

IT Federal Sales, LLC
Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20160803

- 1. Scope.** This Rider and the Manufacturer’s Commercial Supplier Agreement (CSA) establish the terms and conditions enabling IT Federal Sales, LLC (ITFS) to provide Software and Services to U.S. Government agencies (the "Client" or “Licensee”).
- 2. Applicability.** The terms and conditions in the attached Manufacturer’s CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer’s CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under ITFS’ Multiple Award Schedule Contract, GS-35F-0494T, including, but not limited to the following:

 - (a) Contracting Parties.** The Government customer (Licensee) is the “Ordering Activity”, defined as an entity authorized to order under Government contracts as set forth in Government Order ADM 4800.2H, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
 - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.
 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government 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) Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. ITFS on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- ITFS may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.
- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) **Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w)(1)(x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w)(1)(iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that ITFS, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(r) Limitation of Liability: Subject to the following:

ITFS, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, ITFS, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee 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. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

FirstFuel Software, Inc.
420 Bedford Street
Lexington, MA 02420

**MASTER SERVICE AGREEMENT
COVER PAGE**

The attached documents describe the relationship between FirstFuel Software, Inc. ("FirstFuel") and the customer identified below ("**Customer**") (each of FirstFuel and Customer, a "**Party**"). The documents attached to this Cover Page consist of the document entitled "Terms and Conditions" which describes and sets forth the general legal terms governing the relationship, and certain Addenda and Exhibits attached thereto, if any, which describe and set forth further rights and obligations of the Parties (collectively, the "**Agreement**"). This Agreement shall become effective when this cover page is executed by authorized representatives of both Parties (the "**Effective Date**").

CUSTOMER INFORMATION:

Company Name: _____	Principal Contact Person: _____
Address: _____	Title: _____
_____	Phone: _____
_____	Fax: _____
_____	Email Address: _____
Billing Contact: _____	
Title: _____	
Phone: _____	
Fax: _____	
Email Address: _____	

FOR INTERNAL FIRSTFUEL USE ONLY:

Contract #: _____

Term: _____

The Parties have caused their duly authorized representatives to execute this Agreement as of the dates set forth below.

COMPANY

FIRSTFUEL

Name (Printed): _____

Title: _____

Date: _____

Name (Printed): _____

Title: _____

Date: _____

**FIRSTFUEL
MASTER SERVICE AGREEMENT
TERMS AND CONDITIONS**

1. DEFINITIONS. Certain capitalized terms used in this Agreement, not otherwise defined on the cover page, shall have the meanings set forth below.

1.1 "Access Term" means the period during which the ordered Services are made available to Customer by and through its Administrative User and its Designated Users according to a Statement of Work.

1.2 "Administrative User" means an employee of Customer to whom Customer has assigned a unique identification number for access to the FirstFuel Website Portal for Customer's own business purposes.

1.3 "Brand" means any trademarks, service marks, trade names, domain names, logos, business names, product names and slogans, and all registrations and applications for registration thereof owned by or licensed to the respective Party or to which the respective Party has rights.

1.4 "Confidential Information" means, whether written or oral, (i) know-how, business methods, intellectual property, trade secret and any other non-public, confidential or proprietary information of a party and (ii) information that, by the nature of the information or the circumstances surrounding disclosure, ought reasonably to be treated as confidential. Without limiting the foregoing, for purposes of this Agreement, FirstFuel Analytics and FirstFuel Intellectual Property shall be the Confidential Information of FirstFuel and the Customer Data shall be the Confidential Information of Customer.

1.5 "Customer's Customer" means any current or former Customer's customer.

1.6 "Designated User(s)" means those Customer's users that are permitted access to the FirstFuel Website Portal based upon a unique username and password.

1.7 "FirstFuel Analytics" means (i) any data or information collected or compiled by FirstFuel under the terms of this Agreement and (ii) the results and data from any manipulation, analysis, calculations, or processing of data or information in accordance with this Agreement, which in each of (i) and (ii) does not include Personally Identifiable Information.

1.8 "FirstFuel Content" means any data, results, ideas, plans, sketches, texts, files, links, images, graphics, design, photos, video, sound, inventions (whether or not patentable), notes, works of authorship, articles, feedback, or other materials, including, without limitation, statistics, analyses and forecasts, FirstFuel Analytics and any similar information that is either owned, developed or licensed by FirstFuel and that FirstFuel makes available through the Services.

1.9 "FirstFuel Intellectual Property" means: (i) any proprietary work; (ii) any system owned, licensed, or developed by FirstFuel, including FirstFuel Content and the Website Portal; (iii) any analysis, compilation, aggregation, derivative work or work of authorship created by FirstFuel; (iv) data independently developed or created by FirstFuel; and (v) data entered by Customer's Customers via the FirstFuel Website Portal, so long as such data does not include Personally Identifiable Information.

1.10 "FirstFuel Terms of Use" means any applicable FirstFuel terms of service (including the FirstFuel privacy policy) for the FirstFuel Website Portal, which FirstFuel may amend from time to time.

1.11 "FirstFuel Website Portal" means a web-based feature created and maintained by FirstFuel to provide Customers and its Administrative User and Designated Users with information about their energy usage.

1.12 "Personally Identifiable Information" means any individual Customer's Customer name, address, telephone number, e-mail address, account number, Social Security number, credit card number, debit card number, banking information, or other financial information or financial account information regarding a Customer's Customer.

1.13 "Services" means access to the FirstFuel Website Portal to the extent such purchased in a Statement of Work.

1.14 "Statement of Work" means a document signed by both Parties identifying Services to be made available by FirstFuel pursuant to this Agreement, and set forth in Exhibit A.

1.15 "Third Party Content" means any data, results, ideas, plans, sketches, texts, files, links, images, photos, video, sound, inventions (whether or not patentable), notes, works of authorship, articles, feedback, or other materials, including, without limitation, statistics, analyses and forecasts, and any similar information that is either (i) received by FirstFuel from a third party; or (ii) made available by a third party through the Services.

1.16 "Customer Data" means any data or information supplied by Customer or its Designated Users to FirstFuel under this Agreement. Customer Data shall exclude FirstFuel Content, Third Party Content and any FirstFuel Analytics.

2. STATEMENT OF WORK; ACCESS AND USE

2.1 Statement of Work. The Services to be provided by FirstFuel under this Agreement shall be set forth in one or more Statements of Work executed by the Parties during the Term. FirstFuel shall perform the Services set forth in the Statements of Work in accordance with, and subject to, the terms and conditions herein (including such Statement of Work), and Customer shall make the payments and perform its other obligations as set forth herein (including such Statement of Work). Each Statement of Work shall be attached to this Agreement and incorporated in this Agreement by reference.

2.2 Access to FirstFuel Website Portal. Subject to the terms and conditions of this Agreement, FirstFuel hereby grants to Customer's Administrative User a non-exclusive, non-transferable right to access and to permit access to the FirstFuel Website Portal to Designated Users for the sole purpose of viewing the FirstFuel Website Portal as it relates to the Customer buildings specified on a Statement of Work.

2.3 Access to Customer Data and Individual Analytics. Subject to the terms and conditions herein, Customer grants FirstFuel a worldwide, perpetual, fully-paid non-exclusive, non-transferable, royalty-free license to (i) use the Customer Data for the limited purpose of providing the Services and performing FirstFuel's obligations under this Agreement, including, without limitation, the creation of FirstFuel Analytics, and (ii) use the Customer Data in an aggregated and anonymous form to enhance the result of the FirstFuel Services.

2.4 Brand Licenses. The Parties shall cooperate with each other to develop a mutually agreeable strategy for co-branding the FirstFuel Website Portal. Customer grants to FirstFuel a non-exclusive, non-sublicensable, non-transferable, royalty-free right and license to use the Customer Brand during the Term in accordance with such reasonable Customer branding guidelines as Customer may specify for the limited purposes of performing FirstFuel's obligations under this Agreement. Notwithstanding the foregoing, (i) Customer may use the FirstFuel Brand to identify and publicize the Services at trade shows and industry events; (ii) FirstFuel may identify Customer as an FirstFuel customer and use the

FIRSTFUEL CONFIDENTIAL

Customer Brand for marketing and sales purposes, provided that such identification shall not state or imply an endorsement by Customer; (iii) FirstFuel may identify the Services with the FirstFuel Brand and "Powered By FirstFuel" or other similar phrasing. Except as expressly permitted by this Agreement, each Party shall have a written right of approval over the use of its Brand by the other Party, not to be unreasonably withheld.

2.5 Usage Restrictions.

(i) Customer shall not (a) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Services is compiled or interpreted; (b) modify the Services, FirstFuel Content, Third Party Content or create any derivative product from any of the foregoing, except with the prior written consent of FirstFuel; or (c) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under this Section 2. Customer shall use the Services and all Customer Data solely in compliance with all applicable laws, regulations or rules, including, without limitation, the FirstFuel Terms of Use.

(ii) Customer shall be responsible for the security of its Administrative User' accounts and passwords, and shall notify FirstFuel immediately of any unauthorized use of any password or account or any other known or suspected breach of security. Customer shall be responsible for the acts or omissions of its Administrative User in connection with the use of, and access to, the FirstFuel Website Portal, and any such act or omission which would constitute a breach of this Agreement if undertaken by Customer, shall be deemed to be a breach by Customer hereunder.

2.6 Retained Rights; Ownership.

(i) Subject to the rights granted in this Agreement, Customer retains all right, title and interest in and to the Customer Brand and Customer Data, and FirstFuel acknowledges that it neither owns nor acquires any additional rights in and to the Customer Brand or Customer Data not expressly granted by this Agreement.

(ii) Subject to the rights granted in this Agreement and except to the extent set forth in Section 2.4 (iii), (a) FirstFuel retains all right, title and interest in and to the Services, the FirstFuel Content and the FirstFuel Intellectual Property, (b) Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement.

3. FIRSTFUEL OBLIGATIONS.

3.1 Responsibility for Hosting of Service. As between the Parties, FirstFuel shall, at its expense, bear sole responsibility for the design, development, hosting, operation, maintenance and management of the FirstFuel Website Portal, including development of its features, functions and technology, and any adaptation or reconfiguration thereof as may be necessary for purposes of providing access to, and use of, the content therein.

3.2 Data Protection. FirstFuel shall use commercially reasonable managerial, operational, and technical safeguards designed to preserve the integrity and security of the Customer Data while in its possession and control hereunder. Customer shall have the right, at its expense and during the Term upon thirty days notice and during FirstFuel's normal business hours, to conduct an audit of FirstFuel's compliance of this Section 3.2 as it relates solely to the Customer Data, provided that such audit shall: (i) be conducted by an independent third party approved by FirstFuel (such approval not to be unreasonably withheld); and (ii) not unreasonably disrupt FirstFuel's business or operations. FirstFuel shall notify Customer if it knows, or has reason to know, of any breach of this Section 3.2. FirstFuel shall receive data security protections similar in scope to those provided in this Agreement from any subcontractor engaged by FirstFuel.

3.3 Subcontractors. FirstFuel shall be permitted to enter into an arrangement with one or more subcontractors to fulfill any of FirstFuel's obligations hereunder.

3.4 Communication with Administrative Users and Designated Users. As part of the provision of the Services, FirstFuel may need to communicate with an Administrative User or Designated Users from time-to-time. Customer hereby grants FirstFuel the limited right to communicate with Administrative Users or Designated Users as may be necessary to provide the Services.

4. CUSTOMER OBLIGATIONS.

4.1 Customer Data. Customer shall provide the Customer Data to FirstFuel in the format and at the times specified in the Statement of Work. Customer shall be responsible for, and FirstFuel shall not be liable for any breach of this Agreement, resulting from the Customer Data, including the delivery, accuracy, completeness and consistency thereof. Customer shall make available in a timely manner at no charge to FirstFuel all content, graphic files, Customer Brand information and other information and resources of Customer reasonably required by FirstFuel for the performance of its obligations under this Agreement.

4.2 Feedback. Customer shall provide FirstFuel with prompt written notification of any ideas, comments or complaints about the FirstFuel Website Portal that are made to Customer by an Administrative User or Designated Users, and of any problems with the Services or their use that Customer becomes aware of during the Term.

4.3 Assistance to FirstFuel. Customer shall, at its expense, provide reasonable assistance to FirstFuel to enable FirstFuel to perform its obligations under this Agreement, including, without limitation, any obligations with respect to a Statement of Work.

5. FEES AND EXPENSES; PAYMENTS.

5.1 Fees. In accordance with the Prompt Payment Act (31 USC 3903), the GSA Multiple Award Schedule (MAS) Contractor shall invoice Customer, Customer shall make payment to the GSA MAS Contractor and the GSA MAS Contractor shall pay First Fuel all fees required by each particular Statement of Work or payment schedule.

5.2 Taxes. Customer shall be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on FirstFuel's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Customer shall make all required payments to FirstFuel free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to FirstFuel shall be Customer's sole responsibility, and Customer shall, upon FirstFuel's request, provide FirstFuel with official receipts issued by the appropriate taxing authorities, or such other evidence as FirstFuel may reasonably request, to establish that such taxes have been paid.

6. CONFIDENTIAL INFORMATION.

FIRSTFUEL CONFIDENTIAL

6.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the Confidential Information of the disclosing Party or such third party.

6.2 Mutual Confidentiality Obligations. Each Party agrees (i) to use Confidential Information disclosed by the other Party only as described herein; (ii) to hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party. Notwithstanding the above, a Party may disclose the Confidential Information of the other Party to such of its personnel, agents, or consultants, if any, who have a need to have access such information and who have agreed in writing to treat such information as confidential. Each Party shall notify the other Party of any suspected breach of this Section 6.

6.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Section 6.2 shall not apply to Confidential Information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient as reflected by recipient's records; or (vi) is approved in writing for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information (a) to the limited extent required to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; (b) to the limited extent required to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do; or (c) to its counsel, accountants, financial advisor or other similar representatives and in connection with an actual or proposed merger, acquisition, or initial public offering or similar transaction of such Party, provided that the recipient in such case has agreed in writing to treat such information as confidential.

6.4 Terms of Agreement. Each Party shall be entitled to disclose to third parties the existence of this Agreement, but the terms and conditions of this Agreement (including, without limitation, the fees) shall be the Confidential Information of FirstFuel and shall not be disclosed by Customer to any third party; provided, however, that either Party may disclose the terms and conditions of this Agreement to its counsel, accountants, financial advisor or other similar representatives and in connection with an actual or proposed merger, acquisition, or initial public offering or similar transaction of such Party, provided that the recipient in such case has agreed in writing to treat such information as confidential.

6.5 Equitable Relief. In the event of a breach or threatened breach of this Section 6 by either Party, each Party agrees that remedies at law may not be adequate to protect the non-breaching Party and the non-breaching Party shall be entitled to seek specific performance and injunctive or other equitable relief to enforce the provisions hereof and shall be entitled to recover from reasonable attorneys' fees incurred in connection therewith. Notwithstanding the foregoing, the remedies in Section 6.5 shall not be the exclusive remedies for a breach of this Section 6.

7. REPRESENTATIONS AND WARRANTIES.

7.1 General Representations. Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (iii) that this Agreement, when executed and delivered by the other Party, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

7.2 Service Warranty. FirstFuel hereby represents and warrants that the Services will conform in all material respects to the service standards set forth in the Statement of Work; provided, however, that FirstFuel does not warrant that the Services will be error free or will operate without interruption. Customer's exclusive remedy for any breach of this Section 7.2 shall be the re-performance of the Services. If FirstFuel is unable to re-perform the Services as warranted within 30 days of receipt of notice of breach, Customer shall be entitled to recover the fees paid to FirstFuel solely for the deficient Services, subject to Section 8.3.

8. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.

8.1 Third Party Content. FirstFuel makes no representations or warranties regarding any Third Party Content made available in, or in connection with, the Services.

8.2 Disclaimer. EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 7, THE SERVICES, THE FIRSTFUEL ANALYTICS, THE FIRSTFUEL WEBSITE PORTAL, THE FIRSTFUEL CONTENT, THE THIRD PARTY CONTENT AND ALL OTHER DATA, MATERIALS, OR INFORMATION PROVIDED BY FIRSTFUEL ARE PROVIDED "AS IS," AND FIRSTFUEL DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE.

8.3 Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL FIRSTFUEL BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM. THE CUMULATIVE LIABILITY OF FIRSTFUEL TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID TO FIRSTFUEL BY CUSTOMER DURING THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

9. INDEMNIFICATION.

9.1 By FirstFuel. FirstFuel shall indemnify, defend and hold harmless Customer from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim (a "**Claim**") by any third party that (i) a claim that the Services infringe a third party's valid U.S. patents issued as of the Effective Date, or infringe or misappropriate, as applicable, a third party's copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America. If an infringement claim is made or appears possible, Customer agrees to permit FirstFuel, at FirstFuel's sole discretion, to enable Customer to continue to use the Services, or to modify or replace any such infringing material to make it non-infringing. If FirstFuel determines that none of these alternatives is reasonably available, Customer

FIRSTFUEL CONFIDENTIAL

shall, upon written request from FirstFuel, cease use of, and, if applicable, return, those materials that are the subject of the infringement claim. This Section 9.1 shall not apply to any claims arising, in whole or in part, from a Customer Indemnity Responsibility.

9.2 By Customer. Customer agrees to hold, harmless, indemnify, and, at FirstFuel's option, defend FirstFuel, using counsel acceptable to FirstFuel, from and against Claim resulting from (i) intellectual property infringements arising from a combination, operation or use of the Services with other software, hardware or technology not provided by FirstFuel; (ii) errors, inaccuracies, or omissions in the Customer Data; or (iii) breach of any Customer warranties in this Agreement (each a "**Customer Indemnity Responsibility**"). If the Customer Indemnity Responsibility relates to the Customer Data, Customer shall, at its sole discretion, obtain the right to enable FirstFuel to continue to use the Customer Data or to modify or replace any such Customer Data to make it non-infringing. If Customer determines that none of these alternatives is reasonably available, FirstFuel shall, upon written request from Customer, cease use of the Customer Data and terminate this Agreement pursuant to Section 10.2.

9.3 Procedure. As a condition to the indemnifying Party's obligation under this Section 9, the Party seeking indemnification must: (i) promptly notify the indemnifying Party in writing of the claim, (ii) cooperate with the indemnifying Party, and (iii) allow the indemnifying Party sole authority to control the defense and settlement of such claim. The indemnifying Party will not settle any third-party claim against the indemnified Party unless such settlement completely and forever releases indemnified Party from all liability with respect to such claim or unless the indemnified Party consents to such settlement, and further provided that the indemnified Party will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice, at such indemnified Party's expense.

10. TERM AND TERMINATION.

10.1 Term. The term of this Agreement (the "**Term**") will commence on the Effective Date and will continue until the later of (i) one year after the Effective Date and (ii) the date on which all Services contemplated under Statements of Work have been completed, unless earlier terminated in accordance with this Section 10. The Agreement Term shall be extended for additional one (1) year Terms unless otherwise terminated within sixty (60) days of the end of the then current Term.

10.2 Termination for Breach. Either Party may terminate this Agreement in the event of a material breach by the other Party by providing written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party shall have a right to cure such breach within 30 days of receipt of such notice, and this Agreement shall terminate in the event that such cure is not made within such 30-day period.

10.3 Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate this Agreement upon written notice to the other Party, in the event: (i) that the other Party becomes insolvent or unable to pay its debts when due; (ii) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within 90 days after such filing; (iii) the other Party discontinues its business; or (iv) a receiver is appointed or there is an assignment for the benefit of such other Party's creditors.

10.4 Effect of Termination. Upon any termination of this Agreement: (i) Customer shall immediately discontinue all use of the Services and any FirstFuel Confidential Information; (ii) Customer shall delete any FirstFuel Confidential Information from Customer's computer storage or any other media including, but not limited to, online and off-line libraries; (iii) FirstFuel shall delete any Customer Confidential Information and Customer Data from FirstFuel's computer storage or any other media including, but not limited to, online and off-line libraries; (iv) Customer shall return to FirstFuel or, at FirstFuel's option, destroy, all copies of FirstFuel Confidential Information then in Customer's possession; (v) each Party shall discontinue use of the other Party's Brand; and (vi) Customer shall promptly pay to FirstFuel all amounts due and payable hereunder. Notwithstanding the foregoing, FirstFuel may continue to use Customer Data or its Designated Users data, provided it is aggregated and anonymous.

10.5 Survival. The provisions of Sections 1, 2.6, 5, 6, 7, 8, 9, 10.5, 10.6, and 11 shall survive the termination of this Agreement.

11. MISCELLANEOUS.

11.1 Entire Agreement. This Agreement, including all Exhibits attached hereto and the GSA MAS Contract into which this Agreement has been incorporated, set forth the entire agreement and understanding between the Parties and supersedes all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein.

11.2 Independent Contractors. In making and performing this Agreement, Customer and FirstFuel act and will act at all times as independent contractors, and nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

11.3 Notices. All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid or overnight courier, to the Parties to the Agreement and addressed, if to Customer, to the address set forth on the Cover Page, and if to FirstFuel, as follows:

FIRSTFUEL, INC.
420 Bedford Street
Lexington, MA 02420
Attention: Chief Financial Officer

or addressed to such other address as that Party may have given by written notice in accordance with this provision.

11.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

11.5 Assignment; Delegation. Customer shall not assign any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of FirstFuel, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect.

11.6 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

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11.7 Severability. The invalidity or unenforceability of one or more of the provisions of this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

11.8 Waiver. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

11.9 Force Majeure. Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, Internet access outside of FirstFuel's control, war, terror, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than 90 days, the other Party may terminate this Agreement upon 30 days' written notice.

11.10 Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF. THE PARTY'S AGREE TO THE EXCLUSIVE JURISDICTION OF THE MASSACHUSETTS COURTS.

11.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

11.12 Interpretation. The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement. For all purposes hereof, the terms "include", "includes" and "including" shall be deemed followed by the words "without limitation," and the term "or" is not exclusive.

[End of terms.]