

APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3418

LEXMARK SOFTWARE AND SERVICES AGREEMENT

THIS SOFTWARE AND SERVICES AGREEMENT (“Agreement”) is between Lexmark Enterprise Software USA, Inc., a Delaware limited liability company (“Supplier”), and _____, a _____ governmental entity (“Customer”), and will be effective as of the date this Agreement is executed both by Supplier and Customer (“Effective Date”).

WHEREAS, the parties desire to enter into this Agreement for the purpose of Supplier furnishing certain software and associated services to Customer.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

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

1.1 “Agreement” means this Software and Services Agreement, including the recitals to this Agreement, the schedules to this Agreement, and the End User License Agreement, each of which are incorporated into this Agreement by this reference, and all Sales Orders issued and executed under this this Software and Services Agreement.

1.2 “End User License Agreement” means the end user license agreement for the Licensed Software. The End User License Agreement for the Licensed Software is attached to this Agreement as Exhibit 1 and may also be viewed at <http://www.lexmark.com/enterprisesoftware-eula>, such End User License Agreement which is hereby incorporated into and made a part of this Agreement by this reference as if fully set forth herein. Should any provisions or additional terms of the End User License Agreement conflict with DIR Contract No. DIR-TSO-3418, such provisions or additional terms shall be deemed null and void.

1.3 “Licensed Software” means each of the computer programs, systems (including their associated documentation and other supplemental materials) and upgrades, enhancements and new releases thereto that are: (a) proprietary to Supplier or licensed to Supplier by its suppliers; and (b) specified on a Sales Order.

1.4 “Technical Services” means implementation and other Supplier-provided services as described in a Sales Order.

1.5 “Sales Order” means a written sales or purchase order and/or statement of work for Supplier Products in a form acceptable to Supplier signed by Supplier and Customer and referencing this Agreement. The initial Sales Order(s) is (are) attached as Schedule A to this Agreement and will be deemed signed by Supplier and Customer upon execution of this Agreement by Supplier and Customer.

1.6 “Software Maintenance and Support” means the maintenance and support of Licensed Software as described in the Software Maintenance and Support Agreement(s) attached as Schedule B to this Agreement.

1.7 “Supplier Products” means Licensed Software, Technical Services, Software Maintenance and Support and/or training as identified on a Sales Order.

2. Scope. Customer will order and Supplier agrees to provide Supplier Products in accordance with the terms and conditions of DIR Contract No. DIR-TSO-3418 and this Agreement and as set forth in a Sales Order. The Licensed Software described in a Sales Order is licensed to Customer by the licensor identified in the Sales Order for such Licensed Software and will be delivered to Customer by such licensor, each solely upon the terms and conditions of DIR Contract No. DIR-TSO-3418, this Agreement and the End User License Agreement for such Licensed Software.

3. Ordering. Customer will procure Supplier Products using a Sales Order that references this Agreement and which will be binding upon by Supplier and Customer upon signature by Supplier and Customer. Supplier and Customer each specifically disclaim terms and conditions contained in any purchase order, statement of work or similar document issued by Customer in connection with the purchase of Supplier Products that is not executed by Supplier, and any such other document will have no legal effect. In the event of a conflict between the terms and conditions of DIR Contract No. DIR-TSO-3418, this Agreement and those of a Sales Order, the terms and conditions of DIR Contract No. DIR-TSO-3418 will control provided, however, that to the extent any Sales Order includes terms and conditions not addressed in this Agreement or not in conflict with the terms and conditions of this Agreement, then such terms and conditions will supplement and be a part of this Agreement...

4. Payment.

4.1 Fees and Expenses. The fees payable by Customer to Supplier for Supplier Products (collectively, the “Fees”) are set forth in each Sales Order and must be in accordance to Appendix C of DIR Contract No. DIR-TSO-3418 and,

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and are payable in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3418. All Fees are nonrefundable and non-cancellable, except as expressly provided in this Agreement, and are exclusive of taxes and any shipping or freight.

4.2 Taxes. Taxes will be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3418.

4.3 All Fees will be payable in the US Dollars. Payments will be made in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3418.

5. Warranties.

5.1 Software Maintenance and Support and Technical Services Warranties. Supplier warrants that it has the legal right to enter into this Agreement and to provide the Software Maintenance and Support and Technical Services to Customer, and that the Software Maintenance and Support and Technical Services will be performed in a professional manner by personnel familiar with the Supplier Products. If Customer is dissatisfied with the performance of any Software Maintenance and Support or Technical Services, Customer will promptly (and in any event within thirty (30) days calendar days following the completion of the Software Maintenance and Support or Technical Services in question) provide Supplier written notice describing the specific basis for such dissatisfaction. After receipt of such notice, Supplier will meet with Customer to discuss the problem and, if applicable, will arrange for the performance of such Software Maintenance and Support or Technical Services to be raised to the warranted level.

5.2 Limitations. Supplier's warranties for the Software Maintenance and Support and Technical Services will not extend to any interference with or failure or degradation of the performance of the Licensed Software caused by (a) Customer's failure to meet and comply with the specifications and requirements set forth in Supplier's technical specifications as necessary for implementation and/or execution of the Licensed Software, including as provided in the Software Maintenance and Support Agreement(s) attached as Schedule B to this Agreement, (b) Customer's violation of any restrictions upon the use of the Licensed Software as provided in the End User License Agreement, including, without limitation, any modification or enhancement of the Licensed Software, or (c) Customer's installation, without Supplier's prior written approval, of any other software, hardware, product or apparatus in the Customer's application environment following the installation of the Licensed Software.

5.3 DISCLAIMERS. SUPPLIER MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE SOFTWARE MAINTENANCE AND SUPPORT OR TECHNICAL SERVICES, EXPRESSED OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED HEREIN, AND EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR SKILL AND CARE.

6. Responsibilities of Customer.

6.1 Computing and Networking Resources. Customer will be solely responsible, at Customer's expense, for causing Customer's application environment to meet and comply with the specifications and requirements set forth in Supplier's technical specifications provided by Supplier to Customer, and Customer will be solely responsible, at Customer's expense, for operating and providing ongoing maintenance, service, security and administration for Customer's application environment, including all hardware and software specified in Supplier's technical specifications as necessary for implementation and execution of the Licensed Software. Supplier's performance under this Agreement and the End User License Agreement will be excused for any period of time during which Customer's failure to meet the foregoing responsibilities prevents such performance by Supplier.

6.2 Data Backup. Customer, at Customer's expense, will regularly make, validate and backup and keep safe copies of its information and other data processed by or used in connection with the Licensed Software, such backup copies suitable for restoring such information and data in the event of a data loss event.

6.3 Access and Work Area. Customer will provide Supplier with timely access to Customer's facilities and to an adequate work area to perform installation and configuration services as contemplated in this Agreement.

6.4 Customer Staff. Customer, at Customer's expense, will provide timely participation of Customer's functional and/or information technology staff as Supplier reasonably deems necessary for the timely delivery of the Technical Services and the delivery of the Software Maintenance and Support as contemplated in this Agreement.

6.5 Indemnification. Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-3418.

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7. Limitation of Liability. LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10K OF DIR CONTRACT NO. DIR-TSO-3418.

8. Licensed Software. The terms and conditions related to Customer's license and use of the Licensed Software, as well as Supplier's warranties concerning the Licensed Software, are provided in the End User License Agreement.

9. Software Maintenance and Support.

9.1 Term. Supplier will provide Software Maintenance and Support for the initial term as provided in the Sales Order (the "Initial Software Maintenance and Support Term"). Customer will pay Supplier the fees for Software Maintenance and Support (the "Software Maintenance and Support Fees") as provided in Appendix A, Section 8J of DIR Contract DIR-TSO-3418. Following the expiration of the Initial Software Maintenance and Support Term, the Software Maintenance and Support will renew and extend for additional consecutive periods (each a "Renewal Software Maintenance and Support Term") as provided in the Sales Order. The Initial Software Maintenance and Support Term and Renewal Software Maintenance and Support Term are collectively referred to in this Agreement as the "Software Maintenance and Support Term".

9.2 New Version Releases. Supplier from time to time may release new major versions of the Licensed Software. Following the release of each such major version, Supplier will continue to provide Software Maintenance and Support for the previous major versions of the Licensed Software, together with all minor, service pack and hotfix versions of such previous major versions of the Licensed Software in accordance with Supplier's End of Life (EOL) Policy provided at the product support page of Supplier's online support site. The foregoing notwithstanding, however, Supplier reserves the right to discontinue Software Maintenance and Support for previous major versions of the Licensed Software if the manufacturer of the hardware or software technologies upon which the Licensed Software runs, with which the Licensed Software interfaces, and/or upon which the Licensed Software relies, discontinues support and maintenance of such hardware or software technologies, or if the industry in general identifies major flaws in such hardware or software technologies. The Software Maintenance and Support may not include software programs offered by Supplier that include functionality separate from the Licensed Software and unique to said software programs, or otherwise has a value and quality separate from the Licensed Software, any of which Supplier may price, market and offer separately from the Licensed Software.

9.3 Cessation of Support. If Software Maintenance and Support expires or is terminated for any reason, Software Maintenance and Support may be reinstated only upon Supplier's written agreement; provided, however, that upon any such renewal, Customer will (i) pay to Supplier (together with Software Maintenance and Support Fees for the Renewal Software Maintenance and Support Term) an amount equal to the Software Maintenance and Support Fees that Customer would have paid during the period between the date of expiration or termination and the date of reinstatement, and (ii) apply all upgrades, enhancements and new releases to the Licensed Software needed to bring Customer's Licensed Software current with Supplier's most current supported version of the Licensed Software. Supplier will have no liability to Customer for any damages arising from or related to Supplier's cessation of Software Maintenance and Support in the event Customer does not timely renew Software Maintenance and Support.

9.4 Termination of this Agreement or the End User License Agreement. The Software Maintenance and Support will terminate immediately upon termination of this Agreement or upon termination of the End User License Agreement applicable to the Licensed Software subject of such Software Maintenance and Support.

10. Technical Services.

10.1 General. Supplier will provide the Technical Services as described in the Sales Order. Customer will pay Supplier the fees for the Technical Services ("Technical Services Fees"), together with reasonable pre-approved travel expenses incurred in connection with Technical Services, as provided in the applicable Sales Order. If Customer fails to timely pay any invoice for Technical Services or travel expenses, Supplier will have the right, in addition to any other remedies it may have under this Agreement or at law, to suspend its performance of any further Technical Services without any liability to Customer for any damages suffered by Customer arising from or related to such suspension of performance.

10.2 Change Orders. Any modification to the Technical Services or any other aspect of a Sales Order, including any resultant changes to pricing or project schedules, will be made pursuant to a written change order that is signed by Supplier and Customer. Each such change order will set forth in reasonable detail the nature of the change in the Technical Services or other aspect being changed, the recommended change in personnel or other deliverables, any change in Technical Services Fees, and any other impact the change order will have on the Sales Order.

10.3 Additional Technical Services. Supplier may provide Customer additional Technical Services, as may be agreed to between Supplier and Customer from time to time. Additional Technical Services will include any services provided by Supplier for product support to the extent required to remedy any Licensed Software support or performance issues caused

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by or resulting from Customer's failure to comply with Customer's responsibilities as described in this Agreement, including, without limitation, in the Software Maintenance and Support Agreement. In each such event Supplier will invoice Customer for all Technical Services Fees for such additional Technical Services at Supplier's then-current rates for Technical Services in accordance with Appendix C of DIR Contract No. DIR-TSO-3418, unless otherwise agreed to in writing by the parties, together with all reimbursable expenses incurred by Supplier in providing such additional Technical Services, and Customer will pay the invoiced amount in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3418.

11. Ownership of Intellectual Property. Intellectual Property shall be handled in accordance to Appendix A, Section 5 of DIR Contract No. DIR-TSO-3418.

12. Term and Termination.

12.1 Term. The term of this Agreement will commence as of the Effective Date and will continue until the termination or expiration of the term of all of the licenses of the Licensed Software, unless earlier terminated in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3418.

12.2 Rights and Obligations upon Termination or Expiration. Upon termination or expiration of the term of this Agreement, all rights granted to Customer hereunder will immediately cease. Termination or expiration of the term of this Agreement for any reason will not excuse Customer's obligation to pay in full any and all Fees or other amounts due by Customer to Supplier, nor will termination or expiration of the term of this Agreement result in a refund of Fees or other amounts paid by Customer to Supplier. Customer's rights to retain and use the Licensed Software upon the termination or expiration of the term of this Agreement are as provided in the End User License Agreement.

12.3 Continuing Obligations. The terms and conditions in this Agreement that by their nature and context are intended to survive any termination or expiration of the term of this Agreement, including, without limitation, Sections 4 (Payment), 7 (Indemnification), 8 (Limitation of Liability), 12 (Ownership of Intellectual Property), 13 (Term and Termination), 14 (Confidentiality and Nondisclosure) and 15 (Miscellaneous), will survive such termination or expiration of the term of this Agreement for any reason and will be fully enforceable thereafter. Termination or expiration of the term of this Agreement will not otherwise affect the party exercising such rights, remedies and protections hereunder.

13. Confidentiality and Nondisclosure.

13.1 Confidential Information Defined. "Confidential Information" includes, but is not limited to, any information, technical data, or know-how (including, but not limited to, information relating to research, products, software, services, quantity, price, pricing, delivery, development, inventions, processes, engineering, marketing, techniques, customers, internal procedures, business and marketing plans or strategies, finances, employees and business opportunities) concerning a party and its affiliates and disclosed by such party (the "Disclosing Party") to the other party (the "Receiving Party") either directly or indirectly in any form whatsoever (including, but not limited to, in writing, in machine readable or other tangible form, orally or visually): (i) that has been marked as "confidential" or "proprietary" or with a similar legend; (ii) whose confidential nature has been made known by Disclosing Party, orally or in writing, to the Receiving Party concurrently with the disclosure of such information; or (iii) that, due to its character and nature, a reasonable person under like circumstances would treat as confidential. Any summaries, compilations or extracts of Confidential Information prepared by the Receiving Party will be deemed Confidential Information and will be subject to the terms of this Agreement.

13.2 Personally Identifiable Information Defined. "Personally Identifiable Information" includes all written, electronic, oral, visual or intangible information disclosed during the term of this Agreement that identifies or may be used to identify any individuals who are customers, end-users, employees or contract personnel of the Disclosing Party, including, but not limited to, name, address, telephone number, e-mail address, date of birth, social security number, age, gender, race, nationality, account number and transaction history.

13.3 Exceptions. Confidential Information will not include information that: (i) is or becomes publicly available other than through the Receiving Party or its Authorized Representatives (as defined in Section 13.4 below); (ii) is in the Receiving Party's possession at the time of disclosure as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iii) is acquired by the Receiving Party from a third party, who provides the information without breaching any express or implied obligations or duties to the Disclosing Party; (iv) is disclosed by the Receiving Party with the Disclosing Party's prior written consent; (v) is independently developed by the Receiving Party without reference to Confidential Information; or (vi) is disclosed in response to a valid order, or request of a court or other governmental body; provided, however, that unless prohibited by law or regulation, the Receiving Party will first have given prompt notice to the Disclosing Party of any such order, inquiry or request so that the Disclosing Party may seek an appropriate protective order or

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reach a mutual written agreement with the Receiving Party, requiring that the information so disclosed be used only for the purposes for which the inquiry or request was made or the order was issued.

13.4 Level of Care. The Receiving Party will maintain the confidentiality of, and agrees to use the same care to prevent disclosure of, the Confidential Information and Personally Identifiable Information as it employs to avoid disclosure, publication or dissemination of its own information of a similar nature, but in no event less than a reasonable standard of care. The Receiving Party further agrees to use the Confidential Information and Personally Identifiable Information only in connection with and in furtherance of the business transactions contemplated by this Agreement; provided, however, that any Customer Confidential Information retained in the individual or collective memories of Supplier employees who have had access to said Confidential Information pursuant to this Agreement may freely use such residual information subject to the obligation of nondisclosure as to the source of such residual information. The Receiving Party may disclose Confidential Information and Personally Identifiable Information to its employees, directors, officers, affiliates, agents, subcontractors, attorneys, accountants or technical advisors, who have a need to have access to the Confidential Information and Personally Identifiable Information in carrying out the business transactions contemplated by this Agreement (“Authorized Representatives”). The Receiving Party will inform its Authorized Representatives of the confidential nature of the Confidential Information and Personally Identifiable Information and the applicability of this Agreement thereto and will obligate and direct its Authorized Representatives to maintain the confidentiality of the Confidential Information and Personally Identifiable Information, and otherwise to observe the terms of this Section 13.

13.5 Ownership. All Confidential Information and Personally Identifiable Information disclosed by the Disclosing Party will remain the property of the Disclosing Party, and except as otherwise provided in this Agreement, the Receiving Party does not acquire any license, right, title or interest in such Confidential Information and Personally Identifiable Information.

13.6 Termination. To the extent allowable under the Texas Public Information Act, upon the termination or expiration of this Agreement the Receiving Party, upon the written request of the Disclosing Party, will (except to the extent otherwise provided herein): (i) return to the Disclosing Party or destroy all of the Disclosing Party’s Confidential Information and Personally Identifiable Information, including without limitation, all media, documents, data, and copies thereof in its possession containing the Confidential Information and Personally Identifiable Information, without retaining any copy or summary thereof; and (ii) deliver to the Disclosing Party a certificate executed by an authorized officer of the Receiving Party certifying compliance with these requirements.

13.7 Injunctive Relief. The Receiving Party acknowledges that improper dissemination of Confidential Information and Personally Identifiable Information may cause irreparable damage to the Disclosing Party and agrees that the Disclosing Party will have available to it, in addition to any other remedy provided by law, the right to apply for mandatory injunctive relief to enforce compliance by the Receiving Party with the Confidentiality provisions of this Agreement Nondisclosure Agreements. The terms and conditions of DIR Contract No. DIR-TSO-3418 and this Section 13 will supplement the terms and conditions of any nondisclosure or confidentiality agreements entered into between Supplier and Customer prior to the Effective Date, and the terms and conditions of this Section 13 will be interpreted, to the extent possible, to be consistent with the terms and conditions of any such nondisclosure or confidentiality agreement; provided, however, that in the event of a conflict between the terms and conditions of DIR Contract No. DIR-TSO-3418 and this Section 13 and those of a nondisclosure or confidentiality agreement, the terms and conditions of DIR Contract No. DIR-TSO-3418 will control.

14. Miscellaneous.

14.1 Notices. Notices shall be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-3418.

14.2 Export. The Supplier Products and any technical data provided by Supplier (collectively, the “Controlled Items”) are subject to United States export control jurisdiction. The Controlled Items may not be shipped, transferred, re-exported into any country, or used for any purpose prohibited by any applicable international and national legal instruments that apply to the Licensed Software, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by the United States and other governments. Customer agrees that it will not export or re-export the Controlled Items without first having obtained applicable United States or foreign government export licenses or permissions.

14.3 Tax Treaties. Each party will comply with any tax treaty obligations applicable to this Agreement and, upon request, will provide the other party with any reasonably necessary information to document such party’s compliance with any applicable tax treaties.

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14.4 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.

14.5 Waiver or Delay. No failure to exercise or delay by a party in exercising any right, power, or remedy under this 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.

14.6 Severability. The provisions of this 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 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 Agreement.

14.7 Governing Law and Venue. This Agreement will be construed and governed in accordance with the laws of the State of Texas, 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 hereby submit to the exclusive venue in the State courts of Travis County, Texas for any action or legal proceeding related to or arising under this Agreement. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas. This 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.

14.8 Assignment. Assignments shall be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-TSO-3418.

14.9 Relationship of the Parties. The relationship between the parties will at all times be that of independent contractors and not one of agency, partnership, or joint venture, and this Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturers, co-owners, principal-agent, or otherwise participants in a joint or common undertaking, or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

14.10 Counterparts. This Agreement may be executed in two or more counterparts. Digital or facsimile signatures are acceptable to execute this Agreement.

14.11 Construction of Agreement. Each party acknowledges that it has had the opportunity to review this Agreement with legal counsel of its choice and agrees that in the event that this Agreement or any other documents delivered in connection with the transactions contemplated by this Agreement contain any ambiguity, such ambiguity shall 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 Agreement, which will be considered as a whole.

14.12 Entire Agreement. DIR Contract No. DIR-TSO-3418, and this Agreement, including the recitals to this Agreement, the schedules to this Agreement, and the End User License Agreement(s), each of which are incorporated into this Agreement by this reference, constitutes the entire understanding and agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous agreements and communications between the parties concerning such subject matter. No modifications may be made to this Agreement except in writing, signed by both parties.

14.13 Force Majeure. Force Majeure shall be handled in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-3418.

14.14 Non-Solicitation. The parties agree that during the term of this Agreement and for a period of one (1) year following the termination or expiration of this Agreement, neither party will solicit for employment or hire any employee or consultant of a party that has been introduced to the other party in connection with providing or receiving Technical Services or Software Maintenance and Support under this Agreement, except in each case with the other party's prior written consent; provided, however, that nothing herein will preclude either party from hiring anyone who responds to a bona fide general advertisement for employment.

14.15 No Security Interest. Customer will not grant any security interest in, or permit any lien or encumbrance upon, any Supplier Product or any intellectual property right of Supplier; and each party will make all reasonable efforts to stop attempts by third parties to obtain such a security interest, lien, or encumbrance on such property.

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14.16 Compliance with Laws. The parties agree to comply with any and all laws and governmental requirements that apply to their respective performance under this Agreement. Customer agrees that it is solely responsible for determining and complying with any and all laws and governmental requirements applicable or incident to Customer's use of the Licensed Software, including, without limitation, data protection laws affecting Customer's use or the retention of data, including any obligation to obtain consents related to any disclosure of personal data.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

LEXMARK ENTERPRISE SOFTWARE USA, INC.

By: _____

Name: **Vince Vecchiarelli**

Title: **Vice President – Public Sector**

Date: **February ____, 2017**

8900 Renner Boulevard
Lenexa, Kansas 66219
Attention: Contracts Administration
E-mail: escontracts@lexmark.com

CUSTOMER _____

By: TEST _____

Name: TEST _____

Title: TEST _____

Date: TEST _____

Address:
TEST _____

Attention: TEST

E-mail: TEST

Schedule A - Lexmark Enterprise Software Product and Services Sales Order

Schedule B - Lexmark Enterprise Software Maintenance and Support Agreement

Exhibit 1 - End User License Agreement

Schedule A - Lexmark Enterprise Software Product and Services Sales Order

This Lexmark Enterprise Software Product and Services Sales Order (“Sales Order”) is attached to and made a part of the Software and Services Agreement (the “Agreement”) between Lexmark Enterprise Software, LLC (“Supplier”) and _____ (“Customer”) for Supplier’s license and sale to Customer of the Supplier Products as described in the Agreement and as specified below, and is effective on the Effective Date of the Agreement. The Supplier Products are licensed and sold to Customer pursuant to the terms and conditions of DIR Contract No. DIR-TSO-3418 and the Agreement and the terms and conditions of this Sales Order, and this Sales Order sets forth the fees payable by Customer for the Supplier Products. Any capitalized terms not otherwise defined in this Sales Order will have the meanings given such terms in the Agreement.

I. LEXMARK ENTERPRISE SOFTWARE TERMS AND CONDITIONS

The following terms and conditions will apply to Supplier’s license and sale of the Supplier Products to Customer:

A. Software License

1. The Licensed Software is licensed upon the terms and conditions of DIR Contract No. DIR-TSO-3418 and the Lexmark Enterprise Software End User License Agreement (<http://www.lexmark.com/enterprisesoftware-eula>), which End User License Agreement terms and conditions are accepted by Customer upon Customer’s receipt of the Licensed Software, no signature required.
2. The Fees for the Licensed Software are invoiced upon execution of the Agreement, and the Licensed Software is available to Customer for download upon such invoicing.
3. Additional licenses of the Licensed Software purchased by Customer following the Effective Date will be priced as listed in Supplier’s then-current, published Price Book, and discounted as indicated in Appendix C of DIR Contract No. DIR-TSO-3418.

B. Technical Services

1. Technical Services are provided on an hourly-price basis for the project scope as described in this Sales Order.
2. If the commencement of the Technical Services are delayed beyond ninety (90) days of the Effective Date because of Customer’s request or Customer’s failure to meet its responsibilities as provided in the Agreement, then the implementation of the Licensed Software will be closed Technical Services are invoiced as incurred, or as otherwise may be provided in this Sales Order.
3. Pre-approved travel and living expenses are invoiced as incurred.
4. Additional Technical Services outside the scope illustrated in the Agreement are outside the scope of DIR Contract No. DIR-TSO-3418 and not permitted as part of this Agreement. Examples of software **not** within scope of this Agreement are Identity Management software as a stand-alone product, Custom Application development, Enterprise Resource Planning products or software already loaded on an appliance that requires a bundled purchase. Services must be related to the Software or SaaS purchased.
5. Customer’s execution and delivery of the Agreement allows Supplier to commit project resources.

C. Software Maintenance and Support (Annual Term)

1. Software Maintenance and Support for the Licensed Software is provided as illustrated in the Software Maintenance and Support Agreement attached as Schedule B to the Agreement.
2. Software Maintenance and Support is activated and available immediately upon the Effective Date, and the Software Maintenance and Support Fees for the Initial Software Maintenance and Support Term are invoiced along with the Licensed Software.
3. The Initial Software Maintenance and Support Term will be for a period of one (1) year commencing on the Effective Date and ending on the last calendar day of the month of the first anniversary of the Effective Date.
4. Following the expiration of the Initial Software Maintenance and Support Term and the continuation of DIR Contract No. DIR-TSO-3418, the Software Maintenance and Support for the Licensed Software will have three (3) one (1) year renewal options to be exercised by the Customer by providing the Vendor at least thirty (30) calendar days written notice of the renewal prior to the then-expiration date.

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5. The Software Maintenance and Support Fees for each Renewal Software Maintenance and Support Term will be an annual fee as published in the Appendix C – Pricing Index to DIR Contract No. DIR-TSO-3418 which Supplier may increase from time to time upon prior notice to Customer and with DIR approval.
6. Supplier will provide Customer, by e-mail or USPS mail, a renewal notice and invoice for the Software Maintenance and Support Fees for the next successive Renewal Software Maintenance and Support Term not less than thirty (30) calendar days prior to the expiration of the then current Software Maintenance and Support Term.
7. Software Maintenance and Support may not extend to any third party software licenses re-sold by Supplier to Customer.

D. Training

1. Training is provided for the prices as provided in this Sales Order.
2. Any discounts granted for the training, such as those for multiple attendees, are valid for one hundred eighty (180) days from the date of the sales order for such training signed by Supplier and Customer. Attendees completing training after such one hundred eighty (180) day period will be billed at Supplier’s then-current pricing in accordance with the Appendix C of DIR Contract No. DIR-TSO-3418, such pricing which Supplier may increase from time to time following the Effective Date upon DIR approval.
3. Training is invoiced as incurred.
4. Additional training may be provided at Supplier’s then-current pricing in as stated in the Appendix C – Pricing Index of DIR Contract No. DIR-TSO-3418.

PURCHASE ORDER NOTICE

Is a Purchase Order required by the Customer?
Please enter Yes or No.

Purchase Order #: _____

(Yes/No)

*If a Purchase Order is required the **Purchase Order Number must be inserted** above upon Customer’s execution of this Sales Order. Any terms and conditions appearing in any Purchase Order issued by Customer will have no effect unless agreed to in a separate writing signed by Supplier and Customer and specifically referencing and amending the terms of the Agreement.*

IN WITNESS WHEREOF, Supplier and Customer have caused this Sales Order to be executed to be effective and binding on the Effective Date.

Supplier

Customer

Lexmark Enterprise Software, LLC

>Customer Name<

Signature: _____

Signature: _____

Name: **Vince Vecchiarelli**

Name: _____

Title: **Vice President - Government Sales**

Title: _____

Schedule B – Lexmark Enterprise Software Maintenance and Support Agreement

1. Software Maintenance and Support

Software Maintenance and Support customers have access to:

- a) Support for published and released standard Licensed Software functionality as defined by Supplier's End of Life Policy.
- b) Access to Lexmark Enterprise Software Support Services, twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, with engagement within two (2) hours.
- c) Lexmark Enterprise Software Support Services are available to any Customer allowed licensed user.
- d) Support for an unlimited number of incidents per year.
- e) Comprehensive online support, including product documentation, Knowledgebase Web case submissions, product downloads, ability to interact with Lexmark Enterprise Software Support Services via interactive channels including web chat and screen sharing, access to Lexmark Enterprise Software User Community forum, and ability to review and register for training courses, are available real-time through secure and customer-unique access. Customers require a valid user ID and password to access online support.
- f) Periodic standard version releases and software patches of the Licensed Software providing corrections to defects, minor bugs, and, at the discretion of Supplier, enhancements providing new functionality to the Licensed Software, subject to Supplier's End of Life Policy.
- g) Notification of any new version releases and software patches for the Licensed Software.

2. Customer Responsibilities

In addition to the Customer's responsibilities as set forth in the Agreement between Supplier and Customer for the license of the Licensed Software, the Customer will be solely responsible, at the Customer's expense, to:

- a) Notify Supplier immediately of any support or maintenance issues.
- b) Train users on use of the Licensed Software.
- c) Be familiar with and leverage the use of Supplier online support.
- d) Apply all new version releases and software patches in a timely manner to ensure conformance with Supplier's End of Life Policy.
- e) Designate a key contact for maintenance and support communications.
- f) Provide Supplier with timely access, remote and/or on site, to Customer's facilities, including Customer's servers upon which the Licensed Software runs, with which the Licensed Software interfaces, and/or upon which the Licensed Software relies, including but not limited to the database server with which the Licensed Software interfaces.
- g) Provide Supplier timely return of requested troubleshooting data in order to perform root cause analysis for support issues being experienced with the Licensed Software.
- h) Cause Customer's software environment to meet and comply with the specifications and requirements set forth in Supplier's technical specifications, and otherwise assume responsibility for all standard IT/IS infrastructure requirements, including the purchase, maintenance, administration and service of hardware and software upon which the Licensed Software runs, with which the Licensed Software interfaces, and/or upon which the Licensed Software relies, up to and including as appropriate:
 - i. An efficient and functioning computer network which meets or exceeds the functional specifications required for operation of the Licensed Software.
 - ii. Appropriate computer equipment in proper working condition, up to and including, servers and workstations as appropriate.
 - iii. Maintain a virus free network and computer equipment environment in which the Licensed Software runs, interfaces with, and/or relies upon.

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- iv. A database with which the Licensed Software interfaces, updated per manufacturer's recommendations and properly tuned and maintained for acceptable performance.
- v. A firewall appropriately configured to allow all Licensed Software related communications to traverse the network per the functional specifications required for operation of the Licensed Software.
- vi. A web application server in proper working condition, in the event that Customer purchases web client licenses of the Licensed Software or "combo" full/web client licenses of the Licensed Software.
- vii. A messaging server and software in proper working condition, such as Microsoft Exchange.

If Supplier is required to provide services to Customer to remedy any Licensed Software support or performance issues caused by or resulting from Customer's failure to comply with Customer's responsibilities as provided above or in the Agreement between Supplier and Customer for the license of the Licensed Software, then in each such event Supplier will invoice Customer for all fees at Supplier's then-current hourly rate for the services provided by Supplier and for all reimbursable expenses incurred by Supplier in providing such services, and Customer will pay the invoiced amount per the Appendix A, Section 8J of DIR Contract No. DIR-TSO-3418.

3. Onsite Support.

If Supplier and Customer agree that onsite services are necessary to remedy any Licensed Software support or performance issue, then in each such event Supplier will invoice Customer for reimbursable expenses incurred by Supplier in providing such services, and Customer will pay the invoiced amount per the payment terms provided in Appendix A, Section 8J of DIR Contract No. DIR-TSO-3418.

EXHIBIT 1 – LEXMARK END USER LICENSE AGREEMENT

LEXMARK ENTERPRISE SOFTWARE END USER LICENSE AGREEMENT

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT (“LICENSE AGREEMENT”) CAREFULLY BEFORE INSTALLING OR USING THE LICENSED SOFTWARE AND THE ACCOMPANYING USER DOCUMENTATION. THE LICENSED SOFTWARE AND THE USER DOCUMENTATION ARE COPYRIGHTED AND LICENSED (NOT SOLD). BY INSTALLING OR USING THE LICENSED SOFTWARE, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE AGREEMENT. IF YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THE TERMS OF THIS 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 LICENSE AGREEMENT. IF YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR EMPLOYER, A COMPANY OR OTHER LEGAL ENTITY THAT WILL USE THE LICENSED SOFTWARE, DO NOT INSTALL THE LICENSED SOFTWARE OR ACCEPT AND AGREE TO THE TERMS OF THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE AGREEMENT, DO NOT USE THE LICENSED SOFTWARE, AND, IF YOU HAVE ALREADY INSTALLED THE LICENSED SOFTWARE, PROMPTLY AND PERMANENTLY REMOVE IT FROM YOUR SYSTEM AND DESTROY ALL COPIES OF THE LICENSED SOFTWARE AND USER DOCUMENTATION, RETURN TO LICENSOR ANY CDs AND OTHER MEDIA CONTAINING THE LICENSED SOFTWARE AND THE USER DOCUMENTATION WITHIN A REASONABLE PERIOD OF TIME (NOT TO EXCEED THIRTY (30) DAYS), AND REQUEST A REFUND OF THE LICENSE FEES PAID BY YOU FOR THE LICENSES OF THE LICENSED SOFTWARE. EXCEPT TO THE EXTENT THE LICENSED SOFTWARE IS SUBJECT TO A SEPARATE WRITTEN SOFTWARE LICENSE AGREEMENT BETWEEN YOU AND LICENSOR, THIS LICENSE AGREEMENT WILL SUPERSEDE ANY AND ALL LICENSE AGREEMENTS GOVERNING ANY LICENSES OF THE LICENSED SOFTWARE PREVIOUSLY GRANTED BY LICENSOR (AND ITS PREDECESSORS IN INTEREST) TO YOU.

1. Software License Grant.

(a) License Grant. Subject to the terms and conditions of this License Agreement, Lexmark Enterprise Software, LLC (“Licensor”) hereby grants to you, and you accept, nonexclusive and nontransferable licenses to use the Licensed Software provided to you by Licensor or its authorized distributor with this License Agreement, in the original, unmodified, machine-readable, object code form only, including, without limitation, any data structures created by such programs, and all upgrades, enhancements and new version releases of any of the foregoing that may be provided by Licensor to you from time to time (collectively referred to as the “Licensed Software”), and the accompanying User Documentation (the “User Documentation”), only as authorized in Section 2 of this License Agreement and for the purposes contemplated by the User Documentation, and installed and used only on a computer or device located at a specific geographic site if provided in a written agreement between you and Licensor or its authorized distributor which sets forth the license fees for and other terms and conditions applicable to the Licensed Software (the “Sales Order”) (the Licensed Software and User Documentation are collectively referred to herein as the “Licensed Products”). Your licenses of the Licensed Products are perpetual; provided, however, such licenses may be limited as designated in the Sales Order, including, without limitation, as transaction, subscription or term licenses. Licensor retains the right to terminate the licenses for the Licensed Software, however, upon the terms provided in Section 12 below.

(b) Third Party Software. Notwithstanding the terms and conditions of this License Agreement, any portion of the Licensed Software that constitutes third party software, including software provided under a public license (“Third Party Software”), is licensed to you subject to the terms and conditions of the software license agreements accompanying 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. 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.

2. Licensed Rights.

(a) Server Licensing. If your Sales Order indicates that you acquired the server component of the Licensed Software, the server component of the Licensed Software, including all data structures, data elements, and other data types, may be installed and used only on a single computer or device that you own, lease, or otherwise control (or in the event of the

inoperability of a computer or device, on your backup computer or device only until such operability is restored), unless you purchase additional server licenses. In addition, the licensed server components of the Licensed Software may be used only with the licensed components of the Licensed Software.

(b) Per-seat/Per-user/Per-device Licensing. Unless your Sales Order specifies otherwise, if you have acquired client seat, named user or device licenses of the Licensed Software, the client component of the Licensed Software may be installed and used only on computers or devices that you own, lease or otherwise control (or in the event of the inoperability of a computer or device, on your backup computer or device only until such operability is restored), and only (i) equal to the number of client seat licenses of the Licensed Software that you have purchased, (ii) for use by the user designated in the Sales Order, or, as the case may be, (iii) on the device designated in the Sales Order. If the Licensed Software includes a server component, then the licensed client component of the Licensed Software may be used only with the licensed server component of the Licensed Software. You may not use the Licensed Software on any additional computers or devices or in a local area network (LAN) or other network, either in a multi-launch or remote sharing environment without purchasing additional license rights.

(c) Concurrent Client Licensing. If your Sales Order indicates that you acquired concurrent client licenses of the Licensed Software, then you may install and use the client component of the Licensed Software on any computers or devices you own, lease or otherwise control (or in the event of the inoperability of a computer or device, on your backup computer or device only until such operability is restored). However, the number of concurrent client licenses of the Licensed Software that you operate at any time with the licensed server component of the Licensed Software will not exceed the number of concurrent seat licenses that you have purchased as identified in the Sales Order.

(d) Test Environment Licenses. If your Sales Order indicates that you acquired test environment licenses of the Licensed Software, then you may utilize such test environment licenses to test the Licensed Software, including upgrades, enhancements and new releases of the Licensed Software, in a test environment to analyze the operation of the Licensed Software prior to making changes in your production environment. You are prohibited from using test environment licenses in a live production environment for productive use or otherwise for use in excess of your licensed rights or in violation of the terms of this License Agreement. Your right to use such test environment licenses is conditional upon your cooperation with Licensor in creating a hardware fingerprint profile of the server facilities upon which you create such test environment or implementing such other measures as Licensor reasonably may require, and your continuing obligation to update and correct such hardware fingerprint profile or modify such measures as changes to the backup server or server cluster node hardware occur.

(e) Failover License. If your Sales Order indicates that you acquired failover licenses of the Licensed Software, then you may install the server component of the Licensed Software on a back-up server or server cluster node (the "Failover Copy") to ensure server or system failover of your Licensed Software environment in the event of the failure and non-availability for productive use of your Licensed Software environment (a "Failover Event"); provided that (i) you install the Licensed Software for server or system failover only on a backup server or server cluster node for system failover, (ii) the Failover Copy must remain dormant until the occurrence of a Failover Event, (iii) your use of the Failover copy must immediately cease upon the cessation of the Failover Event, and (iv) you may not use the Failover Copy in excess of your licensed rights or in violation of the terms of this License Agreement. Your license and right to use the Licensed Software for system failover is conditioned upon your cooperation with Licensor in creating a hardware fingerprint profile of the backup server or server cluster node upon which you install the Failover Copy or implementing such other measures as Licensor reasonably may require, and your continuing obligation to update and correct such hardware fingerprint profile or modify such measures as changes to the backup server or cluster node hardware occur. Your license and right to install and maintain the Licensed Software for system failover will expire upon the first to occur of (x) your modification of your Licensed Software environment such that you no longer need a copy of the Licensed Software for a Failover Event, (y) Licensor's modification of the Licensed Software to permit failover operation of the Licensed Software absent the need for a Failover Copy, or (z) the termination of this License Agreement.

(f) Transaction Licensing. If your Sales Order indicates that you acquired transaction licenses, then your rights to install and use the transaction component(s) of the Licensed Software will be limited to the duration of any purchased transaction period and/or to the number of transactions that you have purchased as identified in the Sales Order (e.g. your use of the Licensed Software is limited to a designated number of transactions per day, month or year during the term of the license, or the term of the license is determined with reference to a designated number of transactions), and you will not execute any transactions in excess of that number of transactions. You may use the transaction component of the Licensed Software only with the licensed server component of the Licensed Software. You may not use the transaction component(s) of the Licensed Software on any additional computers or devices or in a LAN or other network, either in a multi-launch or remote sharing environment without purchasing additional licenses of the Licensed Software.

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(g) Subscription or Term Licensing. If your Sales Order indicates that you acquired subscription or term licenses, then your rights to install and use the Licensed Software will be limited to the subscription or term of the licenses as identified in the Sales Order, and will be subject to the terms and conditions of the Sales Order. Your rights will also depend upon your timely payment to Licensor of all subscription or license fees due for each subscription or term license. If you fail to timely pay your subscription or license fees, this failure will constitute a breach of a material term of this License Agreement and will permit Licensor to terminate your rights to the Licensed Software and this License Agreement. If Licensor hosts the central Licensed Software application environment and associated infrastructure for your use of the Licensed Software, you will be entitled to possession only of the licensed client component of the Licensed Software. This License Agreement and your limited license to use the Licensed Software will expire at the end of your subscription or license term, unless this License Agreement is (a) renewed or (b) terminated prior to the end of the subscription or license term.

(h) Agent and Feature Licensing. If your Sales Order indicates that you acquired agent or feature components of the Licensed Software, then you may install and use such components of the Licensed Software only with the licensed server component of the Licensed Software and on computers or devices you own, lease, or otherwise control (or in the event of the inoperability of a computer or device, on your backup computer or device only until such operability is restored) and will not exceed the number of agent or feature licenses of the Licensed Software that you have purchased. You may not use the agent or feature components of the Licensed Software on any additional computers or devices or in a LAN or other network, either in a multi-launch or remote sharing environment without purchasing additional licenses of the Licensed Software.

(i) Overdraft. If your Sales Order indicates that you acquired the overdraft feature for use with the concurrent license model of the Licensed Software, you will pay Licensor an annual fee for the overdraft capability in the amount provided in the Sales Order, provide quarterly reports to Licensor within thirty (30) days following the last day of each calendar quarter detailing the number of times the overdraft feature was used within such quarter, and pay to Licensor with such quarterly reports the overdraft fees associated with such license overdrafts in the amount provided in the Sales Order. Furthermore, if you have used the overdraft feature for four (4) consecutive calendar quarters, then within thirty (30) days following the last day of such 4th calendar quarter you will purchase additional licenses of the Licensed Software in an amount equal to the daily average number of license overdrafts during such four (4) calendar quarters. If you fail to timely pay any overdraft fees to Licensor or timely purchase any such additional licenses, then Licensor will have the right to terminate this License Agreement.

(j) Restricted Use. If your Sales Order indicates that you acquired licenses of the Licensed Software subject to restrictions or limitations upon your use of a portion of the functionality provided by such licenses, such restrictions or limitations as identified in the Sales Order, then you will neither use nor permit the use of any of the functionality of such Licensed Software subject of such restrictions or limitations. If you use any such restricted or limited functionality, then you will pay to Licensor the license fees and maintenance and support fees which you would have paid to Licensor had you purchased such restricted or limited functionality.

(k) 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.

(l) 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.

(m) 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

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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 or direct benefit 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.

7. Licensor Warranty.

(a) Performance Warranty. Licensor warrants (the "Performance Warranty") to you for a period of ninety (90)

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days from the date of your acceptance of this License Agreement (the “Performance Warranty Period”) that (i) the Licensed Software, under normal, proper and intended usage, will operate substantially in accordance with the functional specifications in the User Documentation, and (ii) that at the time of installation of the Licensed Software, the Licensed Software does not contain any computer worms or viruses. To be eligible for a remedy under this Performance Warranty, at law or in equity, you must report all warranted problems to Licensor in writing within the Performance Warranty Period.

(b) Remedies. If during the Performance Warranty Period you notify Licensor in writing that the Licensed Software is noncompliant with the Performance Warranty, and Licensor determines the Licensed Software is noncompliant with the Performance Warranty, then your exclusive remedy and Licensor’s sole obligation with respect to the noncompliant Licensed Software will be, at Licensor’s option and expense: (i) use reasonable efforts to provide a correction or a workaround for any reproducible errors or other noncompliance; (ii) replace the Licensed Software; or if the foregoing two (2) options are not commercially reasonably viable (iii) terminate this License Agreement and refund the unamortized license fees paid to Licensor for the noncompliant Licensed Software. 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. You agree to cooperate with Licensor in recreating the environment in which any noncompliance occurred and to supply any equipment and personnel Licensor reasonably deems necessary to diagnose and remedy such noncompliance.

(c) Exclusions. The warranty and remedies provided in this License Agreement do not apply to any Licensed Software to the extent that such Licensed Software: (i) has been modified, enhanced or altered in any way, except by Licensor or as authorized in advance in writing by Licensor; (ii) has not been installed, operated, repaired or maintained in accordance with the User Documentation; (iii) has been subjected to misuse, negligence, or accident; (iv) has been subjected to external forces, such as power failures or electrical power surges; or (v) cannot reasonably reproduce the error reported by you.

(d) DISCLAIMERS. LICENSOR MAKES NO WARRANTY THAT THE LICENSED SOFTWARE WILL MEET YOUR NEEDS, PERFORM ERROR-FREE OR UNINTERRUPTED, OR THAT LICENSOR WILL CORRECT ALL ERRORS THAT MAY EXIST WITHIN THE LICENSED SOFTWARE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED PRODUCTS ARE LICENSED “AS IS” AND LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY NON-INFRINGEMENT WARRANTY AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. ANY IMPLIED WARRANTIES THAT BY LAW CANNOT BE DISCLAIMED ARE LIMITED IN DURATION TO: (I) NINETY (90) DAYS FROM THE DATE OF YOUR ACCEPTANCE OF THIS LICENSE AGREEMENT; OR (B) THE SHORTEST PERIOD PERMITTED BY LAW, WHICHEVER IS GREATER. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION OR LIMITATIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

8. Indemnification.

Indemnification shall be as stated in Appendix A, Section 10A, to DIR Contract Number DIR-TSO-3418.

9. Licensee Warranties, Covenants and Agreements (Medical or Technical Services). If you use the Licensed Software in conjunction with rendering medical or other technical services, then you represent, warrant, covenant and otherwise acknowledge and agree that:

(b) Legal Requirements. You will be responsible for and will comply with all applicable legal and regulatory requirements associated with the use of the Licensed Software in rendering medical or other technical services, including, without limitation, any licensing requirements arising out of the transfer of any data over state or other jurisdictional lines and ensuring the use of such data solely by properly licensed professionals in each jurisdiction to which such data may be transferred.

(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 personnel 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 Licensed 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 technical services provided in conjunction with your use of the Licensed Software or the data managed, processed, stored or otherwise handled by the

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Licensed Software, or your regulatory compliance or other service obligations.

10. Limitation of Liability. LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10K OF DIR CONTRACT NUMBER.DIR-TSO-3418.

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.

(a) Term and Termination shall be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3418.

(b) **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.

12. 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, and subject to your security requirements, 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 undisputed 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 provided for in the Texas Prompt Payment Act. If you fail to pay such undisputed amounts within thirty (30) calendar 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.

13. Miscellaneous.

(a) **Notices.** Notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3418.

(b) **Governing Law.** Governing Law shall be handled in accordance with Appendix A, Section 4F, of DIR Contract No. DIR-TSO-3418.

(c) **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.

(d) **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.

(e) **Export Laws.** The Licensed Products are subject to United States export control jurisdiction, and may not be shipped, transferred, re-exported to any country or recipient, or used for any purpose prohibited by any applicable international and national laws that apply to the Licensed Products, including the U.S. Export Administration Regulations as well as end-user, end-use, and destination restrictions issued by the United States and other governments. You will not export or re-export Licensed Products without first obtaining the appropriate U.S. or foreign government export licenses.

APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3418

(f) Entire Agreement. DIR Contract No. DIR-TSO-3418, Appendix A, Appendix B, Appendix C, Appendix D and Appendix E 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 DIR Contract No. DIR-TSO-3418, its Appendices and this License Agreement except in writing, signed by both parties.

(g) Benefit of Agreement. This License Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns.

(h) 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.

(i) Force Majeure. Force Majeure shall be handled in accordance with Appendix A, Section 11C, of DIR Contract No. DIR-TSO-3418.

(j) 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.

(k) Choice of Language. The original of this Agreement has been written in English, which will be the controlling language in all respects. Any translations into any other language are for reference only and will have no legal or other effect.

(l) Personal Data; Consent to Process and Transfer. You agree to comply with all applicable laws and regulations which may govern your use of the Licensed Software, including, but not limited to, laws pertaining to the collection and use of personal data and to the transfer of data over state or other jurisdictional lines.