

<b>Term</b>	<b>Description</b>
<b><i>A4 MFD</i></b>	A Multi-function Device which is designed to handle letter, legal and some smaller paper sizes, such as postcards and envelopes. Ledger size paper is NOT an option on this Device.
<b><i>Acceptance</i></b>	A written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which Acceptance Testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.
<b><i>Acceptance Testing</i></b>	The process set forth in this Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity.
<b><i>Accessory</i></b>	A compatible item that is added to the Base Unit to enhance its capabilities and functions.
<b><i>Authorized Dealer ("Dealer")</i></b>	The Contractor's authorized sales and Service center (also known as a Dealer, or Partner) that must be certified by the Contractor to sell the Contractor's Products, and perform machine installation and maintenance on Devices offered by the Contractor. A Purchasing Entity must be able to, at a minimum, visit the sales and Service center to view and test Equipment.
<b><i>Base Unit</i></b>	The copier, printer, Scanner, Large/Wide Format and Production Equipment that includes all standard Accessories and parts, and excludes optional Accessories and/or software.
<b><i>Blended Rate</i></b>	A rate that is derived by taking the b&w and color cost per click rates on one or more Devices and calculating one rate that a customer will be billed for all copies, regardless of Device type and b&w or color output. Allows for simplicity when billing copies run.
<b><i>Bronze Standard</i></b>	Devices which meet less than 50% of the 28 optional EPEAT criteria.
<b><i>Business Day</i></b>	Any day other than Saturday, Sunday or a legal holiday.
<b><i>Buyout to Keep</i></b>	The early termination option on an FMV or \$1 Buyout Lease that involves the acquisition of the Equipment by the Purchasing Entity, and consists of any current and past due amount, plus the remaining stream of Equipment Payments.
<b><i>Buyout to Return</i></b>	The early termination option on an FMV, \$1 Buyout or Straight Lease that involves the return of the Equipment by the Purchasing Entity to Contractor, in good working condition (ordinary wear and tear excepted), and consists of any current and past due amounts, plus the remaining stream of Equipment

	Payments.
<b><i>Ceiling Pricing</i></b>	Pricing that is established as a “not-to-exceed” amount; the maximum price Contractor may charge for Products, Services, and Supplies.
<b><i>Chief Procurement Officer</i></b>	The individual who has the authority to supervise and approve the procurement of all Products and Services needed by the Lead State or a Participating State.
<b><i>Contractor</i></b>	The person or entity delivering Products or performing Services under the terms and conditions set forth in this Master Agreement.
<b><i>Coterminous</i></b>	Two or more leases that end at the same time. The original lease payment is modified to reflect the addition of a new piece of Equipment or Accessory. The original term of the lease is not modified as a result of a Coterminous addition.
<b><i>Device</i></b>	Also referred to as “Equipment.” The Base Unit, either with or without optional Accessories and/or software.
<b><i>Direct Material</i></b>	Materials which are easily identified, measured, and charged to the cost of production; part of the finished Product. Examples include timber for furniture and leather for shoes.
<b><i>EULA</i></b>	End User License Agreement
<b><i>Electronic Product Environmental Assessment Tool (EPEAT)</i></b>	A tool which evaluates and selects Equipment according to a list of preferred environmental attributes. EPEAT registered means Devices meet the 1680.2 IEEE Standard for Environmental Assessment of Imaging Equipment, as amended.
<b><i>Embedded Software</i></b>	One or more software applications which permanently reside on a computing Device.
<b><i>Energy Star</i></b>	The U.S. Environmental Protection Agency’s standard for energy efficiency.
<b><i>Equipment</i></b>	Also referred to as “Device.” The Base Unit, either with or without optional Accessories and/or software.
<b><i>Equipment Downtime</i></b>	The period of time that a Device is waiting for Service to be completed.
<b><i>Equipment Payment</i></b>	The Equipment portion of the payment, less any Service, Supplies, and maintenance.
<b><i>Equipment Trade-In</i></b>	An agreed upon transaction between the Purchasing Entity and Contractor, in which Contractor takes ownership of Purchasing Entity’s owned Device, often for a discounted amount.
<b><i>Equipment Upgrade or Downgrade</i></b>	A replacement of the Purchasing Entity’s existing lease Equipment, with a different piece of Equipment, of either greater or lesser value. A new lease is then originated for the new piece of Equipment, with the remaining lease payments on the old Equipment wrapped into it. The old lease is closed out, and the Equipment is returned to Contractor.
<b><i>Free on Board (FOB) Destination</i></b>	Contractor is responsible for transportation and handling charges and the sale does not occur until the Products arrive at the Purchasing Entity’s specified location.

<b>Group</b>	The Device classification for the different types of Equipment in this Master Agreement. Groups are determined by the Devices primary functions and/or capabilities.
<b>Independent Contractor</b>	A natural person, business, or corporation that provides Products or Services to another entity under the terms specified in a contract. An employer-employee relationship does not exist.
<b>Initial Lease Term</b>	The length of time (i.e. 12, 18, 24, 36, 48, or 60 months) that a Purchasing Entity enters into a lease agreement.
<b>Intellectual Property</b>	Any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
<b>Lead State</b>	The State that is centrally administering this Master Agreement.
<b>Lease</b>	<p>Per the Governmental Accounting Standards Board (GASB), a lease is defined as a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction.</p> <p>For the purposes of this Master Agreement, a Lease shall contain the following options:</p> <ol style="list-style-type: none"> <li>1. Short-Term Lease: Maximum possible term is 12 months, including any renewal or extension options.</li> <li>2. Straight Lease: A type of agreement in which ownership is not an option and the Total Monthly Payment amount remains firm throughout the Initial Term.</li> <li>3. Fair Market Value Lease (FMV): A lease in which the Purchasing Entity can either 1) Take title to the Equipment at the end of the Initial Lease Term by paying the residual value to Contractor, 2) Enter into a Renewal Term for the Equipment, or 3) Return the Equipment to Contractor at the end of the Initial Lease Term.</li> <li>4. \$1 Buyout Lease: A lease in which title to the Equipment will automatically pass from the Contractor to the Purchasing Entity at the end of the Initial Lease Term, and the Purchasing Entity will not be subject to additional payments in order to assume ownership.</li> </ol>
<b>Legacy Equipment</b>	Equipment that was purchased, leased, or rented under a prior NASPO ValuePoint or WSCA Master Agreement, another program, or via any other means.
<b>Maintenance Agreement</b>	An agreement in which the Contractor provides monthly Service, parts, and Supplies, on purchased or leased Devices.
<b>Managed Print Services (MPS)</b>	The management, Service, and support of the Purchasing Entity's entire enterprise and output infrastructure of printed materials, with the objective of creating a solution that improves the print process and reduces the expense of printed material.
<b>Manufacturer</b>	A company that, as its primary business function, designs, assembles, and owns the trademark/patent and markets a Product. Also referred to as Contractor.

<b><i>Manufacturer's Suggested Retail Price (MSRP)</i></b>	The list price or recommended retail price of a Product in which the Manufacturer recommends that the retailer sell the Product.
<b><i>Master Agreement</i></b>	Also referred to as "Contract"; the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
<b><i>Multi-function Device (MFD)</i></b>	A Device which incorporates the functionality of multiple Devices into one, such as print, fax, copy and scan. Each feature can work independently of the other.
<b><i>NASPO ValuePoint</i></b>	The NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is a 501(c)(3) limited liability company that is a subsidiary organization of the National Association of State Procurement Officials (NASPO). NASPO ValuePoint is identified in this Master Agreement as the recipient of reports and may perform Contract administration functions relating to collecting and receiving reports as well as other Contract administration functions as assigned by the Lead State.
<b><i>Newly Manufactured</i></b>	Devices that have not been Refurbished, Remanufactured, rented, leased, sold, or used in a demonstration, and are currently being marketed by the Manufacturer.
<b><i>Normal Business Hours</i></b>	8:00 a.m. to 5:00 p.m., Monday through Friday (state holidays excluded), regardless of time zone.
<b><i>Not Specifically Priced (NSP)</i></b>	NSP items are items that enhance or compliment the Contractor's Product, and may be acquired by a Purchasing Entity under Contractor's Master Agreement, but are not listed or priced in Contractor's NASPO ValuePoint Price List. NSP's may include Coin Op equipment, empowering software, etc. NSP items do not include Services.
<b><i>OEM</i></b>	Original Equipment Manufacturer.
<b><i>Order</i></b>	Any type of encumbrance document or commitment voucher, including, but not limited to, a purchase order, contract, MPS statement of work, Maintenance Agreement, lease agreement etc.)
<b><i>Participating Addendum</i></b>	A bilateral agreement executed by a Contractor and a Participating State or Entity incorporating this Master Agreement and any other additional Participating State or Entity specific language or other requirements (e.g. ordering procedures, other terms and conditions).
<b><i>Participating Entity</i></b>	A government entity within a state, or an eligible Non-Profit association, that is properly authorized to enter into a Participating Addendum.
<b><i>Participating State</i></b>	A state, which encompasses all government entities within that state, or the District of Columbia, or one of the territories of the United States, that enters into a Participating Addendum.
<b><i>Power Filter</i></b>	An electronic filter which is placed between an external power line and a Device for the purpose of removing frequencies or electromagnetic interference.
<b><i>Private Label</i></b>	Products that are manufactured by one company and sold under a retailer's



	brand name.
<b><i>Product</i></b>	Devices, Accessories, parts, software, and/or Supplies provided or created by the Contractor pursuant to this Master Agreement.
<b><i>Public Record</i></b>	All books and Public Records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and Public Records.
<b><i>Purchasing Entity</i></b>	A city, county, district, institution of higher education, and some non-profits who issue an Order against this Master Agreement via their Participating State or Entity's Participating Addendum.
<b><i>Refurbished</i></b>	A Product which has received extensive maintenance and/or minor repair, including the replacement of all standard parts subject to wear during the normal course of use. Refurbished Equipment shall not have more than 750,000 original copies on it. In addition, Refurbished Equipment must only contain OEM parts. Refurbished Equipment must be certified by the Manufacturer.
<b><i>Remanufactured</i></b>	The process of disassembling Devices known to be worn or defective that can be reused or brought up to OEM specification by cleaning, repairing or replacing it in a manufacturing environment and then reassembling and testing it, so that it will operate like a new Device. Remanufactured Equipment must be certified by the Manufacturer.
<b><i>Renewal Term</i></b>	A lease term that supersedes the Initial Lease Term, and which a Purchasing Entity may enter into upon thirty (30) days prior written notice to Contractor. Each Renewal Term shall not exceed 12 months, the residual value of the Equipment, or the Useful Life of the Equipment. \$1 Buyout Leases are excluded from going into renewal.
<b><i>Resell</i></b>	Any payment in exchange for transfer of tangible Products, or assignment of the right to Services.
<b><i>Response Time</i></b>	The time from when the original Service Call is placed with the Contractor or Authorized Dealer, to when the Service technician arrives at the Purchasing Entity's location.
<b><i>Segment</i></b>	The various speeds that Devices are categorized by.
<b><i>Service Base Location</i></b>	The place of business where the Contractor or Authorized Dealer stores parts and provides training for service technicians.
<b><i>Service Call</i></b>	An on-site Service technician visit due to Device error or malfunction.
<b><i>Services</i></b>	The labor required to be performed by Contractor pursuant to this Master Agreement or an Order.
<b><i>Single-function Printer</i></b>	An inkjet or laser Device that only prints and is not capable of other functions such as copying, faxing or scanning.
<b><i>Solicitation</i></b>	A written offer or attempt to purchase Products and/or Services through an official Proposal, Evaluation, and Award process.
<b><i>Supplemental</i></b>	Documents include, but are not limited to, lease agreements, rental

<b>Documents</b>	agreements, Maintenance Agreements, and software or click-wrap agreements that are pertinent to the Products being offered.
<b>Supplies</b>	<u>Consumable</u> items that gets used up or are discarded once used, such as ink cartridges.
<b>Third Party</b>	Someone who may be indirectly involved but is not a principal party to an arrangement, contract, deal, lawsuit or transaction.
<b>Total Monthly Payment</b>	The Equipment portion of the payment, as well as any Service, Supplies or maintenance, and less any applicable taxes.
<b>Useful Life</b>	Period during which a Device is expected to be usable for the purpose in which it was manufactured.

### 3. NASPO VALUEPOINT PROGRAM PROVISIONS

#### 3.1. Price and Rate Guarantee Period

- 3.1.1.** The Price List(s) in **Exhibit A (Price Lists)**, identifies a complete listing of all Products and Services the Contractor can provide under this Master Agreement, with the exception of NSP items.
- 3.1.2.** MSRP/List Price discount percentages must be guaranteed throughout the term of this Master Agreement, including any renewal terms; however, Contractor may increase its discount percentage at any time. The Lead State must be notified of any such discount percentage increase, and provided with a copy of the new Group Price List(s).
- 3.1.3.** MSRP/List Price shall remain firm during the first twelve (12) months of the Master Agreement. After this period, Awarded Vendors may update their MSRP/List Price on a quarterly basis, according to the following guidelines:
- a) All requested price increases must include documentation from Direct Material suppliers detailing cost escalations, and Awarded Vendors must describe how those escalations impact current Product offerings.
  - b) With the exception of Direct Material cost increases, no price increase requests will be allowed.
  - c) Updated Price Lists must be submitted to the Lead State by the 1st day of each quarter.
  - d) Pricing will not go into effect unless, or until, it is approved by the Lead State.
- 3.1.4.** The Master Agreement pricing IS Ceiling Pricing. Contractor may offer lower pricing on a per Order basis to Purchasing Entity's; likewise, Purchasing Entity's may request lower pricing on a per Order basis from Contractor.
- 3.1.5.** Contractor may offer state-wide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. Contractor must notify the Participating State or Entity Contract Administrator of special state-wide promotional discounts.
- 3.1.6.** Any revisions to Product offerings (new Products, altered item or model numbers, etc.) must be pre-approved by the Lead State, and will be allowed once per month.
- 3.1.7.** Product updates are required by the 1st of the month and shall go into effect upon approval by the Lead State.

- 3.1.8.** Any Product additions must be updated with Buyer's Lab within ninety (90) days of submission to the Lead State. Failure to adhere to this requirement will result in the Product(s) being removed from the Master Agreement Price List(s) until such time as they can be verified on Buyer's Lab.
- 3.1.9.** Updates to lease rates must be submitted by the 1st day of each quarter.
- 3.1.10.** Price Lists received after the 1st of the month may not be approved for up to thirty (30) days following submission. In addition, errors in the Contractor's Price Lists may delay the approval process further.
- 3.1.11.** All approved Price Lists will be submitted by the Lead State to NASPO ValuePoint. Contractor shall then update all applicable websites with the new Price Lists after the NASPO ValuePoint website has been updated.
- 3.1.12.** All-inclusive Cost Per Copy (CPC) programs may be offered upon request by the Participating State or Entity, but pricing must not exceed Master Agreement pricing. Contractor must provide the Participating State or Entity with their pricing breakdown which enables the Participating State or Entity to easily compare the pricing in the CPC structure against the pricing in this Master Agreement.
- 3.1.13.** Pricing must include all standard shipping, delivery, and installation costs associated with the Products. Excess installation charges or expedited shipping however, may be billable. Refer to §4.9.5 for more information.

## **3.2. Participants and Scope**

- 3.2.1.** Contractor may not deliver Products or perform Services under this Master Agreement until a Participating Addendum acceptable to the Participating State or Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating State or Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating State or Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. Order) used by the Purchasing Entity to place the Order.
- 3.2.2.** Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating States or Entities authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Officer.
- 3.2.3.** Obligations under this Master Agreement are limited to those Participating States and Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating States and Entities are limited to the Orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Contractor shall email a fully executed PDF copy of each Participating Addendum to

[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.

- 3.2.4.** Participating States and Entities may, through a Participating Addendum, limit:
  - a) Available financial vehicles;
  - b) Device Groups, Segments, Products, Services (including MPS); and
  - c) Any additional items as deemed necessary by the Participating State or Entity.
- 3.2.5.** A Participating State or Entity must sign a new Participating Addendum with Contractor, regardless of whether Contractor has signed Participating Addenda under a prior Master Agreement(s).
- 3.2.6.** NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to this Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO ValuePoint cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.
- 3.2.7.** Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor, and any such language shall be void and of no effect:
  - a) Term of this Master Agreement;
  - b) Amendments;
  - c) Participants and Scope;
  - d) Administrative Fee;
  - e) NASPO ValuePoint Summary and Detailed Usage Reports;
  - f) NASPO ValuePoint Cooperative Program Marketing and Performance Review;
  - g) NASPO ValuePoint eMarket Center;
  - h) Right to Publish;
  - i) Price and Rate Guarantee Period; and
  - j) Individual customers.
- 3.2.8.** Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Officer of the state where the Participating Entity is located. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 3.2.9.** Purchasing Entities may not Resell Products. This limitation does not prohibit the following; however, any sale or transfer must be consistent with license rights granted for use of Intellectual Property:
  - a) Payments by employees of a Purchasing Entity for Products;
  - b) Sales of Products to the general public as surplus property; and

- c) Fees associated with inventory transactions with other governmental or non-profit entities, and consistent with a Purchasing Entity's laws and regulations.

### 3.3. Administrative Fees

- 3.3.1. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter.
- 3.3.2. The NASPO ValuePoint Administrative Fee is not negotiable.
- 3.3.3. The Contractor shall report on all actual Equipment sales, and on estimated Service and Supply sales. This method will no longer require the Contractor to capture the actual Service and Supply revenues that are billed to the customer each month.
- 3.3.4. Industry research has shown close to a 1:1 ratio between sales price on a piece of Equipment and the actual amount of Service and Supply costs required to operate that Equipment over its Useful Life. Therefore, to simplify the reporting process and remove the burden to capture the actual Service and Supply costs, the Contractor shall report as follows:
  - a) **Purchased Equipment:** Contractor shall report the actual amount invoiced (less any taxes) for all Equipment sold under the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount equal to the invoice amount and identified as "Estimated Service and Supplies" providing the customer elects to enter into a Maintenance Agreement. Thus, in the Contractor's Detailed Sales Report, for each item sold, there will be two-line items: one for the piece of Equipment, and one for the Estimated Service and Supplies. The amounts reflected for the Estimated Service and Supplies must be equal to the amount of the Equipment.
  - b) **Leased Equipment:** Contractor shall report sales according to the Purchased Equipment methodology described in §3.3.4(a), or they may report the actual amount invoiced (less any taxes) for the lease during the reporting period (calendar quarter). In addition, the Contractor shall report an additional amount equal to the invoice amount and identified as "Estimated Service and Supplies." Thus, in the Contractor's Detailed Sales Report, for each item leased, there will be two-line items: one for the invoice amount to the customer for the Equipment, and one for the Estimated Service and Supplies. The amounts reflected for the Estimated Service and Supplies must be equal to the amount of the invoiced Equipment.
- 3.3.5. Some Participating States may require a fee be paid directly to the Participating State on sales made by Purchasing Entities within that state. For all such requests, the fee level, payment method, and schedule for such reports and payments will be incorporated into the Participating Addendum. The Contractor may adjust this Master Agreement pricing accordingly for sales made by Purchasing Entities within the jurisdiction of the Participating State requesting the additional fee.

### 3.4. NASPO ValuePoint Summary and Detailed Usage Reports

The Contractor shall provide the following NASPO ValuePoint reports:

- 3.4.1. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the Contract shall be reported as cumulative totals by state, which are inclusive of all line items identified in the Detailed Sales Report. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

**3.4.2. Detailed Sales Report.** Contractor shall also report detailed sales data by:

- a) State;
- b) Customer Type (e.g. local government, higher education, K-12, non-profit);
- c) Customer bill-to name and address;
- d) Contractor or Authorized Dealer Order number;
- e) Customer purchase order number;
- f) Customer number;
- g) Order type (e.g. sales Order, credit, return, upgrade);
- h) Purchase order date;
- i) Ship date;
- j) Invoice date and number;
- k) Product number and description
- l) List Price/MSRP;
- m) Contract Price;
- n) Quantity;
- o) Total Price;
- p) NASPO ValuePoint Admin Fee amount; and
- q) Dealer.

**3.4.3.** Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM or flash drive. Detailed sales reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is shown in **Exhibit E (NASPO ValuePoint Detailed Sales Reporting Template)**.

**3.4.4.** Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report.

**3.4.5.** Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with, and any PA roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

**3.4.6.** Timely submission of these reports is a material requirement of this Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, copy, and otherwise use reports, data and information provided under this section.

### **3.5. NASPO ValuePoint Cooperative Program Marketing and Performance Review**

- 3.5.1.** Contractor agrees to work cooperatively with NASPO ValuePoint personnel to ensure that Contractor's personnel will be educated regarding the provisions of this Master Agreement, as well as the competitive nature of NASPO ValuePoint procurements, the Participating Addendum process, and the manner in which Participating Entities can utilize this Master Agreement.
- 3.5.2.** Contractor agrees, as Participating Addenda are executed, and if requested by NASPO ValuePoint personnel, to provide plans to launch this Master Agreement program within the Participating State. Plans will include timeframes to implement this Master Agreement and Participating Addendum, as well as confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the Participating State.
- 3.5.3.** Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the Participating Addendum. Contractor shall ensure that their sales force is aware of this contracting option.
- 3.5.4.** Contractor agrees to fairly, actively, and equally promote and advertise their NASPO ValuePoint Master Agreement at all trade shows and Dealer meetings whereby Contractor displays or makes reference to their government contract award offerings.
- 3.5.5.** Contractor agrees, within 30 days of this Master Agreement effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored customer provisions in third-party government contracts or agreements that may affect the promotion of this Master Agreement, or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.
- 3.5.6.** Contractor agrees to participate in person at an annual performance review, which may include a discussion of marketing action plans, target strategies, marketing materials, reporting, and timeliness of administration fee payments. The location of the performance review shall be determined by the Lead State and NASPO ValuePoint.
- 3.5.7.** Contractor agrees that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing materials until a logo-use agreement is executed with NASPO ValuePoint.
- 3.5.8.** The Lead State shall evaluate the utilization of this Master Agreement at the annual performance review. The Lead State may, in its discretion, cancel this Master Agreement pursuant to §1.4, or not exercise an option to renew, when Contractor utilization does not warrant further administration of this Master Agreement. The Lead State may exercise its right to not renew this Master Agreement if Contractor fails to record or report revenue for three consecutive quarters, upon a 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of this Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel this Master Agreement pursuant to §1.4.4 or to terminate for default pursuant to §6.10.

### **3.6. NASPO ValuePoint eMarket Center**

- 3.6.1.** In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint customers to access a central online website to view and/or shop the Products and Services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

3.6.2. The Contractor shall have visibility in the eMarket Center through one of the following no-cost options:

**a) Ordering Instructions**

- i. The Contractor shall provide a link to their website, their Price list, their Dealer list, and any additional information they would like the customer to have in regards to placing Orders.
- ii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have thirty (30) days to provide NASPO ValuePoint with the Ordering Instructions.

**b) Hosted Catalog**

- i. The Contractor shall provide a list of its awarded Products and Services pricing via an electronic data file, in a format acceptable to JAGGAER.
- ii. In order to maintain the most up-to-date version of its Product offerings, the Contractor must submit electronic data to the eMarket Center no more than four (4) times per calendar year.
- iii. Upon receipt of written request from the eMarket Center Site Administrator, the Contractor shall have fifteen (15) days to set up an enablement schedule with NASPO ValuePoint and JAGGAER. The schedule shall include future calls and milestone timeframes related to testing and go-live dates.
- iv. The Contractor shall have ninety (90) days from the receipt of written request, to provide the Hosted Catalog to NASPO ValuePoint.
- v. The Hosted Catalog must be strictly limited to the awarded Products and Services, and must contain the most current approved pricing, including applicable quantity discounts.
- vi. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
- vii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although Suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating State or Entities if for example, the Participating State or Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating State or Entity has determined that they will not allow all awarded Products and Services under their Participating Addendum. SciQuest will deliver the appropriate contract files to the user viewing the catalog.

**c) Punch-Out Catalog**

- i. The Contractor shall provide its own online catalog, which must be capable of being integrated with the eMarket Center via Commerce eXtensible Markup Language (cXML).
- ii. The Contractor shall validate that its online catalog is current by providing a written update to the Lead State every four (4) months, verifying that they have audited the offered Products and Services pricing.
- iii. The Contractor shall have ninety (90) days from the receipt of the written request, to deliver the Punch-Out Catalog to NASPO ValuePoint.



- iv. The Punch-Out Catalog must be strictly limited to the awarded Products and Services, and must contain the most current approved pricing, including applicable quantity discounts.
- v. The catalog must include a Lead State Contract identification number and detailed Product line item descriptions.
- vi. The site must also return detailed UNSPSC codes for each line item.
- vii. Contractor shall provide e-Quote functionality to facilitate volume discounts.
- viii. The catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. It is possible to have multiple catalogs applicable to different NASPO ValuePoint Participating State or Entities if for example, the Participating State or Entity has incorporated an Administrative Fee into the Contract pricing, or a Participating State or Entity has determined that they will not allow all awarded Products and Services under their Participating Addendum. JAGGAER will deliver the appropriate contract files to the user viewing the catalog.

**3.6.3. Revising Pricing and Products**

- a) Any revisions to Product offerings (new Products, altered SKU's, etc.) must be pre-approved by the Lead State, and will be allowed once per month.
- b) Updated Product files are required by the 1<sup>st</sup> of the month and shall go into effect upon approval by the Lead State.
  - i. Files received after the 1<sup>st</sup> of the month may not be approved for up to thirty (30) days following submission.
  - ii. Errors in the Contractor's submitted files may delay the approval process.

**3.6.4. Supplier Network Requirements for Hosted and Punch-Out Catalogs**

- a) Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use the JAGGAER's Supplier Portal to import the Contractor's catalog and pricing files into the JAGGAER system.
- b) Contractor can receive Orders through electronic delivery (cXML) or through low-tech options such as fax.
- c) More information about the SQSN can be found at [www.sciquest.com](http://www.sciquest.com), or by contacting the JAGGAER Supplier Network Services team at 800-233-1121.

**3.6.5. Order Acceptance Requirements for Hosted and Punch-Out Catalogs**

- a) Contractor must be able to accept Orders via fax or cXML.
- b) The Contractor shall provide confirmation via phone or email within 24 hours of Order receipt.
- c) If the Order is received after 3pm (EST) on the day prior to a weekend or holiday, the Contractor must provide confirmation via phone or email on the next business day.

**3.6.6. UNSPSC Requirements**

- a) Contractor shall support use of the United National Standard Product and Services Code (UNSPSC). UNSPSC versions that Contractors must adhere to are provided by JAGGAER and upgraded each year.
- b) NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC, and Contractor shall be required to support the migration effort.
- c) All line items for Products and Services provided under this Master Agreement must be associated to a UNSPSC code.
- d) All line items must be identified at the most detailed UNSPSC level, indicated by segment, family, class, and commodity.

**3.6.7. Applicability.** Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center, and that NASPO ValuePoint may elect at any time to remove any Contractor offerings from the eMarket Center.

**3.6.8.** Several NASPO ValuePoint Participating States and Entities currently maintain separate JAGGAER eMarket Place accounts. In the event that one of these Participating States or Entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarket Center), but publish the information to their own eMarket Place, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint, and agrees to take commercially reasonable efforts to implement such separate JAGGAER catalogs.

### **3.7. Right to Publish**

The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the Products and Services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of this Master Agreement for cause.

### **3.8. Individual Customers**

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of this Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in this Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in this Master Agreement and applicable Participating Addendum. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **4. STATEMENT OF WORK**

### **4.1. Overview**

- 4.1.1.** Contractor guarantees a continuing supply and consistent quality of Equipment, Accessories, software, Supplies, and Services offered.
- 4.1.2.** Contractor may not provide Products that have not been approved by the Lead State, with the exception of NSP items, as referenced in §4.3.9.
- 4.1.3.** Contractor shall maintain compliance with all requirements of this Master Agreement throughout the duration of the Contract.
- 4.1.4.** A Purchasing Entity that purchases or leases Equipment may issue an Order, pursuant to the terms and conditions that are incorporated into this Master Agreement, and according to the

requirements listed in their states' Participating Addendum, including, but not limited to, the issuance of Contractor's Supplemental Documents, which are attached as **Attachment A through Attachment I**. Each Participating State or Entity shall be responsible for negotiating the terms and conditions of each of the aforementioned Attachments.

**4.1.5.** Per Section 508 of the United States Workforce Rehabilitation Act of 1973, Contractor provides Devices under Groups B and D, which are accessible to people with disabilities.

**4.1.6. MPS:**

- a) Contractor may provide MPS on Group A, Group B, Group C, Group D.
- b) Contractor may provide MPS on Group E, and Group F, providing the Purchasing Entity owns the Equipment.
- c) Contractor may not provide MPS maintenance or repair Services on any Devices that are being leased or rented to a Purchasing Entity by another Manufacturer, unless they have a written agreement with the Manufacturer to do so.

**4.1.7. Survivability:**

- a) Any Order placed under this Master Agreement shall survive the expiration of this Master Agreement unless otherwise specified in a Participating Addendum.
- b) Contractor is not permitted to increase pricing on any Order that was placed prior to the expiration of this Master Agreement.

**4.1.8.** Contractor shall notify the Lead State, Participating States, Participating Entities and all Purchasing Entities of any recall notices, warranty replacements, safety notices, or any applicable notice regarding the Products being sold. This notice must be received in writing (via postal mail or email) within thirty (30) calendar days of Contractor learning of such issues.

**4.2. Authorized Dealers**

**4.2.1.** Contractor may engage Authorized Dealers, who shall be Contractor's agent and Subcontractor for providing sales and support for the Products and/or Services purchased by the Purchasing Entity under this Master Agreement.

**4.2.2.** In the event Contractor elects to use Authorized Dealers in the performance of the specifications, Contractor shall serve as the primary Contractor, and shall be fully accountable to the Lead State for assuring that the Authorized Dealers comply with the terms and conditions of this Master Agreement, and shall be liable in the event that Authorized Dealers fail to comply with such terms and conditions.

**4.2.3.** Authorized Dealers shall be expected to stay current with Contractor's Products, pricing, Master Agreement, and Participating Addendum requirements.

**4.2.4.** Authorized Dealers shall have the ability to accept Orders from a Purchasing Entity and invoice them directly.

**4.2.5.** Contractor must disclose to the Lead State, a list of all Authorized Dealers that provide Products and/or Services, utilizing **Exhibit C (Authorized Dealers by State)**.

**4.2.6.** Contractor shall send notice to the Lead State, utilizing **Exhibit D (Authorized Dealer Form)** and the Authorized Dealers by State spreadsheet, within three (3) calendar days of Dealer and Contractor signing the Authorized Dealer Form.

4.2.7. The Lead State reserves the right to deny the addition of any Authorized Dealer and will provide notification to the Contractor with justification as to why the decision was reached. In addition, it will be at the discretion of each Participating State or Entity as to whether they will utilize the Authorized Dealers as approved by the Lead State.

4.2.8. If an Authorized Dealer is performing unsatisfactorily, or is not in compliance with this Master Agreement, then it shall be at the discretion of the Lead State, upon recommendation from the Participating State, to either remove the Dealer from the Contract, or in the case of multiple branch locations in one state, or multiple states, remove them as a Dealer from the location in which they are not in compliance. Alternatively, the Contractor may investigate and consult with the Participating State and/or the Purchasing Entity as appropriate, and use commercially reasonable efforts to resolve the dispute.

**4.3. Product Offerings**

4.3.1. **Group Segments.** Contractor shall offer Products under the following Groups:

<b>Group B – MFD, A4 B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
1	Up to 20
2	21 – 30
3	31 – 40
4	41 – 50
5	51 – 60
6	61+

<b>Group D – Single-function Printers B&amp;W only; Color and B&amp;W</b>	
<b>Segment</b>	<b>PPM</b>
1	Up to 20
2	21 – 40
3	41 – 60
4	61+

4.3.2. **Device Configurations.** Contractor’s Devices shall be equipped, at a minimum, with the following Accessories/capabilities:

- a) **Group B – MFD, A4**
  - i) New Power Filter;
  - ii) Bypass paper supply;
  - iii) Standard paper drawer(s) equal to or greater than:
    - 1) One (1) paper supply for Segments 1 and 2;
    - 2) Two (2) paper drawers for Segments 3 and 4; and/or
    - 3) 2,000 sheet paper capacity for Segments 5 and above.
  - iv) Paper size capacity up to 8 ½” x 14”; and
  - v) Envelope adjustment capability.

**b) Group D – Single-function Printers**

- i) Must include an inkjet, light emitting diode (LED), or laser print engine;
- ii) Standard paper drawer(s);
- iii) Standard paper capacity; and
- iv) Network connectivity.

**4.3.3. Device Standards.** Devices shall meet the following requirements:

- a) Group B Base Units are OEM only;
- b) Group B must be EPEAT registered to a minimum of Bronze Standard within one (1) year of being added to the Master Agreement Price List;
- c) Group D must be Energy Star compliant or EPEAT registered to a minimum of Bronze Standard within one (1) year of being added to the Master Agreement Price List;
- d) If Contractor's Devices fail to meet the EPEAT Bronze Standard, or be Energy Star compliant (applicable to Group D Devices only) within one (1) year, then they will be removed from the Price List;
- e) Must be Newly Manufactured, current, Remanufactured, or Refurbished, except as specified in a Participating Addendum;
- f) Devices, when installed, and if available, must be set-up to receive automatic software updates and patches. For new software versions or upgrades that carry an additional cost, updates will not be done automatically; rather, Contractor or their Authorized Dealer will inform the Purchasing Entity of the new version and assist them in their decision to upgrade based on needed functionality and compatibility with their existing Equipment.
- g) Specifications must be published on Contractor's website;
- h) MSRP must not exceed what is listed with Buyers Laboratory Inc., or List Price must not exceed what is published on the Manufacturer's website;
- i) Must maintain a PPM speed, according to Segment classification; and
- j) Must be compatible with using recycled paper, up to and including, 100% Post-Consumer Waste (PCW) paper. Contractor may not fault the use of recycled paper for Device failures, as long as the recycled paper in use meets the standard paper specifications (e.g., multi-purpose, copy, or laser paper).

**4.3.4. Device Exceptions.** Group D will not be restricted to OEM, and do not have to be Private Labeled.

**4.3.5. Accessories.** Contractor shall provide OEM and/or Third Party compatible Accessories that compliment or enhance the features of the Device.

**4.3.6. Software**

- a) Contractor shall provide software to enhance the capabilities of the Devices, or software may be provided as a standalone option on any pre-owned, purchased, or leased Device.

- b) Contractor shall provide OEM and/or Third Party Software.
- c) All software drivers shall be, at a minimum, Windows 7 compliant, and all Devices must have universal software drivers.
- d) Purchasing Entities that acquire software shall be subject to the license agreements distributed with such software, as referenced in **Attachments F through J**, and as additionally provided by Contractor upon order placement. However, the Master Agreement will supersede and control if there is conflicting language between it, and any software license agreement.

#### **4.3.7. Consumable Supplies**

- a) Contractor shall offer OEM or compatible consumable for Supplies for Groups B and D. These Supplies may be purchased as standalone items or included as part of a Maintenance Agreement. Under no circumstances may the Supplies, regardless of quantity, be financed, unless they are start-up Supplies. The Supplies that may be offered include, but are not limited to the following:
  - i) Toner;
  - ii) Staples;
  - iii) Print Cartridges;
  - iv) Imaging Drums (Photoconductor Drums);
  - v) Fuser Kits;
  - vi) Transfer Kits;
  - vii) Waste Toner Bottles;
  - viii) Fuser Wipers;
  - ix) Ribbon;
  - x) Developer;
  - xi) Rollers and Pick-Tires; and
  - xii) Maintenance Kits.
- b) Toner must be free of carcinogenic, mutagenic, or teratogenic substances.
- c) Contractor shall provide the Purchasing Entity with a method to return the empty toner cartridges at no additional charge.

#### **4.3.8. Remanufactured/Refurbished Equipment**

- a) Contractor may offer Remanufactured and/or Refurbished Equipment under Group B and D.
- b) Remanufactured and Refurbished Equipment is not required to be EPEAT registered or Energy Star compliant.
- c) Equipment may be acquired via a purchase or lease agreement.
- d) Contractor must notify the Purchasing Entity in writing, when Remanufactured or Refurbished Equipment is being offered.

- e) All Remanufactured or Refurbished Equipment must be clearly labeled as such, and must be certified by the Manufacturer.
- f) Remanufactured Equipment must be priced according to the minimum discount offered for similar Equipment in Groups B and D.
- g) Refurbished Equipment shall be offered at a minimum discount of 10% less than the lowest priced Device of the Group and Segment to which the Refurbished Equipment belongs.
- h) Service and Supplies for Remanufactured and Refurbished Equipment will receive the same pricing as the published price for the Group and Segment to which it belongs.

#### **4.3.9. Open Market Items**

- a) Contractor may offer Not Specifically Priced (NSP) items that compliment or enhance the Products and/or Services. NSP items will not include:
  - i) Interactive White boards;
  - ii) Computers, monitors, or other related items;
  - iii) Fax machines;
  - iv) Overhead Projectors; and
  - v) Cameras.
- b) NSP items may only be acquired through the Contractor or their Authorized Dealers and must be reported quarterly with all other sales.
- c) NSP items must be priced at a minimum discount of 15% from MSRP or List Price.
- d) 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 shall be determined by the Participating State or Entity.
- e) It shall be at the discretion of the Participating State or Entity to allow Open Market Items in their Participating Addendum.

#### **4.3.10. Emerging Technologies**

- a) Upon approval from the Lead State, Contractor may add new, related technology.
- b) Technology does not have to be restricted to OEM, nor does it have to be Private Labeled.
- c) Any new technology that a Contractor requests to add to their Price List must contain a full description of the Product, along with MSRP and pricing information, as well as an explanation/justification as to how the Product conforms to the requirements of this Master Agreement.
- d) Any new technology must be priced at a minimum discount of 10%.

### **4.4. Service Offerings**

#### **4.4.1. Managed Print Services**

- a) Contractor shall provide the following:
  - i) **No Fee Initial Assessment** – which shall include the following:
    - 1) Document workflow

- 2) Identification of Supplies in existing Equipment
  - 3) Current output fleet
  - 4) Total Cost of Ownership (TCO)
  - 5) Employee to Device ratio
  - 6) Preliminary estimated cost savings
  - 7) Scope and size of No Fee engagement should not exceed 150 Devices in the current environment.
- ii) **Implementation** – which shall consist of the following:
- 1) Plan Development
  - 2) Hardware and Software Installation and Set-up.
- iii) **Remote Device Monitoring** – which shall include the following:
- 1) Job Accounting
  - 2) Automated Meter Reads
  - 3) Automated Toner Replenishment
- iv) **End-user Support** – which shall include the following:
- 1) Training
  - 2) Help Desk Services
- v) **Account Management** – which shall include the following:
- 1) Reporting
  - 2) Invoicing
  - 3) Customer Business Reviews
- b) Contractor may also provide the following:
- i) **Maintenance**
- 1) Service and Repair
  - 2) On-site break/fix
  - 3) Parts Management
  - 4) Warranty Management
- ii) **Ongoing Fleet Management and Optimization**
- 1) Add/Move/Change Services
- iii) **Cost Based Assessment**
- 1) Asset Mapping
  - 2) End-user Survey
  - 3) Detailed Recommendation
  - 4) Analysis and Plan Design
- iv) **Professional Services**



- 1) Consulting for MPS services
  - 2) Project Management for Lexmark deployments
  - 3) Network and Data Security for Lexmark Devices and Solutions
  - 4) Document Workflow Consulting
- c) All MPS engagements shall require the Contractor and Purchasing Entity to complete a detailed statement of work, as referenced in **Attachment C (Lexmark MPS Statement of Work)**, and it must be approved by both parties prior to the initiation of any engagement.
- d) The free initial assessment shall not constitute a commitment on behalf of the Purchasing Entity. Upon request from a Purchasing Entity, Contractor must provide the assessment with the understanding that the Purchasing Entity is under no obligation to enter into an MPS engagement.
- e) MPS pricing and billing options shall be flexible, as long as pricing doesn't exceed Master Agreement pricing, and the Purchasing Entity will drive the complexity of the solution required with a staged approach to implementation.

#### 4.4.2. Maintenance Agreements

##### a) Pricing

- i) Pricing shall include a zero base, cost per click rate for b&w and/or color for Groups B and D.
  - ii) Pricing for a monthly base charge, a set copy allowance and an overage rate for b&w and/or color shall also be provided.
  - iii) Pricing must be provided that includes all parts, labor, Service Calls, and Supplies for Groups B and D.
  - iv) A pricing option for ALL Groups shall include parts, labor, and Service Calls, but **excludes** Supplies.
  - v) Contractor may increase their Service and Supply pricing to include staples (if applicable to the Device).
  - vi) Service Calls due to misuse, neglect or abuse shall not be covered by the Maintenance Agreement, and Contractor and Authorized Dealers may bill the Purchasing Entity at an hourly rate for Services rendered.
  - vii) A two-sided document shall be counted as two (2) clicks.
  - viii) Contractor must not charge for scans on any MFD.
- ix) Initial Term:**
- 1) Pricing shall remain firm for the initial term of the Maintenance Agreement.
  - 2) For leased Equipment, the Maintenance Agreement term is equal to the term of the lease (12, 18, 24, 36, 48 and 60 months).
  - 3) For purchased Equipment, the initial term is whatever period of time the Purchasing Entity elects, as long as it does not exceed 60 months.
- x) Renewal Term:**
- 1) If a Purchasing Entity wishes to renew a Maintenance Agreement for Equipment that was acquired under this Master Agreement, then the Contractor may negotiate new pricing. This pricing shall not exceed this Master Agreement pricing.

**b) Blended Rates**

- i) Contractor shall have the ability to blend the Service and Supply costs over a large Equipment fleet, and the Blended Rate must cover all units in the fleet.
- ii) The Blended Rate must be divided between b&w and color.
- iii) Contractor shall provide the Purchasing Entity with the Blended Rate calculation prior to Order placement.
- iv) Utilizing a Blended Rate shall be at the discretion of the Participating State or Entity.

**c) Manual Meter Reads**

- i) Contractor may collect meter reads from a Purchasing Entity via electronic means.
- ii) Meter reads may be submitted via the Contractor's online portal, or through e-mail, or facsimile.
- iii) A Participating State or Entity may also elect, at their discretion, to submit meter reads through the Device.

**d) Customer Owned Equipment**

- i) Purchasing Entity's may elect to enter into a Maintenance Agreement for Equipment they already own, or Equipment they acquire through an up-front purchase.
- ii) The Maintenance Agreement may be priced on a flat rate fee, which shall include parts, labor, and Service calls. Supplies may or may not be included.
- iii) The Maintenance Agreement shall not be subject to automatic renewals.

**e) Leased Equipment**

- i) Contractor shall be required to provide a Maintenance Agreement on all Equipment that is leased by a Purchasing Entity.
- ii) The Maintenance Agreement shall be priced based on a cost per click rate, or a monthly base charge.

**4.4.3. Service Requirements**

**a) Technicians.** All technicians shall be factory trained by the OEM and certified to Service the Devices.

**b) Standard Service Levels.** Participating States and/or Entities shall negotiate their own Service Level Agreement (SLA) with the Contractor. The SLA, must, at a minimum, adhere to the following requirements:

**i) End-User Training**

- 1) An initial, no charge, on-site, one-hour training session for each Device, must be offered by Contractor for all non-desktop Products placed at each Purchasing Entity's location. For drop-shipped or desktop Products, Contractor shall offer an initial, one-hour, no charge, web-based, or on-line training session.
- 2) Technical support training shall also be included in the initial, no charge training, and will include network connectivity and print driver installation. This training will be in addition to the one-hour of free training for Device operation.
- 3) If Purchasing Entity elects to exercise the training option, then Contractor shall provide the training within ten (10) Business Days of Purchasing Entity's request.

- 4) Contractor shall offer additional on-site, one-hour training sessions for a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity prior to Order placement.
- 5) Contractor must provide on-site or off-site operational training to designated Purchasing Entity personnel, until the personnel are able to operate the Equipment independently. Pricing for operational training shall be based on a flat rate fee. Additional charges for travel and per diem, if applicable, must be disclosed to the Purchasing Entity prior to Order placement.
- 6) Contractor shall provide Product literature, user-manuals, and access to on-line resources, if available, at no charge to the Purchasing Entity.
- 7) Contractor shall provide a toll-free end-user technical support number that Purchasing Entities can utilize for everyday minor troubleshooting. A Purchasing Entity must be able to obtain assistance during Normal Business Hours.
- 8) Contractor shall provide phone/technical support within two (2) hours of Purchasing Entity's request for assistance.

**ii) Equipment Performance**

- 1) Equipment Downtime shall be calculated from the time a service call is placed with Contractor or with Dealer's dispatch department until the time the technician completes the repair.
- 2) Equipment Downtime due to lack of consumable Supplies is not acceptable.
- 3) Contractor shall guarantee that the fleet of Devices for each Purchasing Entity will be operational at least 96% of the time, during Normal Business Hours for Groups B and D.
- 4) If any fleet of Devices fails to perform at the operation level specified in §4.4.3(b)(ii)(3) then §4.11.11 shall apply.
- 5) Contractor must provide daily communication to the Purchasing Entity regarding inoperable Equipment, including updates regarding resolution timeframe, and any parts, Accessories, or Devices on back-order.

**iii) Loaner Equipment.** If any Device is inoperable for two (2) Business Days, due to Equipment malfunction, as reasonably determined by Contractor, then Contractor shall provide the Purchasing Entity with:

- 1) A loaner Device of similar speed and capabilities until such time as the inoperable Device(s) are now operable; or
- 2) Provide the Purchasing Entity with off-site manned production capabilities to accomplish the work of the unit that is inoperable at the sole expense of the Contractor. Such costs shall be limited to the cost of production (Service and Supplies), Equipment, labor, and transportation to and from the off-site production facility and the Purchasing Entity location.

**iv) Repair Parts**

- 1) Contractor shall guarantee the availability of repair parts for a minimum of five (5) years after the Purchasing Entity's Acceptance of any Device.
- 2) All Device components, spare parts, application software, and ancillary Equipment that is supplied under this Master Agreement, must conform to Manufacturer specifications.

- 3) Contractor shall be responsible for ensuring that any repair parts are operable and installed in accordance with Manufacturer specifications.
- 4) Repair parts may be new, reconditioned, reprocessed or recovered.

**v) Replacement Equipment**

- 1) If Purchasing Entity is not satisfied with any Device, Contractor will, at Purchasing Entity's written request, replace it without charge with an equivalent unit or, upon mutual agreement with the Purchasing Entity, with a Device of comparable features and capabilities.
- 2) Prior to installing a substitute Device, Contractor will be allowed thirty (30) days to remedy any quality or reliability issues.

**vi) Service Zones**

- 1) Unless otherwise specified in a Participating Addendum, Contractor shall adhere to the following Service Call Response Times based on the distance that their Service Base Location is from the Purchasing Entity:

Service Zone	Definition	Response Time
Urban	Within 60 miles	Next Business Day; 4 – 6 Hours where available
Rural	60 – 120 miles	1 - 2 Business Days
Remote	120+ miles, or only accessible by plane or by boat	4 - 5 Business Days

- 2) Repair or replacement of parts and/or Devices shall occur within four (4) Business Days of Contractor arriving at Purchasing Entity's location, with the following exception:
  - If Contractor is drop-shipping a new Device to replace a defective Device, then Purchasing Entity must receive the new Device within three (3) Business Days.
- 3) Contractor may charge different rates according to each Service zone.

**vii) Service Logs**

- 1) Contractors shall maintain a Service log which describes the maintenance and repair Services provided for each Device.
- 2) A no-cost copy of Service logs/reports must be provided to the Purchasing Entity or Participating State or Entity, within five (5) Business Days of the request.

**viii) Equipment Relocation**

- 1) Equipment relocation Services include dismantling, packing, transporting, and re-installing Equipment.
- 2) Contractor may charge for this Service based on the following table:

Service Zone	Distance from original placement of Device	Charge
1	Within the same building	No Charge Allowed* (limited to 5% of the fleet throughout the

		service performance period)
2	Up to 50 miles from building in which Device was originally placed	Flat Rate Fee, plus Per Mile or Hourly Fee
3	More than 50 miles from building in which Device was originally placed	Flat Rate Fee, plus Per Mile or Hourly Fee

\*Contractor may charge Purchasing Entities a mutually agreed upon price for special rigging in the event a Purchasing Entity's demographics require such rigging for Zone 1 relocation's. The price shall be agreed upon in writing by Contractor and Purchasing Entity prior to any Equipment relocation in Zone 1.

- 3) Contractor shall not charge for any fees incurred due to fuel or tolls.
- 4) Moves must be performed within thirty (30) calendar days of the Purchasing Entity request. Request may be verbal or written, but Contractor must confirm the request in writing and provide a date that the move will occur. Written confirmation must be sent to the Purchasing Entity within three (3) Business Days of request. In the event that there will be a delay in these Services, Contractor shall communicate with Purchasing Entity and agree on a mutually beneficial time-frame.

**c) Meter Read Invoicing**

- i) In order for Contractor to generate accurate invoices, Purchasing Entities shall provide meter reads within the Contractor's requested time-frame.
- ii) Invoices that are generated without receiving the proper meter read information from the Purchasing Entity will not be considered inaccurate.
- iii) The Purchasing Entity shall provide written notice of any such alleged invoicing issue and the Contractor will be allowed a thirty (30) day cure period to address any such issue. During the thirty (30) day cure period, the Purchasing Entity will not be assessed any late fees for failure to submit payment by the invoice due date.
- iv) Failure on the Contractor's part to maintain accurate invoicing shall result in a \$25.00 per instance credit on the following month's invoice, but shall not exceed a maximum of \$500.00 for any billing period.

**d) Service Level Calculations**

- i) At the discretion of the Participating State or Entity, Contractor shall produce reports that can be measured against the required SLA components. Refer to §4.4.3(e) for reporting requirements.
- ii) The Participating State or Entity shall determine how the reports will be utilized and whether liquidated damages will be assessed for failure to meet the SLA requirements. Any liquidated damages or penalty structure shall be defined in the Participating State or Entity's Participating Addendum.

**e) Reporting.** Contractor shall provide periodic reporting to all Purchasing Entities upon request. The reports shall be provided on a quarterly basis, or at the discretion of the Participating State or Entity.

- i) The report shall include the following:
  - 1) Up-time percentage (%) per fleet of Devices;
  - 2) Number of Service Calls placed;

- 3) Response Time per Device; and
  - 4) Estimated end of Useful Life per Device, based on current usage.
- ii) The report may include, but not be limited to, the following:
- 1) Location of Devices;
  - 2) Click usage per Device; and
  - 3) EPEAT certification level of each Device.

**4.4.4. Software Subscriptions**

- a) Software pricing shall be inclusive of available software patches and any updates.
- b) Purchasing Entities shall have the option to finance software subscriptions according to the lease rates listed in Groups B and D of the Master Agreement.
- c) Any new releases of software versions (upgrades) shall be chargeable to the Purchasing Entity; however, Contractor may not charge for the installation of the software upgrade.
- d) License fees and support fees shall remain firm throughout the term of the agreement.
- e) Software subscriptions shall not be subject to automatic renewals. Should there be any conflicting language between the software end user license agreement and the Master Agreement, the Master Agreement shall govern and control.
- f) Contractor shall be responsible for communicating all updates, patches, and new releases/versions to Purchasing Entities.
- g) Contractor shall provide a web-based or toll-free hotline during Normal Business Hours for Purchasing Entities to report software problems or answer software related questions.

**4.5. Purchase and Lease Programs**

4.5.1. Contractor shall offer the following acquisition methods:

<b>Financial Vehicle</b>	<b>Standard Terms Offered</b>
Purchase	N/A
Fair Market Value Lease	12, 18, 24, 36, 48 and 60 months
\$1 Buyout Lease	
Straight Lease	
Short-Term Lease	12 months

4.5.2. All Products on Contractor’s Price List may be purchased or leased, either as a packaged-deal, or stand-alone item. Any Products that are not available as a stand-alone item, shall be listed as such on the Contractor’s Price List(s).

**4.5.3. Equipment Trade-In**

- a) A Purchasing Entity shall have the option, at the Contractors sole discretion, and based upon Participating State or Entity regulations and laws, and Purchasing Entity policies, to do an Equipment Trade-In, when placing a purchase or lease Order.
- b) The value for the Equipment Trade-In shall be negotiated by the Purchasing Entity and the Contractor, and shall not include any disposal or shipping fees.

#### **4.5.4. Lease Rates**

- a) The rate for any lease shall remain fixed throughout the Initial Lease Term.
- b) Equipment Payments for Renewal Terms shall never exceed Master Agreement pricing.
- c) If a Purchasing Entity enters into a Renewal Term, then the Equipment Payment will be subject to the lease rates listed in the most recent Price List(s) posted on the NASPO ValuePoint website.
- d) Contractor may update lease and rental rates on a quarterly basis to allow for changes in the financial market. The rates must be indexed against the US Daily Treasury Yield Curve Rates, or something similar, and must be the rate in effect at the end of each calendar quarter. Refer to <https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield> for additional information.
- e) Contractor shall offer Coterminous lease rates to any Purchasing Entity wishing to add Products to an existing lease agreement.

#### **4.5.5. Leasing Overview**

- a) All lease programs must remain with the Contractor or Authorized Dealers through an in-house leasing program, or through the financial branch or subsidiary of the Contractor. In addition, Contractor and their Authorized Dealers may use Third Party leasing companies, but all billing must be invoiced in the name of the Contractor or their Authorized Dealer, and all contractual obligations shall remain with the Contractor.
- b) A Purchasing Entity may lease Equipment pursuant to the terms and conditions identified herein.
- c) Lease agreements shall not be subject to automatic renewals.
- d) In the event that the term of a lease agreement extends beyond the term of the Participating Addendum, the terms and conditions of this Master Agreement and Participating Addendum shall continue to apply.
- e) A lease agreement issued prior to the termination of this Master Agreement and Participating Addendum, shall survive the termination of this Master Agreement and the Participating Addendum.
- f) With the exception of a \$1 Buyout Lease arrangement, or unless exercising the purchase option on an FMV Lease, a Purchasing Entity shall return the Equipment at the end of the Initial Lease Term, or at the end of the Renewal Lease Term, or the Contractor may pick the Equipment up, without any further financial obligations to the Purchasing Entity.
- g) Equipment pickups must be performed within thirty (30) calendar days of the end of the Initial or Renewal Term.
- h) Equipment returns must be performed within thirty (30) calendar days after the Contractor or Authorized Dealer provides return shipping instructions to the Purchasing Entity.
- i) Contractor shall be responsible for all Product pickup and return costs.
- j) The maximum term on any Initial Lease Term shall be 60 months, with the exception of Short-Term Leases, which shall have a maximum term of 12 months.

- k) The length of a Renewal Term shall be at the discretion of the Participating State or Entity, but at no time shall the Renewal Term exceed the Useful Life of the Equipment.
- l) All Renewal Terms shall be billed on a monthly basis.

#### **4.5.6. Leasing Options**

##### **a) FMV Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months.
- ii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Exercise their purchase option;
  - 2) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 3) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

##### **b) \$1 Buyout Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months.
- ii) Upon the expiration of the Initial Lease Term, the Contractor shall provide title to the Equipment to the Purchasing Entity, or as otherwise determined in a Participating Addendum, and the Purchasing Entity shall not be subject to any additional expense in order to assume possession of the Equipment.

##### **c) Straight Lease**

- i) A Purchasing Entity shall have the option to enter into an Initial Lease Term of 12, 18, 24, 36, 48 or 60 months.
- ii) Upon the expiration of the Initial Lease Term, a Purchasing Entity may do one of the following:
  - 1) Renew the lease on a month to month basis, or a 12-month basis, at the discretion of the Participating State or Entity; or
  - 2) Return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

##### **d) Short-Term Lease**

- i) A Purchasing Entity shall have the option to enter into a maximum lease term of 12 months.
- ii) Upon the expiration of the lease term, a Purchasing Entity shall return the Equipment to the Contractor, or have the Contractor pick the Equipment up.

#### **4.5.7. Leasing Terms and Conditions**

##### **a) Possession and Return of Lease Equipment**

- i) Purchasing Entity is responsible for risk of loss to the Products while the Products are in Purchasing Entity's possession. Purchasing Entity shall be relieved of all risks of loss or damage to the Products during periods of transportation and de-installation.



- ii) Contractor or Authorized Dealer must notify a Purchasing Entity, in writing, of their End of Term (EOT) options at least sixty (60) to ninety (90) days prior to the end of any Initial Lease Term. Such notification may include, but not be limited to, the following:
    - 1) Any acquisition or return options, based on the type of lease agreement;
    - 2) Any renewal options, if applicable; and/or
    - 3) Hard drive removal and surrender cost, if applicable.
  - iii) If a Purchasing Entity desires to exercise a purchase, renewal, or return of the Equipment, it shall give Contractor at least thirty (30) days written notice prior to the expiration of such lease term. Notwithstanding anything to the contrary, if Purchasing Entity fails to notify Contractor of its intent with respect to the exercise of a purchase, renewal, or return of the Equipment, the Initial Lease Term shall be terminated on the date as stated in the Order and removal of the Product will be mutually arranged, unless otherwise specified in a Participating State or Entity's Participating Addendum.
  - iv) If Purchasing Entity does not exercise the purchase or renewal option, it will immediately make the Product available to Contractor in as good of condition as when Purchasing Entity received it, except for ordinary wear and tear.
- b) **Payment.** The first scheduled payment (as specified in the applicable Order), will be due following the Acceptance of the Products, or such later date as Contractor may designate. The remaining payments will be due on the same day of each subsequent month, unless otherwise specified in the applicable Order.
  - c) **Buyout to Keep Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Keep option on an FMV or \$1 Buyout Lease.
  - d) **Buyout to Return Option.** A Purchasing Entity must notify the Contractor or Authorized Dealer, in writing, at least thirty (30) days in advance, if they wish to exercise the Buyout to Return option on an FMV, \$1 Buyout or Straight Lease, and return the Equipment to the Contractor in good working condition (ordinary wear and tear excepted).
  - e) **Equipment Upgrade or Downgrade.** A Purchasing Entity may do an Equipment Upgrade or Downgrade on a lease at any time throughout the term of the lease agreement. The Purchasing Entity and the Contractor shall negotiate the price of the Equipment Upgrade or Downgrade, but at no time shall the total cost of the Equipment Upgrade or Downgrade be less than the remaining stream of Equipment Payments.
  - f) **Non-appropriation of Funds.** The continuation of any lease agreement will be subject to, and contingent upon, sufficient funds being made available by the Participating State Legislature and/or federal sources. The Purchasing Entity may terminate any such lease agreement, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Purchasing Entity's funding sources are not available.
  - g) **Assignment**
    - i) Purchasing Entity has no right to sell, transfer, encumber, sublet or assign the Product or any lease agreement without Contractor's prior written consent (which consent shall not be unreasonably withheld).
    - ii) Purchasing Entity agrees that Contractor may not sell or assign any portion of Contractor's interests in the Product and/or these Lease Terms or any Order for leases,

without notice to Purchasing Entity even if less than all the payments have been assigned. In that event, the assignee (the "Assignee") will have such rights as Contractor assigns to them, but none of Contractor's obligations (Contractor will keep those obligations) and the rights of the Assignee will not be subject to any claims, defenses or set offs that Purchasing Entity may have against Contractor.

- iii) No assignment to an Assignee will release Contractor from any obligations Contractor may have to Purchasing Entity.
- h) **Early Termination Charges.** Except in the case of Non-appropriation of funds, FMV, \$1 Buyout, Straight and Short-Term Leases shall be subject to an early termination charge, and shall involve the return of the Equipment (in good working condition; ordinary wear and tear excepted) by the Purchasing Entity to the Contractor. With respect to the Equipment, the termination charge shall not exceed the balance of remaining Equipment Payments (including any current and past due amounts), and with respect to Service or maintenance obligations, the termination charge shall not exceed four (4) months of the Service and Supply base charge or twenty-five percent (25%) of the remaining Maintenance Agreement term, whichever is less.
- i) **Default.** Each of the following is a "default" under these lease terms:
  - i) Purchasing Entity fails to pay any payment or any other amount within forty-five (45) days (or as otherwise agreed to in a Participating Addendum) of its due date;
  - ii) Any representation or warranty made by Purchasing Entity in these lease terms is false or incorrect and Purchasing Entity does not perform any of its obligations under these lease terms, and this failure continues for forty-five (45) days (or as otherwise agreed to in a Participating Addendum) after Contractor has notified Purchasing Entity;
  - iii) Purchasing Entity or any guarantor makes an assignment for the benefit of creditors;
  - iv) Any guarantor dies, stops doing business as a going concern, or transfers all or substantially all of such guarantor's assets; or
  - v) Purchasing Entity stops doing business as a going concern or transfers all or substantially all of Purchasing Entity's assets.
- j) **Remedies.** If a Purchasing Entity defaults on a lease agreement, then Contractor, in addition to, or in lieu of, the remedies set forth in this Master Agreement, and Participating Addendum, may do one or more of the following:
  - i) Cancel or terminate any or all Orders, and/or any or all other agreements that Contractor has entered into with Purchasing Entity;
  - ii) Require Purchasing Entity to immediately pay to Contractor, as compensation for loss of Contractor's bargain and not as a penalty, a sum equal to:
    - 1) All past due payments and all other amounts payable under the lease agreement;
    - 2) All unpaid payments for the remainder of the lease term, discounted at a rate equal to three percent (3%) per year to the date of default; and
    - 3) Require Purchasing Entity to deliver the Product to Contractor per mutual arrangements.

#### 4.6. Security Requirements

##### 4.6.1. Network and Data Security

- a) Devices may be configured to include a variety of data security features. The set-up of such features shall be at the discretion of the Purchasing Entity, and all costs associated with their implementation must be conveyed by Contractor prior to Order placement.
- b) Contractor will not be permitted to download, transfer, or access print data stored on the Device in either hard drive or chip memory. Only system management accessibility will be allowed.
- c) Contractor shall ensure that delivery and performance of all Services shall adhere to the requirements and standards as outlined in each Participating State or Entity's Participating Addendum.

**4.6.2. Sensitive Information.** Sensitive information that is contained in any Legacy Equipment or applications shall be encrypted if practical. In addition, sensitive data will be encrypted in all newly developed applications. Since sensitive information is subjective, it shall be defined by each Participating State or Entity in their Participating Addendum.

**4.6.3. Data Breach.** Contractor shall have an incident response process that follows National Institute of Standards and Technology (NIST) standards as referenced in Special Publication 800-61, Revision 2 (available at <http://dx.doi.org/10.6028/NIST.SP.800-61r2>) and includes, at a minimum, breach detection, breach notification, and breach response.

**4.6.4. Authentication and Access**

- a) Any network connected Device must offer authentication for all features via LDAP and/or Windows AD, as well as the ability to disable authentication for any or all features.
- b) Any network connected Device must have the ability to connect via Dynamic Host Configuration Protocol (DHCP) or Static IP address.
- c) The credential information for any remote authentication method may not be maintained within the Device's memory.
- d) Access to the Device's administrative functions must be password protected per the Participating State or Entity requirements, and the default settings must be changed at the time of Equipment installation.

**4.6.5. Hard Drive Removal and Surrender**

- a) Contractor shall ensure that all hard drive data is cleansed and purged (if capable) from the Device at the end of its Useful Life, or when any hard drive leaves the Purchasing Entity's possession; or
- b) At the Participating State or 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.
- c) If Contractor takes possession of any Device at the Purchasing Entity's location, then they shall also remove any ink, toner, and associated Supplies (drum, fuser, etc.) and dispose of them in accordance with applicable law, as well as environmental, and health considerations, or as otherwise specified in a Participating Addendum.

- d) Hard drive sanitation shall be at no expense to the Purchasing Entity; however, Contractor may charge the Purchasing Entity a fee if the Purchasing Entity elects to keep the hard drive in their possession. Contractor must disclose the price for removal and surrender of the hard drive, prior to Order placement.
- e) If the hard drive is not removable, or the Device does not contain a hard drive, then Contractor must convey this to the Purchasing Entity at the time of Order placement. In the case of a non-removable hard drive, §4.6.5(a) shall apply.
- f) If a Contractor is removing another Manufacturer's Equipment, they are not permitted to remove the hard drive. Only the Manufacturer or their Authorized Dealer shall remove hard drives in their own Devices. Contractor shall work with the Manufacturer to ensure the requirements pursuant to this Subsection are met to the best of their abilities.

**4.7. Equipment Demonstration Requirements**

4.7.1. Contractor must offer trial or demonstration Equipment for Group B, and if requested by the Purchasing Entity, Group D.

4.7.2. Trial or demonstration Equipment may be new or used; however, no used, Remanufactured, or Refurbished Devices shall be converted to a purchase or lease.

4.7.3. At the discretion of the Participating State or Entity, and 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:

- a) The meter count on Group B Devices does not exceed 10,000 copies total (i.e. b&w and color combined);
- b) The Device must be discounted by at least 5% off of this Master Agreement pricing for that same Device; and
- c) The Purchasing Entity and the Contractor indicate on the Order that the Device is a showroom model.

4.7.4. Any trial or demonstration period shall not exceed thirty (30) calendar days.

**4.8. Shipping and Delivery Requirements**

4.8.1. All Orders, regardless of quantity, shall be delivered to the Purchasing Entity within thirty (30) calendar days after Contractor receipt of Order, unless otherwise specified by a Purchasing Entity.

4.8.2. Software related to the Device must be installed within five (5) Business Days of the Device installation, or as otherwise stated in an Order.

4.8.3. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. The minimum shipment amount, if any, will be found in the special terms and conditions. Any Order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

4.8.4. Responsibility and liability for loss or damage shall transfer to the Purchasing Entity upon delivery of the Product, except as to material defects, fraud and Contractor's warranty obligations, which shall remain with the Contractor.

- 4.8.5. All deliveries shall be made during Normal Business Hours, which may vary for each Purchasing Entity of each Participating State.
- 4.8.6. It shall be the responsibility of the Contractor to be aware of the delivery days and receiving hours for each Purchasing Entity.
- 4.8.7. The Purchasing Entity shall not be responsible for any additional charges, should the Contractor fail to observe specific delivery days and receiving hours.
- 4.8.8. The delivery days and delivery hours shall be established by the Purchasing Entity at the time of Order placement.
- 4.8.9. All deliveries, with the exception of drop-shipped or desktop Products, shall be made to the interior location specified by the Purchasing Entity. Specific delivery instructions will be noted on the Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
- 4.8.10. Products shall be packaged and labeled so as to satisfy all legal and commercial requirements applicable for use by any Purchasing Entity, and shall include, without limitation and if applicable, OSHA material safety data sheets, and shall conform to all statements made on the label.
- 4.8.11. Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.
- 4.8.12. **Laws and Regulations.** Any and all Products and Services offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**4.9. Equipment Installation Requirements**

- 4.9.1. Prior to Order acceptance, Contractor must advise Purchasing Entity of any specialized installation and site requirements for the delivery and installation of Device. This information should include, but is not limited to, the following:
  - a) Air conditioning;
  - b) Electrical;
  - c) Special grounding;
  - d) Cabling;
  - e) Space;
  - f) Humidity and temperature limits; and
  - g) Other considerations critical to the installation.
- 4.9.2. The Purchasing Entity shall be responsible for furnishing and installing any special wiring or dedicated lines.
- 4.9.3. Network installation shall include configuration of the Device for the proper network protocols, and installation of the appropriate print drivers on up to five (5) computers per Device, or as otherwise specified in a Participating Addendum.

- 4.9.4. If applicable, all Devices must be set-up with the most environmentally responsible defaults enabled, including Energy Star saving settings.
- 4.9.5. Contractor may charge for excessive installation requirements, including rigging, access alterations, and access to non-ground floors via stairs. Any such excessive installation charges must be quoted to the Purchasing Entity prior to the signature of any Order, and shall be based on the actual expenditures of Contractor or Authorized Dealer. In addition, Contractor may charge for expedited shipping.
- 4.9.6. Contractor or Authorized Dealers shall affix a label or a decal to the Device at the time of installation which shows the name, address, and telephone number of Contractor or Authorized Dealer responsible for warranty Service of the Equipment.
- 4.9.7. Contractor shall clean-up and remove all debris and rubbish resulting from their work as required by the Purchasing Entity. Upon completion of the work, the premises shall be left in good repair and in an orderly, neat, clean, and unobstructed condition.
- 4.10. Inspection and Acceptance**
- 4.10.1. All Products are subject to inspection at reasonable times and places before Acceptance.
- 4.10.2. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option:
- a) Declare Contractor to be in breach and terminate the Order;
  - b) Demand replacement Product from Contractor at no additional cost to Purchasing Entity; or,
  - c) Continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.
- 4.10.3. Purchasing Entity shall confirm delivery, installation and Acceptance of all Products covered by each purchase or lease Order, by signing a Delivery and Acceptance Certificate (D&A), as referenced in **Exhibit B (Sample D&A Certificate)**, which shows Acceptance of the Product(s) and allows Contractor to invoice for the Product(s).
- 4.10.4. Purchasing Entity agrees to sign and return the D&A to Contractor (which, at mutual agreement, may be done electronically) within five (5) Business Days after any Product is installed, or as otherwise stated in a Participating Addendum.
- 4.10.5. Failure to sign the D&A or reject the Product(s) within the foregoing five (5) day period shall be deemed as Acceptance by the Purchasing Entity; however, it does not relieve the Contractor of liability for material (nonconformity that substantially impairs value) defects subsequently revealed when Products are put to use. Acceptance of such Products may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor shall be liable for any resulting expense incurred by the Purchasing Entity in relation to the preparation and shipping of Product(s) rejected and returned, or for which Acceptance is revoked.
- 4.10.6. Transfer of Title**

- a) Contractor shall have exclusive title to the Products being delivered and the Products shall be free and clear of all liens, encumbrances, and security interests. Title to the Device shall only pass to the Purchasing Entity upon:
  - i) Purchasing Entity up-front purchase of the Device;
  - ii) Purchasing Entity exercising the purchase option at the end of a Fair Market Value Lease;
  - iii) Upon expiration of a Purchasing Entity's \$1 Buyout Lease; or
  - iv) Purchasing Entity has secured Third Party financing and payment is being made directly to the Contractor by the Purchasing Entity.
- b) Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

**4.10.7.** If any Services do not conform to Contract requirements, the Purchasing Entity may require the Contractor to perform the Services again in conformity with Contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and reduce the Contract price to reflect the reduced value of Services performed.

#### **4.11. Warranty Requirements**

- 4.11.1.** The Warranty period shall begin upon Acceptance of the Products, and shall be for a minimum of ninety (90) days for purchase or leased Equipment.
- 4.11.2.** Devices that are sold under this Master Agreement will come with the standard features as published on the Manufacturers website, and will not deviate from the stated specifications.
- 4.11.3.** Products shall be in good working order, free from any defects in material and workmanship, and fit for the ordinary purposes they are intended to serve.
- 4.11.4.** If defects are identified, per mutual agreement of Contractor and the Purchasing Entity, Contractor's obligations shall be limited solely to the repair or replacement of Products proven to be defective upon inspection.
- 4.11.5.** Replacement of Products shall be on a like-for-like basis and shall be at no cost to the Purchasing Entity.
- 4.11.6.** Repair of defective parts and/or Devices shall be at no cost to the Purchasing Entity.
- 4.11.7.** Upon significant failure of a Product, the warranty period shall commence again for the same amount of time as specified in §4.11.1. Significant failure shall be determined by the Participating State.
- 4.11.8.** Contractor warranty obligations shall not apply if:
  - a) Product is installed, wired, modified, altered, or serviced by anyone other than Contractor and/or their Authorized Dealer;

- b) If a defective or non-Contractor authorized Accessory, Supply, software, or part is attached to, or used in the Device; and
- c) The Device is relocated to any place where Contractor Services are not available.

4.11.9. Contractor agrees to perform its Services in a professional manner, consistent with applicable industry standards.

4.11.10. It will be at the discretion of each Participating State or Entity to negotiate additional warranty requirements with the Contractor.

**4.11.11. Lemon Clause**

- a) This clause shall apply to all Devices that are purchased or leased under this Master Agreement.
- b) This clause shall not apply if Supplies are used in the Devices that were not manufactured, provided, or authorized by the Contractor.
- c) The application period is thirty-six (36) months from the date of Acceptance.
- d) This clause shall take precedence over any other warranty or Services clauses associated with this Master Agreement, or as specified by a Participating State or Entity in their Participating Addendum.
- e) A Purchasing Entity must maintain an uninterrupted Maintenance Agreement on all purchased Devices in order for this clause to apply past the initial ninety (90) day warranty.
- f) Any Device that fails (except due to operator error) to function in accordance with the Manufacturer's published performance specifications, four (4) times in any four (4) week period and/or is subject to recurring related problems, shall be replaced with a like-for-like Device that meets or exceeds the requirements of the original Device, at no cost to the Purchasing Entity.

**4.12. Customer Service**

4.12.1. **Key Personnel.** Contractor shall ensure that staff has been allocated appropriately to ensure compliance with this Master Agreement and subsequent Participating State or Entity requirements and that the individuals occupying the Key Personnel positions have adequate experience and knowledge with successful implementation and management of a national cooperative contract. Contractor shall ensure that there is always a single point of contact for the following positions:

- a) **Master Agreement Contract Administrator** - the Lead State's primary contact in regards to Contract negotiations, amendments, Product and Price List updates, and any other information or documentation relating to this Master Agreement;
- b) **NASPO ValuePoint Reporting Contact** - Responsible for submitting quarterly reports and the quarterly Administrative Fee to the appropriate personnel;
- c) **Master Agreement Marketing Manager** - Responsible for marketing this Master Agreement, as well as creating Participating State websites, and ensuring that all uploaded data and content is current; and
- d) **National Service Manager** - Responsible for overseeing the Regional Service Managers, Field Service Technicians, training, and inside Service operations. This position works with



the Lead State Contract Administrator to ensure contractual obligations are met, while providing leadership for the Contractor's operations, as well as strategic planning of the Service department.

- 4.12.2. Contractor shall provide a single point of contact for each Participating State, who will handle any questions regarding the Products provided, as well as pricing, delivery, billing, status of Orders, customer complaints and escalated issues.
- 4.12.3. Contractor shall provide full Service and support for Products during Normal Business Hours.
- 4.12.4. Contractor shall have a designated customer service team who will be available by phone (via local or toll free number), fax, or email during Normal Business Hours.
- 4.12.5. Customer service representatives shall have online access to account information and will respond to inquiries concerning the status of Orders (shipped or pending), delivery, back-orders, pricing, Product availability, Product information, and account and billing questions.

## **5. ADMINISTRATION OF ORDERS**

### **5.1. Ordering and Invoicing Specifications**

- 5.1.1. Master Agreement Order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- 5.1.2. Contractor shall accept procurement credit cards as a form of payment from Purchasing Entity, with no additional charge or fee assessed.
- 5.1.3. Contractor shall provide a centralized billing option, upon request, and at the discretion of a Participating State or Entity.
- 5.1.4. Authorized Dealers may invoice the Purchasing Entity directly, unless otherwise specified in a Participating Addendum.
- 5.1.5. Contractor and/or Authorized Dealers may charge the Purchasing Entity a re-stocking fee for any Products that are not accepted. The amount of the fee shall be the lesser of 10% of the purchase price, or \$200.00, unless otherwise specified in a Participating Addendum.
- 5.1.6. Contractor may bill property tax separately or as otherwise indicated in a Participating Addendum or an Order.
- 5.1.7. Contractor and/or Authorized Dealers may estimate meter reads if a Purchasing Entity fails to submit the required information within the specified time-frame.
- 5.1.8. This Master Agreement permits Purchasing Entities to define project-specific requirements and informally compete the requirement among other contractors having a NASPO ValuePoint Master Agreement, on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may, in its sole discretion, determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- 5.1.9. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules,

policies, and procedures regarding the ordering of Products, and/or Services contemplated by this Master Agreement.

- 5.1.10. Contractor shall not begin work without a valid purchase order or other appropriate commitment document compliant with the law of the Purchasing Entity.
- 5.1.11. Orders must be placed consistent with the terms of this Master Agreement, and only during the term of this Master Agreement.
- 5.1.12. All Orders pursuant to this Master Agreement, at a minimum, shall include:
  - a) Name of Purchasing Entity;
  - b) The name, phone number, and address of the Purchasing Entity representative;
  - c) Order date;
  - d) Description of the Product and/or Service ordered;
  - e) Model number;
  - f) Serial number;
  - g) Price;
  - h) This Master Agreement number; and
  - i) Any additional information required by the Participating Entity.
- 5.1.13. All software Orders must reference the Manufacturer's most recent release or version of the Product, unless the Purchasing Entity specifically requests a different version.
- 5.1.14. All communications concerning administration of Orders placed shall be furnished solely to the authorized individual within the Purchasing Entity's location, or to such other individual identified in writing in the Order.
- 5.1.15. Contractor shall not issue an invoice until the Purchasing Entity has confirmed Acceptance, per §4.10.3.
- 5.1.16. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 5.1.17. **Internet-based Portal and Electronic Catalogs.** If Contractor provides the ability to place an Order through an internet-based portal or electronic catalog, then Contractor shall maintain all necessary hardware, software, backup-capacity and network connections required to operate that internet-based portal or electronic catalog. In addition, Contractor shall adhere to the following requirements:
  - a) The internet-based portal or electronic catalog shall clearly designate that the Products are part of this NASPO ValuePoint Master Agreement, and shall link to the Participating State or Entity's designated web location;
  - b) All Environmentally Preferable Products (EPP) shall be clearly listed;
  - c) If the Contractor's electronic catalog will either be hosted on or accessed through the Participating State's eCommerce system, then Contractor shall comply with all policies, procedures and directions from the Participating State or Entity in relation to hosting its catalog on or making its catalog accessible through that system;

- d) All information made available through the Participating State or Entity's eCommerce system is accurate and complies with this Master Agreement and the Participating Addendum; and
- e) Paper catalogs or catalogs on other digital media must be supplied to the Participating State or Entity upon request.

**5.1.18.** Substitutions are not allowed. If an ordered Product is out-of-stock, Contractor shall notify the Purchasing Entity and request approval before substituting for the out-of-stock item. Contractor's request to substitute shall explain how the substituted Product compares with the out-of-stock item. Any substitute Product offered must be on this Master Agreement Price List.

**5.1.19.** Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery Order arrangement priced against this Master Agreement, may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery Order agreement.

**5.1.20.** Contractor shall ensure they have a process in place for resolving disputed invoices, issuing refunds and/or credit, and addressing over-payments as well as Product returns. In all instances of dispute resolution, the Purchasing Entity may contact the Participating State Contract Administrator, or the Lead State, for assistance in resolving the dispute.

## **5.2. Payment**

Payment for completion of a Contract Order is normally made within thirty (30) days following the date the entire Order is delivered or the date a correct invoice is received, whichever is later. After forty-five (45) days, the Contractor may assess overdue account charges up to a maximum rate of one (1) percent per month on the outstanding balance.

## **6. GENERAL PROVISIONS**

### **6.1. Insurance**

**6.1.1.** Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option; result in termination of its Participating Addendum.

**6.1.2.** Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering premises operations, Independent Contractors, Products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence, \$2 million general aggregate, \$2 million Products and completed operations aggregate and \$50,000 and any one fire. If any aggregate limit is reduced below \$2,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Participating Entity, a certificate or other document satisfactory to the Participating Entity, showing compliance with this provision.

- b) Cyber Liability covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorized access/use of information, and identity theft) with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- c) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- d) Automobile Liability covering any auto (including owned, hired and non-owned), with a minimum limit of \$1,000,000 each accident combined single limit.

**6.1.3.** Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.

**6.1.4.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that:

- a) Names the Participating States identified in the Request for Proposal as additional insured's, and;
- b) Provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

**6.1.5.** Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within seven (7) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within fifteen (15) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

**6.1.6.** Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Order.

## **6.2. Records Administration and Audit**

**6.2.1.** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any

other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or Orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any Order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

6.2.2. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of this Master Agreement or Orders, or underpayment of fees found as a result of the examination of the Contractor's records.

6.2.3. The rights and obligations herein right exist in addition to any quality assurance obligation in this Master Agreement requiring the Contractor to self-audit Contract obligations and that permits the Lead State to review compliance with those obligations.

### 6.3. Confidentiality, Non-Disclosure, and Injunctive Relief

6.3.1. **Confidentiality.** Contractor acknowledges that it and its employees or Authorized Dealers may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity's or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or Authorized Dealers in the performance of this Master Agreement, including, but not necessarily limited to:

- a) Any Purchasing Entity's records;
- b) Personnel records;
- c) Information concerning individuals is Confidential Information of Purchasing Entity. Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that:
  - i) Is or becomes (other than by disclosure by Contractor) publicly known;
  - ii) Is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;
  - iii) Is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
  - iv) Is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
  - v) Is disclosed with the written consent of Purchasing Entity; or
  - vi) Is independently developed by employees, Dealers or Subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

6.3.2. **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and Authorized Dealers of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**6.3.3. Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

**6.3.4. Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

**6.3.5.** The rights granted to Purchasing Entities, and the Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to §6.2, **Records Administration and Audit.** To the extent permitted by law, Contractor shall notify the Lead State of any entity seeking access to the Confidential Information described in this subsection.

**6.4. License of Pre-Existing Intellectual Property**

Contractor grants to the Purchasing Entity a non-exclusive, perpetual, irrevocable, unlimited license to use, modify, or dispose of the Intellectual Property and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

**6.5. Public Information**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

**6.6. Assignment/Subcontracts**

**6.6.1.** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State, which approval shall not be unreasonably withheld.

**6.6.2.** The Lead State reserves the right to assign any rights or duties, including written assignment of Contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

**6.7. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor's Key Personnel, in writing within ten (10) calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed in the Contractor's proposal.

**6.8. Independent Contractor**

**6.8.1.** Contractor shall perform duties as an Independent Contractor, and not as an employee. Neither the Contractor nor any employee or Authorized Dealer of the Contractor, shall be or deemed to be an employee of the Lead State, NASPO ValuePoint, and/or any Participating State or Entity.

**6.8.2.** Contractor acknowledges that its employees are not entitled to unemployment insurance benefits unless the Contractor or a Third Party provides such coverage, and that the Lead State, NASPO ValuePoint and any Participating State or Entity does not pay for or otherwise provide such coverage.

**6.8.3.** Contractor shall have no authority to bind the Lead State, NASPO ValuePoint and any Participating State or Entity to any agreements, liability, or understanding except as may be expressly set forth in this Master Agreement, Participating Addendum or an Order.

**6.9. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of this Master Agreement.

**6.10. Defaults and Remedies**

**6.10.1.** The occurrence of any of the following events shall be an event of default under this Master Agreement:

- a) Nonperformance of contractual requirements; or
- b) A material breach of any term or condition of this Master Agreement; or
- c) Any certification, representation or warranty by Contractor in this Master Agreement that proves to be untrue or materially misleading; or
- d) 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) calendar days after the institution or occurrence thereof; or
- e) Any default specified in another section of this Master Agreement.

**6.10.2.** Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of thirty (30) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part, if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis.

**6.10.3.** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:

- a) Exercise any remedy provided by law;
- b) Terminate this Master Agreement and any related Contracts or portions thereof;
- c) Impose liquidated damages as provided in this Master Agreement;
- d) Suspend Contractor from being able to respond to future Solicitations;
- e) Suspend Contractor's performance; and
- f) Withhold payment until the default is remedied.

**6.10.4.** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in this Master Agreement, in addition to those set forth in its Participating Addendum.

**6.10.5.** Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

#### **6.11. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or an Order.

#### **6.12. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

#### **6.13. Indemnification**

**6.13.1.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or Subcontractors or volunteers, at any tier, relating to the performance under this Master Agreement.



**6.13.2. Indemnification – Intellectual Property.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim").

**6.13.3.** The Contractor's obligations under this section shall not extend to any combination of the Product with any other Product, system or method, unless the Product, system or method is:

- a) Provided by the Contractor or the Contractor's subsidiaries or affiliates;
- b) Specified by the Contractor to work with the Product;
- c) Reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available Product, system or method capable of performing the same function; or
- d) It would be reasonably expected to use the Product in combination with such Product, system or method.

**6.13.4.** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**6.14. No Waiver of Sovereign Immunity**

**6.14.1.** In no event shall this Master Agreement, any Participating Addendum or any Contract or any Purchase Order issued thereunder, or any act of a Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

**6.14.2.** This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**6.15. Governing Law and Venue**

- 6.15.1.** The construction and effect of this Master Agreement shall be governed by the laws of the Lead State. Venue for any administrative or judicial action relating to this Master Agreement shall be in the City and County of Denver, Colorado.
- 6.15.2.** The construction and effect of any Participating Addendum or Order against this Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- 6.15.3.** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): The Lead State for claims relating to the procurement, evaluation, award, or Contract performance or administration if the Lead State is a party; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

**6.16. Assignment of Antitrust Rights**

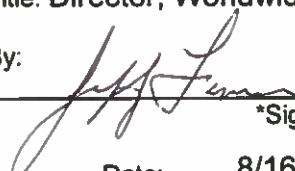

Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any Goods or Services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**6.17. Contract Provisions for Orders Utilizing Federal Funds**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.


**THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT**

**\* Individual signing for Contractor hereby swears and affirms that they are authorized to act on Contractor's behalf and acknowledge that the Lead State is relying on their representations to that effect.**

<p><b>CONTRACTOR</b> Lexmark International, Inc.</p> <p>By: Jeff Larsen Title: Director, Worldwide Contracts</p> <p>By:  _____ *Signature</p> <p>Date: <u>8/16/2019</u></p>	<p><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Personnel &amp; Administration State Purchasing &amp; Contracts Office Kara Veitch, Executive Director</p> <p>By:  _____ John Chapman, State Purchasing Manager</p> <p>Date: <u>August 17, 2019</u></p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Master Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any Goods and/or Services provided hereunder.**

<p><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By:  _____</p> <p>Date: <u>8/21/19</u></p>
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## **EXHIBIT A, PRICE LISTS**

**Group Price Lists (posted as separate file)**

**MPS Price List (posted as separate file)**

**EXHIBIT B, SAMPLE D&A CERTIFICATE**

**NASPO VALUEPOINT MASTER AGREEMENT NO. 140601  
AND THE STATE OF Insert Name of Participating State PARTICIPATING  
ADDENDUM NO.  
WITH Lexmark International, Inc.**

To: Insert Name of Contractor or Authorized Dealer

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

**Insert name of Purchasing Entity**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**EXHIBIT C, AUTHORIZED DEALERS BY STATE**

**Lexmark Dealer List (posted as separate file)**

## EXHIBIT D, AUTHORIZED DEALER FORM

**Manufacturer Name:** \_\_\_\_\_

(Check one)

- The Dealer listed below is authorized to provide Products and Services in accordance with the NASPO ValuePoint Copiers and Managed Print Services Master Agreement.
- The Dealer listed below will no longer provide Products and Services under the NASPO ValuePoint Copiers and Managed Print Services Master Agreement for the following reason:

State(s) Serviced by Dealer:	
Dealer Name:	
Address:	
Phone (include Toll-Free, if available):	
Contact Person(s):	
Email Address:	
FEIN:	

Signed: \_\_\_\_\_  
(Contractor Representative)

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

Signed: \_\_\_\_\_  
(Authorized Dealer Representative)

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

\_\_\_\_\_  
(Print First and Last Name of Authorized Dealer Representative)

# EXHIBIT E, NASPO VALUEPOINT DETAILED SALES REPORTING TEMPLATE



NASPO ValuePoint  
Detailed Sales Repo



## ATTACHMENT A, 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. 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. In that event you authorize us to adjust the Lease Payments by up to fifteen percent (15%).

**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 payment or an amount only to the extent permitted by law.

**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. INDEMNITY:** We are not responsible for any losses or injuries caused by the installation or use of the Equipment. You agree to reimburse us for and to defend us against any claim for losses or injuries caused by the

Equipment. This indemnity will continue even after the termination of this Agreement and the Leases.

**12. 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 and will pay us interest and a late charge (as calculated in Section 3) on such payments with the next Lease Payment plus a fee for our collecting and administering any taxes, assessments or fees and remitting them to the appropriate authorities. Further, to the extent permitted by applicable law, you will indemnify us upon demand and on a net after tax basis against the loss (including recapture) of or inability to claim, or if we shall suffer a disallowance or deferral of, as determined in good faith by us, any Equipment ownership, or Lease-related, federal and/or state income tax benefits anticipated by us at the Commencement Date resulting from any of your acts or omissions or any inaccuracy of any statements or information provided by you. This indemnity will continue even after the termination of this Agreement and the Leases.

**13. 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.

**14. 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.

**15. 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 (or the lowest rate permitted by law, whichever is higher); 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, but in no event more than the maximum rate permitted by law; 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 are also required to pay

(i) all expenses incurred by us in connection with the enforcement of any remedies, including all expenses of repossessing, storing, repairing and selling the Equipment, and (ii) reasonable attorneys' fees. 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.

**16. 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.

**17. RESERVED.**

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. CHOICE OF LAW:** This Agreement and each Lease was made in the Commonwealth of Pennsylvania (by us having countersigned them in Wayne, Pennsylvania); and they are to be performed in the Commonwealth of Pennsylvania by reason of the Lease Payments you are required to pay us in Pennsylvania. 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 Commonwealth of Pennsylvania except for local filing requirements. You consent to and agree that non-exclusive jurisdiction, personal or otherwise, over you and the Equipment shall be with the Courts of the Commonwealth of Pennsylvania or the Federal District Court for the Eastern District of Pennsylvania solely at our option with respect to any provision of this Agreement or any Lease. **YOU ALSO IRREVOCABLY WAIVE YOUR RIGHT TO A TRIAL BY JURY.**

**23. 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.

**24. 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

**25. 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 of at least 30 days prior to the end of the current fiscal year 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 B, LEXMARK SAMPLE CUSTOMER PO

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

### SAMPLE CUSTOMER PURCHASE ORDER

PO number must be on the Order Form

Purchase Order Number: **3208002386**

Date: 3/31/2019

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

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

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

For more information regarding this purchase order, call

**Point of Contact Name at (999) 999-9999**

**IMPORTANT CONDITIONS OF ORDER**

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

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

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

**STATE SALES TAX EXEMPTION CERTIFICATE** The undersigned claims an exemption from taxes under Chapter 21, Title 122A, Revised Civil Statutes of Texas for the purpose of tangible personal property described in this numbered order, purchased from contractor and/or shopper listed above as this is being secured for the exclusive use of the State of Texas

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

## ATTACHMENT C, LEXMARK MPS STATEMENT OF WORK TEMPLATE

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 # / 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. 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. 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. 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. 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. 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 ten (10) 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) Payment of all subsequent transportation, logistics and/or restocking charges for additional shipping, delivery, and/or storage should Customer refuse delivery at any Customer Location,
  - d) Supplying a Staging location at each Customer Location designated for Output Device installation, where Output Devices can be unboxed, assembled, configured and potentially tested at least five (5) Business Days prior to the start of the installation. Such space shall be of appropriate square footage to accommodate the number of Output Devices designated for installation at that location. Staging is also applicable to the Customer's Existing Devices being de-installed at the time of Output Device installation,
  - e) Supplying IP address and/or hostname details, to Lexmark in writing no later than five (5) Business Days prior to the first installation of Output Devices, and no later than five (5) Business Days prior to any subsequent installations,
  - f) Installation of the printer queues and Printer Drivers,
  - g) 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. 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. 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. 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 down level.

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. 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. 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:

- Managed Output Device serial number,
  - Managed Output Device model type,
  - Error code message as seen on the Managed Output Device user panel,
  - 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.
- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 Maintenance Service is not a guarantee of uninterrupted or error-free functioning of Managed Output Devices. Maintenance Service does not include repair of failures caused by use not in conformance with Lexmark published specifications or by non-authorized parties.

## **11. 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 \_\_\_\_\_."
  - 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 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 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.

<b>Customer:</b> PURCHASING ENTITY NAME	<b>Lexmark:</b> 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**

<b>Change Request Number:</b>	To be assigned by Lexmark
<b>Requester Name:</b>	
<b>Requester Company Name:</b>	
<b>Date Requested:</b>	
<b>Response Requested By:</b>	
<b>Change Requested:</b> 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.
<b>Resources Required:</b>	Lexmark to complete this section
<b>Estimated Schedule Impact:</b>	Lexmark to complete this section
<b>Estimated Cost Impact:</b>	Lexmark to complete this section
<b>Date Change Request Received:</b>	
<b>Change Request Received by:</b>	
<b>Change Request Receipt Company:</b>	
<b>Request Accepted: (State next steps)</b>	
<b>Request Rejected: (State reason for rejection)</b>	



**ATTACHMENT D: Reporting**

<b>Name of Report</b>	<b>Description of report</b>	<b>Frequency of delivery</b>
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 D, 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 soft- ware 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 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.

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 Commonwealth of Kentucky.

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

## **ATTACHMENT E, LEXMARK SOFTWARE FINANCE AGREEMENT TERMS AND CONDITIONS**

**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 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, and add an insurance fee to the amount due from Obligor, on which Payee may make a profit. Payee is not responsible for any losses or injuries caused by the System and Obligor will reimburse Payee and defend Payee against any such claims. This indemnity will survive termination hereof.

**6. Taxes:** Obligor is responsible for and agrees to pay when due, either directly or as reimbursement to Payee, and indemnify Payee against, 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, but in no even more than the maximum rate permitted by law; (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 lawsuits and/or other enforcement action. To the extent permitted by law, 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 Commonwealth of Pennsylvania. OBLIGOR CONSENTS TO JURISDICTION, PERSONAL OR OTHERWISE, IN ANY STATE OR FEDERAL COURT IN PENNSYLVANIA. 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 F, LEXMARK SOFTWARE LICENSE AGREEMENT TERMS AND CONDITIONS**

PLEASE READ CAREFULLY BEFORE USING AND INSTALLING THIS SOFTWARE PROGRAM: 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](http://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. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 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, TITLE, 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. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 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). YOUR SOLE REMEDY AGAINST LICENSOR IN ANY DISPUTE UNDER THIS SOFTWARE LICENSE AGREEMENT SHALL BE TO SEEK TO RECOVER ONE OF THESE AMOUNTS, UPON PAYMENT OF WHICH LICENSOR SHALL BE RELEASED AND DISCHARGED OF ALL FURTHER OBLIGATIONS AND LIABILITY TO YOU.**

IN NO EVENT WILL LICENSOR, ITS SUPPLIERS, SUBSIDIARIES, OR RESELLERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, LOST SAVINGS, INTERRUPTION OF USE OR ANY LOSS OF, INACCURACY IN, OR DAMAGE TO, DATA OR RECORDS, FOR CLAIMS OF THIRD PARTIES, OR DAMAGE TO REAL OR TANGIBLE PROPERTY, FOR LOSS OF PRIVACY), 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 Licensor. You may not separate the components of the Software Program for use on more than one computer. You agree that you will not Use the Software Program, in whole or in part, in any manner that has the effect of overriding, modifying, eliminating, obscuring, altering or de-emphasizing the visual appearance of any trademark, trade name, trade dress or intellectual property notice that appears on any display screens. No license to distribute the Software Program in any form is granted under this Software License Agreement.

- 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.
4. **RESERVATION OF RIGHTS.** The Software Program, including all fonts, is copyrighted and owned by Licensor and/or its suppliers. Licensor reserves all rights not expressly granted to you in this Software License Agreement.
5. **THIRD PARTY SOFTWARE.** Notwithstanding the terms and conditions of this Software License Agreement, portions of the Licensed Software constituting third party software, including software provided under a public license, may be licensed to you subject to the terms and conditions of certain software license agreements ("Third Party Software"). Such software license agreements accompany such Third Party Software, whether in the form of a discrete agreement, shrink-wrap license, electronic license terms at the time of download or installation, or as set forth in the `thirdpartylicenses.txt` file accompanying the Licensed Software and/or attached to this License Agreement. Unless explicitly stated in the `thirdpartylicenses.txt` file, the use of the Third Party Software by you will be governed exclusively by the terms and conditions of such software license agreements.
6. **LIMITATION ON REVERSE ENGINEERING.** You may not alter, decrypt, reverse engineer, reverse assemble, reverse compile or otherwise translate the Software Program or assist or otherwise facilitate others to do so, except as and to the extent expressly permitted to do so by applicable law for the purposes of interoperability, error correction, and security testing. If you have such statutory rights, you will notify Licensor in writing of any intended reverse engineering, reverse assembly, or reverse compilation. You may not decrypt the Software Program unless necessary for the legitimate Use of the Software Program.
7. **FEEDBACK.** Licensee may, at its sole option, give Lexmark suggestions, comments or other feedback relating to the Software Program ("Feedback"). However, Licensee agrees that: (i) Lexmark may freely use, disclose, reproduce, license, distribute and otherwise commercialize the Feedback in any Lexmark product, technology, service, specification or other documentation offered, manufactured, sold or distributed by Lexmark ("Offering"); (ii) Licensee also grants third parties, without charge, only those patent rights necessary to enable their products, technologies or services to use or interface with any specific parts of a Lexmark product, technology or service that incorporates the Feedback; and (iii) Licensee will not give Lexmark Feedback that is subject to license terms that seek to require any Lexmark Offering incorporating or derived from such Feedback, or other Lexmark intellectual property, to be licensed to or otherwise shared with a third party. Licensee understands that Licensor is under no obligation to develop, license or otherwise make available any other version of any Trial Version(s) of the Software Program(s).
8. **TRANSFER.** Except for Trial Versions of the Software Program, You may transfer the Software Program to another end-user. Any transfer must include all software components, media, printed materials, and this Software License Agreement and you may not retain copies of the Software Program or components thereof. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end-user receiving the transferred Software Program must agree to all these Software License Agreement terms. Upon transfer of the Software Program, your license is 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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(l) **OVERAGE.** If your Sales Order indicates that you acquired transaction licenses of the Licensed Software and Licensor permits your use of such transaction component(s) of such licenses in excess the number of transactions that you have purchased as identified in the Sales Order (e.g., a designated number of transactions), then you will pay to Licensor overage fees for such excess use in the amount provided in the Sales Order. If you fail to timely pay any overage fees to Licensor, Licensor will have the right to terminate this License Agreement.

(m) **EVALUATION LICENSE.** If your Sales Order indicates that you acquired evaluation licenses of the Licensed Software, then you are prohibited from using the evaluation licenses in a live production environment for productive use or otherwise in excess of your licensed rights or in violation of the terms of this License Agreement or the Sales Order or other agreement setting forth the terms of use of such evaluation licenses, and you accept such evaluation licenses without any representations, warranties or indemnification obligations by Licensor with respect to such evaluation licenses, including, without limitation, as provided in this License Agreement, all such representations, warranties and indemnification obligations which are hereby expressly disclaimed by Licensor. Your rights to install and use the Licensed Software subject to such evaluation licenses will be limited as specified in the Sales Order or other agreement granting such evaluation licenses, and will terminate on the date specified in such Sales Order or other agreement, and upon such termination you will immediately discontinue to use, remove from your system, and return to Licensor such Licensed Software and associated User Documentation as provided in Section 12(e) below.

(n) **U.S. GOVERNMENT ENTITIES.** If you are a U.S. Government entity, then your use, duplication or disclosure of the Licensed Software and User Documentation is subject to the following restricted rights clause: The Licensed Software and User Documentation are "Commercial Items," as that term is defined in 48 C.F.R. §2.101, consisting of "commercial computer Licensed Software" and "computer software documentation," as such terms are used in 48 C.F.R. §252.227-7014(a)(1) and 48 C.F.R. §252.227-7014(a)(5), respectively, and used in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202-1 through 227.7202-4, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government entities license the Licensed Software and User Documentation (a) only as Commercial Items, and (b) with only the rights explicitly set forth in this License Agreement and the Sales Order.

3. **COPY OF LICENSED SOFTWARE.** Upon installing the Licensed Software as permitted herein, you may retain any installers and executables that Licensor has made available to you, but you may use them only for

backup purposes. You may make one copy of the Licensed Software 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 User Documentation for backup purposes only; provided, that any backup copy of the Licensed Software and User Documentation must include all copyright, trademark, and other proprietary notices contained on the original. You will account for and keep a record of the copy of the Licensed Software or User Documentation you make, including where the copy is located and the name of the custodian of the copy. You must provide these records to Licensor upon Licensor's request.

4. **REPLACEMENT LICENSES.** If Licensor issues you replacement licenses of the Licensed Software pursuant to your transition of the Licensed Software to a new computer or device, then your use of the replacement Licensed Software will be subject to the terms of this License Agreement, and promptly upon the completion of such transition you will immediately discontinue to use, remove from your system, and return to Licensor such Licensed Software and associated User Documentation as provided in Section 12(e) below.

#### 5. **RESTRICTIONS**

(a) **LICENSE RESTRICTIONS.** You will use the Licensed Software (i) only for your internal business purposes, only for your direct benefit, and not for the internal purposes of any third party nor for any timesharing, rental, Internet, or application service provider, commercial hosting services, or service bureau basis, and (ii) only to the extent it is licensed hereunder and provided you have paid all applicable license fees for the Licensed Software. You will not without Licensor's prior written consent in each instance voluntarily or involuntarily in any form or manner assign, sublicense, transfer, pledge, lease, network, rent, loan or share the Licensed Products or any rights under this License Agreement to or with any other person or entity, including, without limitation, any assignment or transfer incident to your merger or consolidation with another entity, or any assignment or transfer by operation of law. Any such assignment, sublicense, transfer, pledge, lease, network, rental, loan or sharing absent Licensor's prior written consent will be void and of no force or effect and will cause the immediate termination of this License Agreement. Furthermore, you will not publish, disclose or otherwise display in writing, electronically or otherwise any part of the Licensed Products without Licensor's prior written consent in each such instance, any such publication, disclosure or display absent Licensor's prior written consent which will cause the immediate termination of this License Agreement.

(b) **USE RESTRICTIONS.** You will use the Licensed Products only in their original form, and will not reverse engineer, decompile, disassemble, decrypt, re-engineer, reverse assemble, reverse compile or otherwise translate or create, attempt to create the source code of the Licensed Software or its structural framework (in whole or in part), or perform any process intended to determine the source code for the Licensed Software, or assist or otherwise facilitate others any of the foregoing. You will not modify, enhance or create derivative works based upon the Licensed Software (in whole or in part), including, without limitation, any derivative works based upon the database structures of the Licensed Software, or otherwise change the Licensed Software. You agree that any modification, enhancement, derivative work or other improvement to the Licensed Software and/or the User Documentation developed by Licensor, you, your employees or your independent contractors, whether with or without the consent, advice and/or support of Licensor, will be the exclusive property of Licensor and subject to and governed under the terms and conditions of this License Agreement, and you hereby assign to Licensor all such rights, title and interest therein.

6. **INTELLECTUAL PROPERTY.** You acknowledge and agree that: (i) all Licensed Products are licensed and not sold; (ii) by accepting the licenses set forth in this License Agreement, you acquire only the right to use the Licensed Products in accordance with the terms of this License Agreement, and that Licensor, or its licensors, will retain all rights, title, interest, including all associated patent, copyright, trademark, trade dress, trade secret and other proprietary rights in and to the Licensed Products; and (iii) the Licensed Software, including the source and object codes, logic and structure, constitute valuable trade secrets of Licensor. You agree to secure and protect the Licensed Products with the same degree of care which you employ to protect your own intellectual property of a similar nature, but in no event less than a reasonable standard of care. This Section will survive any termination of this License Agreement.

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(b) **LICENSEE INDEMNIFICATION.** You will hold harmless, indemnify and defend Licensor, its affiliates and their respective officers, directors, agents and employees (collectively, "Licensor Parties") from and against any and all Claims to the extent arising out of any action or proceeding brought by a third party against any one or more of the Licensor Parties related to any act or omission by you which is a breach by you of any term of this License Agreement or of any of your obligations under this License Agreement.

(c) **EXCLUSIVE REMEDY.** This Section 8 sets forth your exclusive remedy with respect to any action or claim for an alleged violation of the intellectual property rights or other rights of third parties with respect to the Licensed Products. Licensor will have no liability to indemnify you under this Section 8 if you are in breach of any of your obligations under this License Agreement.

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(c) **DISCLAIMERS.** You acknowledge that: (i) the Licensed Software does not offer medical



interpretations of data, diagnose patients, or recommend therapy, the Licensed Software is designed solely as an information resource to be used by healthcare professionals using their sole judgment in the provision of medical services, and you are solely responsible for determining the applicability and confirming the accuracy of all data generated by the Software; (ii) Licensor has no control of or responsibility for your use of the Licensed Software or the data managed, processed, stored or otherwise handled by the Licensed Software, and Licensor has no knowledge of the specific or unique circumstances under which the Licensed Software or such data may be used by you; and (iii) neither Licensor nor its affiliates or their respective officers, directors, agents and employees assume any responsibility for any aspect of the medical or other professional services provided in conjunction with your use of the Licensed Software or the data managed, processed, stored or otherwise handled by the Licensed Software, or your regulatory compliance or professional service obligations.

10. **LIMITATION OF LIABILITY.** To the maximum extent permitted by law, in no event will either party be liable to the other party for loss of profits or other economic loss, special, consequential, exemplary, or incidental damages (including without limitation any loss of business, profits, revenue, goodwill, use, or data), even if such party has been apprised of the likelihood of such damages occurring. These limitations apply to all causes of action in the aggregate, including without limitation causes of action arising out of termination of this LICENSE agreement, breach of contract, breach of warranty, negligence, strict liability, misrepresentation, product liability and any other torts. Unless prohibited by law, the maximum aggregate cumulative amount for which either party may be liable under this agreement will be limited to the amounts actually paid or payable by YOU to LICENSOR for the affected LICENSED Product(s) under this LICENSE agreement during the eighteen (18) months preceding a Claim. This section will not apply, however, to a party's infliction of bodily injury (including death) or breach of confidentiality.

11. **TRADEMARKS.** You recognize, as between you and Licensor, Licensor's ownership in and title to all trademarks and/or service marks owned by Licensor and set forth in the Licensed Products, including any and all common law and registered rights throughout the world (hereinafter the "Trademarks"). No right, license or interest in or to any of the Trademarks is granted hereunder, and you agree that you will assert no such right, license or interest with respect to such Trademarks. Furthermore, you will not contest the validity of any of the Trademarks, claim adversely to Licensor any right, title or interest in and to the Trademarks and will not use, register, apply to register or aid a third party in registering the Trademarks during the term of this License Agreement or any time thereafter. If Licensor considers it advisable to record you as a licensee of the Trademarks, you agree to cooperate in such procedure and to execute any documents submitted to you for this purpose.

## 12. TERM AND TERMINATION

(a) **TERM.** The term of this License Agreement will commence as of the date of your acceptance of this License Agreement, and will continue until the termination or expiration of the term of all of the licenses of the Licensed Software, unless earlier terminated at the end of any timeframe specified in a Sales Order or as provided below.

(b) **TERMINATION BY CUSTOMER.** You may terminate this License Agreement effective thirty (30) days after written notice to Licensor in the event that Licensor breaches any material provision of this License Agreement and has not cured such breach within such thirty (30) day period, or such longer period as reasonably necessary to cure such breach.

(c) **TERMINATION BY LICENSOR.** Licensor may terminate this License Agreement: (i) at any time upon written notice if you breach any provision of Sections 2, 3, 4 or 5 of this License Agreement; or (ii) effective thirty (30) days after written notice to you in the event that you breach any other material provision of this License Agreement and you do not cure such breach within such thirty (30) day period, or such longer period as reasonably necessary to cure such breach.

(d) **TERMINATION BY EITHER PARTY.** Either party may terminate this License Agreement if: (i) any

distress or execution is levied on any of the other party's property or assets; (ii) the other party makes or offers to make any arrangement or composition with creditors; (iii) any resolution or petition to wind up the other party's business is passed or presented or if a receiver or administrative receiver of such party's undertaking, property or assets is appointed or a petition presented for the appointment of an administrator or, if an individual, such party has a bankruptcy order made against him or her; or (iv) the other party is subject to any proceedings, which are equivalent or substantially similar to any of the proceedings under sub-clause (i), (ii) or (iii) under any applicable jurisdiction.

(e) **RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION.** Upon termination of this License Agreement, all rights granted to you hereunder will immediately cease and you will: (i) immediately discontinue all use of the Licensed Products; (ii) within fifteen (15) days return to Licensor all copies and modifications of the Licensed Products, including any extracts therefrom (with the exception of your meta data and associated objects); (iii) permanently remove from your system and all storage devices and media all copies of the Licensed Products or any portion thereof; and (iv) give Licensor a written certification signed by an authorized officer that you have complied with all of your obligations under this Section. Termination of this License Agreement for any reason will not excuse your obligation to pay in full any and all amounts due to Licensor, nor will termination by Licensor result in a refund of any fees paid by you to Licensor.

(f) **CONTINUING OBLIGATIONS.** The terms and conditions in this License Agreement that by their nature and context are intended to survive any termination of this License Agreement, including, without limitation, Sections 6 (Intellectual Property), 8 (Indemnification), 10 (Limitation of Liability), 11 (Trademarks), 12 (Term and Termination) and 14 (Miscellaneous), will survive such termination of this License Agreement for any reason and will be fully enforceable thereafter. Termination of this License Agreement will not otherwise affect the party exercising such rights, remedies and protections hereunder.

13. **AUDIT.** Licensor, upon thirty (30) days written notice to you and not more than once during each calendar year during the term of this License Agreement and once during the one (1) year period following the termination of this License Agreement, may enter upon your premises during your regular business hours to audit your use of the Licensed Software. You agree to cooperate with Licensor's audit and provide reasonable assistance and access to your systems and information. If pursuant to any such audit, Licensor discovers any excess or unlicensed use of the Licensed Software, you agree to pay within thirty (30) days of written notification an amount equal to the sum of (i) the license fees and maintenance and support fees which Licensor would have received if your excess or unlicensed use of the Licensed Software had been licensed; (ii) interest on such fees from the date such additional fees should have been paid at the rate of twelve percent (12%) per annum, or the maximum interest rate permitted by law, whichever is lower; and (iii) if your excess or unlicensed use of the Licensed Software exceeds 105% of the licensed use of the Licensed Software, all costs and expenses incurred by Licensor in conducting such audit. If you fail to pay such amounts within thirty (30) days of being invoiced for such amounts, Licensor may terminate your licenses of the Licensed Software and any maintenance and support of the Licensed Software. You will be responsible for any of your costs incurred in cooperating with any such audit.

#### 14. MISCELLANEOUS

(a) **NOTICES.** Any notices, demands or other communications required or permitted under this License Agreement will be in writing and will be deemed effectively delivered to the party: (i) by email using a method that positively establishes receipt of the email by the recipient; (ii) by personal, same or next day delivery; or (iii) by commercial overnight courier with written verification of delivery; in each case addressed to the party for whom it is intended at the address for such party as last provided to the other. All notices so given will be deemed given upon the earlier of receipt or three (3) days after dispatch.

(b) **GOVERNING LAW.** This License Agreement will be construed and governed in accordance with the laws of the Commonwealth of Kentucky, without regard to any rules of conflicts or choice of law provisions that would require the application of the laws of any other jurisdiction. The parties hereto hereby submit to the exclusive jurisdiction and venue of the courts located in the county of Fayette, Commonwealth of Kentucky, for

any action or legal proceeding related to or arising under this License Agreement and waive any objections based on forum non conveniens; provided, however, that if for any reason the courts of such domicile do not have jurisdiction over the matter or a party, then Licensor may elect to commence any such action or proceeding in any court having jurisdiction over you. The foregoing notwithstanding, however, if you acquired the Licensed Software in a country which is a member of the European Union, the laws of that country will govern the interpretation of this License Agreement and any claims arising hereunder, regardless of choice of laws principles of any other jurisdiction. In each case, this License Agreement will be construed and enforced without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act.

(c) **ATTORNEYS' FEES.** In any action to interpret or enforce this License Agreement, the prevailing party will be awarded all court costs and reasonable attorneys' fees and costs and expenses of investigation incurred.

(d) **SEVERABILITY.** The provisions of this License Agreement are severable and if any one or more such provisions is determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of any of the remaining provisions or portions thereof will not be affected or impaired thereby and will nevertheless be binding between the parties. In the event any provision of this License Agreement is found to be invalid, illegal, or unenforceable, the parties will endeavor to modify that provision in a manner that gives effect to the intent of the parties in entering into the License Agreement.

(e) **WAIVER OR DELAY.** No failure to exercise or delay by a party in exercising any right, power, or remedy under this License Agreement operates as a waiver of such right, power, or remedy. A single or partial exercise of any right, power, or remedy does not preclude any other or further exercise of that or any other right, power, or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

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(g) **ENTIRE AGREEMENT.** This License Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter of this License Agreement and supersedes all previous agreements and communications between the parties concerning such subject matter. No modifications may be made to this License Agreement except in writing, signed by both parties.

(h) **BENEFIT OF AGREEMENT.** This License Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns.

(i) **CUMULATIVE REMEDIES.** Except as otherwise provided in this License Agreement, all remedies of the parties hereunder are non-exclusive and are in addition to all other available legal and equitable remedies.

(j) **FORCE MAJEURE.** Neither party will be liable or deemed to be in default for any delay or failure in performance under this License Agreement (except for payment obligations) resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes or any causes beyond its reasonable control; provided that the party failing to perform in any such event will promptly resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

(k) **CONSTRUCTION OF AGREEMENT.** Each party acknowledges that it has had the opportunity to review this License Agreement with legal counsel of its choice and agrees that in the event that this License Agreement or any other documents delivered in connection with the transactions contemplated by this License

Agreement contain any ambiguity, such ambiguity will not be construed or interpreted against the drafting party. The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this License Agreement, which will be considered as a whole.

(l) 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.

(m) 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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## ATTACHMENT J, LEXMARK DATA COLLECTION AND COOKIE NOTICE

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#### 3. Agreement to Contract Electronically

You and Lexmark agree to form this Data Collection Agreement electronically. This means that by checking the Data Collection box and Accept button, you acknowledge your agreement to these Data Collection terms and conditions and that you are doing so with the intent to "sign" a contract with Lexmark.

#### 4. Capacity and Authority to Contract

You represent that you are of the legal age of majority in the place you sign this Data Collection Agreement and, if applicable, you are duly authorized by your employer or principal to enter into this contract.

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