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General Terms of Service

FMS Techniques, Inc. collocation will provide a modest facility to house your server, battery backup system, an IP address and high speed Internet connection. General maintenance requests and server troubleshooting are considered outside the scope of this service and will be billed at regular technician rates as requested.

FMS Techniques, Inc. will maintain connectivity to the best of its ability; however, internet service outages that are beyond our control may interfere with your service, as well as extended power outages in the region. In the case of extended outages, your account will be credited for the duration of the outage.

EQUIPMENT COLOCATION AND SERVICES AGREEMENT

This Equipment Colocation And Services Agreement ("Agreement") is entered into as of the date of application between FMS Techniques, Inc. ("FMS"), and the client named in the application ("CLIENT").

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the following definitions shall apply:

- A. "Facilities" shall be those facilities provided by FMS for housing and co-locating CLIENT'S Equipment pursuant to this Agreement. Such Facilities shall be provided by FMS at locations subject to FMS sole control.
- B. "Operating Expenses" means all expenses that FMS must reasonably pay in connection with the ownership, operation, and maintenance of the Facilities.
- C. "Support" shall mean support and maintenance services for the Equipment provided and/or maintained by FMS at FMS' facilities under this Agreement and at the rates set forth in The Addendum(s) to this Agreement.

II. Services To Be Provided By FMS

- A. CLIENT Agrees to lease and FMS agrees to provide certain facilities for housing and collocating CLIENT'S Equipment at such server locations determined by FMS, including at FMS expense, security, lighting and electric utility service to the Equipment. It is agreed and understood by the parties that the Equipment purchased by CLIENT, shall remain the sole and exclusive property of CLIENT, but shall be housed and operated from the co-location Facilities provided by FMS pursuant to this Agreement. CLIENT may, at CLIENT's option, choose to obtain additional services from FMS as are more fully set forth in The Addendum(s) appended hereto.
- B. CLIENT shall at CLIENT's sole cost and expense, deliver the Equipment to FMS' Facilities prior to the commencement of the Lease Term. Alternatively, CLIENT may choose to utilize FMS' support services according at normal technician rates.
- C. Overall responsibility for the Equipment maintenance, repairs and troubleshooting are outside of the scope of the Colocation agreement and will be billed at normal service rates.

III. NETWORK SUPPORT AND MAINTENANCE

- A. FMS agrees to locate the Equipment in FMS' Facilities and shall exercise reasonable efforts to ensure network services are provided on an uninterrupted basis to CLIENT. However, FMS is not responsible for errors or malfunctions caused by any hardware, network problems, or any third-party operating system or CLIENT error. Maintenance and support services provided by FMS shall not include services for problems arising out of (a) tampering, modification, alteration, or addition to the Hardware or Software, which is undertaken by persons other than FMS or its authorized representatives; or (b) programs or hardware supplied by the CLIENT.
- B. From time to time, FMS may conduct routine tests, maintenance, upgrade or repair on any part of the system, and FMS shall give the CLIENT prior notice thereof. CLIENT acknowledges that there may be instances where it is not practicable for FMS to give advance notice of a disruption, for example, in the event of an emergency, and FMS shall be entitled to disrupt the services to conduct restoration and remedial works without prior notice.

IV. ACKNOWLEDGMENT OF FMS'S OWNERSHIP RIGHTS

- A. FMS acknowledges that it obtains no ownership rights in or to the Equipment or any data and/or information contained thereon, unless provided otherwise in The Addendums.

V. CLIENT'S OBLIGATION FOR DATA PROTECTION AND SERVICE INTERRUPTIONS

- A. CLIENT shall have sole responsibility for making backups of the data on the Equipment housed at FMS' facilities, so that the likelihood of data loss is minimized. CLIENT shall be solely responsible for backup software and all hardware. CLIENT shall also be solely responsible for keeping its computer system free of computer viruses.
- B. FMS shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services.

VI. OVERALL LIMITATION OF DAMAGES AND REMEDIES

- A. CLIENT AGREES THAT FMS WILL NOT BE LIABLE TO CLIENT FOR LOST PROFITS, LOST OPPORTUNITIES OR LOST DATA, OR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES WHATSOEVER, EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- B. IN NO EVENT SHALL THE AGGREGATE AMOUNT OF ANY DAMAGES PAYABLE TO CLIENT FROM FMS FOR ALL CLAIMS ARISING FROM THE BREACH OF THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CLIENT TO FMS UNDER THIS AGREEMENT.

VII. INDEMNITY

- A. CLIENT WILL INDEMNIFY, DEFEND AND HOLD HARMLESS FMS AND ITS OFFICERS, EMPLOYEES, SUBSIDIARIES, REPRESENTATIVES AND AFFILIATES FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES AND REASONABLE EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "LOSSES") RESULTING FROM ANY CLAIM, SUIT, ACTION OR PROCEEDING (COLLECTIVELY "ACTIONS") FMS INDEMNIFICATION OBLIGATIONS HEREUNDER SHALL BE SUBJECT TO
 - i. RECEIVING PROMPT WRITTEN NOTICE OF THE EXISTENCE OF ANY ACTION;

- ii. BEING ABLE, AT ITS OPTION, TO CONTROL THE DEFENSE OF SUCH ACTION;
- iii. PERMITTING THE CLIENT TO PARTICIPATE IN THE DEFENSE OF ANY ACTION AT THE EXPENSE OF CLIENT, AND
- iv. RECEIVING FULL COOPERATION OF CLIENT IN THE DEFENSE THEREOF.

VIII. ASSIGNMENT

- A. CLIENT may not assign any or all of its rights or obligations under this Agreement without the express prior written consent of FMS, and that consent may be granted or withheld at FMS' sole discretion. Any purported assignment by CLIENT, except as provided for in this paragraph, shall be null and void and a material breach of this Agreement.

IX. GENERAL PROVISIONS

- A. Taxes. CLIENT shall pay, in addition to the other amounts payable under this Agreement, all local, state and federal excise, sales, use, personal property and similar taxes (excluding taxes imposed on or measured by CLIENT'S net income) levied or imposed by reason of the transactions under this Agreement. CLIENT shall, upon demand, pay to FMS an amount equal to any such tax(es) actually paid or required to be collected by FMS as a result of storing CLIENT'S equipment at FMS Facilities.
- B. No Waiver. The failure of either party to exercise any right or the waiver by either party of any breach shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same of any other term of the Agreement. All waivers must be in writing.
- C. Disclaimer of Warranties. FMS specifically disclaims all implied warranties, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Except as otherwise provided in this Agreement, any written materials by FMS or information on FMS' web site, shall be for informational purposes only and, whether delivered or disseminated before or after the date of this Agreement, shall not create any express or implied warranties, guaranty of performance, or contractual obligations.
- D. Compliance With Laws. CLIENT shall use the Equipment in a careful and proper manner and shall comply with and conform to all national, state, municipal, police and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Equipment.
- E. Equitable Remedies; Costs, and Attorneys Fees. The parties recognize that money damages may not be an adequate remedy for any breach or threatened breach of any obligation hereunder, by CLIENT. The parties therefore agree that in addition to any other remedies available hereunder, by law or otherwise, FMS shall be entitled to an injunction or other equitable relief against any such continued breach by CLIENT of such obligations. In any action proceeding brought by FMS on account of such breach by CLIENT, CLIENT agrees not to require that FMS post a bond or prove that money damages are not an adequate remedy. The prevailing party in any claim brought pursuant to this Agreement is entitled to recover its costs and attorneys' fees from the other party.
- F. Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any natural disaster, fire, accident, act of government, shortages of materials or supplies or any other cause beyond the control of such party ("Force Majeure") provided that such party gives the other party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof and uses commercially reasonable efforts to cure the delay. In the event of such Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure but not in excess of three (3) months.
- G. Entire Agreement; Modification; Notice. This Agreement, including The Addendum(s), constitutes the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes any prior oral or written promises or agreements. There are no promises, covenants, undertakings or inducements to enter into this Agreement other than those expressly set forth in this Agreement. This Agreement may not be modified or amended except by a writing, which is signed by authorized representatives of each of the parties. Any notice required or permitted to be sent hereunder shall be in writing and shall be sent in a manner

requiring a signed receipt, such as Federal Express, courier delivery, or if mailed, registered or certified mail, return receipt requested. Notice is effective upon receipt, unless the addressee refuses to acknowledge receipt, in which event notice is effective upon delivery.

H. Applicable Law, Jurisdiction and Venue. This Agreement shall be construed pursuant to substantive law of the State of California (excluding its conflicts of laws). Any cause or action arising out of or related to this Agreement (including an action to confirm or challenge an arbitration award) may only be brought in the county or the Federal district wherein FMS' principal place of business is located, and the parties hereby submit to the jurisdiction and venue of such courts.

X. SERVICE RATES

- A. We do not offer a standard setup flat rate. Setup will be performed at normal technician service rates for the time to install excluding the reconfiguration of FMS' equipment to accommodate the service.
- B. Monthly recurring fees for hosting (1) mail server are \$100/month and FileMaker Pro database(s) are \$15/month/database billed according to the following terms and conditions.
- C. CLIENT hereby makes application for credit and provides the information contained herein, which is warranted to be true and correct, for the purposes of inducing FMS Techniques, Inc. to make periodic sales of goods and equipment to it on credit.
 - 1. All payments shall be made to FMS Techniques, Inc.
 - 2. Payments of all amounts due as evidenced by the account shall be made no later than the due date as indicated on each invoice under the heading "terms". Exceptions will be indicated on the invoice.
 - 3. Should it be necessary to assign the account balance to a licensed collection agency or attorney for legal action, the CLIENT shall pay all subsequent collection charges, costs and legalities.
 - 4. CLIENT understands that the seller may make its usual credit investigation and hereby waives any claim of privacy as to the information derived there from and authorizes applicants bank to release information as desired by seller.
 - 5. CLIENT warrants that the undersigned is duly authorized and empowered execute and carry out the terms of this agreement and all documents and instruments delivered by it pursuant to this agreement.
 - 6. CLIENT agrees that all credit extended shall be deemed subject to the terms herein agreed to and such other terms as may be imposed from time to time by seller.
 - 7. Pricing of services and materials at the time provided are binding and CLIENT agrees to make payment at correctly invoiced price.
 - 8. CLIENT is solely responsible for payment on all ordered services and materials that are accepted when provided.
 - 9. FMS assumes that services are requested in good faith and with the ability to meet their financial obligations.
 - 10. CLIENT must stipulate in writing any deviation in their purchasing procedures that would affect the seller.

Before Signing

Please read the above terms and conditions

Signature: _____

Print: _____

Title: _____ Date: _____