

Master Services Agreement

This Master Services Agreement (this "**Agreement**") is made and entered into as of _____ (the "**Effective Date**") by and between FM:Systems Group, LLC, a Delaware limited liability company with an address at 1101 E. Whitaker Mill Road, Suite 220, Raleigh, NC 27604 ("**FMS**"), and _____, a _____ with an address at _____ ("**Client**" or "**Customer**").

In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Introduction.** Under the terms of this Agreement, FMS will provide Client with access and use of certain software (the "**Software**") on a hosted basis over the Internet, as well as any related implementation or professional services ("**Professional Services**") and together with Software, the "**Services**", all as described in a separately executed Order Form, each to be substantially in the same form as Exhibit A, attached hereto. The parties may from time to time agree to new Order Forms that identify additional Software and Professional Services to be provided under the terms of this Agreement. Each Order Form, when executed by authorized personnel of each party, is a separate agreement that incorporates the terms of this Agreement. In the event of a conflict between the terms of this Agreement and any Order Form, the terms of the Order Form shall control. FMS may provide the Services through one or more Affiliates. For the purposes of this Agreement, an "Affiliate" of a Party means any entity, whether incorporated or not, that Controls, is Controlled by, or is under common Control with such Party. "Control" means the ability, whether directly or indirectly, to direct the affairs of another by means of ownership.
2. **Client Responsibilities.**
 - 2.1. Client shall provide FMS with access to Client's technical personnel, facilities, databases, information and security clearance as necessary for FMS to perform its obligations under this Agreement (including but not limited to the establishment of necessary access to Client's databases).
 - 2.2. Unless otherwise agreed in writing by the parties, Client shall have sole responsibility for acquiring, securing and maintaining its own technology environment, including but not limited to PC's, operating systems, servers, Internet access, local area networks, and wide area networks.
 - 2.3. FMS may, in its sole discretion, deny or remove access to any user of the Software or site ("**User**") who fails to abide by the FMS' Acceptable Use Policy, attached hereto as Exhibit E or who otherwise tampers with or abuses the site or the Software.
3. **Term and Termination.**
 - 3.1. The initial term of this Agreement shall begin on the Effective Date, shall continue for thirty-six (36) months after the Effective Date (the "**Initial Term**") and shall remain in effect until all the Services under Order Forms have expired or terminated. The term for any Services shall be specified in the applicable Order Form for such Services. Services shall automatically renew for successive terms (each, a "**Renewal Term**") equal in duration to the term in the applicable Order Form for such Services or twelve (12) months (whichever is shorter), *provided* that FMS shall notify Client of any upcoming renewals no later than ninety (90) days prior to the expiration of the current term, *provided further* that either party may terminate such Services by providing sixty (60) days written notice prior to the end of the then current term for such Services. Any such termination of Services for non-renewal shall be effective upon the expiration of the then current term for such Services.

- 3.2. FMS may suspend or terminate this Agreement upon thirty (30) days prior written notice if Client fails to pay any payment under this Agreement when due. In addition, either party may, upon giving thirty (30) days written notice identifying specifically the basis for such notice, terminate this Agreement for breach of a material term or condition of this Agreement, provided that the breaching party shall not have cured such breach within the thirty (30) day period.
- 3.3. The terms provided in Sections 5, 6, 11, 12, and 13, as well as any other terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall survive any termination of this Agreement.

4. Fees and Expenses.

- 4.1. Unless otherwise specified in the applicable Order Form, Fees are payable in advance and are due within thirty (30) days after date of invoice. Past-due payments will be subject to late payment charges of the lesser of: (a) one-and-one half percent (1 ½ %) per month, or (b) the maximum rate allowed by law.
- 4.2. Unless otherwise specified in the applicable Order Form, Subscription Fees for Renewal Terms shall be subject to a standard increase of the greater of (a) five percent (5%) as compared to the previous annual term or (b) the change in the CPI from the start of the previous annual term until the Client receives a notification of renewal pursuant to Section 3.1. The term "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for Raleigh, North Carolina for All Items (1984=100).
- 4.3. Unless otherwise specified in the applicable Order Form, Client agrees to reimburse FMS for any out-of-pocket and direct expenses, including but not limited to travel, lodging, meals, postage, freight, and printing, *provided* that, FMS will obtain written approval from Client prior to incurring any such expenses.
- 4.4. Client shall be responsible for any and all applicable taxes, however designated, incurred as a result of or otherwise in connection with this Agreement, including but not limited to state and local privilege, excise, sales, and use taxes and any taxes or amounts in lieu thereof paid or payable by FMS, but excluding taxes based upon the net income of FMS.

5. License Terms.

- 5.1. Subject to the terms and conditions of this Agreement and the applicable Order Form, FMS grants Client, and Client accepts, a nontransferable and nonexclusive license to use in object code form only, and on an application services provider (ASP) basis the Software (including all associated documentation ("Documentation")) for the sole purpose of processing information for its own internal business purposes and only in connection with the licensed facilities set forth in the applicable Order Form, and subject to any limitations set forth in the applicable Order Form (but not for any other purposes or in connection with any other facilities).
- 5.2. The Software may be used and accessed only by Client's employees or contractors ("Contractors") using the Software for its intended purpose while doing work for the Client. Contractors may not use the Software for their own business operations or administrative processes.
- 5.3. Client acknowledges that FMS and its licensors are the sole owner of all intellectual property rights in and to the Software and the hosted site, including but not limited to the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated therewith. Except as expressly authorized in this Agreement, Client will not copy, modify, distribute, sublicense, transfer, display, rent or unbundle the Software. In addition, Client will not reverse engineer, decompile or disassemble the Software, and will not otherwise attempt to reconstruct or discover the source code for the Software. Except as stated above, this Agreement does not grant Client any right, title or interest (whether by license, ownership or otherwise) in or to any intellectual property or proprietary rights with respect to the Software or Documentation. Client agrees that any copies of the Software shall contain the same proprietary notices that appear on and in the Software.

- 5.4. FMS shall own all rights in the de-identified aggregated and statistical data derived from the operation of the Services, including, without limitation, the number of records, the number and types of transactions, configurations, and reports processed using the Services and the performance results of the Services (the "**Aggregated Data**"). Nothing herein shall be construed as prohibiting FMS from collecting, utilizing, transferring or sharing the Aggregated Data for purposes of FMS's businesses, *provided* that such use of Aggregated Data will not reveal the identity, or contents, whether directly or indirectly, of any data, information or material relating to Client and its Users, submitted or provided by Client to FMS through the use of the Services (excluding data, information and materials of third parties). In no event will the Aggregated Data include any personally identifiable information.
- 5.5. Client shall retain sole ownership of all CAD drawings and other data supplied by Client for use with the Software.
- 5.6. FMS and its licensors reserve all rights in the Software and Documentation not expressly granted to Client and hereunder.

6. Confidentiality.

- 6.1. "Confidential Information" means any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) that is disclosed by or on behalf of one party (a "**Disclosing Party**") to the other party (a "**Receiving Party**") pursuant to this Agreement. Confidential Information of FMS includes, but is not limited to, the terms of this Agreement; the Software, as well as the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated with such Software; the documentation thereto; and FMS's pricing, sales and training materials and procedures. Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a Receiving Party from a third party without breach of any obligation of confidentiality; or (c) was previously known or developed by the Receiving Party as shown by its written records.
- 6.2. A Receiving Party agrees: (a) to hold the Disclosing Party's Confidential Information in strict confidence; except as expressly authorized by this Agreement (including without limitation Section 11.1), not to, directly or indirectly, use, disclose, copy, transfer or allow access to the Confidential Information; (c) only use the Confidential Information to the extent required to perform this Agreement. In addition, without limiting the foregoing, FMS agrees to use, and to require its contractors to use, reasonable procedures and mechanisms to maintain the security of and to prevent the unauthorized access to the computer systems on which Client's Confidential Information resides. Notwithstanding the foregoing, Confidential Information may be disclosed by the Receiving Party: (i) to its Affiliates, representatives, consultants, agents and subcontractors, and its and their respective shareholders, members, owners, officers, directors, managers, principals, agents, advisors and employees ("**Representatives**") who need to know such Confidential Information for the purposes of performing the Services and who will be advised by the Receiving Party of the confidentiality obligations under this Agreement and provided that the Receiving Party shall (y) be reasonably satisfied that such Representatives will act in accordance with this Section and (z) be responsible for any breach of this Section by such Representatives. Notwithstanding the foregoing, a Receiving Party may disclose Confidential Information of the Disclosing Party as required by law or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure.
- 6.3. Each party acknowledges and agrees that any violation of this Section or of the intellectual property rights of FMS, or of any party that has provided Confidential Information to FMS, may cause the Disclosing Party irreparable injury for which the Disclosing Party would have no adequate remedy at law, and that the Disclosing Party shall be entitled to seek preliminary and other injunctive relief against the Receiving Party for any such violation. Such injunctive relief shall be in addition to, and in no way in limitation of, all other remedies or rights that Disclosing Party shall have at law or in equity.

- 6.4. Upon the termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party all the Confidential Information delivered or disclosed to the Receiving Party, together with all copies in existence thereof at any time made by the Receiving Party. The provisions of this Section 5 shall survive any termination of this Agreement.
7. **Personnel.** The parties are and intend to be independent contractors with respect to the services contemplated hereunder. FMS agrees that neither it, nor its employees nor its contractors shall be considered as having an employee status with Client. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.
8. **Services Support.** During the term of this Agreement, FMS will provide support and maintenance services in accordance with Exhibit B and Exhibit C, respectively, attached hereto and incorporated by reference.
9. **Equipment.** Equipment purchased pursuant to an Order Form is subject to the Hardware Terms and Conditions located at <https://info.fmsystems.com/hubfs/Hardware-Terms-Conditions.pdf>.
10. **Warranty.**
- 10.1. Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder. In addition, FMS warrants that the Software will substantially conform to the documentation provided in connection with the Software. If it does not, at FMS's option, FMS will either make it conform, replace it with conforming Software, or terminate the applicable Order Form and refund any Usage Fees for the Software at issue for the current period. This is the exclusive remedy for breach of the foregoing warranty.
- 10.2. FMS does not warrant that the Software will operate uninterrupted or error-free. Client is solely responsible for the accuracy and adequacy of the information and data furnished for processing with the Software. To the extent that data is being transmitted over the Internet hereunder, Client acknowledges that FMS has no control over the functioning of the Internet and FMS makes no representations or warranties of any kind regarding the performance of the Internet. The successful operation of the Software is dependent on Client's use of proper procedures and systems and input of correct data.
- 10.3. FMS warrants that any Professional Services as defined on the applicable Order Form provided hereunder will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards, and according to the specifications agreed to by the parties at the beginning of the Implementation Services project. For any breach of the above warranty, Client's exclusive remedy and FMS's entire liability will be the re-performance of the applicable Implementation Services. Client must make any claim under the foregoing warranty to FMS in writing within 90 days of performance of such Implementation Services in order to receive warranty remedies.
- 10.4. Client shall be solely responsible for all decisions made using the Software, and that the Software is a tool to be used in conjunction with good and reasonable business judgment by competent personnel. Client agrees to indemnify and hold FMS harmless from any and all claims made as a result of Client's use of or reliance upon the Software. Client is solely responsible for the accuracy and adequacy of the information and data furnished for processing with the Software. The successful operation of the Software is dependent on Client's use of proper procedures and systems and input of correct data.
- 10.5. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, FM:SYSTEMS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING AS A RESULT OF CUSTOMARY USAGE IN THE TRADE OR BY COURSE OF DEALING.

11. **Liability.**

11.1. The limit of FMS's liability (whether in contract, tort, negligence, strict liability in tort, or by statute or otherwise) to Client or to any third party concerning performance or nonperformance by FMS, or in any manner related to this Agreement, for any and all claims shall not exceed in the aggregate the Fees paid by Client to FMS hereunder with respect to the Software at issue during the twelve (12) month period immediately preceding the event which gave rise to the claims.

11.2. In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damage or expenses whether arising in contract or tort (including but not limited to lost profits, savings, data, the cost of recreating lost data, interruption of business, or costs of procurement of substitute goods or services), even if it has been advised of their possible existence. Any action by either party must be brought within one (1) year after the cause of action arose.

12. Indemnification.

12.1. If a claim of copyright, trade secret, or other intellectual property rights violation is made against Client relating to the Software, Client agrees to immediately notify FMS, allow FMS to control the litigation or settlement of such claim, and cooperate with FMS in the investigation, defense, and/or settlement thereof. FMS agrees to take control of the litigation and indemnify Client, its affiliates and their respective directors, officers, employees and agents by paying any settlement approved by FMS, or any judgment, costs, or attorneys' fees finally awarded against the client for such claim. No settlement shall admit the liability of Client without Client's consent. Client may participate at Client's own expense. This indemnification obligation does not apply to the extent the claim is based on a combination of FMS Software with other software or a modification to the Software made or suggested by Client if such claim would not have been made but for the combination or modification.

12.2. If such a claim is made or, in FMS's opinion, is likely to be made, FMS, at its option, may modify the Software, obtain rights for the Client to continue using the Software, or terminate the agreement for the Software product at issue.

12.3. Client shall own or otherwise obtain all required permissions from third parties for Client's use of, and FMS's access to for integration and support purposes, all materials, information, content, or software that are integrated with or used in connection with the Software and that are supplied by Client or at Client's request (collectively, "**Materials**"). Client agrees to indemnify and hold harmless FMS and its officers, directors, shareholders and employees against any and all claims, demands, damages, costs, expenses, losses, and liabilities (including but not limited to reasonable attorneys' fees) arising out of or resulting from Client's use of or FMS's access to any such Materials.

13. **Data Protection.** In performing the services, FMS will comply with the Customer Data Protection Plan, attached hereto as Exhibit D. FMS will act as a data processor, and will act on Client instructions concerning the treatment of the Client data residing in the services environment, as specified in this Agreement and the applicable Order Form. Client agrees to provide any notices and obtain any consents related to its use of the services and FMS's provision of the same, including those related to the collection, use, processing, transfer and disclosure of any such data. After the thirtieth (30th) day following any termination or expiration of this Agreement, Client agrees FMS has no obligation to retain the data and may delete and destroy such data without providing any with notice of such deletion.

14. **Force Majeure.** FMS is not responsible for any damage to Client's computer, software, modem, telephone or other property resulting from Client's use of the Services. If FMS's performance of any obligation under this Agreement is prevented, restricted or interfered with by causes including failure or malfunction of Customer-supplied equipment, disruptions of Internet protocol ("IP") service through intermediate carriers other than FMS, acts of God, explosions, vandalism, cable cut, storms, fires, floods or other catastrophes, power failure, national emergencies, third party malicious acts including cyberattacks, malicious code or other IT failure as a consequence of malicious third party software, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages

or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then FMS shall be held harmless and excused from such performance on a day-to-day basis during such restriction or interference.

15. Insurance.

15.1. Prior to and during any performance hereunder, FMS shall provide a certificate(s) of insurance in limits no less than the following: (a) Workers' Compensation in the statutory limits required in the states where work will be performed; (b) Employers Liability - \$1,000,000; (c) Comprehensive General Liability \$1,000,000 (including products and completed operations, broad form contractual liability and primary and non-contributory insurance coverage) (d) Professional Liability \$5,000,000 (e) Hired and Non-Owned Automobile Liability - \$1,000,000. (f) Umbrella limits of \$5,000,000; (f) Errors & Omissions (including Cyber Liability & Privacy) limits of \$5,000,000. The umbrella provides excess coverage over General Liability, Auto, and Workers Compensation Limits. Client shall be named as an additional insured on all policies except for the Worker's Compensation and Professional Liability policies. The certificate(s) of insurance shall certify that the insurance carrier(s) will endeavor to give Client thirty days prior written notice of any material change in, or cancellation of such insurance coverage, except for non- payment which provides a 10- day notice.

15.2. If during the course of performance under this Agreement or any Order Form, any of the Services are subcontracted, FMS shall ensure that each subcontractor complies with the applicable insurance requirements set forth in Section 14.1 above.

16. Miscellaneous.

16.1. Client acknowledges that FMS and its licensors may from time to time analyze data from Client's database maintained in the Software solely for purposes of statistical analysis, with the express understanding that FMS will not use such data for any purpose other than the maintenance, support and product development.

16.2. This Agreement, including all Order Forms and Exhibits, constitutes the entire understanding of the parties with respect to its subject matter, and supersedes all prior or contemporaneous written and oral agreements with respect to its subject matter. Except as provided expressly herein, this Agreement shall not be modified, amended, or in any way altered except by a written document executed by both of the parties. No waiver of any provision of this Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving compliance.

16.3. Headings used in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

16.4. Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably denied, withheld or delayed, *except* that: (a) each party may assign any of its rights under this Agreement to its affiliates; and (b) FMS may assign any of its rights under this Agreement to any of its lenders or in connection with a sale of all or a substantial part of its business to which the rights and obligations under this Agreement pertain, *provided* that FMS shall provide written notice to Client within thirty (30) days of such assignment.

16.5. This Agreement shall be interpreted, construed, and governed by the laws of the State of North Carolina, without regard to conflict of law provisions. The parties agree that in any dispute arising out of this Agreement, jurisdiction and venue shall be in Wake County, North Carolina.

16.6. All notices required or permitted hereunder shall be in writing, delivered personally or by telephonic facsimile, certified or registered mail, or overnight delivery by an established national delivery service at the respective addresses first set forth above, or as otherwise identified by each party. All notices shall be

deemed effective upon personal delivery; or on the day following receipt by telephonic facsimile; or when received if sent by certified or registered mail or by overnight delivery.

FM:Systems Group, LLC

Client

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[Intentionally omitted]

EXHIBIT A
FORM OF ORDER FORM
Order Form No. [OpID#]
for [Client Name]

This Order Form is made and entered into by and between FM:Systems Group, LLC, (“**FMS**”) and [**Insert Client Contracting Entity**] (“**Client**”) as of date specified below (“**Order Form Effective Date**”). This Order Form incorporates the terms of that certain [**Insert Master Agreement Name**] between the parties dated [**Insert Effective Date of Agreement**] and any amendments thereto (the “**Agreement**”). Capitalized terms used herein but not defined shall have the meanings given to such terms in the Agreement. In the event of a conflict between this Order Form and the Agreement, the terms of this Order Form shall prevail with respect to this Order Form only.

Prepared By

Account Manager: [Account Manager Name]
Email: [Account Manager Email]

Details

Order Form Effective Date: [Insert Effective Date] **Payment Terms:** Net 30
Initial Term (months): [12 / 24 /36 / As set forth in Exhibit A (Description of Services)]

Subscriptions/ HaaS:

- The term for any subscription services shall begin on [the Order Form Effective Date // **[Insert Date]**] and shall continue [for the term set forth above // until **[Insert Date]**]
- Fees for any subscription services shall be invoiced [on the Order Form Effective Date // in accordance with the following:]
 - **[Insert any special subscription invoice terms here]**

Hardware:

- Hardware fees shall be invoiced [on the Order Form Effective Date // in accordance with the following:]
 - **[Insert any special hardware invoice terms here]**

Services:

- Fees for any Professional Services shall be invoiced [on the Order Form Effective Date // in accordance with the following:]
 - **[Insert any special services invoice terms here]**

Currency: USD

[Upon the end of the Initial Term set forth above, any subscription Services as set forth in Exhibit A will automatically renew for successive terms of 12 months, unless Client gives written notice of non-renewal at least 60 days before the end of the then current term.] *****Remove if not auto-renewing** [FMS shall provide written notice of any upcoming renewals no later than 90 days prior to the end of the Initial Term.]

Client Bill To

Bill To: [Client Entity Issuing Purchase Order]
Address: [Street Address,
City, Zip]

Client Ship To (if applicable)

Ship To: [Ship To Client Entity]
Address: [Street Address,
 City, Zip]

Shipping Costs \$[•]

Description of Services

As set forth on Exhibit A

Invoicing Schedule

Client shall be invoiced in accordance with the following schedule:

Order Form Effective Date	\$[•]
[1 st Anniversary Date]	\$[•]
[2 nd Anniversary Date]	\$[•]
<hr/>	
Total Fees Due	\$[•]

Additional Terms

1. Any Professional Services shall be performed in accordance with the terms set forth on the applicable SOW, attached hereto as Exhibit B ("**Statement of Work**" or "**SOW**").
2. Client shall be responsible for shipping, freight or any other pre-approved Travel and Expenses incurred by FMS in connection with this Order Form. FMS shall invoice Client for such costs once the final amounts are determined, the payment of which shall be in accordance with the terms of the Agreement.
3. [Any Technical Account Manager hours must be utilized within one (1) year of the Order Form Effective Date and will not carry forward into subsequent years.][Only needed if TAM is being purchased]
4. [Placeholder for additional terms if needed].

Binding Contract: By its signature below, Client (i) acknowledges that it has read the Agreement, understands it, and agrees to be bound by its terms and conditions and (ii) represents and warrants that the individual signing below on behalf of Client has all requisite authority to bind Client hereto and that this Order Form constitutes the legal, valid and binding obligation of Client, enforceable against Client in accordance with its terms. If a sales acknowledgment, invoice, purchase order, or other document submitted by either party contains terms or conditions conflicting with or in addition to the terms and conditions of this Order Form, the parties hereby reject such terms and conditions, and the terms and conditions of this Order Form will prevail.

EXHIBIT B

SOFTWARE SUPPORT AND MAINTENANCE SERVICES

1. FMS will provide support for the Software (e.g., features of the Software not working, general questions on use) via telephone, e-mail, fax, and web Monday through Friday (excluding FMS business holidays) during 8:00 a.m. – 8:00 p.m. Eastern Time ("**Normal Business Hours**"). FMS will use commercially reasonable efforts to communicate a qualified response or status within two business days for any unresolved problems. FMS's assistance will consist only of providing general advice on the installation, operation and use of the Software and assistance with suspected problems with the Software. Client will also have access to the FMS online knowledgebase which is available 24 hours a day, 7 days a week, 365 days a year through the Client portal.

A separate telephone number for reporting of IT infrastructure problems (e.g., system-wide failure) will also be available twenty-four (24) hours per day. Calls made outside of Normal Business Hours will be forwarded to FMS's answering service and an on-call engineer will be paged. Use is limited to Severity One and Severity Two problems only, as defined in Exhibit B.

For all reported problems, FMS will work to determine the source of the problem. FMS will attempt to correct all documented problems reported to FMS by Client that FMS is able to recreate at FMS's facility and will deliver any corrections to Client ("**Error Corrections**"). FMS may identify errors as arising from non-FMS hardware or software, or from unauthorized modifications to the Licensed Product. In such a case, FMS reserves the right to charge Client for correcting such errors at its then-current rates for such services.

From time to time, FMS will provide Client with all updates including minor functional enhancements and error corrections ("**Updates**") and upgrades to Software including major functional enhancements ("**Upgrades**") that FMS generally makes available for no additional charge to Clients paying for subscription use. FMS will deploy the Update or Upgrade at a mutually agreed upon time within six (6) months from the release date. During the deployment of the Update or Upgrade FMS will upgrade the test environment with the new version and Client will have two (2) weeks to review, at the end of which FMS will upgrade Client's production system to that new version of the Software. Upgrades and Updates do not include new modules or products, which port existing Software to new hardware or software platforms, which provide significant new functionality on new hardware or software platforms, or which apply to third-party products.

2. Notwithstanding anything to the contrary in these terms, FMS shall have no responsibility to provide any technical support or assistance, nor any Updates or Upgrades, to any third-party software not supplied by FMS. It shall be Client's obligation to obtain maintenance and support directly from the manufacturer of such software.
3. FMS will not be obligated to provide any services in addition to those set forth in these terms ("**Additional Services**"). Unless otherwise agreed, Client shall pay FMS at FMS's then-current hourly rates for Additional Services provided. Additional Services include, but are not limited to, the following: (i) detailed advice or support regarding the use and operation of the Software; (ii) on-site service of any kind; (iii) installation, data conversion, system integration or consulting services; (iv) service or maintenance of third-party software, operating software, hardware, or other equipment; (v) services caused by Client's fault, misuse, negligence or failure to perform Client's responsibilities; (vi) services caused by a malfunction of or problem with any product or goods other than those licensed by FMS; and (vii) services caused by the use by Client of any version of the Software other than the current or immediately prior version.

EXHIBIT C

HOSTED SERVICES SUPPORT LEVEL AGREEMENT

1. Hosting Terms.

1.1. **Support Level Agreement.** This Service Level Agreement (“**SLA**”) is to provide the Client with uninterrupted access to the purchased hosted services (the “**Hosted Services**”) 99.9% of the time. In the event that the Monthly Uptime of the Licensed Program is less than 99.9%, Customer will be eligible for a Services Credit against its prorated Hosted Services subscription fees for that month in the amount set forth in this table:

<u>Monthly Uptime</u>	<u>Credit</u>
90.0% - 99.8%	0.1% - 10%, based on difference between the target of 99.9% and Monthly Uptime.
85.0% - 89.9%	20%
84.9% or less	30%

1.2. **Services Credits.** Services Credits are limited to the prorated subscription fee of the Hosted Services corresponding to the calendar month in which the Monthly Uptime is less than 99.9%. In order to receive a Services Credit, the Client must notify FMS by opening a trouble ticket within 24 hours of an outage, and FMS must verify that the outage was a result of Unscheduled Downtime. Further, the Client must submit an e-mail request for a credit, including the trouble ticket number, to FMS within ten (10) days of opening the trouble ticket. Should the Client not claim the credit during this period, the Client will be deemed to have waived the credit. Client acknowledges and agrees that the SLA credits are the exclusive remedy for service failures.

1.3. **Monthly Uptime.** Monthly Uptime means the percentage calculated as 100% less the ratio of total Unscheduled Downtime in a given calendar month to the total number of hours in that month, rounded to the nearest one-tenth percent (0.1%). For example, if total Unscheduled Downtime is 1.5 hours during a given calendar month, and total number of hours in that month is 744, the Monthly Uptime would be 99.8% (100% - (1.5 / 744)).

1.4. **Unscheduled Downtime.** Unscheduled Downtime is defined as a period of time where the Hosted Services are unavailable to the Customer. Unscheduled Downtime does not include periods where the Hosted Services is unavailable to the Customer as a result of:

(i) Scheduled Maintenance, (ii) interruptions caused by the negligence, error or omission of Client or others authorized by Client to use or modify the Hosted Services, (iii) Client’s applications, equipment, or facilities including Client premise wiring, (iv) acts or omissions of Client, or any use of the Hosted Services authorized by Client, (v) reasons of Force Majeure (as defined in the Agreement), (vi) interruptions from Client’s use of Services in violation of FMS’s Acceptable Use Policy attached hereto as Exhibit E (vii) interruptions resulting from an FMS disconnect for non-payment, (viii) problems in the application that do not preclude use of primary application functions, (ix) interruptions during any period when Client has released the Hosted Services to FMS for maintenance or rearrangement purpose, or for the installation of a Client service order; and/or (x) interruptions during any period when Customer elects not to release the Services(s) for testing and/or repair and continues to use the Hosted Services on an impaired basis. Unscheduled Downtime is measured from the time the Hosted Services unavailability is reported to FMS to the time that Hosted Services availability is restored.

1.5. **Scheduled Maintenance.** Scheduled Maintenance shall mean any maintenance performed by FMS or its Partners (a) for which Client is notified 48 hours in advance, or (b) that is performed

during a standard maintenance window outside North American standard business hours (Mondays-Fridays 8AM – 8PM Eastern Standard Time). Notice of Scheduled Maintenance will be provided to Client’s designated point of contact by email. Client agrees that it is Client’s obligation to make sure FMS has correct contact information for Scheduled Maintenance notification purposes.

2. Support Terms.

FMS will respond as described below to Error reports that Client submits to FMS during Business Hours via the online Client Support Portal or via telephone at 800-648-8030. “Error” means (a) a material failure of Client supported Hosted Services to function in accordance with its documentation, or (b) any other alleged material defect in or malfunctioning of Client supported Services. “Business Hours” and “Business Day” mean 8AM to 8PM Eastern Standard Time weekdays, exclusive of FMS’s holidays.

2.1. When reporting an Error, the named contact must describe the Error in reasonable detail, indicate the severity of the Error using the terminology set forth in the chart below, and specify any and all error messages observed. FMS will use commercially reasonable efforts to respond to Client Error reports within the times indicated below:

Priority	Failure Description	Standard Support	Premium Support (if purchased)
1	Critical (no useful work can be done)	4 business hours	2 hours (24x7)
2	High - Severe Impact (functionality disabled): errors which result in a lack of application functionality or cause intermittent system failure	1 business day	2 business hours
3	Medium - Degraded Operations: errors causing malfunction of non-critical functions	1 business day	4 business hours
4	Low - Minimal Impact: attributes and/or options to utility programs do not operate as stated	Future release, on business justifiable basis	Future release, on business justifiable basis
	Enhancement Request	As needed	As needed

2.2. FMS’s acknowledgements of Error reports will contain either a resolution of the Error or a support plan describing the steps being taken by FMS, and any steps to be taken by Client, to correct the Error. If FMS requests further information about an Error, Client must promptly provide the requested information. Information requested by FMS may include, by way of example and not limitation, manuals related to Client hardware, network, or third -party software; examples of software output; or configuration information, including .ini files and database files.

2.3. FMS will use commercially reasonable efforts to correct, within a commercially reasonable period of time, any substantiated Error in the unaltered software reported by Client as specified above. FMS will determine the form of any Error correction, which may include, by way of example and not limitation, an individual patch, a work around, or a maintenance release provided in the normal course of FMS’s maintenance release schedule.

- 2.4. FMS provides support only for the most current major release of software and the immediately preceding major release. FMS will have no obligation to attempt to correct reported Errors that (a) cannot be reproduced or verified or (b) result from (i) misuse of software by Client or others; (ii) modifications to software rendering it non-standard, regardless of who performed the modifications; (iii) failure or interruption of electrical power; (iv) obsolescence of software due to changes in Client network, hardware, or third party software; or (v) an accident or other cause external to the software, including, but not limited to, problems or malfunctions related to Client network, hardware, or third party software. FMS does not guarantee that all Errors will be corrected. FMS will have no obligation to implement Client requests for changes or enhancements.
- 2.5. If FMS responds to a reported Error and the Error is determined to be outside the scope of FMS's support obligations, FMS may charge for its time and reasonable expenses responding to the reported Error and Client must pay the charges. FMS's time will be billed at its standard daily consulting rate in effect for such services at the time the services are rendered. FMS's support services do not include Professional Services. These services are available for additional fees.

3. Problem Escalation Process.

- 3.1. The issue enters the Problem Escalation process when it is reported to FMS and recorded in its on-line Support Portal. Client may report the issue directly via the Support Portal, or a member of the Support team may enter the issue into the system on behalf of Client. It is essential that the issue be recorded in the system including adequate detail and steps to reproduce. The issue receives a tracking case number, such as Case 0012345.
- 3.2. FMS is responsible for reproducing the issue reported in Case 0012345 in their lab. If it is determined to be a defect, the details and any additional information about the issue are recorded and entered into the Engineering Defect Tracking System (DTS). The issue then receives an additional tracking number.
- 3.3. DTS items are reviewed in a weekly triage meeting made up of members from FMS's Quality Assurance, Development, Product Management, and Client Services, all of which participate in the triage meeting to assign priority levels. During the meeting, the plan for resolution is discussed and the DTS is categorized according to the following criteria:

Showstopper: items have received management attention and reviewed for possible workarounds or fixes, and where possible, are targeted for the next release.

High: items are assigned resources in relation to the theme or goal of a particular release, often being made available in the next release or two.

Medium: items are opportunistically assigned resources when working in the related product area on higher priority items.

Low: items are tracked in the system but at this time there is no intention to add the request to a release.

Customer may track the progress of a particular issue within the Support Portal at any time. Once an issue has been reproduced, assigned a DTS number, and accepted by Engineering, the issue case will be closed. This is intended to reflect that the issue has progressed from the Support queue into the Engineering queue for resolution. Customer may track the progress of the DTS within the Support Portal as it becomes targeted for a particular release, and once it is resolved and available in a release.

NOTE: In the event of a critical, Showstopper problem involving a down system, the Escalation Team Lead may call an emergency meeting to review the situation in advance of the triage meeting and establish a more urgent action plan for resolution.

EXHIBIT D

CUSTOMER DATA PROTECTION PLAN

1. Introduction

- This Customer Data Protection Policy is a part of the Subscription Agreement and is incorporated by reference therein. It sets out additional security and privacy commitments of FMS. Capitalized terms not otherwise defined here retain the same meaning set forth in the Subscription Agreement.

2. Data Confidentiality

- FMS shall maintain administrative, physical and technical controls designed to protect the security, confidentiality and integrity of Customer's Customer Data.

3. Access

- FMS will not knowingly authorize its personnel to have access to any records or data of Customer if the person has been convicted of a crime involving fraud or dishonesty. FMS shall, to the extent permitted by law, conduct a check of public records in the employee's states/ country of residence and employment to verify the above.

4. Compliance

- FMS agrees to provide evidence upon reasonable request of compliance of any system or component used to process, store, or transmit Customer Data that is operated by FMS as part of its service. Similarly, FMS will be prepared to provide available evidence of compliance of any third party it has sub-contracted as part of the service offering. FMS shall take reasonable steps to periodically review and maintain its policies, standards, and procedures. An internal committee with representation from various parts of the organization will oversee our information technology security policies, standards, and procedures.

5. Network Security

- FMS agrees to maintain commercially reasonable network security that, at a minimum, includes:
 - Appropriate measures implemented to protect the perimeter network
 - Intrusion detection/prevention tools;
 - Periodic third-party penetration testing;
 - Periodic external and internal vulnerability scanning
 - Network security that at minimum conforms to an industry recognized standard
 - Anti-spoofing filters enabled on routers;
 - Network, application and server authentication passwords meet minimum complexity guidelines and regularly changed, adhering to acceptable industry standards.
 - Initial user passwords changed during first logon, and policy prohibiting the sharing of user IDs and passwords
- **Remote Network Connectivity.** When remote connectivity to the data exporter network is required for processing of Customer Data, FMS uses secure remote network connectivity solutions e.g., VPM, SDN, or equivalent means to connect to servers for

remote access.

6. Data Security

- FMS agrees to conform to the following measures:
 - a. **Data Transmission.** FMS agrees that any transmission or exchange of system application data with Customer will occur through secure protocols, e.g. HTTPS, FTPS, SFTP, or equivalent means.
 - b. **Data Storage and Backup.** Customer Data in production is encrypted at rest. With respect to back up, FMS agrees to maintain (for the applicable contractual period) Customer's Customer Data for backup and recovery processes in encrypted form, using no less than 256-bit key.
 - c. **Testing Data.** FMS shall implement data protection and obfuscation during application testing or other processes outside of the production environment to sufficiently prevent identification of the actual individual or corporate customer to whom the original data refers, or preparing and executing a data protection plan.

7. System Acquisition, Development and Maintenance

- a. **Security Requirements.** FMS has adopted security requirements for the purchase or development of information systems, including for application services delivered through public networks.
- b. **Development Requirements.** FMS has policies for secure development, system engineering and support. FMS conducts appropriate tests for system security as part of Quality Assurance (QA) testing processes.

8. Supplier Relationships

- a. **Policies.** FMS has information security policies or procedures for its use of suppliers.
- b. **Management.** FMS performs periodic reviews of key suppliers and manages service delivery commitments through contracts with its suppliers.

9. Data Breach

- FMS agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification.

10. Safekeeping and Security

- FMS will be responsible for safekeeping all keys, access codes and similar security codes and identifiers issued to FMS's employees, agents, contractors, or subcontractors. FMS shall ensure that access codes and passwords conforms to an industry recognized standard.
 - a. **Access Policy.** An access control policy is established, documented, and reviewed based on business and information security requirements.

b. Access Authorization.

- i.** FMS has user account creation and deletion procedures, with appropriate approvals, for granting and revoking access to FMS's and/or its Customers' systems and networks at regular intervals based on the principle of "least privilege" and need-to-know criteria based on jobrole.
- ii.** FMS maintains and updates a record of personnel authorized to access systems that contain personal data.
- iii.** FMS maintains strict policies against any shared "generic" user identification access.
- iv.** FMS maintains a password policy requiring accounts to be locked out after a defined maximum number of login attempts in accordance with FMS's current password policy.

c. Integrity and Confidentiality.

- i.** FMS instructs its personnel to automatically lock screens and/or disable administrative sessions when leaving premises that are controlled by FMS or when computers are otherwise left unattended.
- ii.** FMS computers and trusted devices automatically lock after a defined period of inactivity.
- iii.** FMS stores passwords in a secured and restricted way that makes them unintelligible while they are in force.

d. Authentication.

- i.** FMS uses industry standard practices to identify and authenticate users who attempt to access information systems. Where authentication mechanisms are based on passwords, FMS requires that the passwords be renewed regularly, based on acceptable industry standards.
- ii.** Where authentication mechanisms are based on passwords, FMS requires the password to conform to very strong password control parameters including length, character complexity, and non-repeatability.
- iii.** FMS monitors repeated attempts to gain access to the information system using an invalid password.
- iv.** FMS maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.

11. Operations Security

- FMS will maintain policies describing its security measures and the relevant procedures

and responsibilities of its personnel who have access to Customer Data.

12. Physical Access to Facilities

- a. No application data is stored at any FMS facility.
- b. FMS limits access to facilities where systems that process personal data are located to authorized individuals.
- c. Access is controlled through key card and/or appropriate sign-in procedures for facilities with systems processing personal data. Personnel must be registered and are required to carry appropriate identification badges.
- d. A security alarm system or other appropriate security measures shall be in place to provide alerts of security intrusions after normal working hours.

13. Monitoring and Auditing

- FMS will regularly monitor and audit the effectiveness of its information security practices. Servers shall be scanned regularly to ensure they meet the current security standards.

14. Disaster Recovery

- To minimize potential losses and to permit resumption of processing, FMS shall maintain contingency plans consistent with the impact of any system failures on the business. These plans include a suitable backup and disaster recovery plan that is maintained, properly documented, periodically tested and appropriate for the system covered. Such disaster recovery plan shall have a Recovery Time Objective of no less than 8 hours from the time of the initial outage and a Recovery Point Objective of no less than 4 hours from the time of the initial outage. FMS will promptly notify and report the potential impact to Customer Data when the disaster recovery plan is executed.

EXHIBIT E

Acceptable Use Policy

This Policy outlines unacceptable uses of the Software and Services. FMS may make reasonable modifications to this Policy from time to time by posting a new version of this document on its website. Revisions are effective immediately upon posting. Questions about this Policy (e.g., whether any contemplated use is permitted) and reports of violations of this Policy should be directed to hosting@fmsystems.com or by telephone at 800-648-8030.

The Policy:

Client agrees to use the Software and Services in accordance with all applicable local, state and federal laws, and this Policy which shall specifically include, as determined by FMS in its reasonable judgment, NOT using the Software and Services to:

- (i) conduct any business or activity or solicit the performance of any activity that is prohibited by law, tortuous, or interferes upon the use of FMS' system by other Clients.
- (ii) disseminate, display, send, transmit or receive any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening, malicious, or violent, regardless of whether the material or its dissemination is unlawful;
- (iii) disseminate or transmit unsolicited messages, chain letters or unsolicited commercial email including unintended sending of unsolicited commercial email due to unauthorized access to Client's use of the Software and Services, whether or not the recipient wishes to receive such mailings;
- (iv) access, send, receive, display, disclose, or store any content in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right or in violation of any applicable agreement, or without authorization;
- (v) create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication;
- (vi) export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses and/or exemptions;
- (vii) interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which Client does not have authorization to access or at a level exceeding Client's authorization;
- (viii) disseminate or transmit any virus, worms, trojan horse or other malicious, harmful or disabling data, work, code or program;
- (ix) engage in any other activity deemed by FMS to be in conflict with the spirit or intent of the Agreement, or any FMS' policy as examples listed in this Policy are not exhaustive.

Failure to Comply:

Failure to comply with this Policy in FMS' reasonable judgment may result in the immediate termination of Software and Services, responding to law enforcement requests, or any other action deemed necessary by FMS in order to protect its network, Client relationships, and commitment to the highest possible quality of service. FMS will cooperate with law enforcement in cases where the Software and Services are being used for any suspected illegal activity.

Reporting Violations:

Violations of this Policy are unethical and may be deemed criminal offenses. Client shall report to FMS any information Client may have concerning instances in which this Policy has been or is being violated. FMS may at any time initiate an investigation of any use of the Software and Services for compliance with this Policy and Client agrees to cooperate.

Malicious Activity:

Intended: Attempts to exploit other devices or services on and off the FMS hosted services without the permission or implied permission of that party are not permitted. Violations of system or network security may result in criminal and civil liability. FMS will cooperate with law enforcement if a criminal violation is suspected. FMS will limit any traffic from the offending device or network immediately.

Unintended: FMS will notify Clients of an exploited device being used for potential malicious activity. If the activity is causing severe damage or strain to other devices or networks, FMS will limit traffic to and from that device immediately. Otherwise FMS will notify the Client and give a reasonable amount of time to secure the device before limiting traffic to and from that device.