

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 14-205

AUTHORIZING THE COUNTY EXECUTIVE TO SIGN A MASTER SERVICES
AGREEMENT WITH CCG SYSTEMS, INC., DBA FASTER ASSET SOLUTIONS, INC.
FOR A WEB-BASED FLEET MANAGEMENT SYSTEM

WHEREAS, Fleet Services has a contract with Ultramain Systems Inc. for a
Computerized Fleet Management System (FMS) that expires December 31, 2014; and

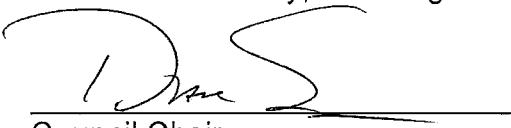
WHEREAS, Fleet Services issued RFP 10-13 and awarded the bid to CCG
Systems Inc., dba FASTER Asset Solutions; and

WHEREAS, Fleet Services plans to expand the use of FMS to improve the
equipment rental and revolving (ER&R) program asset management, preventive
maintenance and work order scheduling, reporting, technician interface, timekeeping
and customer billing;

NOW, THEREFORE ON MOTION, the Snohomish County Council approves this
motion and authorizes the County Executive to sign the FASTER Web Software and
Services Agreement for web-based FMS with CCG Systems Inc., dba FASTER Asset
Solutions, for three years upon signature of the County Executive, in a total amount not
to exceed \$351,356.

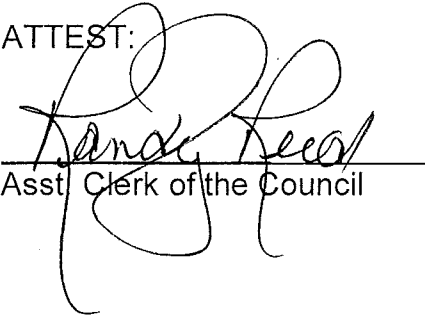
PASSED this 4th day of June, 2014.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Chair

ATTEST:



Asst. Clerk of the Council

FASTER WEB SOFTWARE AND SERVICES AGREEMENT

This "FASTER Web Software and Services Agreement," is entered by and between CCG Systems, Inc., dba *FASTER* Asset Solutions, a Virginia Corporation, duly licensed to conduct business in Washington State, hereinafter referred to as "*FASTER*," and Snohomish County, a political subdivision of the State of Washington, hereinafter referred to as "Customer."

Recitals

Whereas, the Snohomish County has a need for a fleet management information system and related services; and

Whereas, the County issued Request for Proposal (RFP 10-13), dated July 24, 2013, to procure a fleet management information system and related services; and

Whereas, pursuant to RFP 10-13, the proposal from *FASTER* was rated highest overall by the County Evaluation Team, and thereby selected to provide and host the requisite fleet management information system; and

Whereas, *FASTER* has developed and owns certain hosted proprietary applications for use in fleet management. The County desires to engage *FASTER* to supply such fleet management applications; build custom integrations for the County to interface with existing County systems; convert existing County data into a format compatible with the *FASTER* application; and provide ongoing support and upgrade services. *FASTER* desires to provide such applications to the County and perform the services, including hosting the fleet management solution in accordance with terms and conditions as detailed below and in the attached schedules A--Statement of Work, Pricing, Payment Terms; B--*FASTER* Software Upgrades & Support; C--SaaS Agreement; D--Hosting & Hosting Service Level Agreement (SLA.)

Now therefore, in consideration for the mutual covenants and agreements herein, the parties agree as follows:

1. Commercial-off-the-shelf System and Custom Deliverables:

a. Definition of Commercial-off-the-shelf System (COTS):

FASTER Web and its add-on components, Dashboard, Standard Fuel Import, Barcode, MotorPool, if purchased, constitute components of COTS. This Agreement may have custom integration work which is distinct and separate from the COTS software. Custom work product is addressed in Schedule A. *FASTER* will not provide any modification, code changes or database structure changes to the *FASTER* Web or add-on components. Specific custom integration work, listed in Schedule-A, may be requested by the County. *FASTER* will periodically provide enhancements to the COTS software or add-on components as part of its normal life cycle.

b. COTS Software Testing & Approval:

Testing of the COTS software and/or add on components will occur as described in this section and Section 2 of Schedule C. The Implementation of the COTS software and/or add-on components will not require the Customer or *FASTER* to do test plan approvals, requirements documentation approvals, Gap analysis or Gap analysis approvals.

FASTER will have completed testing on the COTS software and add-on components as part of its software life cycle, prior to the Customer's implementation project. The Customer may choose to do whatever further testing it deems necessary on the COTS software and add-on components during the implementation in the Customer's implementation environment (more below related to environments). Any costs associated with the Customer's testing in the implementation environment will be borne and administered by the Customer. *FASTER* will provide to the Customer any of the 50,000+ test cases which *FASTER* has already performed during its normal COTS release cycle free of charge to use at the Customer's expense. The Customer may also request that *FASTER* perform additional testing at the Customer's expense.

c. Customer Approval

Within ten (10) days of *FASTER* providing notice to Customer that the COTS software, add-on components, custom integrations and converted data have been deployed to the hosted environment, Customer shall begin the acceptance testing process. Acceptance testing shall include thirty (30) days of continuous operation of the COTS software, add-on components and custom integrations using the customer's converted data in accordance with all of *FASTER*'s published COTS documentation and the custom requirements specifications. If Customer accepts the work, Customer will send a Notice of Acceptance to *FASTER*. If Customer determines that the work does not comply with the written requirements for the custom integrations, it shall notify *FASTER* in writing, identifying what specifications are not satisfied. Further, should Customer's testing reveal that the COTS software or add-ons do not comply with *FASTER*'s published documentation, *FASTER* will either provide a detailed, written plan to achieve acceptance or make correction or replacements within a mutually agreed upon time with no charge to Customer. The parties shall mutually agree on a start date for beginning another acceptance testing period. Another thirty (30) day successful operation period shall follow any corrections or replacements. If Customer accepts the system following a second or subsequent acceptance testing period, Customer will send a Notice of Acceptance to *FASTER*. If *FASTER* does not satisfy the specifications in the written requirements for the custom integrations or if the COTS software or add-ons do not comply with the published documentation, Customer may terminate this Agreement, according to Section 8 of this Agreement.

d. Data Conversion Testing:

As noted in Schedule-A, *FASTER* will perform data conversion services. *FASTER* will also perform data validation testing to ensure the data that is converted meets the business rules of *FASTER*. Once *FASTER* has completed data validation testing internally, *FASTER* will provide the Customer a Soft Go Live copy of the *FASTER* Web database that contains the Customer's data. The Customer can then perform whatever due diligence it deems necessary to validate its data in the Customer's implementation environment. If the Customer chooses it can redundantly perform some or all of the same Data Validation tests cases *FASTER* performed. *FASTER* will provide data validation test cases for the Customer to use free of charge. All Customer data testing will be performed by the Customer at the Customer's expense. Any data defects the Customer finds and reports during its implementation testing that conform to the scope of data conversion work detailed in this Agreement will be corrected by *FASTER* at *FASTER*'S expense.

e. Definition of Custom Work:

Custom Work is defined as: Integrations, Reports, Stored Procedures and Views.

f. If Schedule-A ("SOW") contains custom work, the following process will be followed to ensure that reliable custom work is delivered as part of the implementation. Customer will provide to *FASTER*:

- In the case of a Custom Report, a mockup in Excel or similar table.
- In the case of Integration, a Data Flow Map which will show the data the Customer wants to import and/or export.
- In the case of either Custom Reports or Integration, the Customer will provide a written summary of:
 - Execution of the integration: How should the integration be executed? For example, would it need to be run manually or scheduled to run automatically.
 - User Interface: Will a user interface be needed? If so, what are the key elements needed in the user interface?
 - Error Handling: How should errors be logged? Are there any specific errors or failures that could occur that would need the integration to notify the Customer about?
 - Special Considerations: Are there any additional business rules or special considerations that the Customer could not show in the data map that the integration needs to meet?
- Upon receipt of the above documentation, *FASTER* will create a Requirements Document for the Customer to approve. The Requirements Document will include:
 - Introduction
 - Development Assumptions (*This section lists the technical and functional assumptions made while understanding / analyzing requirements*)
 - System Details
 - Module Description (*This section describes the information requirements from an external perspective only. Only data that is visible by the end user is described.*)
 - Logical System Requirements (*This section describes the information requirements from an external perspective only. Only data that is visible by the end user is described.*)
 - System Entity (*Provide an organized, alphabetical listing of all data elements that are pertinent*)
 - Testing Plan (*Provide the details about testing scope*)
 - (Note: There is no requirements document related to the Standard Fuel Import. It is a COTS add-on that is configured.)
- Once the Customer approves the Requirements Document, *FASTER* will begin and complete development and testing. If the Customer does not approve the

Requirements Document, it will detail in writing the reasons the Requirements Document was not approved. *FASTER* will recreate the Requirements Document to address the Customer's reasons for non-approval and resubmit the Requirements Document to Customer for approval. Upon approval, the custom work product will be delivered with the COTS components in the form of the Soft Go Live noted above.

- g. Custom Work Testing and Approval: Custom work that may be included in Schedule-A SOW will require custom coding. The Customer will review and sign-off on requirements prior to custom development starting.

2. Change Requests

- a. Change Requests for COTS Add-ons: Change Requests to add COTS add-on components can be done any time up to the time of the installation of the COTS components included in the SOW or after the Go Live and there will only be the added costs which relate to adding those components and any added implementation tasks, such as training.
- b. Change Requests for Custom Work: The Customer may make a change request(s) for custom work, at any time, in writing and submit to *FASTER*'s Implementation Project Manager and *FASTER*'s Development Manager. *FASTER* will provide the Customer with a written estimate of added costs and/or time delay resulting from the change request(s). It is understood by the parties that change requests that occur after the Customer has approved the Requirements Document may lead to higher cost and time delay due to the fact that *FASTER* may need to re-write the Requirements Document, re-do the approval process, re-work code or re-test. The Customer will review *FASTER*'s written response to change request(s) and notify *FASTER* in writing whether it wants to proceed with the change request(s).

3. Taxes

Prices and fees are exclusive of all federal, state, municipal, or other government, excise, sales, use, occupational, or like taxes now in force or enacted in the future and, therefore, prices are subject to an increase equal in amount to any tax *FASTER* may be required to collect, or pay, upon the sale or delivery of items purchased or licensed. If a certificate of exemption, or similar document or proceeding, is to be made in order to exempt the sale from sales or use tax liability, the Customer will obtain and pursue such certificate, document or proceeding.

4. Proprietary Rights of *FASTER*

- a. Nature of Rights and Title: Customer recognizes that the computer programs, system documentation manuals, and other materials supplied by *FASTER* to Customer are subject to the proprietary rights of *FASTER*. Customer agrees that the programs, documentation, and all information or data supplied by *FASTER*, in machine-readable form are trade secrets of *FASTER*, are protected by civil and criminal law, and by the law of copyright, are very valuable to *FASTER*, and that their use and disclosure must be controlled. Customer further understands that operator manuals, training aids, and other written materials are subject to the copyright act of the United States.

Title: *FASTER* retains title to the programs, documentation, information or data furnished by *FASTER* in machine-readable form, and training materials.

Customer shall keep each and every item to which *FASTER* retains title free and clear of all claims, liens and encumbrances except those of *FASTER*; and any act of Customer, voluntary or involuntary, purporting to create a claim, lien, or encumbrance on such an item shall be void.

- b. Restrictions on Customer Use: The computer programs and other items supplied by *FASTER* hereunder are for the sole use of Customer and Customer's employees/agents.
 - i. Competitive Uses: Customer agrees that while this agreement is in effect or while it has custody or possession of any property of *FASTER*, it will not directly or indirectly lease, license, sell, offer, negotiate, or contract to provide any software similar to that supplied hereunder for any third party, but this clause shall not be construed to prohibit Customer from acquiring, for its own use, software from third parties. Customer agrees that while this Agreement is in effect, or while it has custody or possession of any property of *FASTER*, it will not:
 - 1. Copy or duplicate, or permit anyone else to copy or duplicate, any physical or magnetic version of the programs, documentation, or information furnished by *FASTER* in machine-readable form.
 - 2. Create or attempt to create, or permit others to create or attempt to create, by reverse engineering or object program or otherwise, the source programs, or any part thereof, from the object program or from other information made available under this Agreement or otherwise, (whether oral, written, tangible, or intangible). Customer may copy for its own use, and at its own expense, operator manuals, training materials, and other terminal copies made for their distribution.
 - ii. Third-Party Uses. Customer understands that it cannot use *FASTER*'s proprietary software to manage the assets for any third-party, unless expressly authorized by *FASTER* in writing.
 - iii. Merger. Customer's rights hereunder are non-transferable and, unless expressly authorized by *FASTER* in writing, extinguish upon merger with another entity, acquisition by another entity, or the acquisition of another entity.
 - iv. Inspection. To assist *FASTER* in the protection of its proprietary rights, Customer shall permit representatives of *FASTER* to inspect, at all reasonable times, any location at which items supplied are being used or kept.
 - v. Demonstrations. Due to the proprietary nature of *FASTER*'s Fleet Management System, Customer agrees not to demonstrate or show this system to any competitors, or consultants that work with competitors, of *FASTER*.

c. Transfer/Expansion of Rights

The Customer's rights to use the programs, documentation, manuals, and other materials supplied by *FASTER* under this Agreement shall not be assigned, licensed, or transferred to a successor, affiliate or any other person, firm, corporation, or organization voluntarily, by operation or law, or in any other manner without the prior written consent of *FASTER*, which shall not be unreasonably withheld.

d. Remedies

If Customer attempts to use, copy, license, or convey the items supplied by *FASTER* hereunder, in a manner contrary to the terms of this Agreement or in competition with *FASTER* or in derogation of *FASTER's* proprietary rights, whether these rights are explicitly herein stated, determined by law, or otherwise, *FASTER* may, in addition to other remedies available to it, seek equitable relief enjoining such action.

e. Binding Effect & Definitions

The Customer agrees that this Agreement binds the named Customer and each of its employees, agents, representatives, and persons associated with it. The term employee means individual on whose behalf the Customer withholds income taxes or makes contributions under the federal insurance contributions act or similar statutes in other nations.

5. Exclusion of Incidental, Consequential and Certain Other Damages

To the maximum extent permitted by applicable law, in no event shall *FASTER* or its suppliers be liable for any incidental, indirect, punitive or consequential damages whatsoever (including, but not limited to, damages for: loss of profits, loss of confidential or other information, business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or of reasonable care), negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the *FASTER* components or the support services, or the provision of or failure to provide support services, or otherwise under or in connection with any provision of this Agreement, even if *FASTER* or any supplier has been advised of the possibility of such damages.

6. Limitation of Liability

Customer agrees that *FASTER's* liability, and that of its officers, directors, employees, agents and subcontractors to customer or any third party due to any negligent professional acts, errors or omissions or breach of contract by *FASTER* will be limited to the total price of this Agreement, including implementation and annual software upgrade and support services.

7. Confidential Information

a. Customer Data: *FASTER* acknowledges that it may be provided access to confidential data of the Customer that is not subject to public disclosure pursuant to Washington State Chapter 42.56 RCW (the Public Disclosure Act). *FASTER* shall use its best efforts: (1) not to, at any time, disclose or disseminate confidential data provided by Customer to *FASTER* to any other person, firm, organization, or employee who does not need to obtain access thereto consistent with *FASTER's* obligations under this Agreement; (2) not to disclose or disseminate such confidential data to any third party not affiliated with this Agreement or for any purpose not required by the Agreement; and (3) to ensure that all persons working for *FASTER*, or provided access to the Customer's data for any reason, protect the Customer's confidential data against unauthorized use, dissemination, or disclosure. *FASTER's* obligations under this section shall not apply to any information that is or becomes available without restriction to the general public by acts attributable to the Customer or its employees.

b. Public Disclosure: The Customer understands that *FASTER* may have information that it considers confidential, proprietary or a trade secret. In the event that the Customer receives a request pursuant to the Public Records Act to disclose *FASTER's* proprietary software, software documentation, or other information identified by *FASTER* in writing as confidential, the Customer's

sole obligations shall be to: (1) notify *FASTER* and (2) refrain from disclosing such records for a period of up to ten (10) business days to allow *FASTER* an opportunity to seek legal protection against disclosure from a court of competent jurisdiction. The Customer will not withhold requested records beyond the ten (10) business days unless it may do so based on good faith reliance upon an exception to disclosure under the Public Records Act. The Customer may but shall not be required to join in any legal proceedings relating to the requested disclosure unless required to do so by the court. In the event that *FASTER* initiates legal proceedings, or the Customer initiates legal proceedings or withholds requested records at *FASTER*'s request, *FASTER* shall indemnify and hold the Customer harmless against all proceedings and/or withholding of the records. The Customer shall not be liable to *FASTER* for any loss, cost or expense relating to the disclosure of requested records if *FASTER* fails to obtain legal protection against disclosure and the Customer releases the records in good faith.

c. The obligations in this section shall continue for a period of five (5) years following termination of this Agreement.

8. Term and Termination

The initial term of this Agreement shall commence on the date this Agreement is signed by all parties ("Effective Date") and continue for one (1) year. After expiration of the initial term, Customer's Services included in this Agreement shall automatically renew for ten (10) successive one-year periods (the initial term and each renewal term, a "Term") unless either party provides written notice of non-renewal at least sixty (60) days prior to commencement of the applicable renewal term or the Agreement is terminated early as provided in Sections 8(a) or (b). In any case, this Agreement shall not exceed ten (10) years in length. The costs for Services, in this agreement will increase by 3% (three percent) each year.

a. Termination by *FASTER*

FASTER shall have the right, upon notice to Customer, to terminate this Agreement if: (a) Customer fails to pay *FASTER* any amount due hereunder and such failure to pay is not cured within thirty (30) days following *FASTER*'s written notice to Customer of such breach; (b) Customer materially breaches any term or condition of this Agreement, provided such breach is not cured by Customer within thirty (30) days following *FASTER*'s written notice to Customer of such breach; or (c) Customer (i) terminates or suspends its business activities; (ii) makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority; or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

b. Termination by Customer

The Customer may terminate this Agreement, in whole or in part, for its convenience at any time by providing a written Notice of Termination sent certified mail, return receipt requested, to *FASTER*. After receipt of a Notice of Termination, and except as directed by the Customer, *FASTER* shall immediately stop work as directed in the notice. Whenever the Agreement is terminated for convenience, *FASTER* shall be entitled to payment for actual work satisfactorily performed up to the date of termination at unit contract prices for completed items of work and an equitable portion thereof the partially completed items, but shall not be entitled to payment for loss or anticipated profit on deleted or uncompleted work. *FASTER* shall promptly submit its request or termination payment, together with detailed supporting documentation.

The Customer may also terminate this Agreement if (a) FASTER is in material breach of this Agreement and FASTER fails to remedy such material breach within thirty (30) days of its receipt of such notice; (b) as provided by Section 3(a) of Schedule B; (c) FASTER (i) terminates or suspends its business activities; (ii) makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority; or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

In the event that sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the Customer may terminate this Agreement as a matter of public convenience as provided herein. If the Agreement is terminated for non-appropriation, FASTER shall be entitled to payment for actual work satisfactorily performed up to the date of termination at unit contract prices for completed items of work and an equitable portion thereof for partially completed items, but shall not be entitled to payment for loss or anticipated profit on deleted or uncompleted work. The below language in Schedule A: Statement of Work, Pricing & Payment Terms in the case of termination will also apply, for actual work satisfactorily performed up to the date of termination and an equitable portion thereof for partially completed items.

- c. The parties will work in good faith to allow for each party to unwind this relationship if termination occurs.
- d. FASTER agrees to provide Customer a copy of the County's database upon termination.
- e. The termination of this Agreement shall not affect the accrued rights of the Customer or FASTER under any other section or paragraph of this Agreement or limit the rights and remedies of the Customer hereunder in any manner.

9. Price and Payment

- a. The Customer shall pay FASTER the fees set forth in Schedule A, attached hereto and incorporated herein, along with any additional amounts that result from future change request/s the County approves.
- b. Where FASTER requires payments by Customer, payment shall be based upon the payment terms set forth in Schedule A. Customer shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly in arrears, through the Customer's voucher system for FASTER's service pursuant to the fee schedule set forth in Schedule A. Payment shall be made on a Net Thirty (30) day basis. This is a "Fixed-Price" contract based upon the Deliverables identified in Schedule A.
- c. The annual fee for Hosting, Software Upgrades and Support will increase by 3% (three percent) each year.
- d. Should the Customer dispute any of the fees or other additional amounts due, it shall notify FASTER of such disputed charges in writing. The notice shall set forth all details concerning the disputed charges and reasons for the dispute. FASTER and the Customer shall attempt in good faith to resolve any objection to the invoiced amount prior to the payment due date, the Customer shall pay the invoiced amount minus the disputed amount on the due date of original invoice. If the dispute is subsequently resolved in favor of FASTER, FASTER shall re-invoice the disputed amount owed then, including interest at the annual rate of one percent

(1%) from the original due date, and the Customer shall pay all amounts agreed or found to be owing to *FASTER* within (30) days of the date of the reissued invoice.

10. General

a. No Assignment

This Agreement cannot be assigned by either party without prior written consent of the other party. Any attempt to assign any of the rights, duties, or obligations of this Agreement without such consent is void.

b. Independent Contractor

All work and services performed by *FASTER* in connection with this Agreement shall be performed by *FASTER* as an independent contractor and not as the agent or employee of the Customer. All persons furnished by *FASTER* shall be for all purposes solely *FASTER's* employees or agents and shall not be deemed to be employees of the Customer for any purpose whatsoever. *FASTER* shall furnish, employ, and have exclusive control of all persons to be engaged in performing any work or services under this Agreement and shall prescribe and control the means and methods of performing such work or services by providing adequate and proper supervision. *FASTER* shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of Social Security, and other payroll taxes including applicable contributions from such persons when required by law.

c. Agreement Modifications

This Agreement can be modified only by a written agreement duly executed by persons authorized to sign agreements on behalf of Customer and of *FASTER*. Any variance from the terms and conditions of this Agreement in any order or other written notification from the Customer will be of no effect.

d. Entire Agreement

This Agreement constitutes the entire agreement among the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on any party except to the extent incorporated in this Agreement.

e. No Other Warranties outside of this Agreement

EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, *FASTER* DISCLAIMS ALL WARRANTIES WITH REGARD TO THE *FASTER* PRODUCT SOLD HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MARKETABILITY AND FITNESS AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF *FASTER* FOR DAMAGES INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THE USE OR PERFORMANCE OF THE SYSTEM.

f. Savings Clause

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or non-enforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

g. Force Majeure

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if the delay or default is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions, wars, insurrections and or any other causes beyond the reasonable control of the party whose performance is affected.

h. Compliance with Laws

In addition to the obligations of each party as set forth in RFP 10-13, *FASTER* and the Customer shall comply with all applicable federal, state, county and local laws, ordinances, regulations, and codes including, but not limited to, its obligations as an employer with regard to health, safety, and payment of its employees, and identification and procurement of required permits, certificates, approvals, and inspections in *FASTER's* performance of this Agreement.

i. Non-Discrimination

It is the policy of the Customer to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

FASTER shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this Agreement constitutes a certification by *FASTER* of the *FASTER's* compliance with the requirements of Chapter 2.460 SCC. If *FASTER* is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this Agreement may be subject to a declaration of material breach and termination at the County's discretion. This provision shall not affect *FASTER's* obligations under other federal, state, or local laws against discrimination.

j. Federal Non-Discrimination

The Customer assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any Customer sponsored program or activity. The Customer further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

k. Limitation Period (6 years)

No action, regardless of form, arising out of this Agreement may be brought by either party more than six (6) years after the cause of action has arisen, or, in the case of non-payment, more than six (6) years from the date of the last payment.

l. Public Agencies

Agencies may enter into an Interlocal Agreements with the Customer to pursuant to chapter 39.34 RCW to utilize the terms of this Agreement. *FASTER* agrees to extend the terms of this Agreement to such municipalities and government agencies of any state, in accordance with chapter 39.34 RCW. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter, and/or rules and regulations of the

respective agency. Customer does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

m. Notices

All notices, demands, or other communications herein provided to be given or that may be given by any party to the other under this Agreement shall be deemed to have been duly given when made in writing and delivered in person or upon the date of recorded receipt if deposited in the United States mail, postage prepaid, certified mail, return receipt requested, as follows:

FASTER:

2700 International Parkway
Suite 300
Virginia Beach, VA 23452
757 623 1700

Snohomish County (Customer)

Fleet Manager

3000 Rockefeller Ave, M/S 404

Everett, WA 98021

425-388-6061

- n. Governing Law. The validity, construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Washington, except as to its principals of conflicts of laws, and the parties hereto irrevocably submit to the exclusive venue of the Superior Court, Snohomish County, Washington to resolve any disputes arising hereunder or related hereto, except that the County may waive the exclusive venue provision and submit a dispute to any state superior court or federal district court of competent jurisdiction in the State of Washington.
- o. The Customer acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Further, the Customer agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.
- p. Software Escrow

The source code to all *FASTER* Fleet Management software is kept in a secure remote site location. An escrow account may be established specifically for the Customer with the *FASTER* Escrow Agent. A setup fee and an annual maintenance fee for this escrow account will apply. However, *FASTER*, in the event that it is no longer able to support, enhance, and further market the *FASTER* software will make available all source code to all customers who are active and up to date on their support service Agreement with *FASTER*.

- q. Incorporation of Schedules. Schedules [list] referred to in this Agreement and attached hereto are integral parts of this Agreement and are incorporated herein by this reference.
- r. Order of Precedence. In the event of any conflict between this Agreement and any of the attached Schedules, the precedence of Documents shall be as follows:
- i. This Agreement
 - ii. Schedule A
 - iii. Schedule B
 - iv. Schedule C
 - v. Schedule D
 - vi. ~~Schedule E~~

AGREED TO:

CUSTOMER:	FASTER Asset Solutions:
By: <u>Stephen Clifton</u>	By: <u>Michael P. Barclay</u>
Title: <u>Executive Director</u>	Title: <u>V.P. Asset Protection Manager</u>
Date: <u>June 4, 2014</u>	Date: <u>5/8/2014</u>

STEPHEN CLIFTON
Executive Director

Approved as to form

Sydney M. Dornig 5/14/14
Deputy Prosecuting Attorney

COUNCIL USE ONLY
Approved: <u>6-4-14</u>
Docfile: <u>D-7</u>

Schedule A: Statement of Work, Pricing & Payment Terms

(Pricing in this proposal is valid for 60 days.)

Implementation Costs			
Section	Product/Service	Description	Cost
Go-Live Data Integrations		New Customer Standard Fuel Import	
		In order for <i>FASTER</i> to build the fuel import, the customer will need to provide two items to <i>FASTER</i> :	
		1. The five (5) most recent actual export files from your live production Fuel System for the Fuel Vendor which includes the complete disbursement transactions to be imported. It is important that this export file include data populated for all sites, pumps/dispensers and products you want imported. <i>FASTER</i> will then configure a Standard Fuel Import within the <i>FASTER</i> application to read and import the disbursement transactions from the Fuel System export file for this single fuel vendor. The exports from your production Fuel System must system generated flat files and not a Fuel System report that has been exported to a particular format. Microsoft Excel is not an acceptable file for import due to the fact that Excel will change data when saving to an XLS, XLSX format.	
	300: Single Vendor Standard Fuel Import - New Customer		\$5,000
		2. A current file layout definition must be obtained by the customer from their Fuel Vendor that defines and describes the export file's columns, positions and and/or delimiters if used; and it should match the export file the vendor will be providing you over time. Only a single file layout definition can be imported per Standard Fuel Import. Any differences in requirements for any single file layout definition or any additional file layout definitions that vary from the one provided will necessitate an additional Standard Fuel Import.	
	304: Financial (Cayenta) Integration Estimate	This is an estimate for the financial (Cayenta) one way flat file integration. The actual cost of integration can be determined once specifications are identified.	\$8,000
	304: Payroll (Highline) Integration Estimate	This is an estimate for the payroll (Highline) one way flat file integration. The actual cost of integration can be determined once specifications are identified.	\$8,000
	304: Time Keeping Integration Estimate	This is an estimate for the time keeping one-way flat file integration. The actual cost of integration can be determined once specifications are identified.	\$8,000

Data	400: Data Cleanup	The customer will be responsible for any data cleanup needed related to ensuring that the data in the current database is usable. (However, as part of the implementation process, <i>FASTER</i> Fleet Consultants will provide advice and guidance related to data cleanup.)	Customer Responsibility
	401: Data Extraction Method-1	<i>FASTER</i> can provide an MSSQL based data mapping product into which your team will map and populate your existing data. (After this work product is complete, <i>FASTER</i> will execute the conversion level you chose noted below to create your <i>FASTER</i> Web database and test.)	\$10,000
	405: Data Conversion & Testing Level-1	Equipment Birth Certificates, Parts Birth Certificates, Vendor Birth Certificates, Employees/Users Records. This product utilizes a utility and series of packages to convert your data to a <i>FASTER</i> Web database. As part of conversion, <i>FASTER</i> will perform two types of testing: 1. Functional stability testing to ensure that there are no data conflicts with the <i>FASTER</i> Web table structure; 2. Data Validation testing to test that data was converted properly.	\$6,000
	406: Data Conversion & Testing Level-2	Fuel Transaction Details, Work Order Transaction Details. (Data extraction will be significantly more complex due to the level of detail and amount of data that may be involved. Therefore, your internal time to populate the data or the hourly rate if you are paying <i>FASTER</i> may be significantly more.) This product utilizes a utility and series of packages to convert your data to a <i>FASTER</i> Web database. As part of conversion, <i>FASTER</i> will perform two types of testing: 1. Functional stability testing to ensure that there are no data conflicts with the <i>FASTER</i> Web table structure; 2. Data Validation testing to test that data was converted properly.	\$9,000
Implementation Configuration & Training	500: Project Management	Implementation and Project Management Services	\$15,000
	505: Environment	Setup cost related to installation of hardware, Windows Server Operating System and MSSQL and <i>FASTER</i> Web.	\$2,756
	511: System Overview & Configuration Sessions	System overview and configuration session activities take place via live remote web-based session for a 6-hour period where customer will ensure key users are able to participate.	\$6,600
	512: System Training/Go Live	Combined On Site System Training and Go Live: 12-hours of End User training sessions over two days; Two 6-hour days of oversight, preparation and additional instruction. This includes a final review of the work process and the actual "production go live" of the <i>FASTER</i> application. Because training is hands-on, the maximum class size is 20 attendees and includes a single training location. If additional classes are required, additional costs may apply.	\$9,600

Implementation Total	\$87,956
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Service Provider Agreement			
Section	Product/Service	Description	Cost
Annual Service Agreement	First Year SaaS Fee	COTS Software as a Service, Hosting & Support (Payment renews annually)	\$87,800
Annual SaaS Payment			\$87,800

PAYMENT SCHEDULES		
Milestone	SaaS Payments	Amount Due
Contract Signing: First Annual SaaS Payment		\$87,800
Milestone	Implementation Costs	Percent Due
Contract Signing		30%
Custom Software Requirements Approval		20%
Delivery of Custom Software & Data Conversion Soft Go Live		30%
Go Live		15%
30 Days Post Production Go Live		5%

Schedule B: *FASTER* Software Upgrades & Support

1. Scope. *FASTER* Software Upgrades & Support ("Support") will consist of: (i) Upgrades to the COTS software, add on components and Custom Work, listed in section three; (ii) Correction of defects to keep the software in conformance with the applicable user documentation as noted in section four; and (iii) Telephone support listed in section five. Schedule B is subject to the terms and conditions of the Agreement executed between *FASTER* and Customer.

Support will not include: (i) set-up, installation, or configuration of hardware and software required for the Customer to access the software unless a separate hosting or SaaS addendum is included in this Agreement; (ii) consultation, error correction, or research with respect to Customer-created documents and information; and (iii) any other separately-priced services *FASTER* does not generally provide as part of the Services.

2. Representative. The Customer will provide a Representative and an alternate designated to be *FASTER*'s contact for communicating with *FASTER* concerning Support, or making any other request or providing any notice. Customer may change the Representative upon notice to *FASTER*.
3. Software Upgrades:
 - a. All software purchased from *FASTER* requires an annual Software Upgrade & Support purchase by the Customer. After the first year, Software Upgrade & Support will automatically renew unless the Customer terminates pursuant to section 14 of the Agreement. Software Upgrade & Support provides the following upgrade benefits:
 - i. Upgrades for the Core COTS Product: Each new version release of the specific "Core COTS Product" line (*FASTER* Web or *FASTER* Win) purchased is provided at no cost to the Customer. (If *FASTER* Web was purchased, as long as Software Upgrade & Support is maintained, Customer is entitled to new version releases of *FASTER* Web. If *FASTER* Win was purchased, as long as Software Upgrade & Support is maintained, Customer is entitled to new version releases of *FASTER* Win.)
 - ii. Upgrades to Add-on Products and Customizations: All Add-on Products and customizations purchased from *FASTER* will be upgraded to function with the new versions of the Core COTS Product purchased as long as the Customer continues to purchase Software Upgrade & Support.
4. Software Defects: Software Upgrades & Support covers any issue or problem that is the result of a verifiable, replicable error (*FASTER* will use all reasonable means to verify and replicate) in the software ("Verifiable *FASTER* Defect"). An error will be a Verifiable *FASTER* Defect only if it constitutes a material failure by the software to function in accordance with the applicable software documentation.
5. *FASTER* Software Support Coverage:
 - a. Customer will have access to *FASTER*'s Technical Software Support Personnel ("Software Support") via phone during normal business hours. Public holidays are recognized and considered to be non-business days. For the purposes of this Agreement, normal business hours shall be defined as 7:30 am to 6:00 pm EST/EDT, Monday through Friday (excluding US public holidays). Communications with Technical Support may be via

telephone or e-mail. In addition, to the support obligations listed above, *FASTER* shall provide emergency phone support twenty (24) hours a day, seven (7) days a week after business hours via cell phone support for issues defined below under "Emergency Situations Covered by *FASTER* Support."

- b. In the case of Customer hosted environments: The following will NOT be considered a Verifiable *FASTER* Issue: When it is the result of a modification to the software not provided by *FASTER* or the result of a conflict with Customer's equipment or software and/or third party software or equipment, unless such equipment or software was expressly specified in the SOW for interoperability with the *FASTER* Software.
 - c. If Technical Support reasonably determines that Customer's problem is not caused by *FASTER*'s software or equipment, *FASTER* is not obligated to provide support under this Agreement. Nevertheless, *FASTER* will, if possible, offer suggestions as to how Customer can remedy the problem. If *FASTER* determines that the issue or problems was not the result of a Verifiable *FASTER* Issue, *FASTER* may charge for additional services if Customer agrees to pay *FASTER* for its time and expenses at *FASTER*'s then current rates for out of scope support.
- 6. Emergency Situations Covered by *FASTER* Support are defined as: A. The system is frozen; B, The system has crashed and will not recover; C. Customer cannot process work in the system.
- 7. IT Support & Consulting Not Provided: Unless the Customer contracted *FASTER* to provide hosting, *FASTER* Support does not cover IT tasks such as hardware upgrades or changes; server operating system or relational database management system installs, patches or upgrades; or backup and restore or disaster recovery; virtual machine management; server and database cluster tasks, etc. (If *FASTER* is providing hosting, a separate schedule below addresses hosting and hosting support.)
- 8. Customer Errors: *FASTER* will provide limited trouble shooting and advice related to mistakes the Customer's employees may make (data deletion, data input error, Administrative or User errors, etc.). As a courtesy, *FASTER*'s Support Staff accepts these types of calls and is willing to aid the Customer with issues that are out of the scope outlined in this Agreement. Therefore, while *FASTER* staff often is able to add value in root cause analysis and trouble shooting of issues as a courtesy that are outside of *FASTER*'s responsibilities, there may be occasions where *FASTER* must discontinue work on issues that are beyond *FASTER*'s responsibilities so to be attentive to other customers.
- 9. Training: Support does not include training. Live-remote, training via a web-based medium such as GoToMeeting can be provided for an additional cost. *FASTER* also offers Regional Training for an added cost in geographic areas where there are concentrations of customers.
- 10. Additional Support: Technical Support may determine that Customer's request is a request for "Additional Support." Additional Support is any assistance not covered above. Examples of Additional Support include substantive questions regarding data or results, requests for customization, training, custom documentation, and consulting. If *FASTER* believes that it can appropriately and effectively provide the requested services, it will do so at its then-current rates upon its standard terms. *FASTER* will inform Customer if a request is Additional Support and provide an estimate of the cost for the Additional Support. Additional Support will be agreed upon by both parties prior to performance.
- 11. Customer's Responsibilities:

- a. Customer's designated representative or alternate shall initiate all requests for support. The representative must have undergone *FASTER* User training, must be qualified and authorized to communicate all necessary information, must have proper security level access (permissions and credentials) to application, database and hardware resources to be able to perform diagnostic testing and be available for follow up if required.
- b. Customer accepts sole responsibility for any compatibility problems between the Services and any other application software or non-current software programs not maintained or supported by *FASTER*.

12. Submitting a Request: The Customer should be prepared to provide the following:

- a. Telephone number and alternate method of contact (i.e. email address);
- b. A description of Customer's problem or question;
- c. Provide screen capture/s or video/s of the issue.
- d. The circumstances under which the problem does or does not occur.
- e. Specific error messages, error numbers, log files and program numbers.
- f. For customers who host *FASTER* on their internal IT infrastructure, additional information may be needed such as: Version of the *FASTER* Software in use; client or server operating systems versions; and Hardware specifications, etc.

13. *FASTER* will follow the below process to assist Customer with issues:

- a. During business hours *FASTER*'s response time to phone calls is immediate: 95% by the third ring, 99% by the fifth ring.
- b. There is an exception to the above during Support Team training, which will occur no more than twice a month for no more than a length of 90-minutes each. During these training sessions, the response time may drop to 90% of call response by the fifth ring.
- c. *FASTER*'s response to email during business hours is: 95% within three hours and 99% within one business day.
- d. Once contact is established via phone or email, a case will be created for tracking purposes and the supplied information will be documented and a Customer can request a case number for tracking purposes.
- e. *FASTER*'s Support is structured to: Resolve the issue; Answer Customer's questions; or to identify logs, tests or error information the Customer needs to acquire and submit in order to trouble shoot the issue during that first phone call. This is done in an effort to solve the issue in that first call.
- f. If it is not possible to resolve the issue in one phone call, the Technician who took the call will diligently work to gain closure or engage with his/her supervisor to assign the case to the proper staff member for a resolution.

14. Term and Termination: The term and termination of Support shall be consistent with term and termination provisions in section 14 of this Agreement. Customer understands that the annual Hosting, Software Upgrade & Support fee will increase by 3% (three percent each year, unless either party terminates the Agreement early.

Schedule C: Software License Agreement

1. Perpetual License:

FASTER grants to Customer a perpetual, non-exclusive, non-transferable license to use the *FASTER* system in accordance with the terms of this Agreement.

2. Environment:

Customer understands that it may use *FASTER*'s proprietary software in a single environment. In this Agreement an "environment" is defined as a single installation (instance) of the *FASTER* application and one *FASTER* database. *FASTER* publishes specifications for each release of the product. Therefore, the first use of a version of *FASTER* and each subsequent upgrade to a newer version requires that Customer's environment comply with the minimum published specifications. Failure to meet the minimum specification puts Customer's operation at risk and may lead to *FASTER* being unable to provide support until Customer's environment complies with the published specification.

- a. **SINGLE *FASTER* TEST/PRODUCTION ENVIRONMENT:** In order to minimize Customer's and *FASTER*'s IT costs, as well as to control quality and reduce risk, Customer may have only one environment through the implementation process. This environment, upon installation and during implementation will be the test environment on which all tasks (system overview, configuration, testing, training, etc.) will be performed. Upon restoring a final, go-live, database, Customer's test environment will then be promoted to become the production environment.
- b. **OTHER TEST OR DEVELOPMENT ENVIRONMENT/S:** Customer may have a separate test or development environment for other purposes at any time (e.g., during the implementation or after go-live) with payment of an additional license fee and an annual support fee.

3. Copies, Backups & Catastrophic Fail-Over:

Customer understands that it is able to make regular backups of all programs and data and clone, copy or maintain a mirror image of the production environment for catastrophic fail over. This includes the use of virtual machine cloning.

4. Software Modifications:

Customer may not modify the *FASTER* software, including, but not limited to, reverse engineering of any component of the *FASTER* system in order to perform any such modifications. Should Customer violate this provision, all warranties associated with the *FASTER* system are null and void.

Schedule D: SaaS Agreement

This Agreement sets forth the terms under which *FASTER* will provide Customer with access to and use of the software identified in Schedule-A under a software-as-a-service offering ("**SaaS**"). These are collectively referred to as "**Services**".

Access Rights

FASTER hereby grants Customer, during the Term, a limited, non-transferable and non-exclusive license for Customer's employees ("**Authorized Users**") to use the Services consistent with the terms and conditions of this Agreement. *FASTER* reserves all rights not expressly granted herein.

Except as otherwise agreed to by *FASTER* in writing, no express or implied license or right of any kind is granted to Customer regarding the Services (including, but not limited to, any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, or adapt the Services or create derivative works based on the Services or any portions thereof, or obtain possession of any source code or other technical material relating to the Services). Further, Customer shall not decompile, reverse assemble, or otherwise reverse engineer or modify the Services.

E: Hosting & Hosting Service Level Agreement (SLA)

FASTER shall provide hosting and related services to Customer in accordance with the terms of this Schedule E. This Schedule E is subject to the terms and conditions of the Agreement.

1. Environment:

Single Environment: Customer understands that it will access *FASTER*'s proprietary software in a single environment with one instance of the software and one database. Therefore, in this Agreement, an "environment" is defined as "a single install or instance of the *FASTER* application and a single *FASTER* database."

Test/Production Environment: In order to minimize Customer's and *FASTER*'s IT costs, as well as to control quality and reduce risk, Customer will have only one environment through the implementation process. This environment, upon deployment and during implementation will be the test environment on which all tasks (system overview, configuration, testing, training, etc.) will be performed. Upon restoring a final, go-live, database, this same test environment will then become the production environment.

2. Administration:

FASTER will issue to Customer's designated "Administrator" an individual logon identifier and password ("Administrator's Logon") for purposes of the Customer administering internal services, including but not limited to, the administration described below. Using the Administrator's Logon, the Administrator shall assign each remaining Authorized User a unique logon identifier and password and assign and manage the business rules/permissions that control each such Authorized User's access to the Services. Customer shall use commercially reasonable efforts to ensure that each Authorized User will: (a) not disclose his/her logon identifier to any person or entity; (b) not permit any other person or entity to use his/her logon identifier and (c) use the Services solely in accordance with the terms and conditions of this Agreement.

4. Database Backup

An incremental backup of the database to a local drive will occur daily. Full back up to centralized disk based storage will occur weekly. The weekly full disk backup will be replicated and stored offsite. Each virtual machine is attached to a 1TB LUN. It is segregated on a secure, private network over 10G speeds. The LUN attached to a given system can only be seen and accessed by that LUN. The data center security has certifications such as PCI DSS Level 1, SOC1/SSAE-16 Type II, SOC2, SOC3, and Safe Harbor. The 1TB LUN attached to the system will be replicated to the same 1TB LUN in at the remote datacenter with the same security standards.

5. Database Rights and Access:

5.1 Data Rights: Customer maintains full and exclusive rights to its data contained in the database. This provision shall survive the termination of this Agreement.

5.2 Access to Database: Customer will not have access to the database or database server. The Customer will use the Business Intelligence built into *FASTER* to search data, run reports and view data in dashboard. This means there will NOT be the ability to run queries against the database.

6. Hosting Service Level Agreement:

6.1. Availability: *FASTER* shall maintain a data center adequate to support Services to Customer twenty-four (24) hour per day, seven (7) days per week (excluding scheduled maintenance) with service availability of not less than 99.9% (the "Service Level Commitment") calculated as specified below. (99.999% guaranteed up-time is available through a mirrored replication to a fail-over, co-location at an extra cost.)

6.1.1. Formula. The Services will, subject to the exceptions listed below, be available for a percentage of each calendar month at least equal to the Service Level Commitment. The availability of the Service for a given month will be calculated according to the following formula (referred to herein as the "Availability"):

Where: Total minutes in the month = TMM

Total minutes in the month the Service is unavailable = TMU

And: $((TMM - TMU) \times 100) / TMM = \text{Availability}$

6.1.2. For purposes of this calculation, the Service will be deemed to be unavailable if Service application functions do not successfully complete. Further, the Service will not be deemed Unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth in Sections 6.1.3 and 6.1.4 below. *FASTER's* records and data will be the sole basis for all SLA calculations and determinations.

6.1.3. Exceptions: (a). Maintenance performed at Customer's request outside of the normally scheduled maintenance will not be considered an outage. (b). The Service will not be considered to be Unavailable for any outage that results from any maintenance performed by *FASTER* of which Customer is notified 48 hours in advance and to which Customer does not reasonably object during the standard *FASTER* implementation window(s) agreed upon by *FASTER* and Customer during Customer's implementation period. (c). Errors or issues created by the Customer will not be considered.

6.1.4. The *FASTER* Network extends to, includes and terminates at the data center located router that provides the outside interface of each of *FASTER's* WAN connections to its backbone providers (referred to herein as the "*FASTER* Network"). The Service will not be considered Unavailable for any outage unavailability of the Service due to (a) Customer's

information content or application programming, acts or omissions of Customer or its agents, (b) failures of Internet backbone itself and the third-party network by which Customer connects to the Internet backbone or any other network unavailability outside of the *FASTER* Network; (c) delays or failures due to circumstances beyond *FASTER*'s reasonable control that could not be avoided by its exercise of due care; or (d) any other outage or downtime outside the *FASTER* Network.

6.2. Remedies: Subject to the exceptions provided for in this SLA, Customer will have the rights set forth below.

6.2.1. If the total Services availability (as calculated in Section 6.1 above) for a given month is (a) below the Service Level Commitment and greater than or equal to 99.5%, Customer will receive three (3) Service Credits; (b) below 99.5% and greater than or equal to 99.0%, Customer will receive ten (10) Service Credits; and (c) below 99.0%, Customer will receive fifteen (15) Service Credits. Notwithstanding the foregoing and in lieu of the preceding Service Credits, any continuous outage of more than twenty-four (24) hours that is not subject to the Exceptions of Sections 6.1.3 and 6.1.4 above shall automatically result in a total of one (1) month's value of Service Credits. If Service Level Commitment is not met for a second time in a thirty (30) day period, then Customer shall be entitled to receive at Customer's election, either (i) month's value of Service Credits, or (ii) the right to terminate the Agreement.

6.2.2. For purposes of this SLA, a Service Credit will be deemed to be an amount equal 1/30th of the monthly fee for the hosting to the affected customers of the Services (herein referred to as "Service Credit"). Service Credits will be recognized for billing purposes in the month following the month giving rise to such Service Credits. All service credits will be calculated assuming a 30-day month. Except as provided above in Section 3(a) of this SLA, Customer's right to receive service credit(s) will be Customer's exclusive remedy for *FASTER*'s failure to satisfy the Service Level Commitment.

6.2.3. Remedies will not accrue (i.e., no Service Credits will be issued and an outage will not be considered unavailability for purposes of this SLA) if Customer is in breach of its payment obligations either when the outage occurs or when the credit would otherwise be issued.

6.3. Term: The term and termination of Hosting Services shall be consistent with term and termination provided in section 14 of this Agreement.

6.4. Performance: Customer understands that performance of the *FASTER* system is dependent on multiple factors. For example, Customer approved users can only access the system with a PC that meets the minimum client specifications provided by *FASTER*. Customer may need to request its IT Department increase bandwidth and/or improve network connections in order to improve performance. Also, Customer understands that system performance is affected by variables that *FASTER* cannot fully control, such as user habits, number of simultaneous users and database size.