

## FULL SAIL PARTNERS HOSTING MASTER SERVICES AGREEMENT

The Full Sail Partners Hosting Master Services Agreement, and any applicable exhibits or schedules, (collectively, the “Agreement” or “MSA”) is between Full Sail Partners, Ltd. (“FSP”) and any entity that executes a Hosting Service Agreement (“HSA”) with FSP (“Customer”). The terms of this Agreement are effective upon the execution of a HSA between FSP and Customer (the “Effective Date”) and shall remain in effect so long as any HSA is in effect. This Agreement is fully and expressly incorporated by reference into the HSA between FSP and the Customer and shall apply to all Services provided by FSP. Definitions shall have the meanings set forth in the HSA, unless otherwise stated herein. In exchange for the covenants and promises herein, which the parties agree are sufficient consideration, the parties agree as follows:

### SERVICES

FSP offers two tiers of hosting:

- Standard – hosting of software and database on a multi-tenancy standard server.
- Ultimate – Hosting software and database on a dedicated server.

Services - Provided (i) Customer has paid all fees due and set forth in the HSA for each of the following services, and (ii) is otherwise in compliance with the HSA, FSP will provide Customer the following Application hosting services (the “Services”);

- 1) Customer Software License and Data: The “Customer Software” applies to the specific legally licensed application software being hosted by FSP. The “Customer Data” refers to the MS SQL or other database containing exclusively the Customer’s data.
  - a) Customer’s Software will be installed and maintained in accordance with the Software manufacturer’s recommended update and maintenance schedule for programmatic changes and/or updates. Services will include the prerequisite installation of the Customer Software on application tiers within FSP’s Hosting Environment (as defined below).
  - b) Customer’s Data will be installed in the database tier within FSP’s Hosting Environment, and
  - c) Both will be accessible via the Internet using a secure https connection.
  - d) Customer is responsible for the exclusive operation of and updates to the Customer Data.
- 2) One additional SQL Database containing Customer’s “test” non-production data for testing of processing. Updates to this data from Customer’s production database will be charged according to the HSA rate schedule.
- 3) To facilitate communication between the client and the hosting staff, Full Sail Partners utilizes a ticket system. All hosting communications should be sent to [Hosting@FullSailPartners.com](mailto:Hosting@FullSailPartners.com).
- 4) All housekeeping and safekeeping of Customer’s Data, including backups, as follows:
  - (a) Backup. FSP will back-up one (1) designated Customer Data production database within a predetermined eight (8) hour window during each day over a seven (7) day period (the “Backup Period”).
  - (b) Retention. Each backup will remain available for seven (7) days unless otherwise stipulated. Stored backup sets (the “Stored Files”) will be retained at FSP’s Hosting Environment location(s) unless otherwise designated. At Customer’s option, the Stored Files will be retained at a facility of FSP’s agreement, but not accessible by Customer, outside of FSP’s business premises for the additional fees specified on the HSA.
  - (c) Restoration. Restoration of a backup set in the Stored Files that is retained in FSP’s Hosting Environment will begin within sixty (60) minutes of Customer’s request in writing, (confirmed email is acceptable), to provide a restore of the Customer Data production database. Customer will have at their option not to restore the most recent backup set but must specify which of the 7 days backups that they require the restoration is to occur from. Up to two (2) restorations are available at no charge per calendar quarter. Additional restorations can be available **for a charge** by contacting hosting via the hosting ticket system.
  - (d) Maintenance; Additional applications. Customer agrees that FSP will not be in breach of this Agreement if its failure to provide the Services is due to scheduled down-time during back-up and restore utility maintenance, network, server, or utility outages, but that FSP will always attempt to

schedule this maintenance during non-business hours in the US. In addition, some applications offered by the software manufacturer may not be available under a hosted solution due to the nature of the hosted environment. Specifically that Standard and Ultimate hosted solutions over the Internet will not have domain authentication option available nor the ability to integrate with some 3<sup>rd</sup> party applications.

- (e) These applications specific to the hosted software application are documented in the HSA signed by Customer prior to commencement of Services. These applications will not be available at any price due to the nature of the technology limitations of a multi-tenancy hosting environment. If the software manufacturer makes these applications available in a hosted environment without the requirement of active directory, FSP will make every attempt to make them available in FSP's hosting Services to Customer at no additional charge.
  - (f) Client Requested Database Transfers, Client requested database transfers, defined as a client requested copy of the database transferred to the client or non-Deltek 3<sup>rd</sup> party via a secure FTP site, will be provided not to exceed 2 per quarter. Client primary contact must provide approval for any client requested database. Additional transfers can be available **for a charge** by contacting hosting via the hosting ticket system. Deltek requested backups from Deltek support directly are specifically excluded from this limit.
  - (g) Vantagepoint Preview. During the client's migration from Deltek Vision to Deltek Vantagepoint, 2 preview environments will be provided for each Deltek Vantagepoint major release not to exceed 8 per rolling 12 month period. A major release is defined as a significant change in the version number (for example Vantagepoint 5.2 to 6.0). A preview environment is defined as a backup of your current Vision database which is converted to the most recent release of Vantagepoint. Additional previews can be available **for a charge** by contacting hosting via the hosting ticket system.
  - (h) CONSULTING SERVICES - DEFINED AS QUESTIONS AS TO HOW TO USE THE SOFTWARE – are specifically excluded from this agreement. Clients who require this type of assistance can be provided either a GSA and/or scoped service. Please contact [Consulting@fullsailpartners.com](mailto:Consulting@fullsailpartners.com) to request a consulting agreement.
- 5) Services may also include other supplementary services, but these will only apply if specifically documented in the n HSA, the HSA will take precedence.
- 6) Custom report loading and the running of SQL scripts (whether provided by FSP staff or the software manufacturer) will be provided not to exceed 2 per 30 day period. Additional report and SQL Script loads available **for a charge** by contacting hosting via the hosting ticket system.

## HOSTING SERVICE LEVEL COMMITMENT-

FSP's Hosting Availability commitment to Customer (the "Service Availability Commitment") is to have Customer's Application (as set forth in the HSA) available 99.5% of the time.

If FSP determines, pursuant to the Service Availability Commitment Process set forth below, that the Service Availability Commitment does not achieve a cumulative of 99.5% for any calendar month (based upon an average 30-day month), FSP will credit Customer's account five percent (5%) of the Monthly recurring fee for every additional hour post-incident identification, up to a maximum of fifty percent (50%) of the Monthly fee for the affected Software Application.

## MAINTENANCE EVENTS SCOPE

"Maintenance Events" shall mean any maintenance in the Hosted Environment at which Customer's Data and Application Software is located, excluding access and Internet provider(s) equipment or facilities.

Planned Maintenance Events – Normal maintenance activities that may or may not disrupt service:

- (a) Of which Customer is notified at least nine (9) days in advance, and
- (b) That is performed during a standard maintenance window on Wednesdays and Saturday from 3 AM to 6 AM local time of the FSP Hosted Environment at which Customer's Data and Application Software is located. Notice of Planned Maintenance

Events will be provided to Customer's designated point of contact by a method elected by FSP (telephone, email or text message).

Planned Emergency Maintenance Events – Maintenance required due to degradation of service:

- (a) Of which Customer is notified 48 hours in advance if conditions permit, and
- (b) That is performed during a maintenance window any day from 3 AM to 6 AM local time of the FSP Hosted Environment at which Customer's Data and Application Software is located. Notice of Planned Emergency Maintenance Events will be provided to Customer's designated point of contact by a method elected by FSP (telephone, email or text message).

Unplanned Emergency Maintenance Events – Maintenance required due to loss of service: FSP will utilize its best efforts to notify Customer in advance if conditions permit.

## **SERVICE AVAILABILITY COMMITMENT PROCESS**

If FSP determines in its reasonable commercial judgment that the Service is unavailable due to a Hosting Environment outage caused solely by the items of the Hosting Environment managed exclusively by FSP, that outage will be used to calculate "Software Unavailability" for the remedies provided below. The Hosting Environment shall be deemed to be unavailable if the communication from the FSP Hosting Environment is not responding to response requests issued to the server's operating system by FSP monitoring software (for which outage logs are maintained) due to either a failure of the server hardware or the server operating system software. FSP records and data shall be the basis for all Service Availability Commitment calculations and determinations. Planned Emergency Maintenance Events shall not be deemed to be Software Unavailability. Unavailability of Customer's Data and Application Software due to Customer's information content or application programming, acts of Customer or its agents, Internet outages from Customers locations shall not be deemed Software Unavailability for the purpose of the Service Availability Commitment.

## **AVAILABILITY REMEDIES GENERALLY**

At FSP's option, it may extend a portion of the Commitment Term (as defined in the Hosting Services Agreement) and allocate any Customer credit(s) to future Services to be provided in the extended portion of the Term in lieu of a current credit to Customer's account. FSP may also offset any amounts owed to the Customer against any amounts owed FSP by the Customer.

In addition, FSP shall have no obligation to compensate Customer hereunder while the Customer is in Default (as defined herein), or otherwise in breach hereunder, including but not limited to not being current in its payment obligations to FSP.

Any Service Availability Credits will not apply to data transfer charges or to charges for services other than the Monthly Recurring Fee for the hosting of the Customer's Data and Application Software for which the Service Availability Commitment was not met. Customer's account shall not be credited more than once per month and in no event shall any aggregate credits exceed 50% of the Monthly Fee for the affected Software Application.

## **FEES AND BILLING**

- 1) Charges - Unless otherwise specified in a HSA, regardless of whether Customer has commenced use of the Services, Customer's payment obligation for Services accrues on the "Installation Date," which is the later of (i) the applicable Agreement Term Effective Date set forth on the HSA, or (ii) the date on which the applicable Service is provisioned by FSP and ready for Customer's use. All such charges are exclusive of any sales or use taxes and other federal, state, municipal, or other governmental taxes or levies applicable to the sale or use of Services hereunder (collectively "Taxes") now in force or enacted in the future, all of which will be the responsibility of Customer. Customer will be fully responsible to any third party for any charges, costs, expenses (other than those included in the Services), and third party claims that may result from its use of, or access to, the Services.
- 2) Billing and Payment Terms - FSP issues invoices quarterly, or as set forth in an applicable HSA. Quarterly recurring charges are due in advance on the first of the month preceding the quarter in which Services are provided. On the Installation Date, Customer will be invoiced for all non-recurring charges and the quarterly recurring charges for the then-current quarter (pro-rated) and the following quarter, including any initial Setup Fee, unless other terms are

specifically stated in the HSA. Customer shall pay all charges upon receipt of the invoice, and payment shall be past due if not paid within thirty (30) days after the date of the invoice. Late payments will accrue charges at the lower of 1½ % per month, or the highest rate allowed by law. If Customer makes a late payment during the Term, FSP shall have the right, upon written notice to Customer, to require a "Security Deposit" or other reasonable assurances to secure Customer's payment obligations hereunder. Customer agrees to pay FSP's reasonable costs of collection of past due amounts, including collection agency fees, attorneys' fees, Security Deposits and court costs associated with pursuing collection on amounts owed by Customer under this Agreement.

- 3) **Hosting Rates and Rate Changes** – FSP will provide Customer a "Hosting Fee Schedule" as part of the HSA, wherein the FSP rates for hosting are stipulated in conjunction with the Customer's number of Active Employees. The Hosting Fee Schedule details the change in any hosting Fees based on increases or decreases to the Customer's number of Active Employees processed in the Customer's Software during the preceding quarter. Customer will be charged in the subsequent quarter the rate, with applicable discounts applied for commitment periods (if any), in alignment with the number of Active Employees in Customer's Vision in increments of 5 employees for Active Employee changes over 5% of customer's last billed series level. The incremental schedule is proportionate schedule above. FSP reserves the right to make changes to the rates in effect in the Hosting Fee Schedule from time to time. Any revised Hosting Fee Schedule will have an effective date noting the date such rates took effect. FSP cannot make changes to the rates charged to Customer that occur during the time of a Commitment Term. Any Customer that is on a quarter-to-quarter agreement with FSP will be notified of rate increases at least thirty (30) days prior to the invoicing date for any services provided in subsequent quarters to the date of the rate increase.
- 4) **Security Deposit** - In the event Customer is required to pay to FSP a Security Deposit due to Customer's late payment of previous invoices for Services, FSP may, without further notice to Customer and without prejudice to FSP's other remedies, apply part or all of the Security Deposit toward the cure of any Customer under this Agreement. In such event, Customer shall, within five (5) business days after written demand, pay FSP an amount equal to the amount so applied to restore the Security Deposit to its original amount, if Customer is to remedy the default of the Agreement. FSP may co-mingle the Security Deposit with its own funds. Customer shall not be entitled to receive interest on the Security Deposit. Any part of the Security Deposit not used by FSP shall be returned to Customer within sixty (60) days after this Agreement expires or is terminated, after applying the Security Deposit to any outstanding amounts due and payable to FSP. FSP may, at its sole discretion, remove the requirement of a Security Deposit on the Customer's account with FSP and may either apply this amount to amounts then owing or return the Security Deposit to Customer before any termination of the Agreement.

## RIGHTS AND OBLIGATIONS

- 1) **Changes to Services and Customer Delegates** - Customer will provide to FSP written notice of the individuals who are authorized to change the Services received from FSP, as well as to receive notification from FSP regarding Service Availability Commitment or issues surrounding the Services, including changes to FSP's Hosting Fee Schedule. Updates to this contact information must be emailed to [hosting@FullSailPartners.com](mailto:hosting@FullSailPartners.com).
- 2) **Acceptable Use** - Customer's use of the Services shall comply with FSP's Hosting Acceptable Use Policy (the "AUP"). This document can be found at <https://www.fullsailpartners.com/services/hosting-documents>. Customer acknowledges that FSP exercises no control whatsoever over the content, accuracy or reliability of information passing through to the Customer Data utilized in connection with the Services, and that it is Customer's sole responsibility to ensure that the information it transmits, processes and receives complies with all applicable laws and regulations.
- 3) **Restrictions on Use** - Customer shall not nor shall permit others, including but not limited to its employees, representatives, contractors or subcontractors, and agents, to reproduce, reverse-engineer, decompile, disassemble, alter, translate, modify, adapt, market, resell, or sublease any Services, unless expressly permitted by this Agreement. Other than as specified herein, no license, title, or right is granted or transferred to Customer in or to any service marks, trademarks, copyrights, patents, trade secrets or other intellectual property rights of FSP ("Proprietary Information"), and Customer shall not have any right to use any Proprietary Information, or any FSP software or hardware.
- 4) **Cooperation** - Customer shall reasonably, timely, and in good faith cooperate with FSP and FSP's designees and agents to facilitate FSP's performance of Services and shall provide FSP with reasonable access to the necessary information, including but not limited to, application and data version, series level of licensing, continued and current status on manufacturer's software and any maintenance contracts with manufacturer, pass codes or other key codes to grant Customer access to software application from manufacturer, key contacts at Customer for notification by FSP ("Customer Information") to provide the Services described in this Agreement. It is essential to FSP's performance hereunder that FSP has reasonable access to Customer Information. Customer shall (i) configure the Customer

Software, and if applicable for the Services, any of Customer's equipment not located in the FSP's hosting environment, according to the technical specifications reasonably provided by software manufacturer for a cloud deployment, and (ii) maintain any necessary licenses associated with any of Customer's Software. FSP assumes no responsibility to obtain from Customer's licensees any necessary licenses or consents to monitor or access Customer Software to perform the Services. If Customer modifies its Customer Information in a manner that necessitates a change to the Services, then Customer shall pay any reasonable increase in Service Charges as well as time and materials that FSP incurs to modify Customer Software licensing. Unless otherwise specified in the HSA, Customer is responsible for purchasing rights to and maintaining all manufacturer warranties, updates, patches, upgrades, and service plans reasonably required to ensure that the Customer Software and Customer Information remains in working order throughout the Term and FSP shall not be responsible for any loss related to any delay or failure by Customer to purchase rights to or to maintain such coverage from the software manufacturer.

- 5) Customer Security - Customer agrees to use reasonable security precautions in connection with accessing and use of the Customer Software and Data and require its end users to use reasonable security precautions related to Customer workstations and communicating over the Internet. FSP agrees to provide for encryption of data as described in this Agreement under "Services" 1.c. Customer is otherwise responsible for the security of the Customer Data.

## CONFIDENTIAL INFORMATION

- 1) Confidential Information - Each party may have access to certain non-public information of the other party. All such information, if in writing, shall be specifically and obviously marked as "confidential" by the disclosing party at the time of disclosure, or if disclosed orally, shall be orally designated as confidential and thereafter identified as confidential by written notice to the receiving party within a reasonable time ("Confidential Information"). The pricing and terms of this Agreement, the HSA, FSP's physical security systems, specialized recovery equipment, techniques, audit and security reports, server configuration designs, hosting environment designs, names of FSP customers, method of providing its respective services and products are hereby deemed Confidential Information and may be disclosed by FSP only. Neither party will use for its own account or the account of any third party, nor disclose to any third party (except as required by law or as reasonably necessary to the receiving party's attorneys, accountants and other advisors who are obligated to maintain the confidentiality of such information), any of the other party's Confidential Information. The disclosing party retains all right, title and interest in all Confidential Information it discloses under this Agreement and all improvements and modifications made thereto. Each party will use reasonable care, at least equivalent to the care used for its own similar Confidential Information, to protect the confidentiality of the disclosing party's Confidential Information. Each party's obligation under this Section will survive for a ten year period following the expiration or termination of this Agreement. Each party agrees to use the other party's Confidential Information only in connection with the performance or use of Services hereunder.
- 2) Exceptions - Confidential Information shall not include information that (i) is in or enters the public domain without breach of this Agreement and through no fault of the receiving party, (ii) the receiving party was legally in possession of prior to receiving it, (iii) the receiving party can demonstrate was developed by it independently and without use of or reference to the disclosing party's Confidential Information, or (iv) the receiving party receives from a third party without restriction on disclosure. If a party is required to disclose Confidential Information by law, court order, or government agency, such disclosure shall not be deemed a breach of this Agreement.
- 3) Exceptions for Customer Data - Customer Data will remain in FSP's possession for the duration of this Agreement, but may be retained exclusively and without liability by FSP as a form of collateral for the payment of unpaid obligations by the Customer. Customer acknowledges that any unpaid amounts owed FSP will exempt FSP from any liability associated with retaining Customers Data, but under no condition is FSP allowed to provide such Data to any party other than Customer upon satisfactory payment for unpaid amounts.
- 4) Remedy - Any unauthorized copying, transfer, or use of any Confidential Information of the other party shall cause irreparable injury to the disclosing party that cannot be adequately compensated by monetary damages and the disclosing party shall be entitled to seek equitable relief, including injunctive relief, with bond waived, against the receiving party as a remedy for any material breach of this Section. The disclosing party may, in addition to equitable relief, pursue any and all legal and contractual remedies available to the disclosing party.

## REPRESENTATIONS AND WARRANTIES

- 1) Warranties by Customer - Customer represents and warrants to FSP that (i) Customer has the legal right and authority to place and use the Customer Software as contemplated by this Agreement, (ii) Customer is duly organized

- and has the authority to enter into this Agreement and to perform its obligations hereunder, (iii) the person signing the HSA and any other documents on behalf of Customer is authorized to do so, and upon its execution by such person, this Agreement is the legally binding obligation of Customer, (iv) Customer and Customer's end users' use of the Services and of the Customer Software does not, as of the Installation Date, and will not during the Term, violate applicable laws or regulations or the rights of third parties, (v) Customer has read the FSP AUP, and Customer and Customer's end users are in compliance with and shall continue to comply with the AUP during the Term, and will disclose to FSP its content and use for the Services at any time requested by FSP, (vi) Customer will use the Services only for Internet and data transmission, and (vii) all information provided to FSP is materially accurate.
- 2) Warranties by FSP - FSP represents and warrants to Customer that (i) FSP has the legal right and authority to provide the Services, (ii) FSP is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder, (iii) the person signing this Agreement on behalf of FSP is authorized to do so, and upon its execution by such person, this Agreement is the legally binding obligation of FSP, and (iv) the Services supplied to Customer under this Agreement do not, as of the Installation Date, and will not during the Term, violate applicable laws or regulations. FSP's Service Availability Commitment and remedies for unavailability of the Service are detailed in this Agreement, and Customer hereby acknowledges that Customer has read, understood, and agrees to the Service Availability Commitment terms of this Agreement.
  - 3) FSP'S WARRANTY DOES NOT APPLY TO ANY SERVICES THAT ARE EXPRESSLY EXCLUDED IN THE HSA. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE BY FSP TO PROVIDE THE SERVICES, OR OTHERWISE IN CONNECTION WITH THE SERVICES. THIS WARRANTY DOES NOT APPLY WHEN CUSTOMER IS IN DEFAULT OF THIS AGREEMENT.
  - 4) NO OTHER WARRANTY - CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER PRIVACY, CONFIDENTIAL INFORMATION AND PROPERTY. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN 2) ABOVE, THE HOSTING ENVIRONMENT AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE INTERNET FOR ACCESSING CUSTOMER SOFTWARE, DATA AND HOSTING SERVICES IS AT ITS OWN RISK. FSP DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, SYSTEM INTEGRATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FSP DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. WITHOUT LIMITING THE FOREGOING, FSP DOES NOT WARRANT AND HEREBY DISCLAIMS THAT THE SERVICES WILL PROVIDE PROTECTION FROM (i) VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, CANCEL BOTS, OR OTHER HARMFUL OR DELETERIOUS PROGRAMMING ROUTINES, (ii) DATA LOSS, (iii) UNAUTHORIZED, UNKNOWN, OR UNFORESEEABLE SECURITY BREACHES, ACCESSES, OR ATTACKS INTO OR AFFECTING THE EQUIPMENT OR OTHER SYSTEMS, AND (iv) ANY FORM OF REAL-TIME DETECTION OF ANY OR ALL OF THE FOREGOING. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE SERVICES CHOSEN. NEITHER PARTY SHALL MAKE ANY REPRESENTATIONS OR WARRANTIES ON THE OTHER PARTY'S BEHALF.

## LIMITATION OF LIABILITY AND INDEMNIFICATION

### Limitation of Liability

- 1) In no event will either party be liable or responsible to the other for any type of incidental, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, or interruption or loss of use of Services or software, arising from or relating to this Agreement, or the HSA, even if advised of the possibility of such damages, whether arising under any theory of contract, tort (including negligence), strict liability, or otherwise.
  - (a) Notwithstanding anything herein to the contrary, except for claims based on FSP's willful misconduct, the maximum aggregate liability to Customer related to or in connection with this Agreement, the HSA, the Services, FSP's equipment or data center will be limited to the total amount paid by Customer to FSP during the six (6) month period prior to the action giving rise to the liability.
  - (b) At FSP's option, FSP may provide to Customer a credit for future services at the end of the Term equal to FSP's liability under (a) in lieu of cash, but only where Customer agrees to continue to be provided Services under this Agreement on a quarter to quarter basis. At FSP's option, FSP may also offset any amounts owed to the Customer against any amounts owed to FSP by Customer.

- (c) No claim may be asserted by either party against the other party with respect to any event, act or omission for which a claim accrued more than two (2) years prior to such claim being asserted.

## Indemnification

- (1) Each party (the "Indemnifying Party") will indemnify, defend and hold the other party, and each of their respective affiliates, directors, shareholders, officers, agents, representatives, landlords, independent contractors, employees, successors and assigns (collectively an "Indemnified Party") harmless from and against any and all costs, liabilities, losses, and expenses (including but not limited to reasonable attorneys' fees) finally awarded or settled (collectively "Losses") resulting from any claim, suit, action, demand, or proceeding (each, an "Action") brought by any third party against the Indemnified Party, to the extent not covered by the Indemnified Party's insurance, (A) alleging or arising from the gross negligence or willful misconduct of the Indemnifying Party or its employees, agents, contractors, or invitees, in the performance or non-performance of its obligations hereunder, (B) arising from any failure by the Indemnifying Party or its employees, agents, contractors, or invitees, to comply with the FSP Hosting Acceptable Use Policy or applicable law, (C) arising from or connected with any claims of ownership or superior rights to Customer Software or Data or FSP equipment or other intellectual property by a third party.
- (a) Customer will indemnify, defend and hold FSP and FSP's Indemnified Parties harmless from and against any and all Losses resulting from or arising out of any Action brought by or against FSP or FSP's Indemnified Parties alleging: (i) any damages arising from the Customer Software, Customer's business, or Customer's use of the Services or Customer content, or (ii) any damage or destruction to FSP equipment or the equipment of any other FSP customer by Customer or its representatives or designees.
- (b) The Indemnifying Party's obligations hereunder are conditioned upon: (i) prompt notice to the Indemnifying Party upon receipt of written notice of an Action for which the Indemnified Party seeks indemnity, (ii) tendering control of the defense of such Action and any related settlement discussions to the Indemnifying Party (the Indemnified Party may participate in such defense, at its own expense, with counsel of its own choosing that Indemnifying Party reasonably approves), (iii) the reasonable cooperation of the Indemnified Party, at the Indemnifying Party's request and expense, and (iv) obtaining the Indemnified Party's prior written consent (which shall not be unreasonably withheld, delayed, or cause any delay or harm in the settlement discussion), for any settlement of an Action that does not include an unconditional release of the Indemnified Party from the indemnified liability.

## TERM AND TERMINATION

- 1) Initial Commitment Term and Renewal Terms - This Agreement shall remain in effect for so long as any HSA incorporating this Agreement is in effect (the "Term"). The Term of a HSA begins on the Effective Date set forth in the HSA and shall continue during the initial Commitment Term set forth on the HSA (the "Commitment Term"), unless earlier terminated as provided herein. The Term of the HSA shall automatically renew for an additional calendar quarter at the end of the Commitment Term unless the parties agree prior to the completion of the Commitment Term to create a new term in excess of one calendar quarter (each, a "Renewal Term"). Unless notice of non-renewal is provided in a writing signed by the non-renewing party at least thirty (30) days prior to expiration of the Commitment Term or any applicable Renewal Term, the Term shall become a quarter-to-quarter basis with rates to be charged at FSP current rates.
- 2) Removal of Customer's Data - Immediately upon expiration of the Term or promptly upon earlier termination of this Agreement for any reason, Customer shall be provided one backup of their Customer Data, to be delivered via electronic delivery. Upon termination, FSP shall have the option to deny Customer a backup of its Data until all amounts owing FSP under this Agreement or a HSA have been paid and all FSP property returned to FSP.
- 3) Liquidated Damages - Customer acknowledges that the amount of the quarterly recurring fee for Services is based on Customer's agreement to pay the quarterly recurring fees for the entire Term. FSP's damages from (a) termination by FSP associated with a Customer Default or (b) the early termination by Customer not associated with an FSP Default are difficult to ascertain. For that reason, Customer agrees to pay one hundred percent (100%) of the remaining quarterly recurring charges and of any charges due and payable under any applicable HSA through the then-current Commitment Term. This provision is intended to establish liquidated damages and is not intended as a penalty. Other than as set forth herein, this liquidated damages provision does not waive or alter any remedies available to FSP under this Agreement for Customer's Default or early termination. These liquidated damages may, at FSP's sole discretion, be waived by FSP and other terms and conditions may be put in place and negotiated with Customer in lieu of the stipulation for liquidated damages.

## DEFAULT AND REMEDIES

- 1) Default by FSP - The occurrence of any of the following will be a "Default" by FSP: (i) FSP fails to perform or cure a material obligation under this Agreement after receiving fifteen (15) days advance written notice from Customer of such failure, or (ii) FSP's insolvency or liquidation as a result of which FSP ceases to do business, or (iii) the material breach of any representation or warranty made by FSP in this Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Default unless such breach is not cured by FSP within fifteen (15) days after receiving written notice from Customer of such breach. A violation of the terms of the Availability Commitment is not a breach of a representation or warranty or a Default hereunder.
- 2) Default by Customer - The occurrence of any of the following will be a "Default" by Customer: (i) Customer fails to pay, when due, any fees or charges owing to FSP under this Agreement or a HSA, provided that the first such nonpayment in any calendar year shall not be a Default unless Customer fails to pay such amount within either five (5) business days after notice from FSP of such nonpayment (a "Payment Default") or within ten (10) days of the due date any invoice for Services and without notice by FSP of such nonpayment of same invoice for services delivered to Customer, or (ii) Customer fails to pay (or repay) timely any or all of a Security Deposit and does not cure such failure within five (5) business days after written notice thereof ("Security Default"), (iii) the material breach of any representation or warranty made by Customer in this Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Default unless such breach is not cured by Customer within five (5) days after receiving notice from FSP of such breach, (iv) Customer fails to comply with or cure any material obligations under this Agreement (other than payment or security deposit obligations) after receiving fifteen (15) days advance written notice to the Customer of such failure, (v) Customer's insolvency or liquidation as a result of which Customer ceases to do business or if FSP has a reasonably held belief that Customer may be unable to pay its debts as they become due, or (vi) the Customer's filing for bankruptcy, reorganization or failure to discharge an involuntary bankruptcy petition within sixty (60) days.
- 3) Remedies for Default - If a party commits a Default, the non-defaulting party will be entitled, at its election to exercise any one or more of the following remedies, as applicable, then or at any time thereafter: (i) to exercise any remedy for such Default set forth elsewhere in this Agreement, (ii) except as otherwise limited in this Agreement, to pursue any remedy available at law or in equity, or (iii) to terminate this Agreement. In the event of Default by Customer, in addition to and without waiving any other remedies for Default available to FSP hereunder, FSP may, without notice beyond the initial notice required for the Default or without notice upon nonpayment by Customer within 10 days of due date of any invoice, (A) suspend or discontinue Services or performance under this Agreement, (B) collect liquidated damages as set forth in "Term and Termination" 3) above, (C) restrict the Customer's physical and electronic access to the Customer Data and Software except for the limited purpose of transference of the Customer Data after payment in full of all amounts owed to FSP. In the event of suspension or discontinuance of Services due to a Customer Default, Customer agrees to pay FSP's then-current reinstallation fee if charged at FSP discretion. Each remedy of the non-defaulting party as provided for in this Section or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the non-defaulting party of any one or more of such remedies shall not preclude the simultaneous or later exercise by the non-defaulting party of any or all such other remedies.

## CERTAIN DEFINITIONS

- 1) "Availability" shall mean that period of time that Customer's Software Application(s) is available for use by its Active Employees, except for scheduled downtime during backup and restore utility maintenance, or because of network, server or utility outages beyond FSP's control.
- 2) "Company Equipment" shall mean all FSP owned, leased, or developed hardware, software, equipment, machinery, tools and devices (a) located in any Hosted Environment, except for Customer Software, and/or (b) located on the Customer's premises to provide the Services, as may be more fully defined in any applicable HSA, this Agreement or any attachments or amendments hereto. "Equipment" shall refer to FSP Equipment and Customer Equipment collectively.
- 3) "Hosting Environment" means an FSP managed or server whether at a FSP facility or at the Customer location. If this MSA relates to more than one Internet Hosting Environment location, then the term "Hosting Environment" shall refer to each Hosting Environment individually and collectively.
- 4) "HSA" shall mean any agreement or document executed between FSP and Customer that itemizes the Services and charges for such Services purchased by Customer.



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- 5) "Customer Software" shall mean any legally licensed application software being hosted by FSP, for which the Customer will use to maintain the Customer's specific application and business process that the software is designed to provide.
  - 6) "Customer Data" refers to the MS SQL or other database containing exclusively the Customer's Data.

## MISCELLANEOUS

- 1) **Notices** – All notices required under this Agreement or a HSA to be effective shall be in writing, and may be made by confirmed email or First Class Mail, postage prepaid, and shall be deemed to have been duly given or made when actually delivered to the intended addressee, addressed to the party at such address as set forth in a HSA, or to such other address as may be hereafter given by notice hereunder.
- 2) **Governing Law; Jurisdiction** - The parties agree this Agreement any HSA are governed by and construed under the laws of the State of Colorado, except for its conflicts of laws provisions. The parties must bring any action concerning, relating to, or arising out of, this Agreement or a HSA in the federal or state courts located in Denver County, Colorado, and the parties expressly acknowledge and submit to the personal jurisdiction of and venue in those courts. The prevailing party in any such proceeding shall be entitled to recover its costs and expenses incurred in such proceeding, including but not limited to, reasonable attorneys' fees, witness fees and collections costs.
- 3) **Waiver; Assignment; Validity** - No waiver by FSP of any breach or obligation by Customer of this Agreement or a HSA shall be deemed a waiver of any succeeding breach or obligation. This Agreement shall be binding upon Customer and FSP and their respective successors and permitted assigns; however, neither party may assign this Agreement nor a HSA without the prior written consent of the other, which consent for assignment shall not be unreasonably withheld. Should any provision of this Agreement, or a HSA, or the Acceptable Use Policy, be determined to be wholly or partially invalid, or become invalid at a later time, the validity of the other provisions of the applicable Agreement shall not be affected in any way. Any portion held to be invalid, unenforceable or void shall, if possible, be deemed amended or reduced in scope.