

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached FNTS ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



CLOUD SERVICES MASTER AGREEMENT

This **CLOUD SERVICES MASTER AGREEMENT** ("Agreement") is entered into _____, 202__, (the Effective Date") by and between **FIRST NATIONAL TECHNOLOGY SOLUTIONS, INC.** ("FNTS"), and _____, ("Client"). The parties hereby agree as follows:

Section 1. Services and SOWs. FNTS provides Cloud Services (Public, Private, or Hybrid), Network Services, and Managed Services as detailed in the applicable Statement(s) of Work (each a "SOW") and provided by FNTS or its subcontractors (the "Services"). SOWs may be executed by Client and FNTS and must incorporate this Agreement by reference and in conjunction with this Agreement shall form a separate agreement between Client and FNTS.

- 1.1 Service Catalog** The Services shall be performed in accordance with FNTS's then applicable policies and specifications for each service as posted on the FNTS Web Site located at <http://www.fnts.com/images/pdf/servicecatalog.pdf> and attached hereto which may be non-materially amended from time to time by FNTS or as otherwise provided for in this Agreement or applicable SOWs.
- 1.2 Client Cooperation** Client acknowledges that the ability of FNTS to provide the Services depends on Client's cooperation with FNTS and compliance with FNTS's instructions. Client accordingly agrees to accommodate FNTS's reasonable requests for cooperation under the SOW, to comply with Client's specific duties under the SOW and to follow specific instructions and procedures established by FNTS with respect to receipt of the Services.
- 1.3 Subcontractors** Client acknowledges that FNTS may employ subcontractors in connection with the performance of the Services and FNTS shall be responsible for performance of any subcontractors. Subcontractors agree to comply with the terms and conditions of this Agreement, including but not limited to being bound by the confidentiality provisions herein (or substantially similar ones).
- 1.4 Scope of Use.** Client may access and use the Services, subject to the terms and conditions of this Agreement, Service Level Agreements, SOWs, applicable policies, and specifications for each Service as referenced in Section 1.1 above, in compliance with Section 3.0 below and any applicable third party licenses or terms. Client's use of the Services shall be for Client's limited, non-exclusive, royalty-free, non-transferable and term based license to use and access the Services solely for internal business purposes as specified in the applicable SOW. Client specifically acknowledges and agrees that it shall not sell, resell, act as a service bureau or otherwise use the Services to compete with FNTS or to provide substantially similar services and products to third parties in competition with FNTS without disclosure to and consent of FNTS.

1.5 Right to Modify. FNTS reserves the right to modify or change the facilities, network, and systems used to provide the Services for purposes including but not limited to increasing capacity, upgrading environments, evolving technology and providing enhanced services. FNTS shall notify Client at least 60 days prior to any planned changes that may adversely affect the Services provided hereunder, and shall use commercially reasonable efforts to notify Client of any unplanned ones as soon as reasonably practicable. In the event that FNTS discontinues or materially diminishes functionality of a service that Client has contracted for, Client shall be entitled to a pro rata refund for any fees paid not used.

1.6 FNTS-Provided Dedicated Equipment. If applicable as set forth in the SOW, FNTS is acting only as a reseller of hardware, software, circuit or equipment (collectively, the “FNTS-Provided Dedicated Equipment”) offered under this Agreement that was manufactured by a third party. Any malfunction or manufacturer’s defects of equipment either sold or provided by FNTS to Client or purchased directly by Client used in connection with the Services will not be deemed a breach of FNTS’s obligations under this Agreement. Any rights or remedies Client may have regarding the performance or compliance of FNTS-Provided Dedicated Equipment are limited to those rights extended to Client by the manufacturer of such equipment. Client is entitled to use any FNTS-Provided Dedicated Equipment only in connection with Client-permitted use of the Services. Client shall not resell, transfer, export or re-export any FNTS-Provided Dedicated Equipment, or any technical data derived therefrom, in violation of any applicable United States or foreign law.

1.7 Resource Quality and Availability. Client acknowledges that the resources FNTS is making available hereunder have been selected or approved by Client, based on Client’s own independent assessment of its needs, the general quality of those resources and their compatibility with Client’s Systems. FNTS agrees to establish and keep in force reasonable third-party maintenance or support agreements (“Support Agreements”) with respect to those resources. Without limiting the generality or effectiveness of Section 12.3 of the Agreement, FNTS is not responsible for failures, outages, downtime or other problems caused by the resources or failure of FNTS’s maintenance and support providers to perform (collectively, “Problems”) unless caused directly or indirectly by FNTS’ acts or failure to act. FNTS agrees to exercise its rights under the Support Agreements to make the benefits of such Support Agreements available to Client. FNTS agrees to take all commercially reasonable steps to require its maintenance and support providers to remedy Problems, but which will in no case be less than FNTS would take in the operation of its own business.

FNTS’ duty to satisfy service levels set forth in Schedule 2 of the SOW is subject to Client’s duty to allow FNTS to maintain all contracted software and operating systems required by FNTS under this Service Order (collectively, the “Software”) to a level that is supported by the software vendor. FNTS will provide Client with notice of any required upgrades to the Software as necessary for Client to maintain compliance with this provision. All costs associated with any such upgrades will be the responsibility of Client and are, if incurred by FNTS on Client’s behalf, billable to the Client by FNTS. Client may also be required to pay additional software and support fees in the

event that non-compliance requires FNTS to license and maintain unique back-leveled software versions that do not conform to the shared environment. In the event Client chooses not to maintain compliance with this provision, any errors, problems or issues that arise with the Software will not be supported by the respective software vendor and/or any of the other vendors providing maintenance for the Software. Any downtime or other failure associated with Client's non-compliance of this provision shall not be considered as a failed Service Level and shall not be considered a breach by FNTS of its obligations set forth in this Agreement. In addition, Client should contract for the appropriate hardware maintenance from the hardware vendor, for any Client-owned hardware as detailed in this contract through the term of this Agreement.

Section 2. Term and Termination.

2.1 Term This Agreement will continue from the Effective Date until the expiration or termination of the latest-ending SOW. Each SOW will specify its duration (each a "SOW Term"). The termination of any SOW shall not otherwise affect this Agreement or any other SOW.

Termination of Agreement or SOW. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, FNTS shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

In the event of a breach of a material obligation by Client, FNTS will continue to provide the Services during a cure period of thirty (30) days after such a breach has occurred. If Client fails to correct the breach within that thirty (30) day cure period, FNTS will have the right to terminate Services.

In the event this Agreement or any SOW is terminated, FNTS shall be paid for all work performed through the date of termination. Client shall not be entitled to any refund of fees previously paid in the event of termination of this Agreement or the SOW.

Section 3. Compliance with Laws and Regulations. Each party shall comply at all times with all applicable laws, regulations and ordinances relating to the Services and shall also comply with FNTS's Acceptable Use Policy attached hereto, as non-materially amended from time to time ("FNTS Rules and Regulations").

Section 4. Fees and Billing.

4.1 Fees. In consideration of FNTS providing the Services, Client shall pay to FNTS or its authorized reseller as applicable fees in U.S. Dollars, to a location in the United States of America designated by FNTS, based on the pricing set forth in SOW Schedule 1 in accordance with the applicable GSA Schedule Pricelist. It is intended that the fees and charges payable by Client hereunder shall be a net return to FNTS, free of expense, charge, offset, diminution or other deduction whatsoever on account of the premises or the data center space (excepting federal

and state income taxes of general application and those expenses which this Agreement expressly makes the responsibility of FNTS).

- 4.2 Billing.** Charges for Initial Setup and Deployment Fees indicated in the SOW shall be due and payable on the SOW Effective Date. All other fees for Services rendered and expenses incurred shall be invoiced by FNTS on a monthly basis commencing when each component of the Services are installed (“Install Date”). Payments shall be due upon receipt within ten (10) days of the receipt date of each FNTS invoice. All payments shall be made in U.S. dollars. Invoices not paid when due shall be subject to a interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- 4.3 Monthly Recurring Pricing** Commencing on the Install Date and each month thereafter during the SOW Term, FNTS will invoice Client for the Services listed as Monthly Recurring Pricing (MRP) based on the quantities of the Services detailed in the SOW Schedule 1. During the SOW Term any changes to the quantities of Services provided by FNTS and invoiced to Client for Monthly Recurring Pricing Services will be managed by the Change Policy and documented on the Change Order.
- 4.4 Allocation-Based Pricing** Commencing on the Install Date and each month thereafter during the SOW Term, FNTS will invoice Client for the Services listed as Allocation-Based Pricing based on the actual quantities of the Services allocated. These quantities will be detailed on each month’s invoice. FNTS and Client agree that requests made to FNTS by Client to add or remove quantities of allocation priced Services is authorized and approved by Client, and as such FNTS will not

require a separate SOW or Change Order to increase or decrease quantities throughout the SOW Term.

4.5 Internet and Network Services Pricing Commencing on the Install Date and each month thereafter during the SOW Term, FNTS will invoice Client for Internet and Network services as detailed in the SOW in accordance with the GSA Schedule Pricelist and such pricing and quantities will be detailed in the SOW Schedule 1 Monthly Recurring Fees. During the SOW Term any changes to the configuration of Internet or Network services provided by FNTS and invoiced to Client will be managed by the Change Policy and documented on the Change Order.

4.6 Expenses Travel, lodging and reasonable out-of-pocket expenses ("Expenses") that have been approved in advance and in writing by Client will be invoiced each month they are incurred in accordance with FAR 31.205-46 and the Federal Travel Regulation (FTR).

4.7 Reserved

4.8 Reserved.

4.9 Taxes. FNTS shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

Section 5 Change Management Requests for products, technology, circuits, specifications or managed services not specifically detailed in the SOW will be considered a Change. Either party may request Change(s) to the Services. In such event, the following procedure shall be followed by the parties (the "Change Policy"). The requesting party shall provide a written description of the change by way of a Change Request Form (CRF- Schedule 3) and the parties shall meet in good faith to discuss the change and any additional costs or other required terms and any such change shall only become effective upon mutual agreement on a CRF or Amendment. Any Products or Services requested by Client not specifically detailed in a Statement of Work or Change Request Form will be invoiced to Customer at \$200 per hour and itemized on each month's invoice in accordance with the GSA Schedule Pricelist.

Section 6. Insurance.

6.1 **Minimum Levels - Client.** Client will keep in full force and effect during the Term the following insurance coverage with reputable insurance companies licensed to do business in the state in which the Premises are located:

- (a) **Commercial General Liability Insurance** (including personal injury and contractual liability insurance) providing coverage for bodily injury and property damage and endorsed to include products and completed operations with a minimum combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate; this includes any liability arising out of the use, occupancy or maintenance of the Data Center Space and all areas appurtenant thereto.
- (b) **Workers' Compensation and Employer's Liability Insurance:** (i) Statutory Worker's Compensation benefits or coverage for its employees in amounts no less than the statutory benefits required by law; and (ii) Employer's Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) per accident for bodily injury by accident/ Five Hundred Thousand Dollars (\$500,000) per employee for bodily injury by disease/ Five Hundred Thousand Dollars (\$500,000) policy limit for bodily injury by disease

6.2 **Minimum Levels – FNTS.** FNTS will keep in full force and effect during the Term the following insurance coverage with reputable insurance companies licensed to do business in the state in which the Premises are located:

- (a) **Commercial General Liability Insurance** (including personal injury and contractual liability insurance) providing coverage for bodily injury and property damage and endorsed to include products and completed operations with a minimum combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate.
- (b) **Workers' Compensation and Employer's Liability Insurance:** (i) Statutory Worker's Compensation benefits or coverage for its employees in amounts no less than the statutory benefits required by law; and (ii) Employer's Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) per accident for bodily injury by accident/ Five Hundred Thousand Dollars (\$500,000) per employee for bodily injury by disease/ Five Hundred Thousand Dollars (\$500,000) policy limit for bodily injury by disease.
- (c) **Professional Services Liability/Errors and Omissions Insurance** covering acts, errors and omissions arising out of Company's operations or services in an amount not less than One Million Dollars (\$1,000,000).
- (d) **Employee Dishonesty/Fidelity Bond/Commercial Crime including Third Party Theft** in an amount not less than One Million Dollars (\$1,000,000).
- (e) **Network Security & Privacy Liability** providing coverage for FN and its customer breach response costs and third-party liability with minimum limits of Two Million Dollars

(\$2,000,000), all naming FN as an additional insured. This program shall include all data, in any format.

FNTS insurance policies as required under Sections (a), shall name Client and all of its subsidiaries, affiliates, officers, directors, agents, servants and employees as Additional Insureds for any and all liability arising at any time in connection with FNTS performance under this Agreement

6.3 Requirements. Both Client and FNTS will maintain standard Property Insurance for equipment they own or legally liable for against the perils of fire, vandalism, malicious mischief, extended coverage (“all-risk”) and sprinkler damage at full replacement cost. Such insurance afforded under 6.1 and 6.2 shall be primary and noncontributing. All policies will include provisions that the insurers waive the rights of recovery of subrogation against either party. FNTS reserves the right to modify the insurance requirements set forth above, on notice to Client, if FNTS in its reasonable discretion determines that such modification is commercially reasonable.

6.4 Certificates of Insurance. Prior to installation of any Client Equipment in the Data Center Space and thereafter upon request, Client and FNTS will furnish certificates of insurance which evidence the minimum levels of insurance set forth above.

Section 7. Representations and Warranties.

7.1 Client Warranties. Client represents and warrants to FNTS: (i) that it owns or has the legal right, consents, and authority, and will continue to own or maintain the legal right, consents, and authority during the Term, to place and use the Client Equipment (including stored information) in the Data Center Space; (ii) that Client’s services, products, materials and the Client Equipment (collectively, “Client’s Business”) do not and will not operate in any manner that would violate any applicable law or regulation or the FNTS Rules and Regulations; (iii) that no Personal Data subject to the General Data Protection Regulation (“GDPR”) are or will be processed by FNTS as a Processor on behalf of the Client as part of the Services; (iv) that it waives all rights now or hereafter conferred by statute to make repairs to the data center space or the premises at FNTS’s or FNTS’s lessor’s expense.

7.2 Disclaimers by FNTS. The Services will be provided in a professional and workmanlike manner and FNTS warrants that the Services provided under SOW entered into as of the effective date of this Agreement does not knowingly infringe on any United States patent and/or copyright rights upon the effective date of this Agreement. Other than the foregoing, FNTS does not make, and hereby disclaims, any and all express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, noninfringement and title, and any warranties arising from a course of dealing, usage, or trade practice. FNTS does not warrant that the Services will be available uninterrupted, error-free or in a completely secure basis. FNTS makes no representation or warranty with respect to, and specifically disclaims any warranty against infringement with respect to, any client equipment or other hardware or software delivered in connection herewith.

Section 8. Limitation of Liability.

- 8.1 **FNTS Liability.** Client agrees, to the extent not prohibited by law, that FNTS shall not be liable for any claim involving, concerning or related to the loss or destruction of Client data or any portion thereof or for any damage either to person or property sustained by Client or by other persons due to the Premises or Data Center Space or any part thereof becoming out of repair or due to the happening of any accident or event in or about the Premises or Data Center Space or due to the act or neglect of any occupant of the Premises or of any other person, including, but not limited to, damage caused by gas, electricity, power outage, snow, frost, steam, sewage, sewer gas or odors, fire, water or the bursting or leaking of pipes, faucets, sprinklers and plumbing fixtures (collectively, “excluded liability”), unless such excluded liability arose as the result of FNTS’s intentional misconduct or gross negligence.
- 8.2 **Limitation.** In no event will a party be liable to the other, or any employee, agent or contractor thereof, or any third party for special, indirect, incidental, punitive, exemplary or consequential damages or lost profits, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. Notwithstanding anything to the contrary in this Agreement and except gross negligence, or confidentiality breach, neither party’s liability to the other party, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of the direct loss to such party or an amount equal to the total recurring monthly fees paid to FNTS by Client with respect to the service order in question in the twelve-month period prior to the incident giving rise to liability. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law. Any claim, action, or proceeding to enforce this Agreement or to recover for any Services-related loss, or fees claimed hereunder, must be commenced within six (6) years from the date that the event giving rise to the claim, action, or proceeding first occurs.

Section 9. Indemnity.

- 9.1 **Reserved.** Client shall indemnify FNTS from and against claims, demands, actions, damages, liability, judgments, expenses and costs to the extent arising from: (i) claims asserted by third parties based on Client’s contractual or other relationship with them, (ii) any breach by Client of a warranty, covenant or obligations hereunder, or (iii) the violation of any law or regulation by Client. Client’s indemnification obligations shall not exceed the higher of the (a) the amount of fees paid during the preceding twelve months in which the event triggering the indemnification obligation occurred or (b) the total contract value.
- 9.2 **FNTS Indemnity.** FNTS shall indemnify, have the right to intervene to defend and hold harmless the Client from and against any and all claims, demands, actions, damages, liability, judgments, expenses and costs (including, but not limited to,

reasonable attorneys' fees) to the extent arising from (i) claims relating to FNTS's breach of the FNTS Rules and Regulations, (ii) any injury to or death of any person or damage to any property

occurring upon the Data Center Space, the Premises and/or the building or the land of which the Premises are a part, arising out of (or in connection with), or claimed to arise out of (or in connection with) FNTS's negligent acts or omissions, (iii) claims relating to FNTS's breach of the warranties set forth in Section 7.2, above, (iii) the violation of any law or regulation by FNTS, or (iv) the provision by FNTS of Services or FNTS-Provided Dedicated Equipment in violation of any agreements to which FNTS is a party. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

Section 10. Reserved.

Section 11. Confidentiality. Each party acknowledges that, in the course of the performance of this Agreement, it may have access to information and communications, including proprietary information claimed to be unique, secret, confidential, and which constitutes the exclusive property and trade secrets of the other party ("Confidential Information"). Each party agrees to maintain the confidentiality of the Confidential Information and to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this Agreement. Upon request of either party or on termination or expiration of this Agreement, each party shall return or destroy (and certify having done so) the Confidential Information of the other party then in its possession. Nothing in this Agreement shall prohibit or limit either party's use of information which (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) is rightfully in FNTS's or Client's possession, as evidenced by FNTS's or Client's records; (c) is disclosed to FNTS or Client without confidential or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information; (d) is independently developed by FNTS or Client without any breach of this Agreement; (e) is the subject of a written permission to disclose provided by the Disclosing Party; (f) is required to be disclosed to regulators or affiliated or independent auditors or pursuant to court order or subpoena; or (g) is necessary to perform hereunder or to enforce this Agreement. FNTS recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

Section 12. General Provisions.

12.1 No Third-Party Beneficiary. It is the explicit intention of the parties hereto, that no person or entity other than the parties and their respective successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties.

12.2 Relationship of the Parties. Client and FNTS are, and shall remain, independent contractors. Neither party will have the authority to make any representations, claims or warranties of any kind on behalf of the other party or on behalf of such party's licensors or suppliers. FNTS is not an employee, agent, joint venture or partner of Client. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Client and either

FNTS or any employee or agent of FNTS. Neither party shall have the power or authority to bind or obligate the other. Client shall remain the contracting party with FNTS with respect to all matters including but not limited to the payment of fees and all access and use. Client shall retain full, unconditional responsibility for all such access to and use of the Services and will ensure compliance with all terms and conditions by their employees and agents.

12.3 Force Majeure. In accordance with GSAR Clause 552.212-4(f), Subject to the next following sentence, neither party shall be deemed in default of this Agreement to the extent that performance of its obligations (other than an obligation to pay for services rendered by the other party), or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, strikes, unavailability of material, facilities, telecommunications services or supplies or any other cause beyond the reasonable control of such party (“Force Majeure”). In the event of such a Force Majeure, the party shall give the other party prompt written notice within ten (10) days of the Force Majeure. In addition, 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. Although FNTS has certain disaster recovery plans in place, Client understand that those plans do not include recovery of the resources for Client’s benefit, unless specifically identified on the Service Order. Client is solely responsible for Client’s own disaster recovery arrangements. Subject to the foregoing, FNTS will exercise commercially reasonable efforts to reinstate Services under and in accordance with its own disaster recovery plan. If Client contracts for disaster recovery services on the SOW, Client acknowledges that Client is responsible for ensuring that Client is able to connect to the disaster recovery site, and will perform ongoing testing to ensure the disaster recovery solution meets Client’s requirements.

12.4 Assignment. This Agreement and the rights and obligations hereunder shall not be assigned (by way of merger, consolidation, sale of assets or change in control involving Client, or otherwise) or otherwise transferred by Client without the prior written consent of FNTS, which consent shall not be unreasonably withheld, and provided that no assignment shall relieve Client of its obligations hereunder. A transfer or assignment of this Agreement shall include a sale of all or substantially all of the assets of Client to any third-party entity that is not related in any capacity to Client, or other change in control of Client to an unrelated third party. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

12.5 Notices. All notices hereunder shall be delivered personally, made by certified or registered mail, return receipt requested, or sent by email, answer back requested, and shall be sent to the parties at the addresses located in the signature block of this Agreement (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof). Such notice will be effective, (i) if sent by email on the date of answer back or acknowledgement of transmission; (ii) if mailed, five days after the date of posting; or (iii) as of the date delivered, if personally delivered.

- 12.6 **Waiver.** Any waiver of any right or default hereunder shall be effective only if given in writing and shall not operate as or imply a waiver of any similar right or default on any subsequent occasion.
- 12.7 **Severability.** No determination by a court of competent jurisdiction that any term or provision of this Agreement is invalid or otherwise unenforceable shall operate to invalidate or render unenforceable any other term or provision of this Agreement and all remaining provisions shall be enforced in accordance with their terms.
- 12.8 **Governing Law.** This Agreement and all SOWs shall be governed under the Federal laws of the United States.
- 12.9 **Client Data.** Client is responsible for its own data and unless specifically included in the applicable Services provided by FNTS any data back-up. FNTS hereby covenants and agrees that at all times under this Agreement, and thereafter, Client's content, including, without limitation, Client data and Client's trademarks, service marks and licenses ("Client's Intellectual Property"), are and shall always remain the property of Client, with no right, title or interest therein vesting in any capacity by or through this Agreement or otherwise in FNTS. For purposes of clarity, Client bears responsibility for any privacy, collection, or use notifications to its end users regarding the collection of any personally identifiable information in conjunction with the Services. FNTS shall not access or utilize Client Confidential Information or Client's Intellectual Property except as to perform the Services as provided in this Agreement and the relevant SOW. FNTS represents and warrants, notwithstanding any other provision of this Agreement, that it shall in no way interfere with, impair, disseminate or cause dissemination or decompile, disassemble or reverse engineer, copy, modify any of Client's Intellectual Property. Upon the expiration or termination of this Agreement for any reason, FNTS shall deliver, or cause to be delivered or returned, to Client all of Client's Intellectual Property.
- 12.10 **Client personal data that is subject to GDPR.** Each party acknowledges and agrees FNTS has no access to Client personal data that is subject to GDPR requirements and neither stores nor otherwise processes Client personal data that is subject to GDPR requirements. Client shall be responsible to communicate to FNTS in writing, without any undue delay, any anticipated change affecting this understanding. The parties will then enter into a data processing agreement, as an amendment to the applicable SOW, as is reasonably required (i) to reflect their obligations and risks under the GDPR and (ii) for FNTS to provide Services in a manner that allows Client and FNTS to comply with their respective obligations under the GDPR prior to any change affecting Client's applicable representations and warranties. Client agrees to assist and indemnify FNTS in any request or procedure by a national data protection supervisory authority, or any lawsuit, relating to the processing of any Personal Data covered by this Section.
- 12.11 **IP Address Ownership.** FNTS shall maintain and control all IP addresses that may be assigned to Client by FNTS and FNTS reserves, in its sole discretion, the right to change or remove any and all such IP numbers and addresses.

12.12 Intellectual Property. Client represents and warrants that Client's use of the Services shall not infringe the intellectual property or other proprietary rights of FNTS or any third party. Client further acknowledges that its use is granted under a limited, non-exclusive license and all right, title, license, leasehold right or other interest in any and all technology, Products, and Services, including any processes, know-how, methodologies, utilities, algorithms, tools and the software that is part of or provided with the Services and any trademarks or service marks of FNTS (collectively, "FNTS Intellectual Property") is vested in FNTS and/or in FNTS's licensors. Unless otherwise specifically provided in this Agreement, Client shall have no right, title, claims or interest in or to the FNTS Intellectual Property. Client may not directly or indirectly copy, modify, translate, create derivative works (in whole or in part), or act in a manner that could negatively impact the value of the FNTS Intellectual Property or related documentation, or decompile, disassemble or reverse engineer the FNTS Intellectual Property, to use it other than in connection with the Services, or grant any other person or entity the right to do so.

Unless otherwise specifically provided in this Agreement, Client is not authorized to distribute or to authorize others to distribute the FNTS Intellectual Property in any manner without the prior written consent of FNTS; provided, however, that nothing in this sentence would preclude Client from using the FNTS Intellectual Property as incorporated in the Services. This paragraph shall not operate to extinguish, restrict, vary, waive or affect in any manner whatsoever any right, title or interest which Client may now have or hereafter acquires in, or in relation to, the third-party software that is part of or provided with the Services solely to the extent such third-party licensors publicly provide such rights, title or interest in the third-party software to Client.

Notwithstanding anything to the contrary herein or in the SOW, (i) FNTS and its personnel shall now and in the future be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, feedback and concepts learned during the course of any assignment, so long as it or they acquire and employ such information without disclosure of any confidential or proprietary information of Client and (ii) FNTS owns aggregated data, de-identified data derived or generated from the Services, and may use such data for its own commercial purposes.

12.13 No Photographs. Client may not photograph, or electronically or otherwise reproduce any part of the interior of the Premises, without FNTS's prior written permission.

12.14 Nonhiring of FNTS Personnel. Client shall not knowingly recruit or solicit for hire any personnel of FNTS who are or have been assigned to perform work until one year after the completion of the last Service Order in effect between the parties. Such amount shall be in addition to, and not in lieu of, any other damages that FNTS may be able to demonstrate. Notwithstanding anything herein to the contrary, if FNTS learns of an actual or potential violation of this Section, it shall give Client notice and the opportunity to cure prior to demanding or pursuing damages.

12.15 FNTS Personnel. FNTS shall bear sole responsibility for payment of compensation to its personnel, including, without limitation, payment and/or withholding of all federal and state income taxes, social security taxes and unemployment insurance.

12.16 **Publicity.** Each party will submit to the other all advertising, written sales promotions, press releases and other publicity or public relations materials in which reference to the other party is proposed to be made, and neither party will publish or use any such material without the prior written consent of the other.

12.17 **Export Control; Government Regulations.** Software and technical data are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. You agree not to export the software, technology, or technical data in violation of any such laws or regulations and to comply strictly with all applicable rules and regulations. , Any Sale or Service Offering and the accompanying Service Offering Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively pursuant to Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement,, as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosure of any Service Offering or the Service Offering Documentation, by or for the U.S. Government will be governed solely by the terms and conditions of the Agreement.

12.18 **Dispute Resolution.** The Parties shall attempt to resolve any dispute, claim or controversy arising under, out of or in connection with this Agreement (a “Dispute”) amicably. In no event shall any Party commence any judicial proceeding against another Party without first providing to the other Party to the Dispute written notice of the Dispute with sufficient detail, including reference to the contractual provisions at issue, to allow the other Party to evaluate the dispute and negotiate its resolution.

Upon receipt of a notice of Dispute as described above the Dispute will be referred to the executive management representatives designated by each Party (“Executive Escalation”). Such representatives shall meet in person or by telephone (including videoconference) and in good faith attempt to settle the Dispute.

If the Dispute has not been resolved by Executive Escalation for any reason (including a refusal by one or more Parties to participate in negotiations and discussions), within 120 days (which timeframe may be extended as mutually agreed by the Parties) of receipt of a notice of Dispute, either Party may commence any judicial proceedings.

12.19 **Entire Agreement; Amendments; Headings.** This Agreement, including the SOW(s) and Schedule(s) hereto, constitutes the entire agreement between the Parties

pertaining to the subject matter hereof and supersedes all prior or contemporaneous, written or oral negotiations, agreements, negotiations, correspondence and understandings between the parties respecting the subject matter of this Agreement. This Agreement may be modified only by an instrument in writing duly executed by both parties. The Section headings in this Agreement are inserted for convenience of reference only and shall not be used in interpreting this Agreement.

12.20 **Counterparts.** This Agreement may be executed and delivered in counterparts (by original, electronic or facsimile signature), which together will constitute a single Agreement and shall have the same force and effect as delivery of an original document with original signatures.

12.21 **Survival.** The rights and obligations of the parties in this Agreement that would by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive.

IN WITNESS WHEREOF, FNTS and Client have each caused this Agreement to be signed and delivered by its duly authorized representative.

First National Technology Solutions Inc
201 N. 16th Street, SC 2360
Omaha, NE 68197-1073
Attention: Kim Whittaker
kwhittaker@fnts.com
Telephone: (402) 997-1593

Client
Street Address
City, State, Zip
Attention:
email
Telephone:

By: _____
Print: _____
Title: _____
Date: _____

By: _____
Print: _____
Title: _____
Date: _____