

RESOLUTION NO. 30398

A RESOLUTION AUTHORIZING THE INTERIM TREASURER TO EXECUTE A CONTRACT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH FIDELITY INFORMATION SERVICES (FIS) LLC, TO PROVIDE MERCHANT CARD SERVICES FOR THE CITY OF CHATTANOOGA FOR ONE (1) YEAR BEGINNING JULY 1, 2020, PLUS FOUR (4) ONE (1) YEAR EXTENSIONS, FOR AN AMOUNT NOT TO EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Interim Treasurer to execute a contract, in substantially the form attached, with Fidelity Information Services (FIS) LLC, to provide merchant card services for the City of Chattanooga for one (1) year beginning July 1, 2020, plus four (4) one (1) year extensions, for an amount not to exceed \$50,000.00.

ADOPTED: June 23, 2020

/mem



INFORMATION TECHNOLOGY SERVICES AGREEMENT

Client: City of Chattanooga, TN
101 E. 11th Street, Suite 100
Chattanooga, TN 37402-4285

FIS: Fidelity Information Services, LLC (together with its affiliates, "FIS")
601 Riverside Avenue
Jacksonville, FL 32204

Effective Date: This Agreement shall be effective as of the date signed by the Client's authorized signatory.

FIS is pleased to welcome you to the FIS family.

Your agreement with FIS is made up of the attached General Terms and Conditions ("General Terms") and all Order Forms and Addenda, as well as all schedules, exhibits, and pricing attachments that are attached (the "Agreement").

IN WITNESS WHEREOF, the parties have caused their duly authorized officers or representatives to execute and deliver this Agreement as a legally binding obligation of such party.

CITY OF CHATTANOOGA, TN

FIDELITY INFORMATION SERVICES, LLC

Signature: _____

Signature: _____

Name:

Name:

Title:

Title:

Date:

Date:



GENERAL TERMS AND CONDITIONS

1. Introduction.

1.1 These general terms and conditions (“General Terms”) together with each Order Form and each Addendum, now or hereafter agreed to by the parties, are a part of the Information Technology Services Agreement (collectively, the “Agreement”) between City of Chattanooga, TN of Chattanooga, TN (“Client”) and **Fidelity Information Services, LLC** (together with its subsidiaries and Affiliates, “FIS”). The pricing attachment(s) related to each Addendum are incorporated into and made a part of such Addendum. “Affiliate” means, with respect to a party, any entity which directly or indirectly, through one or more intermediaries, is controlled by, or is under common control with such party.

2. In addition to the General Terms herein, the agreement between the parties shall be governed by the City of Chattanooga Purchase Order Standard Terms and Conditions (Revised 07/18/2018) (“City Standard Terms and Conditions”) which are attached hereto as an Addendum and incorporated herein by reference. In the event of a conflict between the General Terms and the City Standard Terms and Conditions, the City Standard Terms and Conditions shall control.

3. **Services.** The following provisions apply to each Addendum that describes the provision of a service by FIS (“Service”). Information, data, records or documents provided by a party in connection with a Service or Software that is subject to the Agreement is referred to as “Data”. “Software” means, individually or collectively, any software and/or interfaces licensed to Client by FIS or its Affiliates pursuant to a Software License and Maintenance or other Addendum to the Agreement.

3.1 Commencement.

3.1.1 Each party shall make commercially reasonable efforts, including the assignment of adequate personnel, to commence the Service (or Software, as applicable) as soon as practicable following the Effective Date.

3.1.2 Unless otherwise set forth in the applicable Addendum, the “Commencement Date” of a Service not already in use as of the applicable Order Form Effective Date is the earlier of: (i) Client’s first production use of the Service or (ii) the date the Service is first available for Client’s use in production, or (iii) the commencement date agreed between the parties in writing. If availability of a Service is delayed by more than ninety (90) days after the agreed upon Commencement Date (or in the absence of an agreed upon Commencement Date, the Order Form Effective Date) due to Client’s actions or inactions, FIS may suspend its efforts to deliver the Service, in which event Client shall pay any one-time fees upon such suspension and pay the recurring minimum fees (or if no minimum fees apply, then the estimated fees) shown on the applicable pricing attachment as if the Commencement Date occurred on the date of suspension. FIS may terminate the Service under Section 15.1 at any time following the date of suspension of the Service.

3.1.3 FIS may postpone implementation of the Service if Client fails to timely provide required information or a circumstance arises that might jeopardize timely processing of transactions for other clients of FIS.

3.2 FIS Performance. FIS shall provide Client and, where applicable, Client’s customers (“Customers”) with access to and use of the Service and Software in accordance with these General Terms, the applicable Addenda, and FIS’ then current standard user operating instructions and requirements made available to Client from time to time (“Specifications”). FIS shall make available documents, reports, statements and other output of the Services, as may be more fully described in the Agreement or the Specifications (collectively, “Output”).

3.3 FIS Responsibilities.

3.3.1 FIS shall perform each Service and provide Software in compliance with all Laws applicable to FIS as a third-party provider of that Service or Software. “Law” means any United States federal, state or local law, rule, regulation, ordinance, code or order to which a party may be subject or under which a party may exercise rights.

3.3.2 FIS shall monitor federal Laws applicable to the provision of the Services and Software. FIS shall maintain the features and functions for the Services and Software in accordance with all federal Laws applicable to such features and functions in a non-custom environment. In addition, FIS shall, at Client’s request, work with Client in developing and implementing a suitable and commercially reasonable procedure or direction to enable Client to comply with state and local Laws applicable to the Services and Software being provided to Client, and,



to the extent commercially reasonable, modify the manner in which FIS provides the Service or Software prior to the regulatory deadline for such compliance. Any modification in a Service or Software necessitated by such a change in state or local Laws shall be paid for by Client.

3.4 Client Responsibilities.

3.4.1 Client shall: (i) provide Customer information to FIS in accordance with the Specifications; (ii) except to the extent due to FIS' material breach of the Agreement, assume all risk and liability associated with transactions, including any risk of counterfeit, charged-back or fraudulent transactions; (iii) timely deliver any Data or other information necessary for the provision of the Service in an electronic form and format approved by FIS; (iv) be solely responsible for timely procuring any information or cooperation required from its Customers and suppliers or other third parties in order to commence the Service; (v) be solely responsible for training its employees and representatives to comply with all Laws applicable to Client and the procedures set forth in the Specifications or any manual or other literature provided to Client by FIS; (vi) comply with all Laws applicable to Client's business and its use of a Service, including but not limited to those Laws relating to usury, truth-in-lending, fair credit reporting, equal credit opportunity, automated clearing house transfers, networks associations, electronic funds transfer, privacy and direct marketing, regardless of whether Client uses any forms or other Materials supplied by FIS; (vii) be responsible for providing FIS with notice of any changes in state or local Law that impact Client's use of the Service; and (viii) maintain any Client-provided equipment used in connection with the Services and Software, and such equipment shall be in good working order in accordance with the manufacturer's requirements.

3.4.2 Client shall be responsible for monitoring and interpreting and for complying with the applicable Laws pertaining to Client's business ("Legal Requirements"). Based on Client's instructions, FIS shall implement the processing parameters and configuration settings (collectively, the "Parameters") available within FIS' Services and systems that shall apply to Client, subject to the change request process in place between FIS and Client to establish or change Parameters, requirements, development arrangements and deployment timelines. Client shall be responsible for determining that such selections are consistent with the Legal Requirements and with the terms and conditions of any agreements between Client and its Customers. In making such determinations, Client may rely upon the written descriptions of such Parameters contained in the Specifications. FIS shall perform the Services in accordance with the Parameters.

3.4.3 If a Service contemplates that FIS will be clearing or settling transactions and/or processing payments, then FIS, in its sole discretion, may require Client to establish and maintain a clearing or settlement account ("Settlement Account") with a minimum balance determined by FIS. Client shall maintain sufficient funds in the Settlement Account to cover any amounts required to facilitate the orderly processing and settlement of transactions (including interchange fees or other payment system or network fees, charges, fines or assessments), and is solely responsible for properly applying all credits and debits made to the Settlement Account. Client shall notify FIS in writing of any change in Settlement Account information within three (3) business days of occurrence.

3.5 Data.

3.5.1 Client shall be solely responsible for transmitting its Data (collectively, "Client Data") and verifying the accuracy, completeness or authenticity of Data furnished by Client or a third party. Client shall bear any risk of loss resulting from that transmission until receipt by FIS. FIS shall bear the risk of loss resulting from Data transmitted to Client until Client confirms receipt. If Client requests FIS to disclose Client Data to a third party, Client shall provide FIS with written authorization to do so and bear any risk of loss or liability associated with that disclosure. In addition, FIS shall be held harmless from any claim arising out of such disclosure or the third party's use or disclosure of that Client Data. If Client's requested disclosure includes FIS Confidential Information, FIS may remove FIS Confidential Information (or require such removal) prior to such disclosure and require the third party to enter into a written agreement with FIS governing use, disclosure and safekeeping of the FIS Confidential Information.

3.5.2 FIS shall not be responsible for the accuracy, completeness or authenticity of any Data furnished by Client or a third party, and shall have no obligation to audit, check or verify that Data. If any Data submitted by Client or a third party to FIS is incorrect, incomplete or not in the required format, FIS may require Client to resubmit the Data or FIS may correct the Data and bill Client its then current rates for performing those corrections. FIS shall attempt to notify Client prior to Client incurring such expense.

3.5.3 Client shall maintain a copy of all Data submitted to FIS (whether directly or through a third party) to permit reconstruction if ever required. Client assumes all risk and expense associated with Data reconstruction,



except for those expenses incurred as a direct consequence of FIS' breach of the Agreement. If Data reconstruction is ever required, the parties shall mutually agree on a schedule for that reconstruction.

3.6 Disaster Recovery. In accordance with FFIEC business continuity guidelines, FIS has put in place a disaster recovery plan designed to minimize the risks associated with a disaster affecting FIS' ability to provide the Services under the Agreement. FIS' recovery time objective (RTO) under such plan is as set forth in the continuity program summary document made available to Client. FIS will maintain adequate backup procedures in order to recover Client Data to the point of the last available good backup, with a recovery point objective (RPO) as set forth in the continuity program summary document made available to Client. FIS will test its disaster recovery plan annually. Upon request, FIS will provide a summary of its disaster recovery plan and test results, excluding any proprietary information or NPI. Client is responsible for adopting a disaster recovery plan relating to disasters affecting Client's facilities and for securing business interruption insurance or other insurance necessary for Client's protection.

3.7 Changes to Services. FIS may change, enhance or update any features, functions, brand, third-party provider, or attributes of a Service, or provide an appropriate replacement for a Service, or any element of its systems or processes ("Changed Service"), from time to time, provided that neither the functionality of the Service nor the overall fees for the Service are materially adversely affected. Client shall not rely on identification of specific brands associated with or names of third-party providers of a Service as an obligation of FIS to use any particular brand or third-party provider. If Client requests a change to a Service, the parties shall negotiate the terms for such change, which terms will be set forth in a mutually agreed upon statement of work ("SOW"). FIS may withdraw a Service or terminate any function or Service (i) immediately upon any final regulatory, legislative, or judicial determination that providing such Service or function violates applicable law or regulation or the rights of any third party, or (ii) upon providing not less than three hundred sixty-five (365) days' prior written notice to Client so long as FIS is withdrawing or terminating the Service or function from its entire client base. If FIS withdraws or terminates a Service or function pursuant to this Section, no damages or liquidated damages will be due as a result of such withdrawal or termination.

3.8 Transition Assistance. Upon termination of a Service, FIS shall provide termination services and deconversion assistance for additional fees. Prior to providing any termination services or deconversion assistance, FIS shall provide Client with a good-faith estimate of all expenses and charges, including charges for custom services. Expenses and charges for termination services and deconversion assistance shall be computed in accordance with FIS' then-current standard prices for such products, materials, and services. Prior to FIS providing master files, transaction data, test data, record layouts or other information or deconversion assistance: (i) Client and any replacement service provider shall execute FIS' deconversion confidentiality agreement; (ii) Client shall fully pay all outstanding amounts; (iii) Client shall prepay FIS' fees for termination services and deconversion assistance; and (iv) the parties shall mutually agree on a date for deconversion that is at least one hundred eighty (180) days following FIS' receipt of Client's notice of deconversion. If the one hundred eighty (180) day period ends between the third week of November and the third week of January, the time period for completing deconversion may be extended until the first week of February. FIS may withhold performance of its obligations under this Section in the event that Client is in default of any payment obligations under the Agreement. In addition, upon termination of the Agreement, FIS may, at Client's request and expense, continue to provide the corresponding Service(s) until the deconversion is completed, provided the parties agree to such continuation in writing. If any Service continues to be provided by FIS and used by Client after the applicable expiration date or termination date, then such Service shall be deemed to be provided subject to the Agreement, provided that, unless the parties mutually agree otherwise, the pricing for such Service going forward shall be equal to one hundred thirty-five percent (135%) of the pricing applicable to such Service immediately prior to the expiration or termination, and provided further that FIS shall not be obligated to continue to provide the Service for a period longer than one hundred eighty (180) days after the applicable expiration date or termination date without additional documentation or amendment to the Agreement.

3.9 Problem Reporting and Resolution. Client shall promptly report any problems encountered with the Service. FIS shall provide a toll-free telephone number for problem reporting. FIS shall promptly respond to each reported problem based on its severity, the impact on Client's operations and the effect on the Service. FIS shall use reasonable commercial efforts to either resolve each problem or provide Client with information to enable Client's personnel to resolve it.

4. Use of Service and Software. Except as otherwise permitted in the Agreement or in writing by FIS, Client shall use each Service and/or Software only for its own internal business purposes to service its U.S.-based accounts for its Customers in accordance with the terms of the Agreement and the applicable Specifications. Client shall not (i) except as permitted in the Agreement and the applicable Specifications, sell, use or otherwise



provide, directly or indirectly, any of the Service, Software or any portion thereof to or for the benefit of any third party, (ii) except as permitted by FIS in writing, copy any Service, Software or any part, feature, function or user interface thereof; (iii) adapt, modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on any Service, Software or any part thereof; (iv) attempt to gain unauthorized access to any Service, Software or its related systems or networks; (v) access any Service for purposes of monitoring the performance or functionality for any benchmarking or competitive purposes; or (vi) perform any load or security testing unless FIS' prior written approval is obtained. Client agrees that FIS may use all suggestions for improvement and comments regarding the Service, or Software that are furnished by Client to FIS in connection with the Agreement, without accounting or reservation. Except as otherwise may be set forth herein or in writing between the parties, Client shall be responsible for handling all Customer inquiries relating to a Service.

5. **Materials.** As a convenience, FIS may provide Client with sample customer forms, procedures, notices, scripts, marketing materials or other similar information (collectively, "Materials"). Client shall have a license to use Materials, if any, solely in connection with its use of the Services or Software during the term of the related Service and solely in a manner that is consistent with the Specifications. Client's license to use the Materials shall expire immediately upon termination of the Agreement or the related Service. Client is responsible for its use of Materials and bears sole liability for any such use.

6. **Training.** Except as may be provided otherwise in the applicable Addendum, FIS will provide its standard initial train-the-trainer training regarding the use and operation of the Service or Software to Client by web-based training or in person at an FIS training location (in which case, travel would be at Client's expense) at FIS' then current rates and on a mutually agreed date and time. Following such initial training, Client is responsible for its trainer(s) training Client's employees on the use and operation of the Service or Software. Additional training may be provided by FIS upon Client's request, including onsite training at Client's location, as mutually agreed to by the parties regarding topics, duration, and fees and expenses.

7. **Fees and Other Charges.**

7.1 **Payment.** Client shall pay all fees and charges set forth in the pricing attachment(s) to an Addendum. fifty percent (50%) of the one-time fees shall be due upon execution of the Agreement (or the applicable Order Form or Amendment), and the remaining fifty percent (50%) shall be due upon the applicable Commencement Date, unless otherwise set forth in an Order Form or an Addendum. Recurring fees shall be billed for each calendar month (or portion thereof) beginning on the Commencement Date and paid within thirty (30) days of the invoice date; provided, however that, notwithstanding anything to the contrary in Section 17.6 below, for any Service and/or Software in use by Client as of the Effective Date, Client shall continue to pay the recurring fees applicable to those Services and/or Software under Client's prior agreement with FIS for such Services and/or Software up to the Commencement Date. FIS may increase any pass-through fees (including, without limitation, postage, supplies, courier, data transmission, and telecommunications expenses) as its cost for those items increases. Fees, costs and expenses owed by Client are exclusive of charges for materials, work, hardware, software or travel not otherwise detailed in an Order Form, Addendum, SOW, or pricing attachment. Travel time, if required, will be charged at FIS' standard hourly rates, but will not exceed eight (8) hours per day per resource.

7.2 **Adjustments.** FIS may increase recurring fees for its products and services by the amount of the percentage change in ECI, calculated by averaging the annual ECI change for the four (4) fiscal quarters immediately preceding the anniversary of the Effective Date, provided the minimum aggregate pricing change during any 12-month period is two percent (2%), and the maximum aggregate pricing change during any 12-month period is six percent (6%), of the pricing then applicable to the product or service. ECI is the U.S. Employment Cost Index ("ECI") – Civilian: All Workers total compensation, as published by the U.S. Bureau of Labor Statistics (www.bls.gov). If the ECI is unavailable or materially changes in content and scope, then FIS may in good faith select another U.S. Government index as a substitute in order to obtain substantially the same result. Pricing adjustments for all products and services will take effect on the first day of the calendar month of each anniversary of the Effective Date of the Agreement. FIS may pass through to Client a share of costs incurred by FIS in making upgrades or modifications to FIS' security systems or processes.

7.3 **Payment Account.** FIS shall electronically debit the account specified by Client ("FIS Payment Account") to settle: (i) any fees, charges or other amounts owed to FIS by Client; (ii) third-party fees, charges, fines, or assessments (including, but not limited to, interchange fees or other payment system or network fees or charges); and (iii) any payments or deposits received from or on behalf of Client. Client shall maintain sufficient funds in the FIS Payment Account to cover any amounts owed to FIS, and is solely responsible for properly applying all credits and debits made to the FIS Payment Account by FIS. Client shall provide FIS Payment Account information sufficient for FIS to initiate ACH transfer within thirty (30) days after execution of the Agreement, and shall provide to FIS any change in FIS Payment Account information within three (3) business days of any



change. In the event FIS does not collect amounts owed from the FIS Payment Account, Client must pay such amounts via electronic payment within thirty (30) days of the invoice date. For any amount not paid within thirty (30) days after its due date, Client shall pay a late fee equal to the lesser of one and one-half percent (1½%) per month of the unpaid amount or the maximum interest rate allowed by Law. If Client disputes in good faith any invoiced amount, Client shall pay the amounts due minus the disputed amount, and the parties shall diligently proceed to resolve the disputed amount. An amount will be considered disputed in good faith if (i) within fifteen (15) days after the date of the applicable invoice, Client provides FIS written notice that includes the amount in dispute, the reason for the dispute (in reasonable detail), and a written statement acknowledging that the disputed amount has been determined in good faith; and (ii) all undisputed amounts due from Client have been paid in accordance with the Agreement. Any compromise amount agreed upon between the parties shall be due and payable within ten (10) days of written confirmation from FIS of the compromise amount. Any disputed amount that remains outstanding after Client follows the above disputed invoice process, shall be due and payable no later than sixty (60) days after the original invoice date, and the parties shall continue to work together in good faith to resolve the disputed amount.

7.4 Billing Errors. In the event of over-billing of fees or charges due to FIS, FIS will correct the error by credit to Client; provided, however, that FIS shall not be obligated to pay or credit Client for any such over-billing more than twelve (12) months after the date of the invoice on which the over-billed fees or charges appeared. If Client was under-billed, FIS will add the under-billed amount to a future invoice. FIS may utilize any amounts owed to Client under the Agreement to pay or reimburse FIS for amounts owed by Client; provided, however, that Client shall not be obligated to pay FIS for any such under-billed amount more than twelve (12) months after the date of the invoice on which the under-billed fees or charges should have appeared.

8. Intellectual Property.

8.1 Each party shall continue to own any Data that it provides, or that may be provided on its behalf, to the other party in connection with the use or provision of the Services and Software. Client is not acquiring a copyright, patent or other intellectual property right in any Service, Software, Deliverable, Specifications or Materials, or Output, modifications, customizations, enhancements, changes or work product related thereto (whether tangible or intangible), all of which shall be owned solely by FIS. “Deliverable” means any technical, programming, consulting, implementation and other professional services performed by FIS, as described in an SOW or similar document signed by the parties.

8.2 Any intellectual property rights that existed prior to the Effective Date of an Addendum shall belong solely to the party owning them at that time. Neither party shall be entitled to any copyright, trademark, trade name, trade secret or patent of the other party.

8.3 Client shall not alter, remove, obscure or revise any proprietary, restrictive, trademark or copyright notice included with, affixed to, or displayed in, on or by a Service, Software, Deliverable or Specifications.

9. Confidentiality.

9.1 Each party shall treat information received from the other that is designated as “confidential” at or prior to disclosure (“Confidential Information”) as strictly confidential. FIS designates the Services, Software, Deliverables, Output (excluding Client Data), Specifications, and any information and intellectual property rights related to the foregoing, as its Confidential Information. Client designates Customer information that qualifies as “Non-public Personal Information” under the Gramm-Leach-Bliley Act of 1999 or its state law equivalents (“NPI”) as its Confidential Information.

9.2 Each party shall: (i) restrict disclosure of the other party’s Confidential Information to employees, agents, subcontractors and Affiliates solely on a “need to know” basis in accordance with the Agreement; (ii) advise its employees, agents and subcontractors of their confidentiality obligations; (iii) require agents and subcontractors to protect and restrict the use of the other party’s Confidential Information in accordance with the terms of the Agreement; (iv) use the same degree of care to protect the other party’s Confidential Information as it uses to safeguard its own Confidential Information of similar importance, but in no event less than a reasonable degree of care; (v) establish procedural, physical and electronic safeguards designed to (a) meet the objectives of the FFIEC Interagency Guidelines and (b) prevent the compromise or unauthorized disclosure of Confidential Information. Client shall notify FIS of any breach of FIS’ Confidential Information as soon as possible following determination of such breach. FIS shall notify Client of any breach of NPI as soon as possible following determination of such breach and shall comply with all Laws regarding NPI that are applicable to it as a third-party processor.



9.3 Confidential Information shall remain the property of the party from or through whom it was provided. Except for NPI, neither party shall be obligated to preserve the confidentiality of any information that: (i) was previously known; (ii) is a matter of public knowledge; (iii) was or is independently developed; (iv) is released for disclosure with written consent; or (v) is received from a third party to whom it was disclosed without restriction. Disclosure of Confidential Information shall be permitted if it is: (a) required by Law; (b) in connection with the tax treatment or tax structure of the Agreement; or (c) in response to a valid order of a U.S. court or other governmental body, provided the owner receives written notice and is afforded a reasonable opportunity to obtain a protective order. Upon termination of a Service, each party shall, except as otherwise set forth in Section 8.4 below, destroy the other party's Confidential Information relating to that Addendum in a manner designed to preserve its confidentiality, or, at the other party's written request and expense, return it to the disclosing party. Upon termination of the Agreement, each party shall destroy any remaining Confidential Information of the other party in the same manner or, if so requested, return it to the disclosing party at its expense.

9.4 Notwithstanding the foregoing, Client hereby authorizes FIS to store and use all Data provided by or on behalf of Client and/or Customers in connection with the Services, and all information that is derived from such Data, in order to provide the Services and/or Software, to create Depersonalized Information, and for other purposes permissible under Law, and to disclose Depersonalized Information to third parties. "Depersonalized Information" means Data provided by or on behalf of Client and/or Customers in connection with the Services, and all information that is derived from such Data, that has been cleansed to remove Client's name and any NPI. Client agrees that FIS is entitled to disclose such Data and derived information to third parties in order to facilitate its cleansing, provided that any such third parties are bound by commercially reasonable confidentiality and non-disclosure restrictions. FIS' rights with respect to Depersonalized Information shall survive the termination of the Agreement or any Service.

10. Indemnification.

10.1 Any liability of Client to FIS for any claims, damages, losses, or costs arising out of or related to acts performed by Licensee under this Agreement shall be governed by the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq.*

10.2 FIS shall defend Client and its officers, employees, directors, agents and shareholders, in their individual capacities or otherwise (collectively, "Client Indemnitees"), from and against any and all Claims (as defined in this Section 9.2) asserted by a third party (other than an Affiliate of Client) against a Client Indemnitee, and shall indemnify and hold harmless Client Indemnitees from and against any damages, costs, and expenses of such third party awarded against a Client Indemnitee by a final court judgment or an agreement settling such Claims in accordance with this Section 9.2. As used in this Section 9.2, the term "Claim" means any action, litigation, or claim by a third party alleging (i) personal injury or property damage caused by FIS' gross negligence or willful misconduct in connection with the Agreement; (ii) FIS' failure to comply with all federal Laws applicable to FIS as a provider of a Service; or (iii) that a Service or Software infringes an effective U.S. Patent or a registered trademark or copyright; provided, however, that FIS shall not be liable for any infringement or alleged infringement that results, in whole or in part, from: (a) use of a Service or Software in a manner or for a purpose not specifically described in the Agreement (including the Addenda) or Specifications; (b) use of a Service or Software in combination with computer programs, processes, hardware, software, data, systems, or services owned, licensed or provided by someone other than FIS; (c) Client's or any Client Indemnitee's products or services; (d) modification, change, amendment, customization, or adaptation of any Service or Software not made wholly by FIS; or (e) Client's or any Client Indemnitee's failure to implement corrections or changes provided by FIS. If a claim of infringement has been asserted, or in FIS' opinion is about or likely to be asserted, FIS may, at its option: (1) procure for Client the right to continue using the Service or Software; (2) replace or modify the Service or Software; or (3) terminate the applicable Addendum or SOW and refund all pre-paid fees covering future use of the Service or Software.

10.3 The obligation to indemnify under the Agreement is contingent upon: (i) the indemnified party promptly notifying the indemnifying party in writing of any Claim subject to such indemnity obligation; (ii) the indemnifying party having sole control over the defense ; (iii) the indemnified party reasonably cooperating during defense and settlement efforts; (iv) the Claim(s) not arising, in whole or in part, out of the action or inaction of the indemnified party; and (v) the indemnified party not making any admission, concession, consent judgment, default judgment or settlement of the Claim or any part thereof.

11. Limitation of Liability and Disclaimer of Warranties and Certain Losses.

11.1 Limitation of Liability. FIS' TOTAL LIABILITY ARISING OUT OF OR RELATING TO A SERVICE OR SOFTWARE IS LIMITED IN ALL CASES AND IN THE AGGREGATE TO THE AMOUNT OF FEES ACTUALLY



PAID BY CLIENT FOR THE CORRESPONDING SERVICE OR CORRESPONDING SOFTWARE DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS FOR THE FIRST CLAIM. NOTWITHSTANDING THE FOREGOING, FIS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, DELAY OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR OTHER PECUNIARY LOSS), EVEN IF FIS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN ADDITION, FIS EXPRESSLY EXCLUDES THE APPLICATION OF THE UNIFORM COMPUTER INFORMATION TRANSACTION ACT AND ITS STATE LAW EQUIVALENTS.

11.2 Disclaimer of Liability for Certain Losses. Notwithstanding anything to the contrary contained in Section 10.1 above, under no circumstances shall FIS be liable for any losses, claims, demands, penalties, actions, causes of action, suits, obligations, liabilities, damages, delays, costs or expenses, including reasonable attorney's fees (collectively, "Losses") caused, directly or indirectly, in whole or in part, by: (i) Client; (ii) a third party, other than FIS' subcontractors and authorized agents; (iii) use of attachments, features, or devices not authorized by the Specifications; (iv) improper or inadequate conditions at a non-FIS site; (v) improper or incomplete installation not caused by FIS or its authorized agents; (vi) equipment changes, reconfigurations, upgrades or relocations performed by someone other than FIS or its authorized agents; (vii) abuse, misuse, alteration or use that is inconsistent with the terms of the Agreement or Specifications; (viii) incorrect or incomplete Data supplied by Client or its agents; (ix) software, hardware or systems not supplied by FIS; (x) a Force Majeure Event; or (xi) a failure that is not directly attributable to FIS or under FIS' direct control. In the event of any error by FIS in processing any Data or preparing any Output, FIS' sole obligation shall be to correct the error by reprocessing the affected Data or preparing and issuing new Output at no additional cost to Client; provided, however, FIS' obligation herein is contingent upon Client notifying FIS of the error within two (2) business days or two (2) processing cycles after Client receives the erroneously processed Data or erroneously prepared Output.

11.3 Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THESE GENERAL TERMS OR AN ADDENDUM, FIS DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SERVICES, SOFTWARE, DELIVERABLES, EQUIPMENT, AND MATERIALS PROVIDED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, OR ERROR FREE OPERATION (EVEN IF CREATED BY THE INTERNATIONAL SALE OF GOODS CONVENTION, AND WHETHER OR NOT FIS KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, FIS DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CLIENT WITH RESPECT TO THE SERVICES, SOFTWARE, DELIVERABLES, EQUIPMENT, AND MATERIALS PROVIDED UNDER THE AGREEMENT.

12. Outsourcing Management; TSP Audit and Vendor Diligence Information.

12.1 Outsourcing and TSP Diligence Generally. FIS will cooperate with Client to meet its responsibilities to perform due diligence and assess FIS as its third-party technology service provider (TSP), as contemplated by the FFIEC IT Examination Handbook and related guidelines (TSP Guidelines). FIS will regularly make available audit reports and materials that address Client's vendor management and due diligence requirements under the TSP Guidelines. Specific information regarding the available materials meeting the TSP Guidelines is available in the Vendor Management Resource Center on the FIS Client Portal. Information and materials available on the FIS Client Portal are FIS Confidential Information.

12.2 Vendor Diligence and Audit Materials. Through its FIS Client Portal, Client will have continuous electronic access to audit reports, attestations, and other detailed information regarding FIS' internal systems testing and procedures, and FIS' information security and data privacy controls. These audit materials and attestations evidence FIS' compliance with industry and regulatory standards and include recent independent audits (such as SSAE 18s), third-party attestations and certifications (such as ISO certifications and PCI AoCs), and detailed information and testing results regarding physical, technical and administrative controls utilized by the Service business lines within FIS and the security of Client's Confidential Information.

12.3 Information Security and Risk Management In-Depth Conferences. Client may attend any or all of the FIS In-Depth Conferences, which provide in-depth in-person discussions with FIS' senior executive team regarding FIS' information security and risk management processes and system testing results. The In-Depth Conferences provide Client with comprehensive vendor diligence information, including (i) a thorough, interactive review of FIS enterprise-wide security and system controls, and (ii) specific assessments of industry standards



and best practices for financial technology information security and risk management. Currently, FIS offers four (4) In-Depth Conferences each year, with clients attending a two-day event onsite at different FIS facilities.

12.4 Governmental Access. FIS shall permit governmental agencies that regulate Client in connection with a Service performed by FIS to examine FIS' books and records to the same extent as if that Service was being performed by Client on its own premises, subject to FIS' confidentiality and security policies and procedures.

13. Use of Names and Trademarks. With written permission from the Client, FIS may use Client's name and logo: (i) in a general listing of users of its products and services; and (ii) as reasonably necessary to perform any Services. Other than the foregoing: (a) neither party shall use the other party's logos, trademarks or stock exchange ticker symbol unless pre-approved in writing; and (b) the parties shall consult with each other in preparing any press release or other similar communication that mentions or implies a relationship between them.

14. Relationship.

14.1 Independent Contractor. FIS is an independent contractor. Neither FIS nor any of its representatives are an employee, partner or joint venturer of Client. FIS has the sole obligation to supervise, manage and direct the performance of its obligations under the Agreement. FIS reserves the right to determine who will be assigned to perform its obligations, and to make replacements or reassignments as it deems appropriate. Each party shall be solely responsible for payment of compensation to its respective personnel, and assumes full responsibility for payment of all federal, state, local and foreign taxes or contributions imposed or required under unemployment insurance, social security and income tax Laws with respect to such personnel. Except as expressly stated in the Agreement, neither party shall be an agent of the other, nor have any authority to represent the other in any matter. To the extent that FIS engages a subcontractor, FIS shall remain solely responsible for the performance of the subcontracted work. Client shall have no recourse, and shall assert no claim, against any subcontractor of FIS.

15. Insurance. FIS shall maintain the following minimum insurance coverage and limits: (i) statutory workers' compensation in accordance with Law; (ii) employer's liability insurance with limits of coverage of \$1,000,000 (a) per accident, bodily injury (including death) by accident, (b) per bodily injury (including death) by disease, and (c) per employee for bodily injury (including death) by disease as required by the state in which the Services are performed; (iii) commercial general liability with an aggregate of \$2,000,000, and \$1,000,000 per occurrence for bodily injury, property damage and personal injury; (iv) automobile liability insurance, including FIS-owned, leased, and non-owned vehicles with a single limit of \$1,000,000; (v) property insurance, covering the hardware and other equipment used by FIS to provide the Services; (vi) professional and technology errors and omissions, including network security and privacy liability coverage, with limits of \$5,000,000 per claim and in the aggregate; (vii) umbrella (excess) liability insurance for the above-referenced commercial general liability and employer's liability coverage in the amount of \$5,000,000 per occurrence and in the aggregate; and (viii) crime insurance, with coverage extended to include property of Client in the care, custody, or control of FIS, or for which FIS is legally liable, with limits of \$5,000,000 per claim and in the aggregate.

16. Term, Termination and Additional Remedies.

16.1 Term. The term of this Agreement shall be for one (1) year (the "Initial Term") with the option to renew, upon mutual agreement between the parties, for up to four (4) additional one (1) year terms (each a "Renewal Term").

16.2 Termination. In addition to any other remedies, either party may terminate the Agreement or an Addendum on thirty (30) days advance written notice if the other party: (i) fails to cure a material breach within thirty (30) days of receiving written notice to do so; (ii) is the subject of a dissolution, reorganization, insolvency or bankruptcy action that is not dismissed within forty-five (45) days of being filed; (iii) suffers the appointment of a receiver, conservator or trustee; (iv) commits any act related to the Service with the intent to defraud the other party; or (v) discontinues performance under the Agreement because of a binding order of a court or regulatory body. In addition to any other remedies, either party may also terminate a Service or Software on thirty (30) days advance written notice if the other party fails to cure a material breach related to such Service or Software within thirty (30) days of receiving written notice to do so. If a breach cannot reasonably be cured within thirty (30) days, the non-breaching party may not terminate the Service or Software so long as the breaching party promptly commences work and completes correction within ninety (90) days of receiving written notice of the breach. Notwithstanding the foregoing, FIS may terminate the Agreement or an Addendum if Client (a) fails to maintain required balances in the Settlement Account associated with a Service, and fails to remedy that deficiency within forty-eight (48) hours of FIS requesting it to do so, (b) fails to cure any material violation of applicable Law within



thirty (30) days of FIS requesting it to do so, or (c) sells, transfers or assigns all or substantially all of its Service-related accounts to a third party that does not agree in writing with FIS to be bound by the terms of the Agreement.

16.3 In addition to the termination rights set forth above, FIS may terminate a Service, in whole or in part, without penalty, if FIS' agreement to use any third-party software or service upon which the Service relies expires or is terminated; provided, however, that prior to any such termination, FIS shall use commercially reasonable efforts to either (i) extend the applicable expiration or termination date so that its provision of the Service hereunder is not interrupted; (ii) procure a third-party software or service similar to the expired or terminated software or service in order to continue to deliver the Service without interruption and without reduction in quality or increase in fees to Client; or (iii) develop another workaround that allows Client to continue to receive the Service without interruption and without reduction in quality or increase in fees.

16.4 In addition to the termination rights set forth above, Client may terminate the Agreement, an Addendum and/or a Service, in whole or in part, on ninety (90) days advance written notice to FIS for convenience/no cause at all. Any such termination under this Section 16.4 shall be without penalty and shall not be deemed a breach of the Agreement by City.

16.5 **Liquidated Damages.** If a Service is terminated by FIS prior to the end of its term pursuant to the terms of Section 16.2 above, then Client shall pay FIS, (i) any amounts owed (ii) any credits or incentives given to Client by FIS on or before the Commencement Date of a Service; plus (iii) any unpaid one-time fees relating to each terminated Service (including implementation fees relating to each terminated Service, whether billed or unbilled). Client shall not be entitled to a refund of any pre-paid amounts.

16.6 Due to the likelihood of irreparable injury, each party shall be entitled to seek an injunction against the other for any breach of confidentiality, indemnification and intellectual property obligations.

17. Export Restrictions and Unlawful Activity.

17.1 FIS' Confidential Information is subject to export controls under applicable Laws. Accordingly, Client shall: (i) remain in compliance with all requirements associated with such Laws; (ii) cooperate fully with any audit related to such Laws; and (iii) not export to or utilize FIS' Confidential Information in any location for which a license or other authorization is required by those Laws without first securing such license or authorization, or in any country that is subject to a comprehensive embargo by the US government. Client shall be solely responsible for the importation of FIS' Confidential Information, including obtaining any approval or permit necessary for importation or use.

17.2 Neither Client nor any of its directors, officers, agents, employees or other persons associated with or acting on its behalf: (i) have received or will receive any unlawful contribution, gift, entertainment or other payment from FIS; or (ii) is in violation of or will violate any applicable anti-corruption or anti-bribery Laws in the performance of the Agreement. FIS shall have an irrevocable right to immediately terminate the Agreement or any other relationship with Client if this subsection is breached.

18. Miscellaneous.

18.1 If Client is an FDIC- or NCUA-insured institution and all or substantially all of Client's voting stock or assets are being acquired by, or Client is being merged or combined with, another FDIC- or NCUA-insured institution, then Client may assign, transfer or otherwise convey its rights and interests in the Agreement in connection with such transaction upon prior written notice to, but without the requirement of obtaining consent of, FIS so long as the acquiring institution agrees in writing to FIS to be bound by the terms of the Agreement. Other than as described in the preceding sentence, Client shall not assign, subrogate or transfer any interest, obligation or right arising out of the Agreement without prior written consent from FIS, which shall not be unreasonably withheld or delayed. Except as otherwise permitted by this Section, any dissolution, consolidation, merger, transfer or reorganization of a majority of the assets or stock of Client shall constitute an attempted assignment and shall be void from its inception. Subject to the foregoing, the terms of the Agreement shall be binding upon and inure to the benefit of permitted successors and assigns.

18.2 . If FIS is required (i) by subpoena or other legal process to produce documents, testify or otherwise respond to a non-party in an investigation, arbitration or other proceeding in which Client is a party or is subject or (ii) in connection with such a proceeding, to preserve documents, materials, or other data not otherwise required to be preserved under FIS' standard retention policies, then upon FIS' request, Client shall reimburse FIS for its expenses, including reasonable attorneys' fees and other costs reasonably and actually incurred in responding or complying with such requirements.



18.3 All notices given in connection with the Agreement must be in writing and delivered via overnight delivery. Notices shall be delivered to the address set forth in the Agreement. Notices to FIS shall include a copy (which shall not constitute notice) to the General Counsel at the same address. Telephone communications between FIS and Client and/or Customers may be monitored without further notice in order to maintain service quality.

18.4 FIS shall not be liable for any loss, damage or failure due to causes beyond its control, including strikes, riots, earthquakes, epidemics, terrorist actions, wars, fires, floods, weather, power failure, telecommunications outage, acts of God or other failures, interruptions or errors not directly caused by FIS ("Force Majeure Event").

18.5 Each party represents and warrants that it has full legal power and authority to enter into and perform its obligations without any additional consent or approval.

18.6 The Agreement (including these General Terms, all Order Forms, Addenda, and the pricing attachments) together with any attachments thereto, constitute the entire agreement and understanding of the parties with respect to its subject matter. All prior agreements, understandings and representations regarding the same or similar services are superseded in their entirety. In the event of a conflict, ambiguity or contradiction in documents, the documents will take precedence over each other in accordance with the following ranking: (i) City Standard Terms and Conditions; (ii) SOWs; (iii) exhibits and attachments; (iv) Addenda; (v) Specifications; (vi) Order Forms; and (vii) these General Terms. The Agreement may only be modified by a written document signed by both parties. The parties do not intend, nor shall there be, any third-party beneficiary rights. The Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the Agreement when a duly authorized representative of each Party has signed the counterpart. Facsimile or electronic signatures will be deemed original signatures for all purposes under the Agreement.

18.7 Client shall not provide to FIS, as part of its regular business activities, any Personal Data (as such term is defined in the General Data Protection Regulation ("GDPR"), Regulation (EU) 2016/679), that is subject to GDPR.

18.8 No waiver of any provisions of the Agreement and no consent to any default under the Agreement shall be effective unless in writing and signed by the party against whom such waiver or consent is claimed. No course of dealing or failure to strictly enforce any provision of the Agreement shall be construed as a waiver of such provision for any party's rights. Waiver by a party of any default by the other party shall not be deemed a waiver of any other default.

18.9 If any provision(s) of the Agreement, including any Order Forms, Addenda, attachments and exhibits hereto, is determined to be invalid, illegal, void, or unenforceable by reason of any law, rule or regulation, administrative order, judicial decision, or public policy, such provision(s) shall not affect any other provision of the Agreement, and the Agreement shall be interpreted and construed as if the invalid, illegal, void, or unenforceable provision had not been included to the extent necessary to bring the Agreement within the requirements of such law, rule or regulation, administrative order, judicial decision, or public policy. In addition, in such event, the parties agree to negotiate in good faith to modify the Agreement to carry out the parties' original intent as closely as possible and to the extent lawful. The Agreement shall not be construed more strongly against either party, regardless of who is more responsible for its preparation. The headings that appear in these General Terms are inserted for convenience only and do not limit or extend its scope. Unless the context clearly indicates otherwise, (i) references to a party's agreement, consent, notice, request or approval mean a written and signed agreement, consent, notice or approval, including electronic signature and delivery by verifiable electronic means, (ii) the words "will" and "shall" have the same meaning, which is obligatory, and (iii) the word "including" means "including, without limitation" (so that it does not limit the scope of the word or phrase to which it is applied).

18.10 Termination of the Agreement, an Addendum, a Service or Software shall not impact any right or obligation arising prior to termination, and in any event, Sections 9, 10, 11, and 18 of these General Terms shall survive termination of the Agreement.

PRICING DETAIL

FIS will provide the City of Chattanooga with transaction processing (merchant) services for Web, POS, IVR, Kiosk, and Gateway applications under a Convenience Fee and Agency Fee funded pricing model. FIS reserves the right to not accept any payment type in situations where doing so may be in violation of the rules and regulations governing that payment type.

Products & Services	Usage Description	Rate
PayDirect Web	Allows customers to make online payments via a computer, tablet, smartphone.	No implementation fees. Covered by convenience fee.
PayDirect IVR	Allows customers to make payments via an interactive voice response system	Implementation fee = \$2500. Processing fees covered by convenience fee.
Multipay POS	Standalone point of sale application used to accept credit/debit payments at the walk in	No implementation fees. Covered by convenience fee.
PayDirect API/Gateway	Allows the City or City's vendor to code directly to the FIS gateway for processing	No implementation fees. Covered by convenience fee.
Direct Dial	Allows vendors to use existing software and connect directly to 3 rd party processor	No implementation fees. Covered by convenience fee.

Option A: Convenience Fee Funded Pricing

Fee Type	Rate	Frequency
Credit Accepted	2.35%, \$1.49 minimum;	Per Transaction
Debit Accepted	2.35%, \$1.49 minimum	Per Transaction
eCheck/ACH	\$1.49	Per Transaction

Ancillary Services	Rate	Frequency
Reporting and Statement Fee	\$0 -Covered by Convenience Fee	Per Application Per Month
ACH and eCheck Returns	\$0 -Covered by Convenience Fee	Per Event
Chargebacks and Adjustments	\$0 -Covered by Convenience Fee	Per Event
24 hr. Settlement Fee (wire)	\$40.00	Per Settlement
48 hr. Settlement (ACH)	Waived	Per Settlement

Option B: Agency Fee Funded Pricing

Fee Type	Rate	Frequency
Credit Accepted	Interchange passthrough +.20% +\$0.20	Per Card Transaction
Debit Accepted	Interchange passthrough +.20% +\$0.20	Per Card Transaction
eCheck/ACH	\$0.12	Per Transaction
IVR line cost	\$0.08	Per Minute

Ancillary Services	Rate	Frequency
DataPoint Reporting	Included	Per Event
eCheck NSF Returns	\$3.00	Per Event
Chargebacks	\$15.00	Per Event

Additional Product and Services Pricing

Below are additional services should the City desire/need them in the future.

Implementation Services	Rate	Frequency
Standard Web Implementation	Waived	Per Application at Setup
IVR Implementation	\$2,500 + Resource Rate	Per Application
Custom Changes-Resource Rate	\$120.00	Per Hour
POS Terminals, supplies	Passthrough	Per Item
IVR Voice Talent Recording	\$1,000.00	Per Recording Event

Point of Sale Devices

Shipping costs will be pass-through. If there is a need or a desire for “Other” equipment, the price will be priced at 15 percent plus cost.

FIS reserves the right to not accept any payment type in situations where doing so may be in violation of the rules and regulations governing that payment type. A review of the convenience fee may be performed periodically to adjust per changes to average payment amount, card types used or changes to costs to FIS. FIS will work with the Client for notification around any updates to the fee assessed to the end user.



ORDER FORM

Prepared for: City of Chattanooga, TN
101 E. 11th Street, Suite 100
Chattanooga, TN 37402-4285
Order Form Effective Date: 5/08/2020

Fidelity Information Services, LLC
601 Riverside Avenue
Jacksonville, FL 32204-2946

SOLUTIONS & TERM

Solution	Applicable Addendum (Existing)	Applicable Addendum (New)	Initial Term	Renewal Term
Billers Direct Services		The attached Billers Direct Services Addendum applies to this product.	12 Months	(4) 12 Months
PayDirect		The attached PayDirect Services Addendum applies to this product.	12 Months	(4) 12 Months

Each Service on this Order Form will begin July 1, 2020 and continue for the initial term in the table above (the "Initial Term"). After the Initial Term, or the then current Renewal Term, the term of the Service automatically renews for successive renewal terms as set forth in the table above (each, a "Renewal Term") unless terminated by Client or FIS in writing at least 180 days prior to the last day of the Initial Term or of the then current Renewal Term.

This Order Form is governed by the Information Technology Services Agreement between **City of Chattanooga, TN** and **Fidelity Information Services, LLC** dated 5/8/2020. In the event of any conflict between this Order Form and the Agreement, the terms of this Order Form govern the Software or Services on this Order Form. By signing this Order Form, Client agrees to purchase the Services and license the Software listed on the attached pricing attachment(s) at the prices listed. This Order Form may be executed and delivered by electronic means. Electronic signatures will be deemed original signatures for all purposes and will legally bind the parties to the same extent as an original signature.

CITY OF CHATTANOOGA, TN

FIDELITY INFORMATION SERVICES, LLC

Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date:



BILLER DIRECT SERVICES ADDENDUM

1. **Introduction.** Client engages FIS (“FIS”) to provide one or more of the following Biller Direct Services (a) Biller Direct Customer Console; or (b) Biller Direct Just Pay It® Service (collectively “Biller Direct Services” or “Services”), as indicated in the pricing attachments and described in this Addendum, to End User(s) to initiate credit card, debit card, and/or electronic check transactions (“Transactions”). FIS will provide the Biller Direct Services either directly or through one or more of its affiliated companies or subcontractors, in accordance with the corresponding Specifications. References to FIS in this Addendum include such entities. This Addendum is a part of the Information Technology Services Agreement described on the Order Form to which this Addendum is attached (“Agreement”), and capitalized words not otherwise defined herein have the meaning set forth in the Agreement. The General Terms apply to the Services provided pursuant to this Addendum.

2. **Payment Transaction Services.**

2.1 **Payment Transaction Entry.** Client may elect to accept End User payments by credit card, debit card and/or ACH. Through the Biller Direct Customer Console Service and Biller Direct Just Pay It® Service, the End User can enter ACH, credit card or debit card payment information required to process payments. FIS encrypts and stores all card payment Transaction information in the FIS database.

2.2 **ACH Payment Transactions.** FIS shall use reasonable efforts to provide Client with accurate and reliable ACH information. In addition, FIS may decline to authorize an ACH payment Transaction for reasons other than derogatory information relating to the End User. ACH processing is made through a Client’s ODFI pursuant to the rules of the ODFI. FIS will initiate the processing of all ACH payments as specified by the End User through the Biller Direct Customer Console and Just Pay It® Services. FIS will prepare payment files for End Users and deliver the files to Client’s ODFI FIS makes available to Client an electronic file that includes an A/R File in a predefined format and on a schedule that has been mutually agreed upon. If Client elects to collect a service charge for a dishonored ACH payment Transaction, it must do so in compliance with all applicable Laws, including Regulation E and state Laws regarding service charges. FIS disclaims all liability and responsibility for Client’s assessment of any service charges on rejected ACH Transactions. Client acknowledges that FIS does not provide collection services.

2.3 **Credit/Debit Card Payment Transactions.** FIS shall use reasonable efforts to provide Client with accurate and reliable credit/debit card information. FIS may decline to authorize a credit/debit card payment Transaction based on response data received from the End User’s card issuing financial institution or Third-Party Card Processor. In addition, FIS may decline to authorize a credit/debit card payment Transaction for reasons other than derogatory information relating to the End User based on FIS’s risk management controls. Credit/debit card processing is made through a certified Third-Party Card Processor and pursuant to the rules of the credit/debit card processor. FIS will initiate the processing of all credit/debit card payments as specified by the End User through the Biller Direct Customer Console and Just Pay It® Service. FIS will prepare payment files for End Users and deliver the files to Client’s Third-Party Card Processor. Client is responsible for maintaining the contractual relationship with the Client’s FI and Third-Party Card Processor, if separate from the FI, to allow for settlement directly to Client.

2.4 **Settlement Process.** FIS is not responsible for the settlement of Transactions. Settlement of debit/credit card funds shall be performed between the Third-Party Card Processor and the Client. Settlement of ACH funds shall be performed between the Client’s ODFI and the Client.

2.5 **Convenience/Service Fee Option.** If Client elects to collect a convenience/service fee from End Users, the amount of such fee(s) shall be specified in the implementation specifications. Client will be responsible for settling the amount of such fee transaction.

3. **Support Services.**

3.1 **ACH Transaction Errors.** FIS’s sole responsibility for any Transaction error or reversed Transaction is to determine whether any mechanical, procedural, or processing problems occurred at FIS during the preparation of the Transaction file (including but not limited to rejection of files) and, if necessary, reprocess and resubmit the Transaction file without additional charge to Client or End User. In the event that a Transaction is reversed or refunded to any End User of Client, for any reason, FIS may offset such amount against funds remitted to Client, or invoice Client for such amount. Client shall pay any such invoice in accordance with this Addendum. In such instance, FIS shall notify Client of the End User’s name and account number.



3.2 Chargebacks Payment. Client shall investigate and respond to any charge backs and/or other disputes in accordance with FI and card brand rules related to merchants' acceptance of card transactions. Client is responsible for all credit/debit card chargeback fees including transaction fees, credit card and maintenance fees and other fees assessed by the card brands or Third-Party Card Processor. Client shall be responsible for reversing the End User's payment to the End User's account with Client and for any subsequent collection efforts.

3.3 Reports. Standard reports are delivered through the Biller Console only. Client can choose which reports to enable. Standard reports include, but are not limited to, credit transactions summary; debit transactions summary; combined transactions summary; enrollments; activated/de-activated accounts.

3.4 Biller Console. FIS will provide to the Client access to the Web-enabled Biller Console which includes, but is not limited to, the following functionality:

- Administrative – create/modify/delete End Users; create/modify/delete user groups.
- Client will be responsible for administrative user provisioning for Biller Console.
- Make payment on End Users' behalf.
- Access to standard reports.

3.5 Client shall maintain a resource and response team possessing suitable competence, ability, training and qualifications to provide first level support to its End Users.

4. Data Services.

4.1 Storage of End User Account Data (for Presentment Services only). FIS will store End User Account Data for an End User for thirteen (13) months after initial publication, after which time period the data will be purged from FIS's database. Client has sole responsibility for storing End User Account Data on a permanent basis, and the loss or destruction of any such data will not result in any liability to FIS.

4.2 Storage of Payment Transaction Data. FIS will store Transaction Data for twenty-four (24) months after initial processing, after which time period the Transaction Data will be purged from FIS's database.

4.3 Additional Storage. At Client's election, FIS may provide additional storage services for Payment Transaction Data at FIS's then current rates. In any event, FIS will store Transaction Data for the period of time required for such records under the NACHA Rules and other applicable law.

5. Biller Direct Customer Console Online Presentment Services.

5.1 End User Account Data Processing. FIS will make the Biller Direct Services available to Client for the processing of End User Account Data. Client will transmit to FIS a consistent, pre-defined data transmission for each End User. FIS will parse the data into Common Document Model ("CDM") and store the parsed data in FIS's database.

5.2 Presentment Services. If "Full Presentment" Services are purchased, FIS will format End User Account Data into a document template which has been configured to conform as closely as possible, with Client's assistance and agreement to Client's existing paper-based document. If "Standard Presentment" Services is purchased, End user will view bill in Summary Presentment format.

5.3 eBill Distribution Service. Client agrees that FIS shall have the right to make End User Account Data, or portions thereof, available to End Users to access through entities participating in FIS's electronic bill presentment and payment network. FIS may also provide for distribution of End User Account Data through any independent third-party aggregation service at FIS's then standard rates, and in that event Client will be responsible for additional fees, if any, charged by such aggregation service. This optional eBill Distribution Service allows End Users who use the bill pay solution provided by their FI to view Client billing statements electronically through such bill pay solution.

5.4 Biller Direct Customer Console End User Services.

5.4.1 Enrollment. End Users must enroll in the Service through the web-enabled Customer Console accessed through the Internet ("Enrollment").

5.4.2 End User Agreements. Client is solely responsible for verifying each End User's identity, and for contracting with, and managing the relationship with End Users of the Biller Direct Services and obtaining all necessary End User authorizations to provide the Biller Direct Services. FIS will not have a contractual relationship with End Users, and so must rely upon Client to manage liability and risk issues. Upon Enrollment, the End User must agree to be bound by terms and conditions of an end user agreement ("End User Agreement"). Client will include reasonable provisions in its End User Agreements regarding, and hereby indemnifies FIS



against, defend FIS against, and hold FIS harmless from claims arising from (a) Client's failure to verify the End User's identity; (b) any End User's use of or inability to use the Biller Direct Customer Console Services, specifically including any End User's claim for economic loss or damages arising from the End User's use of the Biller Direct Services; (c) Transactions effected with a lost, stolen, counterfeit, or misused log-in ID and/or password; (d) Client's policy with respect to privacy, including notice(s) regarding the collection, use, storage, security, and review of personally identifiable data collected; and (e) actions taken by FIS in accordance with an End User's instruction. Client and its End Users shall be responsible for selecting and safeguarding their passwords for using the Biller Direct Customer Console Services. As between Client and FIS, any use of the Biller Direct Customer Console Services through use of a valid password shall be authorized use, provided that FIS will cancel or disable any End User promptly following notification from Client.

5.5 E-mail Notification Services. As part of the Biller Direct Services, standard e-mails are automatically transmitted to End Users based on certain events as detailed below. The Client will choose from standard available e-mails. These e-mails require set-up by the Client in the Biller Direct Customer Console. If Client requests non-standard e-mail development, the Client will pay for non-standard e-mail development at FIS's then standard professional services rates. Client may initiate emails for promotional purposes or other communications to End User. Current standard e-mails options include, but are not limited to:

- Welcome e-mail - automatically sent to confirm End User enrollment
- New Bill Arrival – automatically sent upon Bill presentment
- Payment Reminder - automatically sent prior to payment due date, within time defined by Client
- Payment Past Due - automatically sent when payment is past due, within time defined by Client
- NOC - Notification of Change
- Payment canceled
- Payment confirmation
- Payment failure
- Payment schedule
- Recurring scheduled failure
- Auto rule expiring

5.6 Customer Console Interface. FIS shall provide a user interface with which End Users can:

- Self-enroll
- Review open bill (summary)
- Make one time (same day or future dated) and recurring payments
- Review payment history

6. Biller Direct Just Pay It[®] Services.

6.1 E-mail Services. The Biller Direct Just Pay It[®] Service can transmit standard payment confirmation e-mails to End Users. Non-standard e-mail requiring additional development by FIS will be quoted at professional services rates. Current Standard e-mails options include:

- Payment canceled
- Payment confirmation
- Payment failure
- Payment schedule

6.2 User Interface. FIS shall provide the Biller Direct Just Pay It web interface to which the End Users can review latest bill data and make one-time (same day or future dated) payment.

7. Biller Direct IVR Interface. If the Biller Direct IVR Interface is purchased, FIS shall provide the Biller Direct Services IVR Interface as a telephony-based payment system developed by FIS or its designee through which an End User may perform a transaction ("IVR System") using a touch tone phone.

8. Secure E-mail Push. If Client purchases the "FIS Secure E-mail Push" Service, the following terms shall apply to that Service.

8.1 Data shall be provided by Client in the format determined during the implementation of the Service. Unless otherwise specified in the pricing, message creation shall be done on a batch basis as set forth in the Specifications.



8.2 The Secure E-mail Push Service is not intended to be a substitute for Client's compliance with any regulatory or industry requirements, and Client shall be responsible for all such compliance and any associated reporting and certification.

9. **Secure eBill Push to Mobile Wallets.** If Client purchases the "Secure eBill Push to Mobile Wallet" Service, the following terms shall apply to that Service.

9.1 The Secure eBill Push to Mobile Wallet Service allows Client to offer a new payment and presentment channel in a centralized location accessible via an End User's mobile device.

9.2 End Users will receive an updated, Client-branded eBill in their mobile wallet every month. Such eBill may include summary payment data and/or a full rendering of the End User's billing statement.

9.3 Once enrolled to receive a secure eBill in their mobile wallet, the End User will remain authenticated, without any future login required.

10. **Definitions.** The following terms shall have the meanings ascribed to them as follows:

10.1 "A/R File" means with respect to the Biller Direct Services, an electronic file including accounts receivable posting data that FIS makes available to Client in a mutually agreeable format and pursuant to a mutually agreeable schedule.

10.2 "ACH" means an Automated Clearinghouse direct FI account debit.

10.3 "Biller Direct Console" means the website maintained by FIS which includes all webpages created by FIS pursuant to this Agreement accessible by Client.

10.4 "Biller Direct Customer Console" or "Customer Console" means the website maintained by FIS which includes webpages created by FIS pursuant to this Agreement accessible by End Users.

10.5 "Document" means a document, bill, invoice, or statement of account rendered from Data received from the Client for an End User.

10.6 "End User" is the user of the Services to review bills and make payments. Client may provide Account Data for this End User.

10.7 "End User Account Data" means Client information regarding End User related account(s) that the Client provides to FIS in electronic form.

10.8 "Enrolled End User" means an End User for whom FIS has received Enrollment Data and who is authorized to access the End User's Documents and/or make payments through the Service.

10.9 "Enrollment Data" means Client Data specific to an End User used to properly authenticate that End User.

10.10 "FI" means a financial institution.

10.11 "ODFI" means Originating Depository Financial Institution.

10.12 "Summary Presentment" means data passed to FIS that will be displayed only as a line item on the page, which may include, but not be limited to, data such as amount due and due date. No images and/or bill replica will be available.

10.13 "Third-Party Card Processor" means the preapproved Client's third-party credit and debit card transaction processor with which Client has entered into a separate agreement for processing Biller End User debit and credit card Transactions, or such other credit and debit card transaction processor.

10.14 "Transactions" is defined in Section 1 above.

10.15 "Transaction Data" is data related to a Transaction which may include; unique account and/or Client identifiers, payment method, payment type, payment amount, and payment date.



PAYDIRECT SERVICES ADDENDUM

1. Introduction. Client engages FIS to provide one or more of the electronic payment services as indicated below (each a “Service” and, collectively, the “Services”) pursuant to this PayDirect Services Addendum to the Agreement. This Addendum is a part of the Information Technology Services Agreement described on the Order Form to which this Addendum is attached (“Agreement”), and capitalized words not otherwise defined herein have the meaning set forth in the Agreement. The General Terms apply to the Services provided pursuant to this Addendum.

2. Services. FIS shall provide one or more of the following: online, point-of-sale, and/or telephonic payment processing Services using FIS’ systems (“System”) as described in this Addendum for credit card, debit card, and/or electronic Check transactions (“Transactions”) made by Client’s customers (“Customers”). FIS will provide the Services to Client either directly or through one or more of its affiliated companies or subcontractors in accordance with the corresponding Specifications. References to FIS in this Addendum include such entities.

2.1 Credit and Debit Card Payment Processing. FIS shall transmit Transaction files to FIS’ certified payment processor(s) (each an “Approved Processor”) for authorization and settlement. Funds due to Client for Transactions processed by FIS hereunder shall be settled to Client’s designated bank account (“Merchant Settlement Account”) within two (2) business banking days for Transactions successfully processed prior to Client’s defined end of day. FIS makes no representation or warranty as to when funds will be made available to Client by Client’s bank.

2.2 Electronic Check Authorization. If Client has elected to accept electronic Checks as a form of payment, the following subsections apply. For the purposes of this Addendum, “checks” means checks drawn on accounts held in the U.S. (“Check(s)”).

2.2.1 As part of the implementation plan, Client shall select risk management controls governing Check acceptance and assumes sole responsibility for its choice of controls.

2.2.2 FIS shall confirm whether a User submitted ABA number is valid and then route to Client payment information for payment entries with valid ABA numbers.

2.2.3 Client, based on Client determined risk management controls, shall decide whether to accept or decline a Check payment.

2.2.4 For any accepted Checks presented and then returned due to insufficient funds, Client hereby authorizes FIS to debit the Client’s financial institution account in the amount of the returned Check that is received by FIS. FIS shall have no liability for accepted Checks presented and then returned due to insufficient funds.

2.3 Support. FIS shall provide Client level support twenty-four (24) hours per day, seven (7) days per week, subject to commercially reasonable downtime, with toll-free voice communications lines and representatives to address Client service requests. Unless otherwise agreed to by the parties, Client is responsible for all Customer support.

2.4 Implementation/Professional Services. FIS shall perform the professional services for Client as set forth in the Pricing Attachment and the implementation plan. If additional professional services are needed, such services as well as the fees for the services will be agreed to in a separate statement of work signed by both parties.

2.5 User Interface Services. FIS shall provide Users (defined below) with an interface (“User Interface”) to the Services in the form of a point-of-sale terminal, Virtual Terminal, Private Label Site or a telephony based payment system developed by FIS or its designee (“IVR System”), through which a User may perform a Transaction (collectively the “UI Services”).

2.5.1 For the purposes of this Addendum:

(a) “Private Label Site” means a secure payment website on the Internet that presents the Look and Feel of Client’s existing website and is developed, hosted and maintained by FIS pursuant to this Addendum, and at which a User may perform a Transaction

(b) “Look and Feel” means the elements of graphics, design, organization, presentation, layout, user interface, navigation and stylistic convention (including the digital implementations thereof) which are provided by, and unique to, Client.



(c) “User” means any person or entity who uses the UI Services to perform a Transaction. A User may be a Customer or Client.

(d) “Virtual Terminal” means a secure payment site on the Internet that is developed, hosted and maintained by FIS pursuant to this Addendum, at which Users can initiate a Transaction. Virtual Terminals may record additional Transaction Information than is captured on a Private Label Site.

2.5.2 Domain Names. Unless otherwise agreed by FIS and Client, FIS shall own all of the unique addresses that identify the location of a website(s) on the Internet (“Domain Name(s)”) used to provide the UI Services, provided that Client shall own any and all Domain Names used for a Private Label Site.

2.5.3 Client Brand Features. FIS has the right to reject and remove any information made available to Users via the UI Services, which may include, without limitation, text, graphics, data and other similar materials (“Content”) and/or trademarks, service marks, Look and Feel, logos and other distinctive brand features of Client supplied to FIS by Client (“Client Brand Features”) at any time if FIS reasonably believes that any such materials infringe any third-party Intellectual Property Rights, are libelous or invade the privacy or violate other rights of any person, violate applicable Laws or regulations, jeopardize the health or safety of any person, or are otherwise detrimental to the goodwill of FIS.

2.5.4 Errors. FIS shall correct or cause to be corrected, with reasonable promptness and at its own cost, any errors in the UI Services that are caused by FIS’ failure to perform according to the terms of this Addendum or the Agreement. In no event shall FIS be liable for any costs of corrections in excess of its own costs incurred to correct an error that FIS is solely responsible for correcting.

3. Ownership.

3.1 Client Brand Features.

3.1.1 All Client Brand Features shall be owned exclusively by Client. To the extent FIS possesses any ownership rights in the Client Brand Features, FIS hereby irrevocably assigns to Client all right, title and interest in and to all such Client Brand Features, which includes, without limitation, all of Client’s Intellectual Property Rights therein. For purposes of this Addendum, “Intellectual Property Rights” means any and all now known or hereafter known tangible and intangible: (i) rights associated with works of authorship throughout the world, including, without limitation, copyrights, moral rights, and mask-works; (ii) trademark and trade name rights and similar rights; (iv) trade secret rights; (v) patents, designs, algorithms and other industrial property rights; (vi) other intellectual property rights, whether arising by operation of law, contract, license, or otherwise; and (vii) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

3.1.2 To the extent FIS has any Intellectual Property Rights in the Client Brand Features that cannot be assigned to Client, FIS waives the enforcement of such rights, and if FIS has Intellectual Property Rights in the Client Brand Features that cannot be assigned or waived, FIS hereby grants to Client an exclusive, irrevocable, perpetual, worldwide, fully paid license to such rights (which includes the right to sublicense).

3.1.3 Client represents and warrants that it owns the Client Brand Features and all Intellectual Property Rights therein and that such Client Brand Features do not infringe upon any other material or violate or infringe upon the Intellectual Property Rights of any other party.

3.1.4 Client hereby grants FIS a non-exclusive, worldwide license to use the Client Brand Features for FIS to perform its obligations hereunder. The scope of the foregoing license shall be limited as specified herein, and shall not include any right to use, copy, modify, publish, license, sublicense, sell, market or distribute such Client Brand Features, unless expressly authorized herein.

3.2 UI Services.

3.2.1 Subject only to Section 3.1 above, all Intellectual Property Rights directly or indirectly related to the UI Services (which may include certain software provided by FIS) shall be owned exclusively by FIS (collectively, the “FIS Property”).

3.2.2 Subject to Section 3.1 above, to the extent Client possesses any ownership rights in the FIS Property, Client hereby irrevocably assigns to FIS all right, title and interest in and to all such FIS Property, which includes, without limitation, all applicable Intellectual Property Rights thereto. If Client has any such rights that cannot be assigned to FIS, Client waives the enforcement of such rights, and if Client has any rights that cannot be assigned or waived, Client hereby grants to FIS an exclusive, irrevocable, perpetual, worldwide, fully paid license to such rights (which includes the right to sublicense).



3.2.3 Nothing herein grants or is intended to grant Client any right or license to use any trademarks, trade names, or service marks of FIS or its affiliates and subsidiaries.

4. Convenience Fee.

4.1 If Client elects to charge a convenience/service fee to Customers for using the Services for Transactions, the amount of such fee(s) shall be specified in the implementation plan. Client authorizes FIS to collect each convenience fee through daily settlement or through monthly invoicing, as determined by Client.

4.2 FIS may modify the Convenience Fee (for both Card and eCheck Transactions) on thirty (30) days written notice to Client.

5. Transaction Errors. FIS' sole responsibility for any Transaction error or reversed Transaction is to determine whether any mechanical, procedural, or processing problems occurred at FIS during the preparation of the Transaction file (including but not limited to rejection of files) and, if necessary, reprocess and resubmit the Transaction file without additional charge.

6. Chargebacks/ACH Returns. In the event that a Transaction is chargebacked, reversed, returned, or refunded to any Customer for any reason, FIS may offset such amount against funds settled to Client, or invoice Client for such amount. Any such invoice shall be paid in accordance with the General Terms and this Addendum. In the event of a chargeback, reversal or refund, FIS shall notify Client of the Customer's name and transaction details.

7. Client Warranties.

7.1 As a condition to its receipt of the Services, Client represents and warrants that Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Networks or other third parties whose consent or approval is necessary for the processing of Transactions. A "Network" is an entity or association that operates under a common service mark and has a system which permits Network participants to authorize, route, and settle transactions among themselves, including, for example, those networks operated by VISA USA, Inc. and Mastercard, Inc., NYCE Corporation, American Express, and Discover.

7.2 Client represents, warrants and agrees that it does and will continue to comply with applicable Laws and regulations and Network rules, requirements, regulations or operating guidelines. Client shall notify FIS in writing as soon as possible in the event a claim is either threatened or filed against Client by any governmental organization having jurisdiction over Client related to the processing Services. Client shall also notify FIS in writing as soon as possible in the event a claim is either threatened or filed against Client relating to Transactions or the Services or a fine or other penalty is assessed or threatened against Client relating to Transactions or the Services. Upon the request of FIS, Client shall provide FIS with documentation reasonably satisfactory to FIS verifying compliance with this Section.

8. Customer Information. Client acknowledges and agrees that it has no ownership of or right to use the Cardholder Information associated with a Transaction. FIS has the right to access and use Cardholder Information only as authorized by the respective payment Networks. Client hereby grants FIS the full right, power and authority to request, receive and review any other data or records associated with a Transaction, and represents and warrants that it has the full right and authority to grant these rights to FIS. "Cardholder Information" is defined as any information containing or evidencing either (a) a Cardholder's personal information or data; including without limitation, a Cardholder's name, card account number, debit card PIN numbers, address, social security number, or any other evidence of the Cardholder's credit, debit or other card type, or (b) information relating to transactions consummated with credit or other types of cards, including both electronic, written and other forms of data, and further including any encryption keys or algorithms used to secure any of the foregoing (the disclosure of which could lead to the disclosure of any other Cardholder Information). A "Cardholder" is any Customer who uses a payment card itself or through a Client User to effectuate a Transaction using the Services.

9. Merchant Settlement Account. To the extent the Automated Clearing House (ACH) settlement process is used to debit or credit the Merchant Settlement Account, Client agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association (NACHA). Client hereby authorizes FIS to initiate credit and debit entries and adjustments to the Merchant Settlement Account through the ACH settlement process and/or through direct instructions to (or such other arrangements as FIS deems appropriate) the financial institution where the Merchant Settlement Account is maintained for amounts due under this Addendum as well as for any credit entries in error. Client hereby authorizes the financial institution where its Merchant Settlement



Account is maintained to make all such debits and credits to the Merchant Settlement Account. This authority will remain in full force and effect until all monies due under this Addendum have been paid in full.

10. Termination. In addition to the termination rights in the General Terms, FIS may, in its sole discretion terminate the Services if it determines that the cost to provide the Services exceeds revenues generated by it and Client is not willing to make adjustments.