



FIS TERMS AND CONDITIONS

Global Version 2020.July

The FIS Terms and Conditions (“**FTCs**”) set forth below may be incorporated into one or more orders referencing the FTCs (each an “**Order**”) or statements of work (each an “**SOW**”). Each “**Agreement**” (as defined in the applicable Order) may be referred to as the Information Technology Services Agreement.

1. PROVISION OF SOLUTION.

1.1 FIS shall provide to Client the software licensed for use on Client systems (“**Software**”) and/or services (“**Services**”) identified in an Order (each such Service or Software, a “**Solution**”). Client shall use the Solutions in compliance with the then-current user documentation for the Solution (“**Documentation**”), the then-current system requirements for the Solution (the “**System Requirements**”, and together with the Documentation, the “**Specifications**”), the applicable Order (including, and only in accordance with, the Scope of Use) and these FTCs. “**Scope of Use**” means the rights, restrictions or parameters regarding the use of the Solutions set forth in the applicable Order and in Section 6.2 of these FTCs.

1.2 Each party shall make reasonable efforts to implement the Solution as soon as practicable following the Order Effective Date stated in the applicable Order. Client shall ensure its systems meet the System Requirements at its expense. Client is responsible for the accuracy and completeness of all Client Data that Client introduces into the Solution. “**Client Data**” means data introduced into the Solution by or on behalf of Client or Client’s customers (“**Customers**”) that is stored in or processed by the Solution.

2. FEES.

2.1 Client shall pay any fees stated in the Order within thirty (30) days after the applicable invoice date. Client may specify an account which FIS may electronically debit to settle any fees, charges or other amounts owed by Client. A late payment fee shall accrue on any amounts thirty (30) days past due at the rate of twelve percent (12%) per year (or, if lower, the maximum rate permitted by applicable Law), except for Disputed Amounts. “**Disputed Amount**” means amounts invoiced by FIS which are disputed by Client in good faith for which Client provides a reasonably detailed notice of the dispute before such amounts are past due. A dispute will not exist as to an entire invoice merely because certain amounts on the invoice are Disputed Amounts.

2.2 Unless otherwise stated in an Order: (i) any Software license fees shall be due upon execution of the Agreement (or the applicable Order or amendment); (ii) fifty percent (50%) of any other one-time fees shall be due upon execution of the Agreement (or the applicable Order, SOW or amendment), and the remaining fifty percent (50%) shall be due upon the applicable Commencement Date; (iii) recurring fees for other Services shall begin on the applicable Commencement Date; and (iv) fees for any Professional Services fees billed on a time and materials basis shall be billed for each calendar month (or portion thereof) starting when the Professional Services begin. The “**Commencement Date**”: (a) of Maintenance, shall be the applicable Order Effective Date; (b) of other Services (excluding Professional Services), shall be the date the Service is first made available for use by Client; and (c) of Professional Services, shall be the date that FIS begins performing the Professional Services.

2.3 FIS may increase: (i) fees for (where applicable) postage, mailing and payment card materials, courier, telecommunications and any other fees identified as pass-through fees in the applicable Order, if FIS’ cost for those items increases; and (ii) recurring fees for the Solutions by an amount not to exceed the Maximum Price Change and no more than once per calendar year. “**Maximum Price Change**” means a percentage equal to the sum of (a) the percentage change in the index stated in the applicable Order (the “**Price Index**”) (calculated by averaging the annual change of the Price Index for the four (4) fiscal quarters immediately preceding the date of the applicable fee increase); and (b) the percentage increment specified in the Order (the “**Percentage Increment**”); provided that the Maximum Price Change shall never be less than two percent (2%) or more than six percent (6%).

2.4 In addition to the Solutions listed in an Order, FIS may make other services or software available to Client from time to time. Client’s use of any such software or service constitutes Client’s agreement to pay the fees in the applicable documentation, and that such software or service is a Solution subject to the Agreement.

2.5 The charges and fees invoiced by FIS do not include any applicable taxes (including sales, use, excise or consumption taxes such as GST or VAT), duties, levies, fees or similar charges or surcharges of any jurisdiction that may be assessed or imposed in connection with the transactions contemplated by the Agreement (“**Taxes**”). Client shall: (i) be responsible for the payment of all such Taxes; (ii) directly pay any such Taxes assessed against it, and (iii) promptly reimburse FIS for any such Taxes that FIS is required by law to collect or pay on behalf of Client. Client shall reimburse FIS for reasonable travel, living and other out-of-pocket expenses incurred in connection with the provision of the Professional Services or a Solution, and FIS shall invoice Client for these expenses on a monthly basis, as incurred.



2.6 Taxes do not include withholding tax based on the income of FIS (“WHT”). FIS is ultimately responsible for any WHT; however, if Client is required by Law to deduct WHT from payments owing by Client to FIS and remit it to the applicable tax authorities, Client will: (i) promptly notify FIS; (ii) deduct such WHT from the payment due to FIS (and, in doing so, Client shall apply to such withholding any exemption or reduced tax rate specified in a tax treaty between Client’s and FIS’ respective countries of tax domicile); (iii) promptly pay such WHT to the relevant government agency and remit the net amount after the WHT deduction to FIS; (iv) promptly, and in any event upon FIS’ request, give FIS an official receipt or other official document evidencing payment of such WHT so that FIS may claim a tax credit from the applicable tax authorities; and (v) remain liable to pay FIS for any difference in the amount calculated at the applicable WHT rate that is not supported by a WHT certificate from Client. Each party will provide such assistance, documentation or information as may be reasonably requested by other to resolve any dispute, difference or disagreement with the applicable tax authorities. FIS will not be responsible for any penalties, withholding tax or interest related to the failure of Client to deduct and pay Taxes timely in accordance with applicable local Laws. FIS and Client will reasonably co-operate with each other in determining the extent to which any Tax is due and owing in connection with the Agreement.

3. GENERAL OBLIGATIONS.

3.1 FIS will maintain a disaster recovery plan designed to reduce the risks associated with a disaster affecting FIS’ ability to provide the Services. FIS will test its disaster recovery plan annually and make available a summary of its business continuity plan and test results.

3.2 FIS shall comply with all laws, enactments, orders and regulations (“Laws”) applicable to it as the provider of the Solutions under the Agreement. Client shall comply with all Laws applicable to it as the recipient and user of the Solutions under the Agreement. Each party acknowledges and agrees that: (i) it has complied with and shall continue to comply with all applicable Laws relating to anti-bribery and anti-corruption; and (ii) it shall maintain in place throughout the Term of the Agreement its own reasonable policies and procedures to ensure compliance with such anti-bribery and anti-corruption Laws.

3.3 Each party will implement reasonable administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of the other party’s Confidential Information; (ii) protect against any anticipated threats or hazards to the security or integrity of the other party’s Confidential Information; and (iii) protect against unauthorized access to or use of the other party’s Confidential Information. The information Security and Data Protection Statement (found at <https://www.fisglobal.com/solutions/legal/fis-information-security>) (the “Security Statement”) is incorporated into the Agreement.

3.4 Client shall be responsible for determining the suitability of the Solution for its purposes and that the processing configurations and settings of the Solution (“Parameters”) are consistent with all Laws applicable to Client’s business and Client’s business needs. FIS shall not be liable for any losses, damages or expenses resulting from Client’s, a Client user’s or a Customer’s request or instruction, including Parameter and rule settings and decisioning criteria.

4. PROFESSIONAL SERVICES. This Section applies to the programming, training, consulting, implementation and other professional services (“Professional Services”) identified in SOWs or Orders.

4.1 FIS shall perform the Professional Services in a good and workmanlike manner and any deliverables resulting from the Professional Services (“PS Output”) will conform in all material respects with the requirements stated in the SOW or Order (“Requirements”), provided Client timely performs its obligations stated in the SOW or Order and reasonably cooperates with FIS. If Client requests services that are outside the scope of the Requirements, such services shall be billed at the rates set out in the SOW or Order or, if no such rates are specified, at FIS’ then-current rates. Any failure of PS Output to materially conform with its Requirements shall be a “PS Defect.” Professional Services shall be deemed complete if: (i) Client fails to give FIS notice of a PS Defect within thirty (30) days after delivery (or within fifteen (15) days following FIS’ correction of the last reported PS Defect); or (ii) Client uses the PS Output for production purposes. FIS is not obligated to correct a PS Defect that was not caused by FIS. Following Client’s notice of a PS Defect, FIS shall begin correcting PS Defects upon verifying their existence and shall use reasonable diligence to correct PS Defects in a timely manner based upon their severity and impact on Client’s business. FIS may address PS Defects that do not materially impact Client’s business with a reasonable work around on an interim basis.

4.2 Each SOW or Order shall terminate upon the earlier of: (i) completion of the applicable Professional Service(s), or (ii) expiration of the SOW’s or Order’s Term. If Client terminates a SOW or Order or any Professional Services, Client shall pay for all work performed through the date of termination at the rates set out in the SOW or Order or, if no such rates are specified, at FIS’ then-current rates.

4.3 While FIS personnel are performing Professional Services at Client’s site, FIS will ensure that such personnel comply with Client’s security policies and procedures that are generally applicable to Client’s other suppliers providing similar services and that have been provided to FIS in writing in advance. If Client’s policies require FIS to incur material out-of-pocket costs, Client shall either waive compliance or promptly reimburse FIS for such costs.



5. **LICENSED SOFTWARE.** This Section applies to Software and FIS' corresponding Maintenance.

5.1 FIS grants Client a limited, non-exclusive, and non-transferable right and license to use and/or access a single copy of the object code of the Software during the Term and solely in accordance with the Agreement. Client shall notify FIS of the location of the Software and shall promptly notify FIS of any changes to such location. The Software shall remain under the exclusive control and custody of Client at all times. Client shall keep the Software free and clear of any claim, lien or encumbrance, and any act by Client purporting to create such a claim, lien or encumbrance shall be void from its inception.

5.2 The Software may include embedded or bundled third-party software, including open source software ("**Embedded Software**"). Embedded Software is licensed under the terms of the third-party license that accompanies or is made available with such Embedded Software. Nothing in the Agreement limits Client's rights under, or grants Client rights that supersede, the terms and conditions of any applicable license for such Embedded Software. To the extent required by FIS' agreement with the third-party provider, the third-party provider is a third-party beneficiary to the Agreement with respect to the enforcement of the terms and conditions applicable to the Embedded Software. FIS shall be responsible for fixing Defects caused by such Embedded Software to the same extent as FIS' ongoing maintenance and support obligations as set forth in the Agreement. Third-party technology that may be appropriate or necessary for use in conjunction with Embedded Software may be specified in the Specifications. Any such third-party technology provided by FIS is licensed or provided to Client under the terms of the third-party license that accompanies or is made available by FIS with such technology.

5.3 Client shall verify that the Software complies with the Documentation within thirty (30) days of the applicable Order Effective Date. Client will be deemed to have accepted the Software if: (i) Client fails to give FIS notice of any material non-conformity with the Documentation ("**Defect**") during that thirty (30) day period (or within ten (10) days following FIS' correction of the last reported Defect); or (ii) Client uses the Software for production purposes.

5.4 During the Term (unless otherwise stated in the Order), FIS shall provide Maintenance as more specifically defined in the Order or Documentation. "**Maintenance**" consists of: (i) provision of help desk support ("**Support**"); (ii) correction of Defects reported by Client; and (iii) periodic provision of updates or modifications which FIS, in its discretion, incorporates into the Software, as generally made available at no additional charge to clients receiving Maintenance (each, a "**Release**"). Client shall continuously maintain Software at the most-current Release, the immediately preceding Release, or other Releases made available in the previous twelve (12) months (each, a "**Supported Release**"). Client shall permit FIS to remotely access the Software to provide Maintenance.

5.5 Client shall maintain adequate records of Client's compliance with the Scope of Use, including the names and business contact information of the Software users. Client shall provide FIS with a copy of such records upon request, and FIS, its licensors or its designees shall be entitled to review such records upon reasonable advance notice (but no more often than once annually). Client agrees to reasonably cooperate with FIS, its licensors or their designees during such review.

6. **INTELLECTUAL PROPERTY.**

6.1 FIS (or its licensors) own, and Client (and its users) do not acquire any right, title or interest in, to or under, any copyright, trademark, trade name, trade secret, patent, database rights or other intellectual property right ("**IP Right**") in or to any FIS Property. All FIS Property are (i) trade secrets of FIS or its licensors, having great commercial value to FIS or its licensors, and (ii) owned solely and exclusively by FIS or its licensors, regardless of who participated in their creation or the medium of expression. FIS may use all of Client's comments and suggestions for the improvement of any FIS Property without accounting or reservation. Client shall not provide any such comments or suggestions that are confidential or proprietary to any third party. Client shall not alter, remove, obscure, tamper, or revise any proprietary, restrictive, trademark or copyright notice included with, affixed to, displayed in, encoded or recorded in, on or by a FIS Property, or fail to preserve all copyright and other proprietary notices in any Copy of any FIS Property made by Client. Client hereby unconditionally and irrevocably assigns, transfers, and conveys to FIS all of Client's right, title, and interest in and to any FIS Property and all IP Rights therein or thereto. Client shall take any action reasonably requested by FIS in order to perfect FIS' ownership of its IP Rights in or to any FIS Property. "**FIS Property**" means: (i) any current or prospective Service, Software, PS Output, Specifications or Output; (ii) the pricing, source code, visual expressions, and other parts, features, functions, user interfaces, and design features of such Services, Software, PS Output, Specifications or Output; (iii) the methods, algorithms, formulae, passwords, and concepts used in developing and/or incorporated into the Services, Software, PS Output, Specifications and Output; and (iv) any improvements, derivative works, modifications, customizations, enhancements, or work product related thereto (whether tangible or intangible, by whomever made). "**Output**" means documents, reports, statements and other output of the Services and Software, as may be more fully described in the Specifications, but excludes any Client Data.

6.2 Except as otherwise specifically permitted in the Agreement, Client shall not, shall not attempt to, and shall not permit any others to: (i) use any FIS Property for any purpose or in any manner not specifically authorized by the Agreement; (ii) make or retain any copy (including electronic or temporary copy) ("**Copy**") of any FIS Property;



(iii) create or recreate the source code for any Solution, or re-engineer, reverse engineer, decompile or disassemble, attempt to derive the source code, trade secrets or know-how in or underlying, the FIS Property, except to the extent applicable Law requires that Client have the right to do so; (iv) modify, adapt, alter, translate or create derivative works from any FIS Property, or combine or merge any part of the FIS Property with or into any other software or documentation, except to the extent applicable Law requires that Client have the right to do so; (v) refer to, disclose or use any FIS Property as part of any effort to: (a) develop a program having any functional attributes, visual expressions or other features similar to those of any Solution; or (b) compete with FIS; (vi) sell, lease, rent, assign, transfer, market, license, reproduce, sublicense, distribute or grant to any third party, including any outsourcer, vendor, sub-contractor, consultant or partner, any right to use any FIS Property or allow any third party to use or have access to any FIS Property, whether on Client's behalf or otherwise; (vii) perform benchmark testing, or publish any results of any authorized benchmark testing, on any Solution; (viii) interfere with, modify, disrupt, or disable features or functionality of any Solution, including any such mechanism used to restrict or control the functionality, or defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any software protection or monitoring mechanisms of any Solution; (ix) attempt to gain unauthorized access to any Solution or its related systems or networks; or (x) use any Solution to conduct any type of application service provider, rental, service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any third party, whether on a fee basis or otherwise or use or otherwise provide, directly or indirectly, any Solution to or for the benefit of any third party. The Scope of Use of any Solution does not include any increased processing or use resulting from any merger, assignment, acquisition (regardless of form) involving Client subsequent to Client's procurement of any Solution.

6.3 FIS may change or remove any features, functions, brand, third-party provider, or other element of its systems or processes for a Solution (each, an **"Attribute"**) or provide a replacement for a Solution or Attribute from time to time, provided that neither the overall performance nor the fees for the Solution are materially adversely affected. Notwithstanding the foregoing, FIS may terminate Solution(s) or Attribute(s) (**"Sunset"**): (i) immediately upon any final regulatory, legislative, or judicial determination that providing such Solution or Attribute violates applicable Law, or (ii) upon providing reasonable prior notice to Client (but in no event less than one year for any Sunset of a Solution) so long as FIS is Sunsetting the Solution or Attribute for the clients of such Solution generally or the Attribute from the then-current general release of the Solution. If FIS Sunsets a Solution or Attribute, no damages, liquidated damages or other remedy will be available to or due from either party as a result of such Sunset, and Client shall be entitled to a refund of the portion of prepaid fees (if any) relating to Maintenance or hosting Services for the period after the Sunset takes effect.

6.4 Client shall obtain or provide all necessary rights, consents and notices for FIS and its agents to use the Client Data in accordance with the terms of the Agreement. Except to the extent specified in an Order, FIS shall not be deemed Client's official record keeper for regulatory or other purposes.

7. CONFIDENTIALITY.

7.1 **"Confidential Information"** means all business or technical information disclosed by Disclosing Party to Receiving Party in connection with the Agreement. Client Confidential Information includes: (i) Client Data and the details of Client's computer operations and (ii) Client Personal Data. FIS Confidential Information includes: (i) FIS Property, (ii) FIS Personal Data and (iii) the terms of the Agreement. Except for Personal Data, neither party shall be obligated to preserve the confidentiality of any information that: (a) was previously known; (b) is a matter of public knowledge; (c) was or is independently developed without reference to or use of the other party's Confidential Information; (d) is released for disclosure with the other party's written consent; or (e) is received from a third party to whom it was disclosed by the Disclosing Party without restriction. FIS may use and disclose Client's name and logo as reasonably necessary to perform any Services. **"Personal Data"** means any information relating to an identified or identifiable natural person.

7.2 The party receiving Confidential Information (**"Receiving Party"**) of the other (**"Disclosing Party"**) shall not use Confidential Information for any purpose except as necessary to implement, perform or enforce the Agreement. Receiving Party will use the same reasonable efforts as it uses to protect its own proprietary information and data (but in any event not less than a reasonable standard of care) to: (i) keep all Confidential Information of Disclosing Party strictly confidential; (ii) not disclose the Confidential Information of Disclosing Party to anyone other than its Authorized Recipients; and (iii) only use Personal Data as permitted by applicable Laws. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. **"Authorized Recipient"** means: (a) with respect to Client, Client and any employee of Client, its Affiliate or agent, provided that the agent is not a competitor of FIS; and (b) with respect to FIS, FIS its Affiliates and their respective employees, contractors, or agents, in the case of (a) or (b) that has a reasonable need to know the Confidential Information in connection with the use or provision of the Services or Software and who are required to protect and restrict the use of the other party's Confidential Information in accordance with terms substantially similar to the requirements of the Agreement.



7.3 If Receiving Party believes the Confidential Information must be disclosed or made publicly available under applicable Law, an order of a court of competent jurisdiction or in response to a request from a governmental regulator, Receiving Party may do so provided that, to the extent permitted by such applicable Law, court of competent jurisdiction or governmental regulator, the Disclosing Party is given a reasonable opportunity to contest such disclosure and obtain a protective order, and shall in any event omit all pricing, service level or Solution specific information from any such disclosure or public filing, unless such omission is prohibited by Law.

7.4 Notwithstanding the foregoing, Client authorizes FIS to store (where applicable) and use all data provided by or on behalf of Client and/or its users of a Solution, including Customers, in connection with the Solution, and all information that is derived from such data, in order to provide the Solution, to create Depersonalized Information, and for other purposes permissible under applicable Law, and to disclose Depersonalized Information to third parties. “**Depersonalized Information**” means data provided by or on behalf of Client, its users of a Solution, including Customers, in connection with the Solution, and all information that is derived from such data, that has had names and other personal information removed such that it is not reasonably linkable to any person, household, or device. Client agrees that FIS is entitled to disclose such data and derived information to Authorized Recipients in order to facilitate its cleansing.

8. **VENDOR MANAGEMENT AND DILIGENCE; GOVERNMENTAL ACCESS.** To assist Client with its due diligence and vendor management responsibilities, FIS will provide electronic access to audit reports, third-party attestations and certifications (such as SSAE 18s, ISO certifications and PCI AoCs) and certain other information and testing results regarding the physical, technical and administrative controls utilized by FIS and the security of Client's Confidential Information. FIS shall permit governmental agencies that regulate Client in connection with a Service to examine FIS' books and records and Client Data, to the same extent as if that Service were being performed by Client on its own premises, subject to FIS' confidentiality and security policies and procedures. If requested Client Data is accessible to Client through the Services, Client agrees to reimburse FIS for its costs and its time reasonably incurred in connection with such examination.

9. **DATA PRIVACY.** If requested by Client or any data subject or regulator, FIS shall cooperate with Client as reasonably required to assist Client with Client's compliance with its legal obligations under applicable data protection Laws, and Client shall reimburse FIS for any time spent by FIS personnel as part of any such cooperation at FIS' then standard professional services rate, together with any out-of-pocket costs reasonably incurred. If FIS shall process any Personal Data from Client regarding individuals domiciled in countries outside of the United States (or to which the EU GDPR is otherwise applicable), such processing shall be in compliance with the Personal Data Processing Annex (found at <https://www.fisglobal.com/solutions/legal/fis-information-security>).

10. **TERM AND TERMINATION.**

10.1 The term for the use of the Solution (“**Term**”) shall be as stated in the Order, which may specify an initial term for the use of the Solution (“**Initial Term**”) and subsequent renewal terms (each, a “**Renewal Term**”), in which event the Term shall collectively mean the Initial Term together with any such Renewal Terms. If an Order fails to state a Term, then such Order shall be deemed to have a Term of one (1) year.

10.2 Either party may terminate a Solution on thirty (30) days advance notice to the other party if: (i) the other party breaches any of its material obligations under the Agreement related to the Solution and does not cure the breach within thirty (30) days after receiving notice describing the breach in reasonable detail; or (ii) the other party discontinues performance under the Agreement related to the Solution because of a binding order of a court or regulatory body. If a breach capable of being cured cannot reasonably be cured within thirty (30) days, the non-breaching party may not terminate the Solution so long as the breaching party promptly commences work and completes correction within ninety (90) days of receiving notice of the breach. In lieu of termination, FIS may suspend provision of a Solution for non-payment (except for a Disputed Amount) by providing at least thirty (30) days prior notice.

10.3 In addition to the termination rights set forth above, FIS may terminate a Solution, in whole or in part, without penalty, if FIS' agreement to use any third-party software or service upon which the Solution relies expires or is terminated; provided, however, that prior to any such termination, FIS shall use reasonable efforts develop a work around that allows Client to continue to receive the Solution or similar software or services without material interruption, reduction in quality, or increase in fees.

10.4 Upon termination or expiration of the Agreement or a Solution: (i) Client shall: (a) discontinue all use of the affected Solution(s) and Specifications, and (b) promptly return to FIS any Copies of the affected Solution(s), Specifications and related FIS Property; and (ii) to the extent practicable, at Client's expense, and subject to Section 10.5, FIS shall use reasonable efforts to comply with Client's written instructions regarding the disposition of Client Data or, if Client fails to give such instruction within thirty (30) days after such termination or expiration, then FIS may destroy Client Data in a manner designed to preserve its confidentiality.

10.5 If requested by Client, FIS shall provide termination services and deconversion assistance in accordance with a SOW at Client's expense. Prior to FIS providing transition services 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 agree on a date for deconversion.

11. INDEMNITIES.

11.1 FIS shall indemnify and defend Client against any third-party claim alleging that the Solution alone, as and when made available to Client by FIS and when properly used for the purpose and in the manner specifically authorized by the Agreement, infringes upon any patent duly issued as of the Order Effective Date, any copyright or any trade secret enforceable under applicable Law. If any infringement claim is, or in FIS' sole opinion may be, initiated, FIS may at its option and expense: (i) modify or replace all or part of the Solution; (ii) procure for Client the right to continue using the Solution; or (iii) remove all or part of the Solution. If FIS so removes all or a part of a Solution, then FIS shall (a) if Client has paid a one-time upfront initial license fee for the Software, refund to Client the corresponding portion of the license fee paid by Client to FIS for the Software, less a reasonable rental charge equal to one-sixtieth (1/60) of the initial license fee for each month of use following the Order Effective Date or (b) if Client is paying for use of the Solution on a recurring basis, refund to Client the unused portion of the recurring fee(s) paid by Client for the Solution, and in each such case, the Agreement shall terminate with respect to the Solution or part thereof removed. The remedies provided in this Section are the sole remedies for a claim of infringement or misappropriation hereunder.

11.2 Except for any claims solely caused by FIS' breach of the Agreement, Client shall defend FIS from and against any and all claims asserted against FIS by or on behalf of Client's users or Customer(s), and shall indemnify and hold harmless FIS from and against any damages, costs, and expenses of Client's users or Customer(s) awarded against FIS by a final court judgment or an agreement settling such claims.

11.3 The obligations in this Section 11 are contingent upon: (i) the indemnified party promptly notifying the indemnifying party in writing of any claims for which it seeks indemnity, including all materials received by the party related to the claim and an identification of the relevant Solution; (ii) the indemnifying party having sole control over the defense and settlement of such claims; (iii) the indemnified party reasonably cooperating during defense and settlement efforts; and (iv) the indemnified party not making any admission, concession, consent judgment, default judgment or settlement of such claim or any part thereof.

12. **EXCLUDED ACTIONS.** FIS is not obligated or liable under any provision of the Agreement for any performance problem, claim of infringement or other matter resulting, in whole or in part, from: (i) any modification of any Solution (other than a modification made solely by FIS); (ii) any use of a Solution in breach of the Agreement; (iii) any combination of the Solution with any other software, hardware, product, technology, data or services; (iv) any use of any version of a Solution other than the Supported Release; (v) Client's failure to implement corrections or changes to a Solution provided by FIS; (vi) Client's failure to subscribe to ongoing Maintenance if then offered for the Solution; (vii) any Embedded Software; (viii) any transaction processed on behalf of Client or its Affiliates, users, or Customers, including any credit, fraud or counterfeit losses; or (ix) any negligence or wrongful act or omission, or breach of the Agreement, by Client or its Authorized Recipients, users or Customers.

13. **DISCLAIMER.** EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT, THE SOLUTION, DOCUMENTATION AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS", AND ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE (INCLUDING IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, UNINTERRUPTED OR ERROR-FREE OPERATION, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT) ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DISCLAIMED AND EXCLUDED FROM THE AGREEMENT.

14. LIMITATION OF LIABILITY.

14.1 EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER OR RELATED TO THE AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED THE FEES ACTUALLY PAID BY CLIENT TO FIS UNDER THE AGREEMENT DURING THE TWENTY-FOUR (24) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS FOR THE FIRST CLAIM.

14.2 UNDER NO CIRCUMSTANCES SHALL EITHER PARTY (OR ANY OF ITS AFFILIATES PROVIDING OR RECEIVING THE SOLUTION UNDER THE AGREEMENT) BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR LOSSES OR DAMAGES WHICH FALL INTO ANY OF THE FOLLOWING CATEGORIES: (i) LOST REVENUES; (ii) LOST PROFITS; (iii) LOSS OF BUSINESS; (iv) TRADING LOSSES; (v) INACCURATE DISTRIBUTIONS; OR (vi) ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING ANY OF THE FOREGOING LOSSES OR DAMAGES RESULTING FROM CLIENT'S USE OF THE SOLUTION PROVIDED HEREUNDER, OR ARISING FROM ANY BREACH OF THE AGREEMENT OR ANY TERMINATION OF THE AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE AND WHETHER OR NOT



FORESEEABLE, EVEN IF THE RELEVANT PARTY HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. AS BETWEEN CLIENT AND FIS, THE FOLLOWING SHALL BE DEEMED "DIRECT DAMAGES" FOR THE PURPOSES OF THE AGREEMENT: (a) ANY AND ALL DAMAGES, INCLUDING CONSEQUENTIAL AND SIMILAR DAMAGES, AWARDED TO A THIRD PARTY FOR WHICH INDEMNIFICATION IS PROVIDED BY A PARTY UNDER SECTION 11; (b) THE REASONABLE OUT-OF-POCKET COSTS INCURRED BY CLIENT IN THE PREPARATION AND DISTRIBUTION OF ANY NOTIFICATIONS REQUIRED BY APPLICABLE PRIVACY BREACH NOTIFICATION LAWS; AND (c) THE REASONABLE OUT-OF-POCKET COSTS INCURRED BY CLIENT IN PROVIDING CREDIT MONITORING SERVICES TO AFFECTED INDIVIDUALS FOR A PERIOD OF ONE (1) YEAR, IN EACH CASE OF (b) AND (c), TO THE EXTENT CAUSED BY THE UNAUTHORIZED DISCLOSURE OF CLIENT DATA RESULTING FROM FIS' FAILURE TO COMPLY WITH ITS OBLIGATIONS IN SECTION 7.

14.3 THE LIMITATIONS AND EXCLUSIONS SET FORTH IN SECTIONS 14.1 AND 14.2 SHALL NOT APPLY TO: (i) DAMAGES CAUSED BY EITHER PARTY'S FRAUD OR WILLFUL MISCONDUCT; (ii) A PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY DUE TO THAT PARTY'S NEGLIGENCE; (iii) BREACHES OF THE SCOPE OF USE; (iv) CLIENT'S OBLIGATION TO PAY FEES HEREUNDER AND DAMAGES ARISING FROM IMPROPER TERMINATION OF A SOLUTION, ORDER OR SOW BY CLIENT; OR (v) A PARTY'S LIABILITY FOR DAMAGES TO THE EXTENT THAT SUCH A LIMITATION OR EXCLUSION OF SUCH DAMAGES IS NOT PERMITTED BY APPLICABLE LAW. THE LIMITATIONS SET FORTH IN SECTION 14.1 DO NOT APPLY TO CLAIMS FOR WHICH INDEMNIFICATION IS PROVIDED BY A PARTY UNDER SECTION 11.

15. **EXPORT RESTRICTIONS.** FIS' Confidential Information is subject to export control Laws, including those of the United States of America. Client shall not import, export or utilize FIS' Confidential Information where a license or other authorization is required by Law without first securing such license or authorization.

16. **INSURANCE.** FIS shall maintain the following minimum insurance coverage and limits: (i) statutory workers' compensation in accordance with all federal, state, and local requirements; (ii) employer's liability insurance with limits of coverage of US\$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 jurisdiction in which services are performed under the Agreement; (iii) commercial general liability with an aggregate of US\$2,000,000, and US\$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 US\$1,000,000; (v) property insurance, covering the hardware and other equipment used by FIS to provide services under the Agreement; (vi) professional and technology errors and omissions, including network security and privacy liability coverage, with limits of US\$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 US\$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 US\$5,000,000 per claim and in the aggregate. Upon the reasonable request of Client, FIS shall furnish Client with a certificate of insurance as specified in the Agreement.

17. MISCELLANEOUS.

17.1 The Agreement shall bind, benefit and be enforceable by and against FIS and Client and their respective permitted successors and assigns. Client shall not assign the Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without FIS' prior written consent, except such consent shall not be required in the case of an assignment of the Agreement (but not of any individual rights or obligations hereunder) to: (i) a purchaser of or successor to substantially all of Client's business (provided that such purchaser or successor's primary business operation prior to the assignment is substantially similar to that of Client); or (ii) an Affiliate of Client, and in the case of (i) or (ii), Client hereby guarantees the obligations of the assignee. Any express assignment of the Agreement, any change in control of Client (or its Affiliate in the case of an assignment to that Affiliate under this Section 17.1) and any assignment by merger or otherwise by operation of Law, shall constitute an assignment of the Agreement by Client for purposes of this Section 17.1.

17.2 The Agreement states the entire agreement and understanding between the parties and supersedes all prior representations, agreements and understandings, whether written or oral, relating to its subject matter. If a conflict exists between the FTCs and an Order or SOW incorporating the FTCs, the documents will take precedence over each other in the following order: (i) SOWs, (ii) Orders, and (iii) these FTCs. In entering into the Agreement, each party acknowledges and agrees that it has not relied on any representation, warranty, collateral contract or other assurance (whether negligently or innocently made), except those expressly set out in the Agreement. Except as otherwise set forth herein, the parties do not intend, nor shall there be, any third-party beneficiary rights, and the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Agreement are not subject to the consent of any other person. A determination that any provision of the Agreement is invalid or unenforceable shall not affect the other provisions of the Agreement. No modification of the Agreement, and no waiver of any breach of the Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of the Agreement, and no course of dealing between the parties, shall be construed



as a waiver of any subsequent breach of the Agreement. Termination of the Agreement, an Order, SOW or a Solution shall not impact any right or obligation arising prior to termination, and in any event, Sections 2, 6, 7, 13, 14, 15, and 17 of these FTCs shall survive termination of the Agreement. As used in the Agreement, the word “including” means including but not limited to.

17.3 All notices given in connection with the Agreement must be in writing and delivered via overnight or signed for delivery. Notices shall be delivered to the address stated in the Agreement. Notices to FIS shall include a copy (which shall not constitute notice) to the Chief Legal Officer at the same address.

17.4 FIS is an independent contractor. Neither FIS nor any of its representatives are an employee, partner or joint venturer of Client. The Solutions may be provided by FIS or its Affiliates or their respective subcontractors. FIS shall remain solely responsible for the work performed by its Affiliates and its, or its Affiliates', subcontractors. Client shall have no recourse, and shall assert no claim, against any subcontractor of FIS or its Affiliates. “**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. Nothing herein shall be deemed to make FIS personnel employees of Client and such personnel shall not be subject to background screening by Client or required to sign agreements directly with Client.

17.5 Except for Client's payment obligations, neither party shall be liable for any loss, damage or failure due to causes beyond its control, including strikes, riots, earthquakes, epidemics, terrorist actions, criminal acts by unrelated third parties, wars, fires, floods, weather, power failure, telecommunications outage, acts of any military, civil or regulatory authority, or acts of God (“**Force Majeure Event**”). This provision does not relieve FIS from its obligations to maintain and test disaster recovery plans for the Services.

17.6 The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement or its subject matter. If Client is, as of the Order Effective Date, headquartered in the Americas or the Caribbean, then only Section 17.6.1 below applies. If Client is, as of the Order Effective Date, headquartered in the European Economic Area, United Kingdom and Switzerland then only Section 17.6.2 below applies. If Client is, as of the Order Effective Date, headquartered outside of the Americas, the Caribbean or the European Economic Area, United Kingdom and Switzerland then only Section 17.6.3 below applies.

17.6.1 AMERICAS, CARIBBEAN. The Agreement and any dispute, difference, controversy or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes, differences, controversies or claims) is governed by and shall be construed, resolved, and enforced in accordance with the Laws of the State of New York without regard to that state's choice-of-law provisions or principles. Except as otherwise provided in this Section 17.6.1, each party irrevocably agrees that any such dispute, difference, controversy or claim shall be settled by arbitration in the City of Jacksonville, Florida, administered by the American Arbitration Association (“**AAA**”) under its Commercial Arbitration Rules (including, when applicable, the AAA procedures for Large, Complex Commercial Disputes), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator shall decide any issues submitted in accordance with the provisions and commercial purposes of the Agreement and shall not have the power to award damages other than those described in the Agreement. Except as may be required by Law, or if necessary to obtain a judgment on the award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Each party agrees that a claim of any breach of any of the confidentiality, non-use and intellectual property obligations of the Agreement and/or any infringement, ownership, and enforceability of any intellectual property right may result in irreparable injury to the other for which money damages would not adequately compensate, and each party shall be entitled to seek an injunction for any such claims. Notwithstanding the foregoing, each party irrevocably: (i) agrees that the Florida state courts located in the City of Jacksonville, Florida, Duval County, or the United States District Court for the Middle District of Florida, sitting in the City of Jacksonville, Florida, shall have exclusive jurisdiction to adjudicate any of the foregoing claims for injunctive relief and damages or the breach or validity of this Section 17.6.1, and consents to submit itself to the personal jurisdiction of such courts; (ii) agrees that such courts shall be the proper venue therefor; (iii) waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought; and (iv) waives the right to trial by jury in any such action or proceeding.

17.6.2 EUROPEAN ECONOMIC AREA, UNITED KINGDOM AND SWITZERLAND. The Agreement and any dispute, difference, controversy or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes, differences, controversies or claims) is governed by, and shall be construed and enforced in accordance with, the Laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute, difference, controversy or claim arising, directly or indirectly, out of or in connection with the Agreement, or the breach, termination or validity thereof (including non-contractual disputes or claims). The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

17.6.3 OTHER CLIENT LOCATIONS. The Agreement and any dispute, difference, controversy or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes, differences, controversies or claims) is governed by, and shall be construed and enforced in accordance with,



the Laws of England and Wales. Each party irrevocably agrees that any dispute, difference, controversy or claim arising, directly or indirectly, out of or in connection with the Agreement, or the breach, termination or validity thereof (including non-contractual disputes, differences, controversies or claims), shall be referred to and finally resolved by the International Court of Arbitration of the International Chamber of Commerce under the Rules of Arbitration of the International Chamber of Commerce (“**ICC**”) for the time being in force, which rules are deemed to be incorporated by reference in this Section 17.6.3. The seat of the arbitration shall be: (i) London if Client is headquartered in Europe (excluding European Economic Area, United Kingdom and Switzerland), Middle East or Africa; and (ii) Singapore if Client is headquartered in Asia Pacific (including India), and, unless the tribunal decides otherwise, the venue for hearings in the arbitration will also be respectively in London or Singapore). There shall be one arbitrator. The arbitrator shall be appointed in accordance with the rules of the ICC. The arbitration proceedings shall be conducted in English and all documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by a certified English translation. The decision of the arbitrator shall be final and binding upon both parties and shall be enforceable in any court of law. Each of the parties waives irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made. Notwithstanding anything to the contrary in the Agreement, either party may at any time seek an interim injunction or other interlocutory relief in a court of competent jurisdiction to protect any urgent interest of such party, including, but not limited to, the confidentiality provisions of the Agreement. The Law governing the arbitration agreement contained in this Section 17.6.3 shall be the Laws of England and Wales. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

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