

## FIS Standard Terms

These FIS Standard Terms (“**FST**”) may be incorporated into one or more orders referencing these FST (each an “**Order**”). Each Order, together with these FST, shall form a separate agreement (this “**Agreement**”), by and between the Person identified on the Order (“**Client**”) and the FIS entity identified on the Order (“**FIS**”), applicable to the proprietary solution and/or services identified as the Solution on the Order (the “**Solution**”), as such Solution may be modified, revised and updated from time to time. Only Client and the FIS entities that execute the Order will be liable for the obligations under that Order. Each Order will specify its effective date (“**Order Effective Date**”).

**1. Scope.** Client may use (and permit its Authorized Users to use) the Solution only in the ordinary course of Client’s internal business operations for the benefit of Client and only in accordance with the terms on the Order, the Documentation and this Agreement, including the Scope of Use. Client shall be liable for any breach of this Agreement by any persons given access to the Solution by Client.

**2. Specified Configuration.** Client shall, at its expense, procure and maintain the computer hardware, systems software and other items required for use of, or access to, the Solution, including those described in the Order and Documentation (the “**Specified Configuration**”) and for updating the Specified Configuration in accordance with FIS’ published updates. If not yet completed, Client shall complete its procurement and installation of the Specified Configuration prior to the scheduled start of implementation. Client shall devote all equipment, facilities, personnel and other resources reasonably necessary to begin using the Solution in production on a timely basis as contemplated by this Agreement and satisfy any Client requirements necessary for FIS to complete the professional services described in Section 6. FIS is not responsible for any delays or additional fees and costs associated with Client’s failure to timely perform its obligations under this Section 2.

### **3. Payments.**

**3.1. Fees.** Client shall pay to FIS the fees stated in the Order, in accordance with the payment terms stated on the Order. FIS shall invoice all other fees as and when incurred. All invoices shall be sent to Client’s address for invoices stated on the Order. Except as otherwise specified on the Order, Client’s payments shall be due within thirty (30) days after the invoice date. A late payment fee at the rate of 12% per year (or, if lower, the maximum rate permitted by applicable law) shall accrue on any amounts thirty (30) days past due and unpaid by Client to FIS, except for Disputed Amounts. On an annual basis, FIS may increase recurring fees for the Solution or other products and services stated on the Order, including the Support Fees under Section 9.4 and fees for services provided under Section 8, by the Price Index Change. All fees and other amounts paid by Client under this Agreement are non-refundable except: (a) as provided in Sections 4.3(iii) and 9.3(a)(iii); and (b) the portion of prepaid fees relating to support or hosting services for the period after Client’s termination of such services (but only to the extent early termination of such services is permitted in this Agreement). To the extent that FIS provides any third-party services under this Agreement, the fees payable by Client to FIS in accordance with this Section 3 do not include any applicable royalties, costs, expenses and/or fees that may be imposed by the Third-Party Providers for such third-party services.

### **3.2. Taxes.**

(a) All charges and fees to be paid by Client to FIS under this Agreement do not include any taxes (including 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 this 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.

(b) Taxes do not include withholding tax (“**WHT**”) based on the income of FIS. 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, WHT 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 cooperate with each other in determining the extent to which any tax is due and owing in connection with this Agreement.

**3.3. Certain Remedies for Non-payment.** If Client fails to pay to FIS, within thirty (30) days after FIS makes written demand for the past due amount, any past-due amount payable under this Agreement (including any applicable late payment fee) that is not a Disputed Amount, in addition to all other rights and remedies which FIS may have, FIS may, in its sole discretion and with further notice to Client stating the suspension date, suspend performance of any or all of its obligations under this Agreement (other than Section 5). FIS shall have no liability for Client’s use of the Solution until all such past-due amounts and any applicable reinstatement fees are paid in full.

### **4. Warranties, Covenants and Limitations.**

**4.1. Solution Warranty.** FIS warrants to Client that, for a period of sixty (60) days from the Order Effective Date, the Solution (as delivered to Client by FIS and when properly used for the purpose and in the manner specifically authorized by this Agreement), will perform as described in the Documentation in all material respects. FIS’ sole obligation and liability under this warranty is to comply with the provisions of Section 8.5 or Section 9.4 of this Agreement, as applicable.

### **4.2. Compliance with Laws; Anti-Bribery.**

(a) FIS shall comply with all laws, enactments, orders and regulations applicable to it as the provider of services under this Agreement. Client shall comply with all laws, enactments, orders and regulations applicable to it as the recipient and user of services under this Agreement.

(b) Each party acknowledges and agrees that: (i) it has complied with and shall continue to comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption (“ABC Laws”); and (ii) it shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the ABC Laws.

**4.3. No Infringement.** FIS shall indemnify and defend Client against any third-party claim asserting that the Solution, as and when made available to Client by FIS and when properly used for the purpose and in the manner specifically authorized by this Agreement, infringes upon any IP Rights. FIS’ obligation under this Section 4.3 is contingent upon Client: (a) promptly giving notice to FIS within ten (10) days after the date Client first receives notice of the applicable infringement claim (provided that later notice shall relieve FIS of its liability and obligations under this Section 4.3 only to the extent that FIS is prejudiced by such later notice); (b) allowing FIS to have sole control of the defense or settlement of the claim; (c) reasonably cooperating with FIS during defense and settlement efforts; and (d) not making any admission, concession, consent judgment, default judgment or settlement of the applicable infringement claim or any part thereof (unless otherwise agreed by FIS in writing). Client may monitor any such litigation or proceeding at its expense, using counsel of its choosing. If any applicable infringement claim is initiated, or in FIS’ sole opinion is likely to be initiated, then FIS may at its option and expense:

(i) modify or replace all or the allegedly infringing part of the Solution so that it is no longer allegedly infringing, provided that the functionality does not change in any material adverse respect; or

(ii) procure for Client the right to continue using the allegedly infringing part of the Solution; or

(iii) remove all or the allegedly infringing part of the Solution, and: (aa) if Client has paid a one-time upfront initial license fee for the applicable Solution, refund to Client the corresponding portion of the license fee paid by Client to FIS for the applicable Solution, 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 (bb) if Client is paying for the use of the Solution on a recurring basis, refund to Client the corresponding portion of the unused recurring fee(s) paid by Client to FIS for the applicable Solution, and in each such case this Agreement shall terminate with respect to the Solution or part thereof removed.

The remedies provided in this Section 4.3 are the sole remedies for a claim of infringement or misappropriation hereunder.

**4.4. Harmful Code.** Using a recent version of a reputable virus-checking product (to the extent commercially available): (a) FIS will check the Solution, as well as any systems used by FIS to deliver the Solution, for any Harmful Code; and (b) Client will check the Specified Configuration for Harmful Code and ensure no Harmful Code is introduced by its end users or from its systems into any systems used in the Solution. The party undertaking such virus-checking will use commercially reasonable efforts to eliminate any such Harmful Code that is discovered.

**4.5. Exclusion for Unauthorized Actions.** FIS is not liable under any provision of this Agreement for any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Solution by or on behalf of Client, any combination of the Solution with other software or

services, any use of any version of the Solution other than the Supported Release, Client’s failure to implement corrections or changes to the Solution provided by FIS, a failure to subscribe to ongoing support services if then offered for the Solution, any Third-Party Data Services, any Third-Party Software or Open Source Software (except as set forth in Sections 4.12 and 4.13), any wrongful act or omission by Client, its Affiliates or its customers or any breach of this Agreement by Client.

**4.6. Conditions of Use.** To the extent that Third-Party Users are permitted to have access to the Solution: (a) Client represents and warrants to FIS, its Third-Party Providers, agents, successors and assigns and their respective employees (collectively, the “Indemnified Group”) that agreements between it and Third-Party Users expressly provide, and covenants that all such agreements will provide, that none of the Indemnified Group have or will have any liability in any circumstances with respect to any services offered by Client to the Third-Party Users (“Client Services”), including with respect to the data and information provided to the Third-Party Users as part of the Client Services; and (b) Client shall indemnify and defend the Indemnified Group from and against any of the following: any and all claims, liabilities and obligations (including reasonable lawyers’ fees) by any third party, including Third-Party Users, against the Indemnified Group and arising out of Client’s or Third-Party Users’ use of the Solution, Third-Party Data Services or the Documentation with respect to the Client Services.

**4.7. Force Majeure.** Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than its payment obligations, which shall be suspended only for so long as the force majeure event renders Client unable by any means to transmit payments when due hereunder) as a result of a cause beyond its control, including any act of God or a public enemy or terrorist, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, theft or criminal misconduct by unrelated third parties, disruption or outage of communications (including the Internet or other networked environment), power or other utility, unavailability of supplies or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.

**4.8. Disclaimer.** EXCEPT AS STATED IN SECTIONS 4 AND 6.5, THE SOLUTION, DOCUMENTATION AND SERVICES ARE PROVIDED “AS IS”, AND ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS OR 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, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT) ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT.

**4.9. Limitations Cap.** EACH PARTY’S TOTAL AGGREGATE LIABILITY UNDER OR RELATED TO EACH ORDER SHALL UNDER NO CIRCUMSTANCES EXCEED THE AGGREGATE AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO FIS UNDER THAT ORDER FOR THE SOLUTION AND/OR SERVICES WHICH ARE THE SUBJECT MATTER OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS FOR THE FIRST CLAIM.

**4.10. Consequential Damage Exclusion.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY (OR ANY OF ITS AFFILIATES PROVIDING OR RECEIVING THE SOLUTION, SERVICES OR OTHER SOFTWARE UNDER THIS AGREEMENT) BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR LOSSES OR DAMAGES WHICH FALL INTO ANY OF THE FOLLOWING CATEGORIES: (a) LOST REVENUES; (b) LOST PROFITS; (c) LOSS OF BUSINESS; (d) TRADING LOSSES; (e) INACCURATE DISTRIBUTIONS; OR (f) 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 OR SERVICES PROVIDED HEREUNDER, OR ARISING FROM ANY BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS 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. FOR PURPOSES OF CLARIFICATION, THE FOLLOWING SHALL BE DEEMED "DIRECT DAMAGES" AS BETWEEN CLIENT AND FIS FOR THE PURPOSES OF THIS AGREEMENT: (i) ANY AND ALL DAMAGES, INCLUDING CONSEQUENTIAL AND SIMILAR DAMAGES, AWARDED TO A THIRD PARTY FOR WHICH INDEMNIFICATION IS PROVIDED BY A PARTY UNDER SECTIONS 4.3, 4.6, 6.8 OR 8.3; (ii) CLIENT'S OUT-OF-POCKET COSTS TO NOTIFY AFFECTED PERSONS AND/OR PAY FOR CREDIT MONITORING SERVICES FOR SUCH PERSONS FOR A ONE-YEAR PERIOD INCURRED AS A RESULT OF FIS' BREACH OF SECTION 5.

**4.11. Exceptions.** THE LIMITATIONS AND EXCLUSIONS SET FORTH IN SECTIONS 4.9 AND 4.10 SHALL NOT APPLY TO: (a) BREACHES OF THE SCOPE OF USE; (b) FAILURE TO PAY FEES WHEN DUE; (c) DAMAGES CAUSED BY EITHER PARTY'S FRAUD OR WILLFUL MISCONDUCT; (d) A PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY DUE TO THAT PARTY'S NEGLIGENCE; OR (e) A PARTY'S LIABILITY FOR DAMAGES TO THE EXTENT THAT SUCH LIMITATION OR EXCLUSION IS NOT PERMITTED BY APPLICABLE LAW. THE LIMITATIONS SET FORTH IN SECTION 4.9 DO NOT APPLY TO CLAIMS FOR WHICH INDEMNIFICATION IS PROVIDED BY A PARTY UNDER SECTIONS 4.3, 4.6, 6.8 OR 8.3.

**4.12. Third-Party Software.** FIS shall use reasonable efforts to provide Client the benefit of all indemnities and warranties granted to FIS by the licensor(s) of the Third-Party Software, to the extent possible without additional cost to FIS, as and if permitted by FIS' agreement with the licensor of the Third-Party Software, and to the extent such warranties and indemnities pertain to Client's use of the Third-Party Software hereunder. In the event of any defect in any Third-Party Software (in the form delivered by FIS and when properly used for the purpose and in the manner specifically authorized by this Agreement), FIS will use commercially reasonable efforts to replace or correct the Third-Party Software without charge. If FIS complies with this provision, it shall face no further liability with respect to any defect in any Third-Party Software.

**4.13. Open Source Software Components.** The Solution may utilize Open Source Software, including that Open Source Software identified in the Documentation or on the ongoing support services website for the Solution. Open Source Software is licensed under the terms of the open source license that accompanies or is made available with such Open Source Software, including via a website designated by FIS. Nothing in this Agreement limits Client's rights under, or grants Client rights that supersede, the terms and conditions of any applicable license for such Open Source Software. Open Source Software shall not be

deemed to be part of the Solution under this Agreement and FIS shall have no liability relating to such Open Source Software; provided, however, that FIS shall be responsible for fixing Errors caused by such Open Source Software to the same extent as FIS' ongoing support obligations as set forth in Sections 8.5 and 9.4 of this Agreement.

**4.14. Open Negotiation.** Client and FIS have freely and openly negotiated this Agreement, including the pricing, with the knowledge that the liability of the parties is to be limited in accordance with the provisions of this Agreement.

**4.15. Other Limitations.** The warranties made by FIS in this Agreement, and the obligations of FIS under this Agreement, run only to Client and not to its Affiliates, its customers or any other Persons. Under no circumstances shall any Affiliate or customer of Client or any other Person be considered a third-party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement (including any right to be consulted in connection with any variation or rescission of the Agreement agreed between FIS and Client), even if such Affiliates, customers or other Persons are provided access to the Solution or data maintained in the Solution via the Internet or other networked environment. Except to the extent specified in an Order, FIS shall not be deemed Client's official record keeper for regulatory or other purposes and shall have no obligation to retain any records or data on Client's behalf after termination or expiration of this Agreement.

## **5. Confidentiality, Security, Ownership and Use Restrictions.**

**5.1. Confidentiality.** The party receiving Confidential Information ("Receiving Party") of the other ("Disclosing Party") shall not, and shall cause its Authorized Recipients not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this 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: (a) keep all Confidential Information of Disclosing Party strictly confidential; and (b) not disclose the Confidential Information of Disclosing Party to anyone other than its Authorized Recipients. Prior to disclosing the Confidential Information to its Authorized Recipients, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. 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. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the other party is given a reasonable opportunity to contest such disclosure or obtain a protective order. Confidential Information of either party disclosed prior to the Order Effective Date shall, with effect from that Order Effective Date, be subject to the provisions of this Section 5.

### **5.2. Security.**

(a) FIS will implement commercially reasonable administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of Client Data; (ii) protect against any anticipated threats or hazards to the security or integrity of Client Data; and (iii) protect against unauthorized access to or use of Client Data. FIS will review and test such safeguards on no less than an annual basis.

(b) If Client makes the Solution or data maintained by the Solution accessible through the Internet or other networked environment, Client shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of the Solution, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.

(c) To the extent that Third-Party Users are permitted to have access to the Solution, Client shall maintain agreements with such Third-Party Users that adequately protect the confidentiality and intellectual property rights of FIS in the Solution and Documentation, and disclaim any liability or responsibility of FIS with respect to such Third-Party Users.

**5.3. FIS Personal Data.** If Client Processes or otherwise has access to any Personal Data regarding employees or contractors of FIS or an FIS affiliate as a result of this Agreement, then Client shall treat such Personal Data as FIS' Confidential Information and only Process it for legitimate purposes in accordance with all applicable laws. To the extent required by applicable law, Client shall give notice to FIS of any Personal Data breach relating to the Personal Data of FIS.

**5.4. Client Personal Data.** If FIS Processes or otherwise has access to any Personal Data of Client as a result of this Agreement, the following provisions shall apply with respect to the Processing of that Personal Data on Client's behalf:

(a) FIS shall Process the Personal Data only in accordance with any lawful and reasonable instructions given by Client from time to time as documented in and in accordance with the terms of this Agreement;

(b) FIS shall ensure that all persons it authorizes to access the Personal Data are bound by appropriate obligations of confidentiality with respect to that Personal Data;

(c) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing of the relevant Personal Data, Client and FIS shall each implement appropriate technical and organizational measures to ensure a level of security for the Personal Data in accordance with applicable data protection law;

(d) each party shall take reasonable steps to ensure that any person acting under its authority who has access to Personal Data does not Process the Personal Data except on instructions from that party;

(e) FIS shall cooperate with Client as reasonably required to assist Client with its 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;

(f) to the extent required by applicable law, FIS shall give notice to Client of any Personal Data breach relating to the Personal Data of Client;

(g) Client shall ensure that it is entitled to transfer the relevant Personal Data to FIS so that FIS may lawfully Process the Personal Data in accordance with this Agreement on Client's behalf, which may include FIS Processing the relevant Personal Data outside the country where

Client and the Authorized Users are located in order for FIS to provide the Solution and perform its other obligations under this Agreement;

(h) FIS may engage its Authorized Recipients as Processors under this Agreement and FIS shall: (i) impose upon such Processors the equivalent data protection obligations as set out in this Section 5.4 and (ii) be responsible for the misuse or impermissible distribution of the Personal Data by its Authorized Recipients under this Agreement to the same extent as if those actions were taken by FIS. FIS shall inform Client of any intended changes concerning the addition or replacement of Processors engaged by FIS, including by making such information available to Client on its web page; and

(i) if FIS will Process or otherwise have access to any Personal Data of Client related to data subjects residing in the European Economic Area, United Kingdom or Switzerland, the following additional provisions shall apply with respect to the Processing of Personal Data on Client's behalf:

(i) Client shall be the Controller and FIS shall be a Processor;

(ii) Client must ensure that the Order specifies all types of Personal Data to be Processed including the categories of natural persons to which such Personal Data relates;

(iii) upon Client's written request, FIS shall (at Client's option) delete or return all Personal Data Processed on behalf of Client to Client after the end of the provision of services relating to the Processing of that Personal Data, subject to FIS retaining any copies required by applicable law; and

(iv) to the extent required for compliance with applicable data protection law, upon Client's written request (but not more than once in any twelve (12) month period, unless otherwise required under applicable data protection law), FIS shall make available to Client all information reasonably necessary to demonstrate FIS' compliance with the obligations set out in this Section 5.4. Solely for such purpose, FIS may allow a reputable third-party auditor chosen by FIS to perform audits on Client's behalf and Client hereby authorizes FIS to issue such mandate to the third-party auditor. Reasonable advance notice of at least sixty (60) days is required for a Client request under this Section, unless applicable data protection law requires an earlier audit. FIS and Client will use current certifications or other audit reports to minimize repetitive audits, and will each bear their own expenses of audit.

**5.5. FIS Solution Details.** The FIS Solution Details are trade secrets and proprietary property of FIS or its licensors, having great commercial value to FIS or its licensors. Title to all FIS Solution Details and all related intellectual property and other ownership rights shall be and remain exclusively with FIS or its licensors, even with respect to such items that were created by FIS specifically for or on behalf of Client. FIS and its Affiliates may freely use Feedback without attribution or the need for FIS, its Affiliates or any third party to pay Client or any third party any royalties or other fees of any kind. This Agreement is not an agreement of sale, and no intellectual property or other ownership rights to any FIS Solution Details are transferred to Client by virtue of this Agreement. All copies of FIS Solution Details in Client's possession shall be deemed to be on loan to Client during the term of this Agreement.

**5.6. Use Restrictions.** Except to the extent specifically authorized by this Agreement, Client shall not, shall not attempt to, and shall not permit any other Person under its reasonable control to: (a) use any FIS Solution Detail for any purpose, at any location or in any manner not

specifically authorized by this Agreement; (b) make or retain any Copy of any FIS Solution Detail; (c) create or recreate the source code for the Solution, or re-engineer, reverse engineer, decompile or disassemble the Solution except to the extent specifically permitted by applicable law; (d) modify, adapt, translate or create derivative works based upon the Solution or Documentation, or combine or merge any part of the Solution or Documentation with or into any other software or documentation except to the extent specifically permitted by applicable law; (e) refer to, disclose or otherwise use any FIS Solution Detail as part of any effort either: (i) to develop a program having any functional attributes, visual expressions or other features similar to those of the Solution; or (ii) to compete with FIS; (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any FIS Solution Detail, or fail to preserve all copyright and other proprietary notices in any Copy of any FIS Solution Detail made by Client; (g) sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, sub-contractor, consultant or partner, any right to use any FIS Solution Detail or allow such other Person to use or have access to any FIS Solution Detail, whether on Client's behalf or otherwise; or (h) use the Solution to conduct any type of application service provider, service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any Person, whether on a fee basis or otherwise.

**5.7. Notice and Remedy of Breaches.** Each party shall promptly give notice to the other of any breach by it of any of the provisions of this Section 5, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.

**5.8. Enforcement.** Each party acknowledges that any breach of any of the provisions of this Section 5 may result in irreparable injury to the other for which money damages would not adequately compensate. Accordingly, the injured party in such circumstance shall be entitled, in addition to all other rights and remedies which it may have, to seek to have a decree of specific performance or an injunction issued by any court of competent jurisdiction, requiring the breach to be cured or enjoining all Persons involved from continuing the breach.

## **6. Professional Services.**

**6.1. Professional Services.** An Order may identify certain Professional Services. In addition, at Client's reasonable request and subject to the availability of FIS' personnel, FIS shall provide to Client other Professional Services requested by Client in accordance with a fully executed Professional Services Order.

**6.2. Professional Services Fees.** Client shall pay to FIS the professional services fees stated on the Order. In each case where professional services fees are not specified on the Order, then the fees for such services shall be based upon FIS' then standard professional services fee rates. FIS' standard professional services fee rates in effect on the Order Effective Date are stated on the Order and are subject to increase in the ordinary course of business.

**6.3. Expense Reimbursements.** Client shall reimburse FIS for reasonable travel, living and other out-of-pocket expenses incurred by FIS personnel in connection with all services, including, but not limited to, Professional Services and maintenance and support rendered by FIS. Reimbursable expenses shall be incurred by FIS personnel in accordance with FIS' then current travel and expense policy, a copy of which will be

furnished at Client's request. FIS shall invoice Client for reimbursement of these expenses on a monthly basis, as incurred.

**6.4. Cooperation and Access to Facilities, Data and Employees.** To the extent reasonably necessary for FIS to perform its obligations under this Agreement, Client shall provide to FIS access to Client's location site, equipment, data and employees, and shall otherwise cooperate with FIS in its performance hereunder, all as reasonably necessary for FIS to perform its obligations under this Agreement.

**6.5. Professional Services Warranty.** FIS warrants to Client that Professional Services will be performed in a good and workmanlike manner by qualified personnel, subject to Section 6.4. FIS shall have no obligation or liability under this Section 6.5 unless, within thirty (30) days after the actual date of the particular Professional Services, FIS receives notice from Client describing the breach of this warranty, together with adequate supporting documentation and data. Upon receipt of any such notice, FIS' only obligation and liability under this Section 6.5 is to remedy the breach and reperform the particular Professional Services affected as soon as reasonably practical at no additional charge.

**6.6. Compliance with Client Policies.** While FIS personnel are performing services at Client's site, FIS will ensure that such personnel comply with Client's reasonable security procedures and site policies that are generally applicable to Client's other suppliers providing similar services and that have been provided to FIS in writing and in advance. Client shall promptly reimburse FIS for any out-of-pocket costs incurred in complying with such procedures and policies.

**6.7. Work Product.** Any results of the Professional Services provided under an Order ("**Work Product**") shall be owned by FIS. Client shall be entitled to use such Work Product as it can the Solution related to that Work Product, in accordance with and subject to the terms of the Order for the Solution. To the extent the Work Product does not relate to a Solution licensed from or provided by FIS, FIS grants to Client a personal, non-exclusive, royalty-free, non-transferable, limited scope license to use the Work Product only in the ordinary course of its business operations and for its own internal business purposes.

**6.8. Contributed Material.** In the process of FIS' performing Professional Services, Client may, from time to time, provide FIS with designs, plans, or specifications, improvements, works or other material for inclusion in, or making modifications to, the Solution, the Documentation or any other deliverables ("**Contributed Material**"). Client grants to FIS a nonexclusive, irrevocable, perpetual, transferable right, without the payment of any royalties or other compensation of any kind and without the right of attribution, for FIS, FIS' Affiliates and FIS' licensees to make, use, sell and create derivative works of the Contributed Material. Client shall indemnify and defend FIS against any third-party claim asserting that Client does not have the full legal right (including any moral rights) to grant to FIS such rights to use the Contributed Material and/or that the Contributed Material in the form delivered to FIS infringes upon any IP Rights.

## **7. Term and Termination.**

**7.1. Order Term.** The Order may state an initial term for the use of the Solution ("**Initial Term**") and may state renewal terms (each a "**Renewal Term**"). "**Order Term**" means the Initial Term together with any Renewal Terms.

**7.2. Termination.** Either party may terminate this Agreement by giving notice of termination to the other party if the other party

breaches any of its material obligations under this Agreement and does not cure the breach within thirty (30) days after receiving notice describing the breach in reasonable detail.

**7.3. Effect of Termination.** The provisions of Sections 3, 4, 5, 7.3 and 11 shall survive any termination of this Agreement, whether under this Section 7 or otherwise. Client shall be liable for all payments due to FIS for the period ending on the date of termination. Upon a termination of this Agreement, whether under this Section 7 or otherwise, or upon the expiration or termination of an Order Term: (a) Client shall: (i) discontinue all use of the affected Solution and Documentation; (ii) promptly return to FIS all copies of the affected Solution and Documentation and any other affected FIS Solution Details then in Client's possession; and (iii) give notice to FIS certifying that all copies of such items have been permanently deleted; and (b) FIS shall (upon receipt of a written notice from Client and to the extent permitted by law) promptly return or (subject to reasonable technical limitations with regards to electronically stored information) destroy Client's Confidential Information in FIS' possession.

**7.4. Termination Assistance Services.** Upon the termination of this Agreement by Client pursuant to and in accordance with Section 7.2, at Client's reasonable request and subject to the parties executing a Professional Services Order, FIS shall provide to Client consulting services, assistance with data transfers or downloads to Client's system, database or spreadsheet system and such other termination assistance, on a time and materials basis at FIS' then prevailing professional services fee rates for the type of Professional Services requested.

## **8. Terms Applicable to SaaS, BPaaS ASP and Hosting.**

The following provisions in this Section 8 apply solely to Hosting Services and to Orders for an ASP Solution, BPaaS Solution or SaaS Solution.

**8.1. SaaS, BPaaS, ASP and Hosting.** FIS shall provide the Hosting Services and/or access to the ASP Solution, BPaaS Solution or SaaS Solution, as described and for the term specified on the Order.

**8.2. Passwords and Solution Access.** If FIS provides Client or its Authorized Users with unique access codes to access the Solution (each, a "Password"), Client shall hold any such Passwords in strict confidence and shall not assign, share, misuse or abuse the Passwords or attempt to render ineffective the password protection of the Solution. If Client suspects or learns that a Password is being used to gain unauthorized access to the Solution, Client will immediately notify FIS so that it can change, or assist Client in changing, the applicable Password. To the extent the Solution is within FIS' network, FIS may suspend access to the Solution without advance notice if FIS reasonably believes the Solution is being used or accessed in an unauthorized, illegal or disruptive manner, provided that FIS will promptly notify Client of any such event.

### **8.3. Client Data.**

(a) Client shall supply, or cause to be supplied, all Client Supplied Data. Client shall transmit the Client Supplied Data to FIS by communications link or in another manner described on the Order. As between FIS and Client, Client shall be responsible for ensuring that the Client Supplied Data is accurate and complete. Client represents and warrants to FIS that Client has the full legal right for Client and FIS, its affiliates and agents to use the Client Supplied Data for Processing hereunder. Client shall indemnify and defend FIS, its affiliates and agents against any third-party claim alleging breach of the foregoing warranty.

(b) Within thirty (30) days after termination of Hosting Services or of an Order for an ASP Solution, BPaaS Solution or SaaS Solution, Client shall give FIS an instruction notice regarding the disposition of any tapes, data, files and other property belonging to Client and then in FIS' possession. To the extent practicable and at Client's expense after receipt of such notice, FIS shall use commercially reasonable efforts to comply with the notice, including converting the data on the Solution to machine-readable form. FIS may retain such property until FIS receives all payments due to FIS under that Order. If Client fails to give that notice within thirty (30) days after such termination, then FIS may dispose of such property in a commercially reasonable manner.

(c) In order to improve FIS' product and service offerings for its clients, FIS may maintain a database of information residing on the Solution. FIS and its affiliates may use and distribute such data in an aggregated and de-identified format, including as a part of the development, distribution and licensing of any FIS product or service offering.

**8.4. Regulatory Access.** To the extent permitted by law, each party will notify the other promptly of any formal request by an authorized governmental agency or regulator to examine Client Data or other records, if any, regarding Client that are maintained in FIS facilities under this Agreement. In the event of such a request, FIS shall make such Client Data or other records, if any, reasonably available for examination and audit by the governmental agency or regulatory authority that has jurisdiction over Client's business and Client agrees to reimburse FIS for the reasonable out-of-pocket costs FIS incurs and time FIS spends in doing so.

**8.5. SaaS, BPaaS, ASP and Hosting Support.** FIS shall provide to Client the ongoing support services as described in the Order.

**8.6. Data Backup and Disaster Recovery.** If the Solution maintains a database then, unless otherwise stated on the Order:

(a) FIS shall electronically backup the Client Data in accordance with the backup cycle defined in the Order (and if no backup cycle is defined, at reasonable intervals); and

(b) FIS shall maintain a disaster recovery plan which includes a procedure for the restoration of Client's production environment at an alternate facility in the event of a disaster. FIS' disaster recovery plan shall be tested at least once each calendar year.

**8.7. Interruption to Solution.** From time to time, FIS shall be entitled (at its discretion, without incurring liability for so doing) to interrupt the Solution to: (a) perform repairs and other maintenance and install enhancements on FIS' equipment, software and/or other systems that are required for the provision of the Solution; or (b) make adjustments to its infrastructure (including, for example, in relation to resources shared by its other clients) and thereby cause a disruption in the provision of the Solution. Except in the case of emergency repairs, maintenance or adjustments, FIS will: (i) give Client reasonable prior notice of the interruption; (ii) limit such interruptions to outside of FIS' normal business hours; and (iii) use commercially reasonable efforts to minimize the impact of the interruption.

**8.8. Volume Increases.** Client shall give notice to FIS whenever Client intends to materially increase the volume of data to be processed on the Solution. Any such increase that results in an increase beyond the Scope of Use requires an additional executed Order and the payment of additional fees.

## 9. Terms Applicable to Software Licenses.

The following provisions in this Section 9 apply solely to an Order that provides the right for Client to install the Solution at the facility identified on the Order.

**9.1. Grant.** Except as otherwise provided in an Order, FIS grants to Client a non-transferable, non-exclusive, term license to use the Solution in accordance with this Agreement and the Scope of Use. The Solution shall be installed only in object code form and only at the Designated Location(s). Client may, subject to Section 11.4, use or access the Solution at or from Client locations worldwide. Client may change the Designated Location(s) to another facility owned or controlled by Client by giving prompt written notice thereof to FIS. Client may copy and use the Solution installed at the Designated Location(s) for inactive back-up and disaster recovery purposes. Client may copy the Documentation to the extent reasonably necessary for use of the Solution under this Agreement.

**9.2. Initial Installation.** FIS shall deliver to Client the initial Copies of the Solution stated on the Order by supplying such initial Copies: (a) by physical shipment, such as on a disc or other media; or (b) by electronic delivery, such as by posting it on FIS' network for downloading. Physical shipment is on F.O.B. terms, FIS' shipping point and electronic delivery is deemed effective at the time FIS provides Client with access to download the Solution. The date of such delivery shall be referred to as the "**Delivery Date.**" Client shall install the Solution at the Designated Location(s) on or before the Scheduled Installation Date. If a Scheduled Installation Date is not specified on the Order, Client shall install the Solution within thirty (30) days after the Delivery Date.

**9.3. Acceptance.** If the Solution is specified in the Order as being subject to acceptance testing, then the following terms apply:

(a) Client is deemed to have accepted the Solution at the end of the Acceptance Period, unless during that period, the Solution fails to perform in accordance with the Documentation in some material respect that precludes acceptance of the Solution by Client, and, by the end of the Acceptance Period, Client gives notice of non-acceptance to FIS describing the material failure in reasonable detail and explaining why the failure precludes acceptance of the Solution by Client. If Client gives a proper notice of non-acceptance to FIS, then:

(i) FIS shall investigate the reported failure. Client shall provide to FIS reasonably detailed documentation and explanation, together with underlying data, to substantiate the failure and to assist FIS in its efforts to diagnose and correct the failure.

(ii) If there was no material failure to perform or the failure to perform was not attributable to a defect in the Solution or an act or omission of FIS, then FIS shall give notice to Client explaining that determination in reasonable detail, and Client shall be deemed to have accepted the Solution as of the date of FIS' notice.

(iii) If there was a material failure to perform that was attributable to a defect in the Solution or an act or omission of FIS, and if FIS cannot correct the failure within thirty (30) days (or such longer period as may be reasonable under the circumstances) after receipt of Client's notice of non-acceptance, then Client shall promptly return to FIS all copies of the Solution and Documentation and any other items delivered to Client by FIS, and as Client's sole and exclusive remedy, FIS shall then refund to Client the license fee paid by Client. If, within such period, FIS does correct the failure, then FIS shall give notice to Client

certifying that the failure has been corrected, and another thirty (30) day acceptance period shall begin from the date of such notice in accordance with this Section 9.3.

(b) If Client has not accepted the Solution under Section 9.3(a), then notwithstanding any of the provisions of Section 9.3(a), Client shall be deemed to have accepted the Solution on the first day that Client uses the Solution in a live production environment or as Client's system of record.

(c) The first date on which Client is deemed to have accepted the Solution under Section 9.3(a) or under Section 9.3(b) is referred to as the "**Acceptance Date.**"

**9.4. License Support.** Beginning on the Order Effective Date and continuing for a support term of five (5) years (or such other support term stated in the Order), FIS shall provide the ongoing support services described in the Order and Client shall pay to FIS the Support Fees. If, upon the expiry of that support term, Client's license to use the Solution either continues or is automatically renewed pursuant to the terms of that Order then the ongoing support services shall automatically renew and Client shall be obligated to pay the Support Fees for additional annual support terms unless either party gives the other notice of its intent to terminate the ongoing support services (in accordance with Section 11.1) at least sixty (60) days before the end of the then current support term. Notwithstanding the foregoing, the ongoing support services shall automatically terminate upon expiration or termination of the Order Term.

**9.5. Support Termination.** Upon the Support Termination Date: (a) FIS shall discontinue providing all ongoing support services, including FIS' obligations under Section 9.4; (b) any FIS warranties under this Agreement shall cease to apply for the period after the Support Termination Date; and (c) FIS shall not be liable for Client's use of the Solution after the Support Termination Date, except for FIS' indemnification obligations for any third-party claims covered by Section 4.3 that arose prior to the Support Termination Date (but only to the extent such claim would not have been remedied by a Release made available by FIS after the Support Termination Date). If, after the Support Termination Date, Client wishes to reinstate ongoing support services, Client shall pay to FIS the Support Fees that would have been charged during the period between the Support Termination Date and the date of reinstatement.

**9.6. Escrow of Source Code.** If stated on the Order, then within a reasonable time after the first day that Client uses the Solution in a live production environment, FIS shall arrange, for the benefit of Client (and Client shall execute any documents required to receive such benefit), an escrow of the Solution source code with an escrow agent nominated by FIS ("**Escrow Agent.**"), in accordance with FIS' standard escrow agreement ("**Escrow Agreement.**"). The source code for the Solution may be released from escrow, in accordance with the terms and conditions specified in the Escrow Agreement. Client shall pay all fees due to the Escrow Agent as a result of such escrow. Client acknowledges that the Escrow Agreement shall be deemed null and void and of no effect and that neither FIS nor the Escrow Agent shall be under any further obligation with respect to such escrow arrangement from whichever is the earlier of: (a) the date Client fails to pay the escrow fees when due; or (b) the Support Termination Date.

**9.7. Remote Access of Installed Software.** Provided that FIS performs such services in accordance with the confidentiality provisions

of this Agreement, Client shall permit FIS, at FIS' option, to remotely access the Solution installed at the Designated Location(s) for the purpose of providing ongoing support services to Client under Section 9.4 and otherwise implementing the purposes of this Agreement. In remotely accessing such Solution, FIS will comply with Client's reasonable security procedures and company policies that have been provided to FIS in writing. Client shall promptly reimburse FIS for any out-of-pocket costs incurred in complying with such procedures and policies.

**9.8. Backup.** Client acknowledges that it is the best judge of the value and importance of the data held on Client's systems and that Client shall be solely responsible for maintaining secure and complete back-up copies of all data that Client processes using the Solution, which data will be backed-up on not less than a daily basis and which will be readily available on machines controlled by Client to facilitate the prompt restoration of such data in the event of any loss of or damage to it. FIS shall have no liability for any loss or damage caused by Client's failure to maintain such backed-up copies.

**9.9. Audit.** At FIS' expense and upon written request with reasonable notice, Client will permit FIS, its personnel or its outside auditors to enter the relevant Client locations during normal business hours and audit the number of copies of the Solution and Documentation in Client's possession and information pertaining to Client's compliance with this Agreement. Such audits shall not occur more than once in any twelve (12) month period (unless FIS believes, in good faith, that there has been a breach of this Agreement by Client) and shall be performed in a manner not to disrupt Client's business and operations and will respect the confidentiality of Client, its suppliers and customers. Client will, in a timely manner, reasonably cooperate with the auditors and provide the auditors all assistance as they may reasonably request in connection with the audit. Client may require auditors acting on behalf of FIS to execute reasonable confidentiality agreements and comply with Client's reasonable security requirements, but this requirement will not apply to FIS' internal auditors otherwise bound by the confidentiality conditions of this Agreement.

## **10. Third-Party Data Services.**

The following provisions in this Section 10 apply solely to an Order that includes the provision of Third-Party Data Services.

**10.1. Ancillary Services.** FIS shall provide the Third-Party Data Services originating with a Third-Party Data Provider, as described and for the term specified on the Order.

**10.2. Third-Party Data Providers.** Client acknowledges and agrees that the Third-Party Data Services provided under this Agreement contain information obtained, selected and consolidated by the Third-Party Data Providers under the authority of the Third-Party Data Providers, that Client's use of the Third-Party Data Services is authorized and regulated by the Third-Party Data Providers and further that the Third-Party Data Providers may require to be provided with information and data about Client and its Authorized Users in connection with their provision of Third-Party Data Services. Client also acknowledges that the Third-Party Data Providers may modify the Third-Party Data Services, or discontinue availability of Third-Party Data Services or modify the rules concerning the availability of and the applicable fees, costs and expenses for any of the Third-Party Data Services, in which case neither FIS nor the Third-Party Data Providers shall be held responsible for such modification and discontinuance. Any changes

required by the Third-Party Data Providers shall be made a part of this Agreement by FIS' notice of any such changes to Client. For a thirty (30) day period after receiving such notice from FIS, Client may reject such changes and terminate the affected Third-Party Data Service by notice to FIS. If such notice is not received by FIS within such thirty (30) day period, this Agreement shall be modified by such changes, and shall remain in full force and effect.

## **10.3. Third-Party Data Provider Notices.**

(a) Client acknowledges that FIS is required to display certain notices and agreements and to report certain data related to Client's use of the Third-Party Data Services to the Third-Party Data Providers. To enable FIS to meet its obligation in this regard, Client shall inform FIS, in writing, whenever its display of notices or utilization of any information derived from the Third-Party Data Services changes.

(b) The notices and agreements required to be displayed as of the Order Effective Date are set forth on the Order. Client shall display all such notices and agreements in the exact manner specified by FIS or a Third-Party Data Provider in writing or as set forth in this Agreement. Client acknowledges and agrees that the number and content of such notices, as well as other terms and conditions, may be changed from time to time by the Third-Party Data Providers. Upon written notification of such changes by FIS to Client, the Order shall be deemed modified to include such changes and Client will update such notices.

(c) Client shall comply with all applicable laws and obtain all necessary consents from any person, including its employees and Authorized Users and their respective employees, if any, regarding the collection, use and distribution to FIS of any information or data regarding any Authorized User and to the use by Client and the Authorized Users of the Third-Party Data Services for the purposes set forth in this Agreement. The information and data may include personal and other information about Client, its Authorized Users and their employees, including their use of the Third-Party Data Services. FIS may use this information and data to carry out its obligations under this Agreement, including the provision of such information to the Third-Party Data Providers under this Agreement or for its own internal purposes.

## **11. Other Provisions.**

**11.1. Notices.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of: (a) the date of actual receipt; (b) the third business day after being mailed by first class, certified or air mail; or (c) the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, or email if notice by one of the foregoing is provided promptly thereafter. Client's address for notices is stated on the Order. FIS' address for notices is stated on the Order. In the case of: (i) any notice by Client alleging a breach of this Agreement by FIS; or (ii) a termination of this Agreement, Client shall also mail a written notice to Fidelity National Information Services, Inc., 601 Riverside Avenue, Jacksonville, Florida 32204, U.S.A., Attention: Chief Legal Officer and such notices shall identify the Order name (including the Solution being provided thereunder), date, specific parties and FIS Order Number. Either party may change its address for notices by giving written notice of the new address to the other party.



**11.2. Defined Terms.** As used in this Agreement, the terms below (and their plural forms) have the following meanings:

- (a) **"ABC Laws"** has the meaning given to it in Section 4.2(b).
- (b) **"Acceptance Period"** means thirty (30) days after the Delivery Date unless a different Acceptance Period is specified in the Order.
- (c) **"affiliate"** whether capitalized or not, means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified Person as of the date of this Agreement, for as long as such relationship remains in effect.
- (d) **"Authorized Recipient"** means: (i) with respect to Client, Client, any Authorized User and any employee of a Client contractor, provided that the contractor is not a competitor of FIS; and (ii) with respect to FIS, FIS, its foreign and domestic Affiliates and their respective contractors, and Third-Party Providers.
- (e) **"Authorized User"** means a Client employee, an employee of Client's Affiliate or, if applicable, a Third-Party User.
- (f) **"Client Data"** means data stored in, or processed by, the Solution; provided that aggregated data that is: (i) not Personal Data; and (ii) not identifiable to Client, shall not be deemed Client Data nor Client's Confidential Information.
- (g) **"Client Supplied Data"** means any information or data introduced into the Solution by or on behalf of Client.
- (h) **"Confidential Information"** means all business or technical information disclosed by Disclosing Party to Receiving Party in connection with this Agreement. Confidential Information includes without limitation: (i) Client Data and the details of Client's computer operations; (ii) the FIS Solution Details; and (iii) the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of the Solution or services being provided under an Order. Confidential Information does not include information that: (aa) prior to the receipt thereof under this Agreement, had been developed independently by Receiving Party, or was lawfully known to Receiving Party, or had been lawfully received by Receiving Party from other sources, provided such other source did not receive it due to a breach of an agreement with Disclosing Party, and Receiving Party knew of such breach or ought to have reasonably known of such breach; or (bb) is publicly known at or after the time either party first learns of such information, or generic information or knowledge which either party would have learned in the course of its work in the trade, business or industry; or (cc) subsequent to the receipt thereof under this Agreement: (1) is published by Disclosing Party or is disclosed generally by Disclosing Party to others without a restriction on its use and disclosure; or (2) has been lawfully obtained by Receiving Party from other sources which Receiving Party reasonably believes lawfully came to possess it.
- (i) **"Contributed Material"** has the meaning given to it in Section 6.8.
- (j) **"Controller"** or **"controller"** means an entity which alone or jointly with others determines purposes for which and the manner in which any Personal Data are, or are to be, Processed.
- (k) **"copy"** whether capitalized or not, means any paper, disk, tape, film, memory device or other material or object on or in which any

words, object code, source code or other symbols are written, recorded or encoded, whether permanent or transitory.

- (l) **"Delivery Date"** has the meaning given to it in Section 9.2.
- (m) **"Designated Location(s)"** means the Client's location(s) listed as designated location(s) on the Order.
- (n) **"Disclosing Party"** has the meaning given to it in Section 5.1.
- (o) **"Disputed Amount"** means a good faith dispute by Client of certain amounts invoiced under this Agreement. An amount will only constitute a Disputed Amount if: (i) Client has given notice of the dispute to FIS promptly after receiving the invoice; and (ii) the notice explains Client's position in reasonable detail. A dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice are Disputed Amounts.
- (p) **"Documentation"** means the standard user documentation FIS provides for the Solution, as such Documentation may be updated from time to time.
- (q) **"Error"** means a failure of a Supported Release to perform in all material respects in accordance with the Documentation.
- (r) **"Export Laws"** means any laws, administrative regulations and executive orders of the U.S., the United Kingdom and any other jurisdiction where any FIS Solution Details will be located or from where any FIS Solution Details will be accessed under this Agreement relating to the control of imports and exports of commodities and technical data, use or remote use of software and related property or services, embargo of goods or services or registration of this Agreement including the Export Administration Regulations of the U.S. Department of Commerce and the regulations and executive orders administered by the Office of Foreign Asset Control of the U.S. Department of the Treasury.
- (s) **"Feedback"** means any suggestions or recommendations for improvements or modifications to the Solution made by or on behalf of Client.
- (t) **"FIS Solution Details"** means any of the following: the Solution and Documentation, the object code and the source code for the Solution, the visual expressions, screen formats, report formats and other design features of the Solution, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Solution or Documentation, all future modifications, updates, Releases, improvements and enhancements of the Solution or Documentation, all derivative works (as such term is used in the U.S. copyright laws) based upon any of the foregoing and all copies of the foregoing.
- (u) **"Harmful Code"** means any viruses, worms or similar harmful code.
- (v) **"including"** whether capitalized or not, means including but not limited to.
- (w) **"IP Rights"** means, collectively: (i) any patent issued as of the date of this Agreement by a country that is a signatory to the Paris Convention; (ii) any copyright of any country that is a member of the Berne Convention as of the date of this Agreement; or (iii) any trade secret or other proprietary right of any Person.
- (x) **"Open Source Software"** means computer software made generally available at no charge by the copyright holder under a license

which provides the right to modify and distribute the software to anyone for any purpose at no charge.

(y) **“person”** whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature.

(z) **“Personal Data”** means any information relating to an identified or identifiable natural person.

(aa) **“Price Index”** means the index specified in the Order; provided that, if the applicable Price Index is unavailable or materially changes in content and scope, then FIS may in good faith, taking into account the geographic region of the personnel supporting the Solution and/or providing the applicable services, select another generally recognized Price Index as a substitute in order to obtain substantially the same result.

(bb) **“Price Index Change”** means the amount of the percentage change in the Price Index (calculated by averaging the annual Price Index change for the four (4) fiscal quarters immediately preceding the date of the applicable fee increase) plus the percentage increment specified in the Order, provided, in all cases, the minimum aggregate pricing change during any 12-month period shall not be less than two percent (2%) of the fees then applicable to the Solution or other products or service.

(cc) **“Processing”** means any operation on data whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

(dd) **“Processor”** or **“processor”** means an entity which Processes the Personal Data only on behalf of the Controller and not for any purposes of its own.

(ee) **“Professional Services”** whether capitalized or not, means installation, implementation, training or consulting services including custom modification programming, support services relating to custom modifications, on-site support services, assistance with data transfers, system restarts and reinstallations provided by FIS under this Agreement.

(ff) **“Receiving Party”** has the meaning given to it in Section 5.1.

(gg) **“Release”** means a modification or update to the Solution, which FIS, in its sole discretion, incorporates into the Solution without requiring its then existing client base to pay a separate fee (other than support fees).

(hh) **“Scheduled Installation Date”** means the scheduled installation date stated on the Order. If no scheduled installation date is stated on the Order and the Order is for a Solution that is to be installed at the Designated Location(s), the scheduled installation date shall be the earlier of the date on which the Client installs the Solution at the Designated Location(s) in accordance with Section 9.2 or thirty (30) days after the Delivery Date.

(ii) **“Scope of Use”** means the Designated Computer(s), Designated Location(s), License Term, Platform, Business Purpose, Number of Trades, Number of Work Stations, Number of Developers, Number of Users, Volume Limit, Number of Production Databases, Number of

Production Servers, and/or other restrictions or parameters as are stated in Section 5.6 or on the Order. Scope of Use shall not include the processing of any Acquired Business. Client shall use the Solution in production to process Client's business; provided that all increases in the Scope of Use require execution of an amendment amending the Scope of Use.

(jj) **“Specified Configuration”** has the meaning given to it in Section 2.

(kk) **“Supported Release”** means, unless otherwise stated in the Order, the latest Release of the Solution that is generally available to FIS' client base.

(ll) **“Support Fees”** means the support fees stated on the Order.

(mm) **“Support Termination Date”** means the date of expiry or earlier termination of the ongoing support services for the Solution in accordance with the terms of this Agreement.

(nn) **“Third-Party Data Provider”** means a third-party provider of Third-Party Data Services.

(oo) **“Third-Party Data Services”** means market data services provided by a securities exchange or other provider of market data.

(pp) **“Third-Party Provider”** means a third-party provider of Third-Party Data Services or Third-Party Software or Services.

(qq) **“Third-Party Software”** means the software specified as third-party software on the Order.

(rr) **“Third-Party User”** means any of Client's customers, or their customers, to the extent such persons are provided access to the Solution or Third-Party Data Services hereunder.

(ss) **“Work Product”** has the meaning given to it in Section 6.7.

### **11.3. Parties in Interest.**

(a) This Agreement shall bind, benefit and be enforceable by and against FIS and Client and their respective permitted successors and assigns.

(b) Client shall not assign this 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 this Agreement (but not of any individual rights or obligations hereunder) to: (i) a purchaser of or successor to substantially all of Client's business (unless such purchaser or successor is a software, data processing or computer services vendor that is a competitor of FIS, its parent company or any of its Affiliates); or (ii) an Affiliate of Client, provided in the case of such an assignment, Client guarantees the obligations of the assignee and the use of the Solution is not broadened beyond the Scope of Use. Any assignment by Client in breach of this Section shall be void.

(c) Any express assignment of this Agreement, any change in control of Client (or its Affiliate in the case of an assignment to that Affiliate under this Section 11.3 and any assignment by merger or otherwise by operation of law, shall constitute an assignment of this Agreement by Client for purposes of this Section 11.3 (**“Client Assignment”**).

(d) In the event of a Client Assignment, or any acquisition of additional business by Client, whether by asset acquisition, merger or

otherwise by operation of law (collectively with the Client Assignment, “**Client Additional Business Acquisition**”), Client shall give notice to FIS notifying FIS if Client desires to use the Solution to process any additional business related to such Client Additional Business Acquisition (“**Acquired Business**”).

**11.4. Export Laws.** Client acknowledges that the FIS Solution Details and the services provided by FIS hereunder and this Agreement are subject to the Export Laws. Client shall not violate the Export Laws or otherwise export, re-export or use, directly or indirectly (including via remote access), any part of the Solution, Confidential Information or services in a manner, or to or for any person or entity, for which a license or other authorization is required under the Export Laws without first obtaining such license or authorization.

**11.5. Relationship.** The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint venturers or agents.

**11.6. Entire Understanding.** This Agreement, which includes and incorporates the Order, and any other schedules, exhibits and addenda hereto states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations, representations (whether negligently or innocently made), agreements and other written or oral communications between the parties with respect to the subject matter of this Agreement. In the event of a conflict between the provisions of the FST and an Order incorporating the FST, the terms of such Order shall prevail. Any written, printed or other materials which FIS provides to Client that are not included in the Documentation are provided on an “as is” basis, without warranty, and solely as an accommodation to Client. In entering into this Agreement each party acknowledges and agrees that it has not relied on any express or implied representation, warranty, collateral contract or other assurance (whether negligently or innocently made), except those expressly set out in this Agreement. Each party waives all rights and remedies which, but for this Section 11.6, might otherwise be available to it in respect of any such representation (whether negligently or innocently made), warranty, collateral contract or other assurance. Nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.

**11.7. Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. This Agreement may not be modified or amended by electronic means without written agreement of the parties with respect to formats and protocols. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.

**11.8. Severability, Heading and Counterparts.** A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement. Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**11.9. Personnel.** Client acknowledges that: (a) FIS expends substantial time and money, on an ongoing basis, to recruit and train its programmers, trainers, data processing, client support and professional

services team personnel (“**FIS Personnel**”); (b) FIS’ business is highly competitive, is marketed throughout the United States, Europe and in many other locations worldwide, and requires long sales lead times often exceeding one (1) year; and (c) if Client were to hire FIS Personnel, then FIS may suffer lost sales opportunities and would incur substantial time and money in hiring and training replacement(s) for those FIS Personnel. Accordingly, if Client, directly or through one or more subsidiaries or other controlled entities, hires any FIS Personnel at any time when such FIS Personnel is employed or engaged by FIS or during the six (6) months after such employment or engagement ends, then Client shall pay to FIS as liquidated damages (and not a penalty) an amount equal to twelve (12) months of such FIS Personnel’s salary and other compensation (including bonus or commission payments) at the time of leaving his/her employment or engagement with FIS. For purposes of this provision, “**hire**” means to employ as an employee or to engage as an independent contractor, whether on a full-time, part-time or temporary basis. This provision will remain in effect during the term of this Agreement and for a period of one (1) year after expiration or termination of this Agreement.

**11.10. Insurance.** FIS shall maintain the following minimum insurance coverage and limits: (a) statutory workers’ compensation in accordance with all federal, state, and local requirements; (b) employer’s liability insurance with limits of coverage of US\$1,000,000: (i) per accident, bodily injury (including death) by accident; (ii) per bodily injury (including death) by disease; and (iii) per employee for bodily injury (including death) by disease as required by the jurisdiction in which services are performed under this Agreement; (c) 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; (d) automobile liability insurance, including FIS-owned, leased, and non-owned vehicles with a single limit of US\$1,000,000; (e) property insurance, covering the hardware and other equipment used by FIS to provide services under this Agreement; (f) 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; (g) 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 (h) 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 this Agreement. Maintenance of insurance as specified in this Agreement shall in no way be interpreted as relieving or increasing FIS’ responsibilities or liabilities under this Agreement; and FIS may carry, at its own expense, such additional insurance as it deems necessary, including self-insurance.

**11.11. Certification.** FIS may issue (but not more than once per annum), and Client will promptly complete and return to FIS, requests certifying Client’s current and past compliance with the Scope of Use and the Export Laws.

**11.12. Language.** It is the express wish of the parties that this Agreement and all related documents be drawn up in English. C’est la volonté expresse des parties que la présente convention ainsi que tous les documents qui s’y rattachent soient rédigés en anglais.

**11.13. Jurisdiction and Governing Law.** The United Nations Convention on Contracts for the International Sale of Goods does not

apply to this Agreement or its subject matter. If Client is, as of the Order Effective Date, headquartered in the Americas or the Caribbean, then only Section 11.13(a) below applies. If Client is, as of the Order Effective Date, headquartered in the European Economic Area, United Kingdom and Switzerland then only Section 11.13(b) 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 11.13(c) below applies.

**(a) Americas; Caribbean.**

(i) This 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 Florida without regard to that state's choice-of-law provisions or principles.

(ii) Except as to matters as to which jurisdiction is provided for in Section 11.13(a)(iii), and subject to Section 5.8, 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 parties agree, before resorting to arbitration, first to try in good faith to settle any such controversy, dispute, or claim by mediation in the City of Jacksonville, Florida, either as administered by the AAA under its Commercial Mediation Procedures or, if a party opts out of mediation before the AAA, before another mediator agreed to by the parties.

(iii) Subject to the final sentence of this Section 11.13(a)(iii), each party irrevocably: (aa) 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 dispute, difference, controversy or claim (including non-contractual disputes, differences, controversies or claims) directly or indirectly arising out of, related to, or in connection with Section 5 of this Agreement or the breach or validity of such Section 5, and consents to submit itself to the personal jurisdiction of such courts; (bb) agrees that such courts shall be the proper venue therefor; (cc) waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought; (dd) waives the right to trial by jury in any such action or proceeding; and (ee) consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which the party is to receive notice, provided that nothing in this Section shall affect the right of any party to serve legal process in any other manner permitted by law. Nothing in this Section 11.13(a)(iii) shall prevent any party from commencing, prosecuting, or defending any claim, application, proceeding, or other matter in the United States Patent and Trademark Office or in any department, office or agency of the United States Government as may perform the same functions as it performs (the "USPTO"), nor deprive the USPTO of such jurisdiction as it may have.

**(b) European Economic Area, United Kingdom and Switzerland.** This 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 this 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 this Agreement.

**(c) Other Client Locations.** This 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 this 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. The seat of the arbitration shall be: (i) London if Client is headquartered in Europe, Middle East or Africa; and (ii) Singapore if Client is headquartered in Asia Pacific (and, unless the tribunal decides otherwise, the venue for hearings in the arbitration will also be in London or Singapore, as applicable). 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 this 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 this Agreement. The law governing the arbitration agreement contained in this Section shall be: (i) the laws of England and Wales if Client is headquartered in Europe, Middle East or Africa; and (ii) the laws of the Republic of Singapore if Client is headquartered in Asia Pacific. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

**11.14. Subpoenas; Data Preservation.** If FIS is required: (a) by subpoena or other judicial or legal process to produce documents, testify, give evidence, or otherwise respond as a non-party in an investigation, action, arbitration, or other proceeding in which Client is a party or a subject; or (b) in connection with such a proceeding, to preserve documents, materials, or other data not otherwise required to be preserved pursuant to FIS' standard retention policies, Client shall promptly, upon FIS' request, reimburse FIS for its costs and expenses, including attorneys' fees and other legal costs and expenses, reasonably and actually incurred in responding or complying with such requirements.