Software Subscription and Hosted Services Agreement

This Hosted Services Agreement (this **"Agreement"**) is made and entered into as of _____ (the **"Effective Date"**) by and between FM:Systems Group, L.L.C., a Delaware company with an address at 2301 Sugar Bush Road, Suite 500, Raleigh, NC 27612 (**"FM:Systems**), Texas A&M University, a member of The Texas A&M University System and an agency of the State of Texas, in College Station, Texas.("Client")

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, FM:Systems will provide Client with access and use of certain software (the **"Software"**) on a hosted basis over the Internet, as well as related services, all as described in Schedule 1 attached hereto (**"Software and Services"**). The parties may from time to time agree to new Schedules that identify additional Software and Services provided under the terms of this Agreement. Each Schedule, 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 Schedule, the terms of the Schedule shall control.

2. **License and Hosting**

   2.1 Subject to the terms and conditions of this Agreement and the applicable Schedule, FM:Systems 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 Schedule, and subject to any limitations set forth in the applicable Schedule (but not for any other purposes or in connection with any other facilities). Client may use and access the Software solely through an approved web site or sites (www.fmshosted.com) identified by FM:Systems in writing from time to time (the **"Site"**).

   2.1 The Software may be used and accessed only by Client's employees or contractors (**"Contra ctors"**) 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.

   2.2 Client acknowledges that FM:Systems and its licensors are the sole owner of all intellectual property rights in and to the Software and the 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.

2.3 Client shall retain sole ownership of all CAD drawings and other data supplied by Client for use with the Software.

2.4 The terms of the Service Level Agreement attached as Exhibit B shall apply to the services provided hereunder.

2.5 FM:Systems and its licensors reserve all rights in the Software and Documentation not expressly granted to Client and hereunder.

3 Implementation Services

3.1 FM:Systems agrees to provide the start-up installation, needs analysis, implementation and training services set forth in the applicable Schedule (the" **Implementation Services**").

3.2 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.

4 Term and Termination

4.1 The initial term of this Agreement shall begin on the Effective Date and continue for thirty-six (36) months after the Effective Date (the "Initial Term"). After the expiration of the Initial Term, this Agreement shall automatically renew for up to two successive renewal terms of twelve (12) months, unless either party provides written notice of its intent to terminate this Agreement at least ninety (90} days prior to the end of the Initial Term or applicable renewal term.

4.2 FM:Systems may 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.

4.3 Performance by Client under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds then Client will issue written notice to Vendor and Client may terminate this Agreement without further duty or obligation hereunder. Vendor acknowledges that appropriation of funds is beyond the control of Client. Furthermore, if these funds are not appropriated, Client will provide Vendor 120 days' written notice prior to the start of the next annual term of that year. Client's written notice of termination will include a signed statement from the President, or an authorized individual of Client confirming termination due to insufficient funding for services and such statement will ensure Client will not purchase such related services for the remaining year. Client shall not be assessed any penalty if the Agreement is terminated because of the decision of the legislature not to appropriate funds.

4.4 The terms provided in Sections 7, 10.2, 10.3, 10.4, 11, and 12 of this Agreement shall survive any termination of this Agreement.

5 Additional Client Obligations

5.1 Client agrees to comply with FM:Systems' procedures and security measures associated with access to the Software and the Site (the **"FM:Systems Procedures")**, which will be maintained by FM:Systems on the Site and are incorporated by reference in this Agreement. The FM:Systems Procedures may be revised by FM:Systems from time to time.

5.2 FM:Systems may, in its sole discretion, deny or remove access to any user of the Software or Site **("User")** who fails to abide by the FM:Systems Procedures or who otherwise tampers with or abuses the Site or the Software.

5.3 Client acknowledges that FM:Systems' obligations under Agreement are contingent upon Client providing FM:Systems with access to Client's technical personnel, facilities, databases, and information as necessary for FM:Systems to perform those obligations (including but not limited to the establishment of necessary access to Client's databases) FM:Systems shall comply with all Client requirements for vendor access to Client systems and networks.

6 Fees and Expenses

6.1 Client shall pay Fees in accordance with the terms and conditions in the applicable

Schedule. All payments are due within thirty (30) days after receipt 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.

6.2 Client also agrees to reimburse FM:Systems for any out-of-pocket and direct expenses approved by Client in advance and in writing, including but not limited to travel, lodging, meals, postage, freight, and printing.

6.3 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 FM:Systems, but excluding taxes based upon the net income of FM:Systems

7 Confidentiality

7.1 **"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 FM:Systems 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 FM:Systems' 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 by the Receiving Party as shown by its written records.

7.2 A Receiving Party agrees: (a) to hold the Disclosing Party's Confidential Information in strict confidence; and (b) except as expressly authorized by this Agreement (including without limitation Section 12.1), not to, directly or indirectly, use, disclose, copy, transfer or allow access to the Confidential Information. In addition, without limiting the foregoing, FM:Systems agrees to use, and to require its contractors to use, reasonable proceduresand 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, 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.

7.3 Each party acknowledges and agrees that any violation of this Section 7 or of the intellectual property rights of FM:Systems or of any party that has provided Confidential fn formation to FM:Systems, 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.

7.4 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 7 shall survive any termination of this Agreement.

8 Personnel

8.1 The parties are and intend to be independent contractors with respect to the services contemplated hereunder. FM:Systems 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.

9 Support.
During the term of this Agreement, FM:Systems will provide support and maintenance services in accordance with Exhibit A, attached hereto and incorporated by reference.

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, FM:Systems warrants that the Software will substantially conform to the documentation provided in connection with the Software. If it does not, at FM:Systems' option, FM:Systems will either make it conform, replace it with conforming Software, or terminate the applicable Schedule 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 FM:Systems does not warrant that the Software will operate uninterruptedly 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 FM:Systems has no control over the functioning of the Internet and FM:Systems 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 FM:Systems warrants that any Implementation SeNices 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 FM:Systems' entire liability will be the re-performance of the applicable Implementation Services. Client must make any claim under the foregoing warranty to FM:Systems in writing within 90 days of performance of such Implementation Services in order to receive warranty remedies.

10.4 Client shall be solely responsible tor 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 the extent authorized under Texas law, to indemnify and hold FM:Systems harmless from any and all claims that any decision 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 FM:Systems' 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 non-performance by FM:Systems, or in any manner related to this Agreement, for any and all claims, excluding FM:Systems ' obligations under Section 12, shall not exceed in the aggregate the Fees paid by Client to FM:Systems hereunder with respect to the Software at issue during the twelve (12) month period.

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.

12 Indemnification

12.1 If a claim of copyrigh,t trade secret, or other intellectual property rights violation is made against Client relating to the Software, Client agrees to promptly notify FM:Systems, allow FM:Systems, subject to the consent of the Attorney General of the State of Texas, to control the litigation or settlement of such claim, and cooperate with FM:Systems in the investigation, defense, and/or settlement thereof. FM;Systems agrees to take control of the litigation and indemnify Client by paying any

settlement approved by FM:Systems, or any judgment , costs, or attorneys' fees finally awarded against the client for such claim. 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 FM:Systems 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 FM:Systems' opinion, is likely to be made, FM:Systems, 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 FM:Systems' 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 the extent authorized under Texas law, to indemnify and hold harmless FM:Systems 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 FM:Systems' access to any such Materials.

13 Miscellaneous

13.1 Client acknowledges that FM:Systems 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 FM:Systems will not use such data for any purpose other than the maintenance, support and product development.

13.2 For purposes of this Agreement, "Force Majeure Event" means, with respect to either party, any event or circumstance, whether or not foreseeable, that was not caused by that party (other than a strike or other labor unrest that affects only that party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstance that results in that party's not having sufficient funds to comply with an

obligation to pay money) and any consequences of that event or circumstanceIf a Force Majeure Event prevents a party from complying with any one or more obligations under this Agreement, that inability to comply will not constitute breach if (a) that party uses reasonable efforts to perform those obligations,
(b) that party's inability to perform those obligations is not due to its failure to (1) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (2) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (c) that party complies with its obligations under this Section 13.2. If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying party expects it to last. Thereafter the noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Agreement.

13.3 This Agreement, including all Schedules 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.

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

13.5 Client may not assign this Agreement without the written consent of FM:Systems. Any attempted assignment by Client without such consent shall be null and void. FM:Systems shall have the right to assign this Agreement.

13.6 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.

13.7 FM:Systems represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Client under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent FM:Systems. becomes aware that the EIRs, or any portion thereof, do not comply, then FM:Systems shall, at no cost to Client, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

13.8 Pursuant to Chapter 2270, *Texas Government Code.* FM:Systems certifies that FM:Systems does not and will not, during the performance of this Agreement, boycott Israel. Client may terminate this Agreement if this certification is inaccurate.

13.9 Pursuant to Chapter 2252, *Texas Government Code,* FM:Systems certifies that FM:Systems is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Client may terminate this Agreement if this certification is inaccurate.

13.10 FM:Systems and each person signing on behalf of FM:Systems certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The Texas A&M University System or the A&M System Board of Regents, nor any employee or person whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

13.11 Pursuant to Section 2252.903, *Texas Government Code,* any payments owing to FM:Systems under this Agreement may be applied directly toward certain debts or delinquencies that FM:Systems owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

13.12 A child support obliger who is more than 30 days delinquent in paying child support and a business entity in which the obliger is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code,* the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

13.13 FM:Systems shall use the dispute resolution process provided in Chapter 2260, *Texas Government Code,* and the related rules adopted by the Texas Attorney General to attempt to resolve any claim for breach of contract made by FM:Systems that cannot be resolved in the ordinary course of business. FM:Systems shall submit written notice of a claim of breach of contract under this chapter to Client's designated official, who will examine FM:Systems's claim and any counterclaim and negotiate with FM:Systems in an effort to resolve the claim.

13.14 FM:Systems acknowledges that Client is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Client's written request, FM:Systems shall provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to Client in a non-proprietary format acceptable to Client. As used in this provision, "public information" has the meaning assigned in Section 552.002, Texas Government Code, but

only includes information to which Client has a right of access. FM:Systems acknowledges that Client may be required to post a copy cf the flllly-execLJted Agreement on Client's website in compliance with Section 2261.253(a)(1), Texas Government Code.

ACCEPTED & AGREED:

FM:Systems Group, L.L.C.

Texas A&M University

_____
Signature

_____
Signature

Kurt von Koch , CEO
_____
Name & Title

ROBERT C. BOUNDS
DIRECTOR, PROCUREMENT SERVICES
_____
Name & Title

6/6/2019
_____
Date

6 JUN 2019
_____
Date

EXHIBIT A

SOFTWARE SUPPORT AND MAINTENANCE SERVICES

1. FM:Systems 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 FM:Systems business holidays) during 9:00 a.m. - 8:00 p.m. Eastern Time ("Normal Business Hours"). FM:Systems will use commercially reasonable efforts to communicate a qualified response or status within two business days for any unresolved problems. FM:Systems' 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.

A separate Infrastructure Support telephone number for reporting of IT infrastructure problems (e.g., system-wide failure) will also be available twenty-four (24) hours per day. Calls to the Infrastructure Support telephone number made outside of Normal Business Hours will be forwarded to FM:Systems' answering service and an on-call engineer will be paged. Use of Infrastructure Support is limited to Severity One and Severity Two problems only, as defined in Exhibit 8.

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

3. From time to time, FM:Systems **will** provide Client with all updates including minor functional enhancements and error corrections (**"Updates"**) and upgrades to Software including major functional enhancements (**"Upgrades"**) that FM:Systems generally makes available for no additional charge to Clients paying for subscription use. FM:Systems 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 FM:Systems will upgrade the test environment with the new version and Client will have two (2) weeks to review, at the end of which FM:Systems 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.

4. Client will be entitled to access the FM:Systems User Forum, an online community of users and peers.

5. Notwithstanding anything to the contrary in these Maintenance terms, FM:Systems shall have no responsibility to provide *any* technical support or assistance, nor any Updates or Upgrades, to any third-party software not supplied by FM:Systems. It shall be Client's obligation to obtain maintenance and support directly from the manufacturer of such software.

6. FM:Systems will not be obligated to provide any services in addition to those set forth in these Maintenance Services terms ("Additional Services"). Unless otherwise agreed, Client shall pay FM:Systems at FM:Systems' 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 FM:Systems; and (vii) services caused by the use by Client *of* any version of the Software other than the current or immediately prior version.

EXHIBIT B

HOSTING SERVICE LEVEL AGREEMENT

1. Introduction

The hosting services will generally be available twenty-four hours per day, seven days per week except for periodic system maintenance. However, the Service Levels for Software Availability shall be measured only during the following hours:

Monday - Friday: 6:00 am - 12:00 midnight Eastern Time

Saturday - Sunday: 9:00 am - 10:00 pm Eastern Time

From time to time FM:Systems will be required to do scheduled maintenance. An example of scheduled maintenance would be to perform database maintenance or implement a Software upgrade. When possible,   FM:Systems will: (a) schedule maintenance to be performed outside of regular business hours, and (b) give Client prior notice of any scheduled maintenance as specified in the FM:Systems Change Management Service Levels and Procedures Document.

L Severity Levels

Operational problems will be identified with a Severity Level, using FM:Systems' best judgment and input from the customer.

"Severity One" means a system-wide failure. The service or software, in a supported configuration, has complete loss of service or resources for which no workaround exists and the Client's work cannot reasonably continue. Service cannot reasonably continue until the system is restored, delivery is totally stopped

"Severity Two" means a semi system-wide failure. The Service or Software, in a supported configuration, is causing significant or degraded loss of Client's service or resources. The customer's service is seriously impacted but delivery has not totally stopped.

- "Severity Three" means the Service or Software, in a supported configuration, has minor loss of Client's service or resources. This can be defined as a product flaw with a workaround or a problem with a portion of the software's function that does not impact delivery.

- "Severity Four" means the Service or Software is in full working mode. Client's work is not being impeded at this time. Information is requested or reported.

2   Serv ice Levels

FM:Systems will strive to operate at the service levels described as "Goal", and credits will apply as described below if FM:Systems does not perform at or above the "Minimum Service Level". If any service element deteriorates so much as to be measured at the Crisis Trigger level, the situation will be immediately escalated to the Chief Technology Officer of FM:Systems, and payment of software usage fees will be suspended until the situation is resolved.

Performance ba-tego,y	Se' rvlce Level- Oesc:ription	Goal	Minimum Service Level	Crfsls Tri mer
Software Availability	Availability of hosted Software	99 9%	99 5%	98.0%
Response Time for Severity One Problems	Time by which FM:Systems will respond to Severity One. Client's notification must be by phone per the procedures set forth above. FM:Systems' response may be by phone or e-mail.	30 Minutes	1 Hour	2 Hours
Response Time for Severity Two, Three, and Four Problem s	Time by which FM:Systems will respond to Severity Two, Severity Three, and Severity Four Problems FM:Systems' response may be by phone or e-mail.	2 Business Hours	4 Business Hours	24 Business Hours

"Availability" or "Available" refers to the ability of an Internet user being able to establish a TCP connection to the appropriate FM:Systems-hostedserver.

"Availability Percentage" shall be calculated as follows: $x = [100(n - y)/n]$ percent, where "x" is the Availability Percentage, "n" is the total number of hours in a given calendar month, and "y" is the total number of hours service is not Available (as defined above) in a given calendar month. The calculation of "x" shall be prorated in any month in which services commence on any day other than the first day of the month.

Specifically excluded from "n" and "y" in this calculation and defined as exceptions to the levels of Availability provided herein are (a) scheduled maintenance windows and (b) reasons of Force Majeure

Specifically excluded from "y" are failures of Availability to the extent caused by or related to downtime (a) due to failures of access circuits to the Software, unless such failure is caused solely by FM:Systems' equipment, software or personnel; (b) scheduled and emergency maintenance; (c) emergency upgrades: (d) DNS issues beyond the control of FM:Systems: (e) "false-positive" service breaches reported as a result of outages or errors of any FM:Systems measurement system: (f) any negligence, willful misconduct, or use of the Software or FM:Systems services in breach of this Agreement or FM:Systems' Acceptable Use Policy by Client or by others engaged or authorized by the customer or (f) issues associated with Client's LANs, Client's ISPs or other Client Internet connections.

Also specifically excluded from "y" are outages resulting from network service provider outages or Internet outages resulting from failures outside the control of FM:Systems or its hosting provider. Examples of these types of outages include:

- Corruption in Internet route information within a Tier 1 Internet route server environment;
- Major connectivity failures within or between Tier 1 Internet service providers:
- Corruption in Internet route information at any public or private exchange point;
- Corruption of root levelDNS services.

No credits will apply unless Client specifically requests a credit in writing within fifteen (15) days of the failure to meet a Minimum Service Level, subject to confirmation of such service failure by FM:Systems. For each Minimum Service Level that FM:Systems fails to meet during a calendar month within a specified threshold, FM:Systems will grant a performance credit to the Client for that Service Level failure at the rate of one (1} days' worth of the base fee times the number of hours (or business hours, as applicable) the Minimum Service Level is not met (rounded up to the next whole hour) The performance credit will be applied to the Client's invoice within two (2) billing cycles after receipt of the Client's written request for credit, reducing the amount to be paid by the Client. The maximum credit for any given month will be 50% of the Base Fee paid for such month that the service failure occurred.

SCHEDULE 1
SOFTWARE AND SERVICES

This Schedule is made and entered into by and between FM:Systems Group, L.L.C., ("**FM:Systems**") and ___Texas A&M University___ ("**Client**"). This Schedule 1 incorporates the terms of the Hosted Services Agreement between the parties.

1. Licensed Software and Summary of Fees

SOFTWARE	Type of License/Notes	Quantity	Fees
FM:Interact Space Management, Asset Management, Strategic Planning & FM:Mobile	20 Power Users Unlimited General Users	1	
FM:Higher Ed Survey	Unlimited Power Users & General Users	1	
FM:Move Management	20 Power Users Unlimited General Users	1	
TOTAL ANNUAL USAGE FEE			$98,000

IMPLEMENTATION SERVICES	Type of License/Notes	Quantity	Fees
Hosting Start-up			$5,000
Implementation and Training Services			$104,500
TOTAL IMPLEMENTATION SERVICES FEES			$109,500

2. Payment Terms

a. Annual Usage Fees will be invoiced annually starting on the Effective Date. Support and maintenance services are included at no additional charge as part of the Annual Usage Fees.

b. The Hosting Start-up Fee will be invoiced following execution of this Agreement.

c. Fees for implementation, and training services are invoiced as services are performed. Client is also responsible for all travel-related expenses related to Implementation Services.

d. Annual Usage Fees for Renewal Terms shall not increase more than five-percent (5%) compared to the then previous annual term.

3. Types of Licenses:

a. Read Only User: A single user license allowing the user to view data, reports and floor plans that have been permissioned for universal access. Read only users share a single user account and cannot be added to other groups for additional permissioning. Read only users cannot submit forms or edit data.

b. General User License: A single user license allowing the user to submit move, service and project requests and edit the data related to their requests General users have specific accounts in FM:Interact and can be added to groups to enable permissioning of views, data, reports and floor plans. General users cannot edit data or requests submitted by other users.

c. Power User License: A single user license providing the user with full access to the functionality of the licensed module including the ability to view, edit and delete data, define reports, and configure the system.

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d. <u>Single User</u>. License is restricted to use by one named user. The FM:CAD product is further restricted to installation on one CPU.

4. HOSTING SERVICES

a. FM:Systems will provide hosting service to house the FM:Interact application and database with combined 50GB of storage. Additional storage will be charged in 25GB increments at $100 per month. Hosting will be done at a secure data center with five levels of physical security, managed firewall protection, uninterruptible power, redundant HVAC, fire suppression, and nightly backups.

b. FM:Systems will provide user authentication through secure user name and password. If Client requires SAML, this can be provided for an additional fee of $150 per month.

c. Client may request and receive a SQL backup of their production databases a maximum of once a year at no cost. Subsequent requests within the same twelve (12) month period will be invoiced at $200.00 per request. Delivery will be provided over FTP as an encrypted Zip file.

d. Once every six (6) months Client may request a data restore to remedy Client data input errors. Additional requests will be charged at $500 per request.

e. Hosting Services will be subject to Exhibit B Service Level Agreement.

5. Implementation Services

a. FM:Systems will provide implementation and training services as specified in the appropriate Services description or Statement of Work developed and agreed upon by the parties.