

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

LEXMARK SOFTWARE SERVICES AGREEMENT (SAAS)

**THIS SOFTWARE 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 computer subscription services and other associated services to Customer.

**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 DIR Contract No. DIR-TSO-3418 this Software Services Agreement, including the recitals to this Agreement, and the schedules to this Agreement, each of which are incorporated into this Agreement by this reference, and all Sales Orders issued and executed under this Software Services Agreement.

1.2 “Technical Services” means the implementation, and other Supplier-provided services as described on a Sales Order.

1.3 “Sales Order” means a written sales or purchase order and/or statement of work for Supplier Services 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.

1.4 “Subscription Services” means the subscription services for access to and use of the Subscription Services Platform, Subscription Services Support and associated user documentation and supplemental materials as specified on a Sales Order.

1.5 “Subscription Services Platform” means Supplier’s datacenter facilities, computer software and associated central software application environment, infrastructure and communication services used by Supplier to provide the Subscription Services.

1.6 “Subscription Services Support” means the support and maintenance for the Subscription Services as provided in accordance with the Service Level Summary attached as Schedule B to this Agreement.

1.7 “Supplier Services” means the Subscription Services, Technical Services, Subscription Services Support and other products and services as identified on a Sales Order.

**2. Scope.** Customer will order and Supplier agrees to provide Supplier Services in accordance with the terms and conditions of DIR Contract Number DIR-TSO-3418 and this Agreement and as set forth in a Sales Order.

**3. Ordering.** Customer will procure Supplier Services using a Sales Order that references this Agreement and which will be binding upon Supplier and Customer upon signature by Supplier and Customer. In the event of a conflict between the terms and conditions of DIR Contract Number DIR-TSO-3418, this Agreement and those of a Sales Order, the terms and conditions of DIR Contract No. DIR-TSO-3418 will control.

**4. Subscription Services.**

4.1 Term. Subject to the terms and conditions of DIR Contract Number DIR-TSO-3418 and this Agreement and the applicable Sales Order, including the timely payment of all fees due, Customer may access and use the Subscription Services for the term as provided in the Sales Order (the “Initial Subscription Services Term”). Customer will pay Supplier the recurring fees and non-recurring fees for the Subscription Services (the “Subscription Services Fees”) as provided in the Sales Order and in accordance with Appendix A, Section 8J of DIR Contract Number DIR-TSO-3418. Following the expiration of the Initial Subscription Services Term, the Subscription Services shall have three (3) one (1) year renewal options exercised by the Customer providing Vendor thirty days written notice prior to the then-expiration date. The Initial Subscription Services Term and Renewal Subscription Services Term are collectively referred to in this Agreement as the “Subscription Services Term”.

4.2 Subscription Services Platform. Supplier will provide the Subscription Services through the Subscription Services Platform, which Supplier will manage and maintain, including the OS and database. Customer will not have physical access to the Subscription Services Platform hardware. Supplier will supply the Internet Protocol (“IP”) addresses and/or DNS

## APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3418

names, hostnames and logon information to Customer, and reserves the right to change IP address upon notice to Customer by e-mail. The Subscription Services Platform may be operated by Supplier or by one or more third parties under agreements with Supplier. UNDER NO CIRCUMSTANCES SHALL CUSTOMER INFORMATION BE ALLOWED TO RESIDE OUTSIDE THE CONTINENTAL USA.

4.3 Service Level Summary. Supplier will provide the Subscription Services to Customer, including maintenance and support for the Subscription Services (the “Subscription Services Support”), in accordance with the Service Level Summary attached as Schedule B to this Agreement (the “Service Level Summary”). Customer consents to Supplier’s application of all upgrades, enhancements and new releases to the Subscription Services Platform, and Customer will timely cooperate with such application of upgrades, enhancements and new releases to the Subscription Services Platform. The Subscription Services are subject to the storage acquired by Customer as described in the Sales Order.

4.4 Client Component Software. If the Subscription Services includes a software client component to be installed in Customer’s desktop environment, Customer is hereby granted a non-exclusive and non-transferable license to use such software for the Subscription Services, which license will terminate upon the expiration or termination of the Subscription Services Term. Customer will not reverse engineer or decompile or assist or otherwise facilitate others to reverse engineer or decompile such client component software. Any portion of the client component software that constitutes third party software, including software provided under a public license, is licensed to Customer subject to the terms and conditions of the software license agreements set forth in the `thirdpartylicenses.txt` file accompanying the client component software. The use of such third party software will be governed exclusively by the terms and conditions of such software license agreements. Any provision found to be in conflict with DIR Contract No. DIR-TSO-3418 shall be deemed null and void.

4.5 Customer Responsibilities. Customer is responsible for providing network connectivity between Customer’s local environment and the Subscription Services Platform for the implementation and execution of the Subscription Services as provided in Supplier’s technical specifications provided by Supplier to Customer. Customer will maintain bandwidth of sufficient capacity for the operation of the Subscription Services. Customer has the sole responsibility for installation, testing and operations of facilities, telecommunications and internet services, equipment and software upon Customer’s premises necessary for Customer’s use of the Subscription Services (the “Customer Facilities”), and for paying all third-party access fees incurred by Customer to access and use the Subscription Services.

4.6 Customer’s Data and Information. Customer is solely responsible for the accuracy and completeness of Customer’s data and information located on the Subscription Services Platform. Supplier makes no representation or warranty of any kind, either express or implied, regarding the quality, accuracy or validity of the data and information available from or on the Subscription Services Platform. Use of data and information obtained from or on the Subscription Services Platform or through the interconnecting networks is at Customer’s risk.

4.7 Early Termination Charges. If Supplier terminates the Subscription Services pursuant to Customer’s failure to timely pay any Subscription Services Fees, then Customer will pay Supplier early termination charges with respect to such Subscription Services in an amount equal to any unpaid Subscription Services Fees for the remaining term of such terminated Subscription Services, plus the balance of any unpaid non-recurring charges associated with such terminated Subscription Services. Customer agrees the actual damages in the event of such termination would be difficult or impossible to ascertain, and that such termination charges are intended, therefore, to establish liquidated damages for such early termination and are not intended as a penalty.

4.8 Rights and Obligations Upon Termination. Upon the expiration or termination of the Subscription Services, Supplier will have no further obligation to provide the Subscription Services, and Customer will have no further rights to use or access the Subscription Services Platform. Upon Customer’s payment to Supplier of all amounts due by Customer to Supplier under this Agreement, and upon Customer’s payment to Supplier of data migration fees as provided in Supplier’s then-current, published Price Book, Supplier will deliver to Customer the Customer’s objects/images including metadata then located upon the Subscription Services Platform. Absent Customer’s payment of all such amounts within ten (10) business days following the termination or expiration of the Subscription Services, Supplier may permanently delete such objects/images/metadata from the Subscription Services Platform with no liability or further obligation to Customer with respect to such objects/images/metadata, except as provided under Section 14 below. Supplier, at its option and upon a separate written agreement between Supplier and Customer, may provide additional customization, reformatting, and other migration/conversion services to Customer related to such objects/images/metadata upon Customer’s payment to Supplier of fees for such services at Supplier’s then-current rates for Technical Services.

**5. Use of Subscription Services.**

5.1 Use of Subscription Services. Customer will not use the Subscription Services in any manner which (a) disrupts the normal use of the Subscription Services Platform by Supplier, other customers of Supplier or any other user of the Subscription Services Platform, (b) impacts the privacy, integrity or security of Supplier or such other customers or users, (c) is legally actionable between private parties, or (d) violates any local, state, federal or international law or regulation. Customer further will not allow unauthorized access to or use of the Subscription Services. Any such use by Customer of the Subscription Services is considered to be an abuse of the Subscription Services and cause for immediate termination of the Subscription Services by Supplier without providing Customer notice or opportunity to cure such violation, in which event Customer will pay to Supplier the early termination fees described in this Agreement. Customer will be solely responsible for all content and data placed upon the Subscription Services Platform by Customer or Customer's authorized users of the Subscription Services.

5.2 Restrictions. Customer will not (a) modify, enhance, copy or create derivative works based upon the Subscription Services or the user documentation and other supplemental materials associated with Subscription Services (the "User Documentation") without Supplier's prior written consent in each instance. Any such Customer modification, enhancement, copy or derivative work or other improvement based upon the Subscription Services and/or the User Documentation, whether developed by Customer with or without Supplier's assistance, will be the exclusive property of Supplier and subject to and governed under the terms and conditions of DIR Contract No. DIR-TSO-3418 and this Agreement.

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

5.4 Passwords. Supplier may require Customer to maintain secure passwords for use of the Subscription Services. Secure passwords are those that are at least eight (8) characters in length, not used for a period greater than sixty (60) days, and unique from the four (4) previous passwords. Furthermore, passwords must not contain the user's account name or parts of the user's full name that exceed two (2) consecutive characters, and must contain characters from three (3) of the following four (4) categories: (i) English uppercase characters (A through Z); (ii) English lowercase characters (a through z); (iii) base 10 digits (0 through 9); and (iv) non-alphabetic characters (for example, !, \$, #, %). Customer will keep confidential and not disclose to any third parties any user identifications, passwords, account numbers or account profiles. Customer will have sole responsibility for maintaining the confidentiality of and preventing the unauthorized use of any secure passwords, and for otherwise preventing any unauthorized access to the Subscription Services Platform from or through the Customer Facilities.

5.5 Security Measures. Customer will not use any process, program or tool, in connection with the Subscription Services or otherwise, for guessing the passwords of Supplier, other customers of Supplier or any other user of the Subscription Services Platform, or for circumventing any security measures of Supplier, other customers of Supplier or any other user of the Subscription Services Platform. Customer will not use the Subscription Services Platform to make unauthorized attempts to access the systems and networks of others.

5.6 U.S. Government License Rights. If Customer is a U.S. Government entity, then all Subscription Services and other services provided to Customer are provided under the commercial license rights and restrictions generally applicable under this Agreement. If a U.S. Government entity has a need for rights not conveyed under the terms of this Agreement, it must negotiate with Supplier to determine if there are acceptable terms for transferring such rights and a mutually acceptable written addendum specifically conveying such rights must be included in any contract or agreement.

**6. Payment.**

6.1 Fees and Expenses. The fees payable by Customer to Supplier for Supplier Services (collectively, the "Fees") are set forth in each Sales Order and are in accordance with Appendix C of DIR Contract No. DIR-TSO-3418, and are payable in accordance with Appendix A, Section 8J of DIR Contract Number 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.

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

6.3 Payment Timeframe. Invoices for Supplier Services shall be handled in accordance with Appendix A, Section 8I of DIR Contract No. DIR-TSO-3418.

**7. Warranties.**

7.1 Supplier Services Warranties. Supplier warrants that it has the legal right to enter into this Agreement and to provide the Supplier Services to Customer, and that the Supplier Services will be performed in a technical manner by personnel familiar with the Supplier Services. If Supplier fails to meet any of the service commitments for the Software

## APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3418

Services as described in this Agreement, Customer will be entitled to service credits as provided in the Service Level Summary. If Customer is dissatisfied with the performance of any Technical Services, Customer will promptly (and in any event within thirty (30) days calendar days following the completion of 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 Technical Services to be raised to the warranted level.

7.2 Limitations. Supplier's warranties for the Subscription Services, and Supplier's obligation to issue service credits for the Subscription Services, will not extend to any interference with or failure or degradation of the performance of the Subscription Services caused by (a) Customer's failure to meet and comply with Supplier's specifications and requirements for implementation and/or execution of the Subscription Services as set forth in this Agreement, Supplier's technical specifications, and in the Service Level Summary, (b) Customer's violation of any restrictions upon the use of the Subscription Services as provided in this Agreement, (c) Customer's installation, without Supplier's prior written approval, of any other software, hardware, product or apparatus in Customer's desktop or application environment following the date Customer has the ability to log on to the Subscription Services Platform, or (d) Excluded Outages as described in the Service Level Summary.

7.3 DISCLAIMERS. SUPPLIER MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE SUPPLIER 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.

### 8. Responsibilities of Customer.

8.1 Computing and Networking Resources. Customer will be solely responsible, at Customer's expense, for obtaining and making available the Customer Facilities (as described in Section 4.5 above) and, when applicable, for causing Customer's desktop and application environment to meet and comply with the specifications and requirements set forth in Supplier's technical specifications provided by Supplier to Customer as necessary for the implementation and execution of the Subscription Services, and Customer will be solely responsible, at Customer's expense, for operating and providing ongoing maintenance, service, security and administration for the Customer Facilities and Customer's application environment. Supplier's performance under this Agreement will be excused for any period of time during which Customer's failure to meet the foregoing responsibilities prevents such performance by Supplier.

8.2 Access. Customer will provide Supplier with timely access to Customer's information, facilities, equipment and environment to perform the implementation and delivery of the Subscription Services as contemplated in this Agreement, including, without limitation, data, security access, information and software interfaces to Customer's applications.

8.3 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 Supplier Services as contemplated in this Agreement.

### 9. Indemnification.

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

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

### 11. Technical Services.

11.1 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. Travel reimbursements shall be handled in accordance with the Texas Travel Management Guide issued by the Comptroller of Public Accounts.

11.2 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.

## APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3418

11.3 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 support of the Subscription Services to the extent required to remedy any support or performance issues concerning the Subscription Services caused by or resulting from Customer's failure to comply with Customer's responsibilities as described in this Agreement, including, without limitation, in the Service Level Summary. 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 as identified in 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 with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3418.

**12. Ownership of Intellectual Property.** Each party and their respective licensors will retain all of their right, title, and ownership in and to their intellectual property and related materials. As between Supplier and Customer, Supplier will retain all title to and ownership of all proprietary documentation, software, techniques, tools and processes used by Supplier and/or developed by Supplier in providing the Supplier Services, including, without limitation, all written materials, copyright and patent rights, and other intellectual property rights. Except, and to the extent expressly provided in this Section, no other right is hereby transferred or granted to Customer, including any license by implication, estoppel or otherwise, under any patent, trade secret, trademark or copyright.

### **13. Term and Termination.**

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

13.2 Rights and Obligations upon Termination or Expiration. To the extent allowable under the Texas Public Information Act, upon termination or expiration of the term of this Agreement, all Subscription Services and all other rights granted to Customer hereunder will immediately cease, and Customer will: (a) immediately discontinue all use of the Subscription Services; (b) within fifteen (15) days return to Supplier all copies of the User Documentation, including any extracts therefrom; (c) permanently remove from Customer's system and all storage devices and media all copies of the User Documentation or any portion thereof; and (d) give Supplier a written certification signed by an authorized officer that Customer has complied with all of Customer's obligations under this Section. 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.

13.3 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 6 (Payment), 9 (Indemnification), 10 (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.

### **14. Confidentiality and Nondisclosure.**

14.1 Confidential Information Defined. To the extent allowable under the Texas Public Information Act, "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, 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.

14.2 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

## APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3418

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.

14.3 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 14.4 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 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.

14.4 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 14.

14.5 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.

14.6 Termination. Subject to record retention laws and policies, 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.

14.7 Nondisclosure Agreements. The terms and conditions of DIR Contract Number DIR-TSO-3418 and this Section 14 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 14 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 14 and those of a nondisclosure or confidentiality agreement, the terms and conditions of DIR Contract Number DIR-TSO-3418 will control.

### 15. Miscellaneous.

15.1 Notices. Notices will be handled in accordance with Appendix A, Section 12 of DIR Contract Number DIR-TSO-3418.

15.2 Export. The Supplier Services 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-

## APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3418

exported into any country, or used for any purpose prohibited by any applicable international and national legal instruments that apply to the Controlled Items, including the U.S. Export Administration Regulations, 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.

15.3 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.

15.4 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.

15.5 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.

15.6 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.

15.7 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 exclusive venue in the State courts in 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.

15.8 Assignment. Assignments will be handled in accordance with Appendix A, Section 4D of DIR Contract Number DIR-TSO-3418.

15.9 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.

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

15.11 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 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 Agreement, which will be considered as a whole.

15.12 Entire Agreement. DIR Contract Number DIR-TSO-3418 and this Agreement, including the recitals and the schedules to this Agreement, 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.

15.13 Force Majeure. Force Majeure shall be handled in accordance with Appendix A, Section 11C of DIR Contract Number DIR-TSO-3418.

15.14 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 Supplier Services,

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

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.

15.15 No Security Interest. Customer will not grant any security interest in, or permit any lien or encumbrance upon, any Supplier Services 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.

15.16 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 Supplier Services, 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**

Address:

**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 Subscription Services Sales Order

Schedule B – Lexmark Enterprise Software Service Level Summary



**Schedule A - Lexmark Enterprise Software Subscription Services Sales Order**

This Lexmark Enterprise Software Subscription Services Sales Order (“Sales Order”) is attached to and made a part of Software Services Agreement (the “Agreement”) between Lexmark Enterprise Software, LLC (“Supplier”) and \_\_\_\_\_ (“Customer”) for Supplier’s sale to Customer of the Supplier Services as described in the Agreement and as specified below, and is effective on the Effective Date of the Agreement. The Supplier Services are 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. 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 sale of the Supplier Services to Customer:

**A. Subscription Services**

1. The Subscription Services will have an Initial Subscription Services Term of twelve (12) months commencing upon the Effective Date, and ending on the last calendar day of the month of the anniversary of such date. Three (3) one (1) year renewal options will be available exercised by Customer providing Vendor thirty days written notice prior to the then-expiration date.
2. The Subscription Services Fees for the Subscription Services are charged monthly for each term of the Agreement, and are invoiced upon execution of the Agreement and thereafter quarterly in advance.
3. Supplier’s determination of the Subscription Services Fees for each term of the Subscription Services will be made with reference to Customer’s then current deployment of the Subscription Services and in accordance with Appendix C of DIR Contract No. DIR-TSO-3418.
4. Supplier may increase the Subscription Services Fees effective at the beginning of any term for the Subscription Services by providing written notice of such increase to Customer in the renewal notice and invoice for the Subscription Services Fees for the next successive Renewal Subscription Services Term upon DIR approval.
5. Supplier also may increase the Subscription Services Fees during any Subscription Services Term if Customer extends the use of the Subscription Services to additional users, or extends the use of the Subscription Services such that the extension changes the current Product Tier or requires the use of additional storage to accommodate additional Customer data, objects/images or product installation. Any such increase in the Subscription Services Fees will be prorated for the then remaining portion of such Subscription Services Term and effective thirty (30) days following Supplier’s invoice to Customer for such increase. Any such increase must be approved by DIR and reflected in Appendix C of DIR Contract No. DIR-TSO-3418.
6. Additional Subscription Services purchased by Customer following the Effective Date will be priced as listed in Supplier’s then-current, published Price Book, unless otherwise agreed to in writing by the parties.
7. If Supplier terminates the Subscription Services pursuant to Customer’s failure to timely pay any Subscription Services Fees, then Customer will pay Supplier early termination charges in an amount equal to twenty percent (20%) of the then current monthly recurring charge for the Subscription Services terminated, multiplied by the number of months, or portion thereof, remaining in the then current term of the Subscription Services, plus the balance of all billed but unpaid monthly recurring charges and all outstanding non-recurring charges. Customer agrees the actual damages in the event of such termination would be difficult or impossible to ascertain, and that such termination charges are intended, therefore, to establish liquidated damages for such early termination and are not intended as a penalty.
8. Upon the expiration or termination of the Subscription Services, Customer will have no further right to use the Subscription Services, and Customer immediately will comply with each of its obligations under the Agreement arising upon termination of the Agreement.

APPENDIX E TO 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 and in accordance with Appendix C of DIR-Contract No. DIR-TSO-3418.
2. Technical Services are invoiced as incurred.
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. Subscription Services Support**

1. Subscription Services Support for the Subscription Services is provided as illustrated in the Subscription Service Support Agreement attached as Schedule B to the Agreement.
2. Subscription Services Support is activated and available immediately upon the Effective Date.
3. Subscription Services Support may not extend to any third party software.

**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.
3. Training is invoiced as incurred.
4. Additional training may be provided at Supplier's then-current pricing, such pricing in accordance with the Appendix C of DIR Contract No. DIR-TSO-3418, which Supplier may increase from time to time following the Effective Date.

**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.*

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

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

**Supplier**

**Lexmark Enterprise Software USA, INC.**

Signature: \_\_\_\_\_

Name: **Vince Vecchiarelli**

Title: **Director of Government Sales**

**Customer**

>Customer Name<

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

**Schedule B – Lexmark Enterprise Software Service Level Summary**

1. Subscription Services Availability Commitment. Supplier's Subscription Services availability commitment is to provide Customer the ability to access the Subscription Services Platform 99.9% of the time, and Supplier will provide adequate Subscription Services Platform hardware and OS health to meet such stated uptime. These commitments do not constitute a warranty or guarantee, and the Subscription Services are subject to the limitation of warranties as provided in this Agreement.

2. Scheduled Maintenance. "Scheduled Maintenance" will mean any maintenance of the Subscription Services Platform: (a) of which Customer is notified thirty-six (36) hours in advance; (b) that is performed during a standard maintenance window from 12AM to 4AM within the time zone of the applicable primary deployment datacenter, unless otherwise advised by Supplier to Customer; and/or (c) that is performed during an agreed upon maintenance window. Notice of Scheduled Maintenance will be provided to Customer's designated point of contact by email. It is Customer's obligation to make sure Supplier has Customer's correct contact information.

3. Urgent Maintenance. "Urgent Maintenance" will mean efforts to correct Subscription Services Platform conditions that are likely to cause a material outage of the Subscription Services and that require immediate action outside the Scheduled Maintenance window. Supplier may undertake Urgent Maintenance at any time it deems necessary and will provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances. Urgent Maintenance will entitle Customer to service credits as set forth in Section 5 below.

4. Outage. An "Outage" will mean any fifteen (15) consecutive minutes during which Customer is unable to access the Subscription Services Platform.

5. Service Credits. Customer may obtain service credits if Supplier fails to meet any of the service commitments described in this Service Level Summary. The service credit(s) are limited to an amount equal to the then-current equivalent monthly recurring fees for the Subscription Services (the "Equivalent Monthly Fee"). In order to receive a service credit, Customer must notify Supplier's Subscription Services Support by opening a case through Supplier's online support site within twenty-four (24) hours of an Outage, or within thirty (30) calendar days of Supplier's failure to meet any other service commitment as provided in this Service Level Summary. Supplier must verify the service commitment violation described in each case. Customer must submit a written request for a service credit, including the case number, to Supplier within five (5) calendar days of opening the case. The service credits are Customer's sole and exclusive remedy in the event of Supplier's failure to meet any of the service commitments provided in this Service Level Summary, and any other terms of this Agreement to the contrary notwithstanding, any liability of Supplier to Customer or any third party for any failure of Supplier to meet any of such service commitments or to otherwise provide the Subscription Services will not exceed an amount equal to the applicable service credits.

6. Service Credit Exceptions. Service credits will not be issued when the Subscription Services are unavailable as a result of the following "Excluded Outages": (a) Scheduled Maintenance, (b) interruptions caused by the negligence, error or omission of Customer or other users of the Customer's Subscription Services, (c) Customer's applications, equipment, or facilities, including the Customer Facilities and Customer's connection to the Internet, (d) acts or omissions of Customer, or any misuse of the Subscription Services, (e) reasons of Force Majeure (as defined in Section 15.15 of the Agreement), (f) interruptions arising from Customer's use of the Subscription Services in an unauthorized or unlawful manner or in violation of this Agreement, (g) interruptions arising from a Supplier disconnect for non-payment or an interruption due to improper or inaccurate network specifications provided by Customer, (h) interruptions during any period when Customer or other user has released the Subscription Services to Supplier for maintenance or rearrangement purposes, or for the installation of a Customer service order, and/or (i) interruptions during any period when Customer elects not to release the Subscription Services for testing and/or repair and continues to use the Subscription Services on an impaired basis.

7. Calculation. Subscription Service availability consists of the number of minutes in a month that the Subscription Services were available less unavailable minutes due to an Outage. An Outage will not include an Excluded Outage, any inability of Customer to access or interact with the Subscription Services Platform arising from Customer's failure to meet any Customer responsibilities provided in this Agreement including, without limitation, in this Service Level Summary.

The calculation for Subscription Service availability is:  $100 * (1 - (\text{Sum of Outage Duration} / \text{Total Available Time}))$

8. Subscription Service Availability Remedy. [See SaaS Availability and Service Credit Research re scale of remedies] In the event that, for a particular month, the Subscription Service availability falls below the commitment set forth above, Customer will receive a service credit for the Subscription Services affected for such month in accordance with the following calculation:

## APPENDIX E TO DIR CONTRACT NO. DIR-TSO-3418

20% \* (Current Equivalent Monthly Fee – Any credit for other remedies applied for that particular Subscription Service)

Example: Customer's Subscription Services have monthly base fee of \$500  
Outage of 2.5 hours or 150 minutes in April  
April has 43,200 minutes (30 calendar days \* 24 hours \* 60 minutes)  
Subscription Service Availability is:  $100 * (1 - (150/43,200)) = 99.65\%$

Credit:  $20\% * (\$500) = \$100$

9. Data Backup and Recovery. Data is backed up locally and replicated daily and retained for at least fourteen (14) calendar days. Backups are tested periodically for data integrity.

10. Subscription Services Support. Subscription Services Support customers have access to:

- a) Support for published and released Subscription Services standard technical functionality.
- 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 Subscription Services 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 access. Customers require a valid user ID and password to access online support.
- f) Periodic standard version releases and software patches of the Subscription Services, providing corrections to defects, minor bugs, and, at the discretion of Supplier, enhancements providing new functionality to the Subscription Services.
- g) Notification of any new version releases and software patches of the Subscription Services.

11. Customer Subscription Services Support Responsibilities. In addition to the Customer's responsibilities as set forth in the Agreement between Supplier and Customer for the Subscription Services, Customer will be solely responsible, at Customer's expense, to:

- a) Notify Supplier immediately of any support or maintenance issues.
- b) Train users on use of the Subscription Services.
- c) Be familiar with and leverage the use of Supplier online support.
- d) Apply all upgrades, enhancements and new version releases and software patches on the Customer Facilities in a timely manner.
- e) Designate a key contact for Subscription Service Support communications.
- f) Provide Supplier with timely access, remote and/or on site, to Customer's facilities, including the Customer Facilities, with which the Subscription Services interfaces, and/or upon which the Subscription Services relies.
- g) Provide Supplier timely return of requested troubleshooting data in order to perform root cause analysis for support issues being experienced with the Subscription Services.
- h) Cause the Customer Facilities 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 with which the Subscription Services interfaces, and/or upon which the Subscription Services relies.