

# AGREEMENT

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_  
by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as “SBBC” or “Client”),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**FIS AVANTGARD LLC**  
(hereinafter referred to as “FIS”),  
whose principal place of business is  
601 Riverside Avenue, Jacksonville, Florida 32204

**WHEREAS**, FIS is the developer of a treasury and risk management software as a service (“SaaS”) cloud solution that manages cash positioning, bank account administration, payments processing, debt and investment management as well as accounting, compliance and reporting for improved viability and control around cash and risk that SBBC seeks to utilize; and

**WHEREAS**, FIS is willing to provide the SaaS Cloud solution to SBBC in order to streamline the treasury and risk management functions; and

**WHEREAS**, SBBC policy 3320, Part VI.C.5(c), and Rule 6A-1.012(14), Florida Administrative Code, permit the acquisitions of information technology as defined in Section 282.0041(11), Florida Statutes, by direct negotiation.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE 1 - RECITALS**

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** The term of this Agreement shall commence upon execution by the parties and conclude on March 3, 2021. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for four (4) additional one-year periods.

2.02 **Scope of Services.** The scope and subscription of services to be provided under this Agreement are specified in **Attachment A** of this Agreement. For purposes of this Agreement, references to the term “Order” shall mean **Attachment A**.

2.03 **Cost of Services and Implementation.** SBBC shall pay FIS, for the Initial Term of this Agreement, a total amount of One Hundred Forty-Five Thousand, Two Hundred Dollars and 00/100 (\$145,200) for the Initial Implementation Services and the Monthly Subscription Fees as listed below for the Scope of Use as detailed in Attachment A:

Initial Year Spending Authority	
March -2020	\$88,000.00
April 2020	\$5,200.00
May 2020	\$5,200.00
June -2020	\$5,200.00
July 2020	\$5,200.00
August 2020	\$5,200.00
September 2020	\$5,200.00
October 2020	\$5,200.00
November 2020	\$5,200.00
December 2020	\$5,200.00
January 2021	\$5,200.00
February 2021	\$5,200.00
<b>TOTAL</b>	<b>\$145,200.00</b>

For each of the four (4) renewal periods of one (1) year, SBBC shall pay FIS the amount of Sixty-Two Thousand, Four Hundred Dollars and 00/100 cents (\$62,400) which consists of Five Thousand, Two Hundred Dollars and 00/100 cents (\$5,200) per month for monthly subscription fees as follows:

Year 2		Year 3		Year 4		Year 5	
2021-2022	Monthly Subscription Fee	2022-2023	Monthly Subscription Fee	2023-2024	Monthly Subscription Fee	2024-2025	Monthly Subscription Fee
Mar-21	\$ 5,200	Mar-22	\$ 5,200	Mar-23	\$ 5,200	Mar-24	\$ 5,200
Apr-21	\$ 5,200	Apr-22	\$ 5,200	Apr-23	\$ 5,200	Apr-24	\$ 5,200
May-21	\$ 5,200	May-22	\$ 5,200	May-23	\$ 5,200	May-24	\$ 5,200
Jun-21	\$ 5,200	Jun-22	\$ 5,200	Jun-23	\$ 5,200	Jun-24	\$ 5,200
Jul-21	\$ 5,200	Jul-22	\$ 5,200	Jul-23	\$ 5,200	Jul-24	\$ 5,200
Aug-21	\$ 5,200	Aug-22	\$ 5,200	Aug-23	\$ 5,200	Aug-24	\$ 5,200
Sep-21	\$ 5,200	Sep-22	\$ 5,200	Sep-23	\$ 5,200	Sep-24	\$ 5,200
Oct-21	\$ 5,200	Oct-22	\$ 5,200	Oct-23	\$ 5,200	Oct-24	\$ 5,200
Nov-21	\$ 5,200	Nov-22	\$ 5,200	Nov-23	\$ 5,200	Nov-24	\$ 5,200
Dec-21	\$ 5,200	Dec-22	\$ 5,200	Dec-23	\$ 5,200	Dec-24	\$ 5,200
Jan-22	\$ 5,200	Jan-23	\$ 5,200	Jan-24	\$ 5,200	Jan-25	\$ 5,200
Feb-22	\$ 5,200	Feb-23	\$ 5,200	Feb-24	\$ 5,200	Feb-25	\$ 5,200
	<b>\$ 62,400</b>		<b>\$ 62,400</b>		<b>\$ 62,400</b>		<b>\$ 62,400</b>

2.04 **FIS Standard Terms.** The FIS Standard Terms specified in **Attachment B** of this Agreement are incorporated into and made a part of this Agreement and apply for purposes of any Solution(s) and/or services (including professional services) provided by FIS to SBBC hereunder.

2.05 **Priority of Documents.** In the event of a conflict between documents, the following priority of documents shall govern.

First: This Agreement, then;  
Second: **Attachment A**, then;  
Third: **Attachment B**, then;  
Fourth: **Attachment C**.

2.06 **SBBC Disclosure of Education Records and Employee Information.** Although no student education records shall be disclosed pursuant to this Agreement, should FIS come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws. Likewise, no employee information shall be disclosed by SBBC to FIS. Should FIS come into contact with employee information, it may not be re-disclosed except as required or permitted by law.

2.07 **SBBC Disclosure of Proprietary Information.**

(a) SBBC will provide FIS with the following proprietary information:

- 1) Bank account number
- 2) Bank routing number
- 3) User name, password and any personal information required to set-up user(s)
- 4) Workflows and/or any information related to SBBC's vendors and business partners

(b) FIS will use the above proprietary information only as required to ensure the effective utilization of the FIS Solution.

(c) FIS shall not use or re-disclose any proprietary information for any purpose not listed in this section of this Agreement. This provision supersedes any of FIS's privacy policies regarding collecting and using proprietary information.

2.08 **FIS Safeguarding Proprietary Information.** Notwithstanding any provision to the contrary within this Agreement, FIS shall:

(a) fully comply with the requirements of state or federal law or regulation regarding the confidentiality of proprietary information;

(b) hold the proprietary information in strict confidence and not use or disclose same except as required by this Agreement or as required or permitted by law;

(c) only share proprietary information with those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement;

(d) protect proprietary information through administrative, physical and technological safeguards to ensure adequate controls are in place to protect the proprietary information;

(e) notify SBBC within 48 hours of confirmation of a breach of confidentiality of SSBC's proprietary information by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), 754-321-1980 (Treasurer) and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required of FIS by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes; and

(f) prepare and distribute, at its own cost, any and all required notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so.

(g) This section shall survive the termination of all performance or obligations under this Agreement.

2.09 **Inspection of FIS' Records by SBBC.** FIS shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. Such records shall be maintained by FIS for five (5) years from the date of such income and expenditures. All of FIS's applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to FIS's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to FIS pursuant to this Agreement.

(b) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide FIS reasonable advance written notice (not less than two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to FIS's facilities and to any and all records related to this Agreement as required under Section 2.09(a) hereof and shall be provided adequate and appropriate workspace in order to exercise the rights permitted under this section.

(d) **Failure to Permit Inspection.** Failure by FIS to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all of any FIS's claims for payment.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by FIS in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by FIS. If the audit discloses billings or charges to which FIS is not contractually entitled, FIS shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, FIS shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by FIS to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to FIS pursuant to this Agreement and such excluded costs shall become the liability of FIS.

(g) Inspector General Audits. FIS shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.10 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail or by reputable overnight courier, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Treasurer  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

To FIS: FIS AvantGard LLC  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Contract Administration

With a Copy to: FIS  
601 Riverside Avenue, T-12  
Jacksonville, Florida 32204  
Attn: Chief Legal Officer

2.11 Liability. Please refer to Sections 4.9, 4.10 and 4.11 of Attachment B.

2.12 **Insurance Requirements.** FIS shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** FIS shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Technology Errors & Omissions.** FIS shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** FIS shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Auto Liability.** FIS shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) **Acceptability of Insurance Carriers.** The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A-VI by AM Best or Aa3 by Moody's Investor Service.

(f) **Verification of Coverage.** Proof of the required insurance must be furnished by FIS to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit FIS to remedy any deficiencies. FIS must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) **Required Conditions.** Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) **Cancellation of Insurance.** FIS is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

2.13 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

2.14 **Annual Appropriation and Board Approval.** The performance of payment obligations by SBBC under this Agreement shall be contingent upon both: (i) an annual budgetary appropriation by its governing body; and (ii) annual funding approval by its governing body. If SBBC does not allocate funds or secure board approval for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated and approved. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.15 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.16 **Copyright Indemnification.** FIS shall indemnify and defend SBBC against third-party infringement claims in accordance with Section 4.3 of Attachment B.

2.17 **Travel.** In Broward County travel shall not be billed as a reimbursable expense. Out of county or country travel and per diem may be allowable at the sole discretion of SBBC. SBBC has delegated authority to the Superintendent of Schools or his/her designee to provide prior approval to FIS for any and all travel and per diem. Should any out of county or country travel and/or per diem be allowed, then it shall be billed and reimbursed in compliance with the current or updated School Board Policy 3400, **Attachment C** and/or other relevant School Board Policies.

2.18 **Incorporation by Reference.** **Attachment A, Attachment B** and **Attachment C** attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar days period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) calendar days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof.

3.05 **Termination.** Please refer to General Condition 3.04 above and to Section 7 of Attachment B.

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that



the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective

as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to pay FIS, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records and the other party's Confidential Information and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

\_\_\_\_\_  
Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]**

**FOR FIS:**

(Corporate Seal)

ATTEST:

**FIS AVANTGARD LLC**

By *Peggy Poche*

Print Name: PEGGY POCHÉ

Title: Accounting Manager

\_\_\_\_\_, Secretary

*[Signature]* -or-

Witness

*[Signature]*

Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 18 day of February, 2020 by Peggy Poche of

FIS Name of Person, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced N/A as

identification and did/did not first take an oath. Type of Identification

My Commission Expires: 03/22/2021

*[Signature]*

Signature - Notary Public

Nicholas Kaufman

Printed Name of Notary

GG 085914

Notary's Commission No.

(SEAL)



## ATTACHMENT A - SCOPE OF SERVICES

### SOLUTION AND RELATED INFORMATION

Pursuant to Section 2.02 of Article 2, references in this Agreement to the term, "Order" shall mean this Attachment A. The Order Effective Date (as such term is defined in Attachment B) is March 3, 2020.

1. **SOLUTION:** Integrity SaaS as further detailed in the Solution Description below.

2. **DOCUMENTATION:** Standard online user documentation

3. **INITIAL TERM:** Refer to Section 2.01 of this Agreement

#### 4. SCOPE OF USE

a. **NUMBER OF NAMED USERS:** Five (5) Core and Forty (40) Light

A "Core User" is a Named User that has access to all of the licensed functionality within the Solution.

A "Light User" is a Named User whose access to the Solution is limited to the following: cash position management and inquiry, reporting and inquiry, foreign exchange processing, cash reporting, and wire processing.

b. **NUMBER OF PRODUCTION DATABASES:** One (1)

#### 5. FEES

a. **START UP FEE**

(I) Not Applicable.

b. **SUBSCRIPTION FEES:**

(I) \$5,200 per month as further detailed in the Solution Description below.

(II) Payable from the Order Effective Date billed monthly in advance.

c. **PRICE INDEX CHANGE**

(I) Not applicable

6. **SCHEDULED INSTALLATION DATE:** A date to be agreed between the parties which shall be no later than forty-five (45) days from the Order Effective Date.

**7. PROFESSIONAL SERVICES**

a. **DESCRIPTION OF INITIAL IMPLEMENTATION SERVICES:** Estimate of 46 days to perform the tasks further described below in the Initial Implementation Services section of this Order (“Initial Implementation Services”). This estimate is provided based on SBBC’s known requirements documented at the time this Order is signed and does not represent a commitment to complete the Initial Implementation Services with this estimate, with actual effort potentially more or less than this estimate.

b. **DESCRIPTION OF INITIAL TRAINING:** As described as part of the Initial Implementation Services.

c. **PROFESSIONAL SERVICE FEES APPLICABLE TO THIS ORDER:** \$1,800 per consultant per day excluding expenses, valid for the duration of the Initial Implementation Services only. SBBC has tax exempt status.

d. **MINIMUM DAYS:** The minimum commitment in relation to the implementation Service shall be 25 days (“Minimum Days”). In the event that the Minimum Days have not been utilized by March 1, 2021 (or such earlier date if professional services are cancelled by SBBC), FIS may invoice SBBC for the unused days at the rate specified in c. above, together with any expenses incurred by FIS and not yet invoiced (which expenses FIS cannot have waived by taking reasonable steps).

e. **WEEKEND/HOLIDAY RATES:** If the parties mutually agree that FIS will provide professional services on a weekend day(s) or an FIS holiday, the applicable rate shall be one hundred fifty percent (150%) of the normal rate.

f. **POSTPONEMENT, RESCHEDULING OR CANCELLATION OF PROFESSIONAL SERVICES.** If SBBC wishes to postpone, reschedule or cancel part of the professional services(which in the case of training services includes nonattendance) agreed in this Order (by notice in writing to FIS), the following charges (if any) shall apply, together with any expenses incurred by FIS (and which FIS cannot have waived by taking reasonable steps):

- a. If FIS receives the notice of postponement, rescheduling or cancellation less than five (5) working days prior to (but before) the agreed commencement date of the relevant professional services, a charge of 50% of the agreed rates for such Professional Services shall apply, up to a maximum of five (5) days per consultant.
- b. If FIS receives the notice of postponement, rescheduling or cancellation on or after the agreed commencement date of the relevant professional services, a charge of 100% of the agreed rates for such Professional Services shall apply, up to a maximum of five (5) days per consultant.

**8. ADDRESSES – Refer to Special Condition 2.10****9. OTHER TERMS:**

- a. **Third Party Data and Services:** No Third Party Data and Services will be provided under this Order.
- b. **PERSONAL DATA:** SSBC will NOT use FIS as a Processor of Personal Data under this Order.
- c. **Third Party Users:** No Third Party Users are permitted under this Agreement.

<b>SOLUTION DESCRIPTION</b>
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**A. MODULES**

The Subscription Fees are based on the number of Modules and Named Users as defined in this Order.

<b>INTEGRITY</b>	<b>Modules included in this Order</b>
<b>Base System</b>	
<ul style="list-style-type: none"> <li>- Core Administration and Processing</li> <li>- Cash Management</li> <li>- In-house Banking</li> <li>- Reporting and Interfaces</li> <li>- Valuations and Risk Management</li> <li>- Dashboard</li> </ul>	YES
<b>Accounting Modules</b>	
- Standard Accounting/GL Interface	YES
- Hedge Accounting	NO
<b>Transaction Modules</b>	
- Foreign Exchange	NO
- Foreign Exchange Derivatives	NO
- Money Market, Debt and Investments	YES
- Interest Rates Derivatives	NO
- Equities	NO
- Commodities	NO
<b>EBAM</b>	
<b>Modules included in this Order</b>	
- eBAM (Electronic Bank Account Management)	NO
- BFA (Bank Fee Analysis)	YES

**B. BANK CONNECTIVITY**

The Bank Connectivity Fees are based on the Connectivity Type and the number of Bank Interfaces, as defined in the table below:

CONNECTIVITY TYPE		Unitary Fee per Month	Number of Banks included in this Order	Total per Month
Direct connection (FTP, FTPS....)	Per Bank	USD \$50	2	USD \$100 (included in monthly subscription stated above)

<b>SPECIFIED CONFIGURATION</b>
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**SBBC Workstation:**

## Required

- A modern, standards-compliant web browser. FIS supports the most common Microsoft browser, and at least one (1) alternative browser line.
- For browsers with frequent release cycles (all except Internet Explorer), FIS will make commercially reasonable efforts to support the current version. However, in the event of major compatibility or security issues, FIS reserves the right to limit support to a specified range of versions of the browser, or to drop the browser completely.
- At the time of this Agreement, the supported browsers are:
  - Microsoft Internet Explorer 11
  - Mozilla Firefox
  - Google Chrome

## Optional

- **Microsoft Excel** (may be required to allow import of data from a spreadsheet, or to view reports exported in Excel format)
- **Microsoft Word** (may be required to view reports exported in Word format)
- **Adobe Acrobat Reader** (may be required to view reports exported in Portable Document Format - PDF)
- **Microsoft Windows and SAP Crystal Reports** (a separate runtime license may be required to write custom reports)
- **Microsoft Windows** (may be required to write custom transformations using the ATS software provided)



## INITIAL IMPLEMENTATION SERVICES

DESCRIPTION	FIS CONSULTING DAYS
<b>SaaS Tenant Provisioning</b>	0.00
<b>Design</b>	1.00
<b>Project Management</b> <ul style="list-style-type: none"> <li>• Work with Broward County School Board Project Manager.</li> <li>• Maintain project plan and documentation of agreed changes.</li> <li>• Attend project and steering committee meetings.</li> <li>• Adhere to Change Management process.</li> </ul>	8.00
<b>SFTP</b> <ul style="list-style-type: none"> <li>• Set-up bank connectivity</li> </ul>	0.00
<b>Static Data</b> <ul style="list-style-type: none"> <li>• Currencies, locations, business units, bank accounts, counterparties, credit line, deal types, exposures, and settlement defaults</li> </ul>	1.00
<b>Reconciliation</b> <ul style="list-style-type: none"> <li>• Reconcile and process day-to-day bank statements.</li> </ul>	.50
<b>Cash Positioning</b> <ul style="list-style-type: none"> <li>• Setup one (1) overview for bank and intragroup accounts</li> </ul>	1.50
<b>Liquidity Forecast</b> <ul style="list-style-type: none"> <li>• Setup rolling liquidity forecast by various views as well as time horizon.</li> </ul>	.50
<b>Input, Workflow, Authorization, Settlement, Revaluation and Reporting</b> <ul style="list-style-type: none"> <li>• Investments: CP, CD, Bonds, Money Market Funds</li> <li>• Debt Bonds (fixed and floating), Capital Leases, and Interest Rate Swaps</li> </ul>	4.50
<b>Inhouse Banking, Workflow, Authorization, Settlement and Reporting</b> <ul style="list-style-type: none"> <li>• Setup intercompany accounts for updates from bank statements to track school investment balances.</li> </ul>	1.50
<b>Report Training</b> <ul style="list-style-type: none"> <li>• Covers standard reports and queries, and integrated reporting engine.</li> </ul>	.50
<b>Custom Reporting</b>	5.00
<b>Security Training</b> <ul style="list-style-type: none"> <li>• User profiles, database parameters and front and back office workflow.</li> </ul>	1.00

DESCRIPTION	FIS CONSULTING DAYS
<b>Scheduler Setup</b> <ul style="list-style-type: none"> <li>Automate interfaces using internal scheduler.</li> <li>Train users on scheduler module</li> </ul>	1.00
<b>Bank Statement Import, Balances and Transactions</b> <ul style="list-style-type: none"> <li>Setup and map BAI Imports for prior day and current day.</li> </ul>	1.00
<b>Import for Cash Management Information</b> <ul style="list-style-type: none"> <li>Forecast import possible from difference sources via predefined template (AP/AR).</li> </ul>	1.00
<b>Wire Transfers Export to SAP</b>	1.50
<b>Fund Balances Import from SAP</b>	.50
<b>Interest Allocation Process</b>	4.00
<b>Chart of Accounts Setup</b> <ul style="list-style-type: none"> <li>Upload chart of accounts</li> </ul> <b>GL Templates</b> <ul style="list-style-type: none"> <li>Configure accounting templates for cash flow movements.</li> </ul>	2.00
<b>Periodic Account</b> <ul style="list-style-type: none"> <li>Accrual journals</li> </ul>	(allocation entries setup included in the 4 and 2 days per last 2 rows above)
<b>Payment Workflow Definition</b>	1.00
<b>Export Accounting Journals</b> <ul style="list-style-type: none"> <li>General estimate for a GL Export file in SAP format.</li> </ul>	3.00
<b>Payment Export</b> <ul style="list-style-type: none"> <li>Excluding Payment Confirmations</li> </ul>	3.00
<b>Cutover and Parallel Support</b>	2.00
<b>Go-Live Support</b>	1.00
<b>TOTAL</b>	<b>46.00</b>

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<b>SAAS SUPPORT</b>
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**NORMAL SUPPORT HOURS: 8 AM to 6 PM ET** (Monday through Friday excluding FIS holidays) As of the Order Effective Date and subject to change with notice from FIS, the FIS holidays are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**METHOD OF REPORTING ERRORS:** FIS Service Desk

**SUPPORT TERMS:**

1. FIS product specialists shall provide to SBBC, during FIS' normal support hours as set forth above ("Normal Support Hours"), assistance regarding Client's proper and authorized use of the Supported Release.
2. FIS product specialists shall provide to SBBC, during Normal Support Hours, commercially reasonable efforts in solving Errors reported by SBBC in accordance with this Order. SBBC shall provide to FIS reasonably detailed documentation and explanation, together with underlying data, to substantiate any Error and to assist FIS in its efforts to diagnose, reproduce and correct the Error. If a reported Error did not, in fact, exist or was not attributable to a defect in the Solution or an act or omission of FIS, then SBBC shall pay for FIS' investigation and related services at FIS' daily professional service rate then in effect.
3. FIS' periodic Releases shall be installed by FIS such that SBBC remains on a Supported Release. The preceding sentence notwithstanding, any Release provided by FIS shall be promptly installed and/or use to avoid or mitigate a performance problem or infringement claim. All modifications, revisions and updates to the Solution shall be furnished by means of new Releases of the Solution and shall be accompanied by updates to the Documentation whenever FIS determines, in its sole discretion, that such updates are necessary.
4. During project implementation SBBC shall channel all requests for assistance ("Support Requests") through their nominated FIS project team. Following the first day that SBBC uses the Solution in a live production environment, all Support Requests shall be logged with FIS by Key Users (as defined below) via the FIS Service Desk online incident logging system. "Key Users" are those users nominated by SBBC who have working knowledge of the Solution and for whom use of the Solution is core to their day to day activities. When an Error is believed to have occurred, the Key Users shall first investigate internally to substantiate the Error and use good faith efforts to determine the cause of such Error before referring the Error to FIS (if still necessary).
5. The FIS Service Desk is contactable via the on-line incident reporting system located at the following URL - <https://support.sungard.com/>. FIS shall notify SBBC of any change in the foregoing URL. Where such incident logging system is not accessible at the then current URL, then SBBC personnel shall notify FIS using the contact details provided by FIS to SBBC from time to time. Support Request logging documentation is made available within the FIS Service Desk to users of the Solution.
6. Each Support Request shall be assigned a mutually agreed priority level based on the reported impact and urgency of the error, as such terms are defined below:
  - (a) **"Impact"** means a measure of how widespread the Error is based on the percentage of Client's users impacted by the Error.
  - (b) **"Urgency"** means a measure of the severity of the Error based on its potential effect on SBBC's business and the time period in which such effect is expected to occur.

**Priority Levels:**

<b>Priority Classification</b>	<b>Definition</b>	<b>Initial Response Target (during Normal Support Hours)</b>	<b>Guideline for Escalation of Unresolved Support Request (during Normal Support Hours)</b>
A	An Error that renders the Solution inoperative or causes the Solution to fail so as to make use of the Solution seriously impractical, and significantly interrupts production use by SBBC.	1 business hour	2 business hours
B	An Error that materially impacts the performance of the Solution in a negative manner or materially restricts SBBC's use of the Solution.	4 business hours	1 business day
C	An Error that causes only minor impact on SBBC's use of the Solution or an Error that is not a Priority Classification A or B.	1 business day	3 business days
D	A general question concerning the use or implementation of the Solution.	Promptly, in light of the nature of the question	No escalation

7. A Support Request shall be deemed to have commenced at the time when the Issue is logged in FIS Service Desk (or, if such system is not accessible, at the time otherwise reported to FIS). FIS shall provide an email notification to SBBC representative when it begins working on the issue.
8. In the course of handling a Support Request, it may become necessary to escalate Issues to FIS' senior support staff and/or such other FIS resources as deemed appropriate. Escalation will occur when a product specialist is unable to resolve a Support Request within the Escalation Target timeframe. Client acknowledges that product specialists may also request the advice of senior FIS resources when analyzing Support Requests without officially escalating the case to them.
9. Through the incident management process, it may also become necessary for SBBC to escalate Issues within its organization, including SBBC's IT department or third-party hardware and software vendors. FIS may request SBBC's escalation plan under such circumstance. During escalation of a Support Request, both FIS and SBBC will provide timely progress updates covering their own responsibilities.

<b>SERVICE LEVEL AGREEMENT</b>
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FIS shall provide the Solution in accordance with the following service level commitment provisions:

1. **Definitions.** As used in this section, the following terms shall have the meanings set out below:
  - (a) **"Service Period"** means each calendar month that Client has access to the Solution, from Sunday midnight to Friday midnight EST, excluding US bank holidays.
  - (b) **"Service Availability"** is a measurement of the total time that the Solution is available during each Service Period for access by Client.
2. **Overall Solution Availability Target.** In each Service Period, the target for availability of the Solution is 99.5% ("Service Level Target").
3. **Measurement.** Unless otherwise specified, the measurement period for Service Availability is each Service Period and Service Availability shall be calculated at the end of each Service Period. Service Availability measurement shall be applied to the production environment and the points of measurement for Solution monitoring shall be the servers and the internet connections at FIS' hosting location.

If FIS' monitoring tool for Service Availability indicates that the Availability Target was not met or otherwise indicates that the Service Availability was lower than anticipated but FIS can otherwise show, by reasonable evidence and supporting documentation, the actual Service Availability was in fact different, then the Service Availability indicated by such other evidence and supporting documentation shall apply for the purposes of this Order.

4. **Remedy.** If following the target measurement at the end of each Service Period, the Availability Target is not met with the result that SBBC's use of the Solution is severely interrupted, then SBBC shall be entitled to a service credit calculated as follows:

Actual Service Availability in the relevant Service Period	Percentage Reduction in Monthly Fee payable by SBBC in the Immediately Subsequent Service Period
Less than 99.5% but greater than or equal to 99.0%	5%
Less than 99.0% but greater than or equal to 95.0%	10%
Less than 95.0%	20%

5. **Remedies General.** The applicable credits specified above shall be SBBC's sole and exclusive remedy for FIS' failure to meet any of the service level commitment targets specified in this Order. In no event shall FIS be obliged to provide any refund for any credit, but rather the credit shall be applied to the next following month's invoice due to SBBC. Any credit entitlement that is not requested by SBBC within sixty (60) days of its availability shall no longer be available and SBBC will be deemed to have waived any rights in relation thereto and (for the avoidance of doubt) FIS' failure to meet the relevant

service level commitment. In no event will credits due in any given month exceed that month's fees. Notwithstanding the foregoing, if FIS fails to meet the Availability Target for three (3) consecutive months or for four (4) or more months in any twelve (12) month period, then SBBC shall have the right to terminate this Order as its sole and exclusive remedy by providing FIS with written notice of termination stating a termination date no later than six (6) months from the date the termination right arose.

6. **Limiting Events.** Notwithstanding anything in this Order, FIS shall not be responsible for failure to carry out any of its obligations under this Order, (including liability to apply any credit for any failure to meet a service level commitment target) if the failure is caused by:
- (a) breach of this Order or the Agreement by SBBC;
  - (b) the failure of SBBC to provide any access and/or assistance where required in accordance with this Order and/or the Agreement, including the denial of reasonable access for FIS personnel to any of SBBC's systems or premises;
  - (c) communications links being modified or altered in any way other than by FIS or by the providers of those access lines where such providers have been appointed by FIS;
  - (d) use of the Solution in breach of the **Scope of Use**, Page 13 of this Agreement;
  - (e) scheduled or emergency maintenance, upgrades, repairs or component replacements or scheduled backups or other agreed downtime;
  - (f) adverse impact due to the defectiveness of SBBC's environment or systems or due to SBBC data supplied to the Solution;
  - (g) adverse impact due to material changes made to the usage of the Solution by SBBC where FIS has not agreed to such changes in advance and in writing;
  - (h) adverse impact on the Solution due to failure(s) caused by errors or omissions of SBBC not attributable to the Solution, including but not limited to
    - 1) failure by SBBC to comply with any material terms of the Agreement;
    - 2) failure by SBBC to ensure that only appropriately trained personnel of SBBC or trained and authorized personnel of its sub-contractor(s) interact with the Solution; and
    - 3) the negligent or willful acts or omissions of SBBC or its employees, contractors or agents;
  - (i) equipment and/or software downtime that occurs as a result of:
    - 1) SBBC-made changes to applications or data;
    - 2) SBBC refusing FIS maintenance changes for any reason, or
  - (j) any other event or circumstance beyond FIS' reasonable control.

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<b>DATA PROTECTION</b>
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1. **Definitions.** As used in this section, the following terms shall have the meanings set out below:
  - (a) **"Client Sensitive Information"** means all non-public personal or financial information regarding SBBC's former, current or prospective clients, clients or employees, which is processed by the SaaS Services.
  - (b) **"Process"** and variants thereof mean the processing of Client Sensitive Information by the SaaS Services, including obtaining, storing, recording, copying, holding, modifying, carrying out operations on, and deleting the Client Sensitive Information.
  
2. **General Security Procedures**
  - (a) FIS shall be responsible for establishing and maintaining an information security program based on the Industry Standards Organization ISO 27001.2 that contains appropriate administrative, technical and physical safeguards designed to:
    - 1) ensure the security and confidentiality of Client Sensitive Information;
    - 2) protect against any anticipated threats or hazards to the security, integrity or availability of the Client Sensitive Information;
    - 3) protect against unauthorized access to, or use of, the Client Sensitive Information that could result in substantial harm or inconvenience to SBBC or its clients;
    - 4) ensure the proper disposal of Client Sensitive Information, as further defined herein;
    - 5) ensure that all subcontractors to which FIS grants access to Client Sensitive Information, if any, comply with all of the foregoing and only Process the Client Sensitive Information as required to perform its obligations under this Agreement;
    - 6) limit access to Client Sensitive Information to FIS' employees, agents and subcontractors who need such access to fulfill FIS' obligations under this Agreement;
    - 7) provide for disciplinary measures for violations of the program; and
    - 8) provide for risk assessments to identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Client Sensitive Information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information. FIS shall designate an individual to be responsible for the information security program. Such individual shall respond to SBBC inquiries regarding computer security.
  
  - (b) FIS and/or its subcontractors shall conduct formal security awareness training, with a testing component, for all personnel who have access to the Client Sensitive Information as soon as reasonably practicable after the time of hiring or prior to being appointed to work on the SaaS Services, and shall annually recertify such persons thereafter. FIS shall retain documentation of such security awareness training and subsequent annual recertifications.
  
  - (c) SBBC shall have the right to review a redacted copy of FIS' information security program, on an annual basis during the term of this Agreement.
  
  - (d) In the event of any actual or apparent theft, unauthorized use or disclosure of any Client Sensitive Information, FIS shall promptly commence all reasonable efforts to investigate and correct the causes thereof, and within two (2) business days following confirmation of any such

event contact SBBC about such incident and provide SBBC with additional information and assistance as may be reasonably requested.

- (e) FIS shall not transmit any unencrypted Client Sensitive Information over the internet or a wireless network.
- (f) FIS shall not store any Client Sensitive Information on any mobile computing device, such as, a laptop computer, USB drive or portable data device, except where there is a business necessity and then only if the mobile computing device is protected by industry-standard encryption software.
- (g) SBBC acknowledges that the execution of this Agreement authorizes FIS to Process the Client Sensitive Information as described hereunder.

SBBC shall not transmit FIS employees, agents or subcontractors, or provide FIS employees, agents or subcontractors access to, any Client Sensitive Information other than

- 1) as reasonably necessary in the ordinary course of using the SaaS Services, and
- 2) in an encrypted format.

To the extent SBBC is provided with any access code in order to access the SaaS Services (a "Password"), SBBC shall hold such Passwords in strict confidence and will not assign, share, sell, barter, transfer, exchange, misuse or abuse such Passwords in any way or attempt in any way to disable, deactivate or render ineffective the password protections of the SaaS Services.

### 3. **Network and Communications Security**

- (a) Except in the ordinary course of providing the SaaS Services as anticipated under this Agreement, FIS and its personnel, will not access SBBC computing systems and/or networks without SBBC's authorization and any such actual or attempted access shall be consistent with any such authorization.
- (b) FIS may include in the SaaS Services features and functionality that may restrict use for security purposes or to enforce any contractual scope of use.

### 4. **Disposal of Client Sensitive Information**

- (a) Client Sensitive Information on paper must be shredded by FIS or its subcontractor before disposing of such paper.
- (b) All electronic storage media containing Client Sensitive Information must be wiped, degaussed or overwritten prior to FIS repurposing or disposing of such media, or such media shall be physically destroyed in a manner that makes the Client Sensitive Information unrecoverable.



## 5. **Penetration Testing**

During the time in which FIS is in possession of Client Sensitive Information, FIS shall, at its own expense and at least one (1) time per year, engage a third party vendor or use a third party tool to perform penetration and vulnerability testing (a "Penetration Test") of the SaaS Services, if and to the extent the SaaS Services are internet-facing and identified as "high risk" by FIS' risk assessment.

The objective of the Penetration Test is to identify design and/or functionality issues in applications or infrastructure of those portions of the SaaS Services Processing Client Sensitive Information which could expose such data to risks from malicious activities. Testing may be performed using non-production test systems reasonably representative of the production system. To the extent that critical and/or high level security issues were revealed during a particular Penetration Test, FIS shall use commercially reasonable efforts to remediate any such security issues and subsequently perform additional testing within a reasonable period of time thereafter to ensure continued resolution of such security issues. Upon SBBC's request, FIS shall provide SBBC with an executive summary report of any critical or high level security issues that were unresolved following such additional testing. SBBC shall not perform, or arrange to have performed, a penetration test of the SaaS Services.

## 6. **FIS Employee Background Checks**

- a) Current FIS policy requires a background check to be performed on all newly hired United States and United Kingdom employees expected to access Client Sensitive Information, to the extent such a background check is permitted by, and subject to any restrictions under, the laws or regulations of any applicable jurisdiction or under the applicable employee's employment agreement. Such background checks shall be consistent with industry practices with respect to the employee's position and jurisdiction of hire.
- b) With respect to any such newly hired employee who had a background check in the United States, FIS shall not assign such employee to a position requiring access to Client Sensitive Information if the background check revealed the conviction of a felony or misdemeanor within the previous seven (7) years, to the extent such felony or misdemeanor relates to the suitability of the individual's performance of such services.
- c) With respect to any such newly hired employee who had a background check in the United Kingdom, FIS shall not assign such employee to a position requiring access to Client Sensitive Information if the background check revealed any unspent criminal conviction, to the extent the criminal activity relates to the suitability of the individual's performance of such services.
- d) With respect to employees outside of the United States and the United Kingdom, FIS may perform background checks as described above in conformance with local custom, law, or regulations.

## ATTACHMENT B - FIS STANDARD TERMS

These FIS Terms ("FST") may be incorporated into one (1) or more orders referencing these FST (each an "Order"). Each Order, together with these FST, shall be incorporated into this Agreement, by and between The School Board of Broward County, Florida ("SBBC" or "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 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 the 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 of the FIS Standard Terms. 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 of the FIS Standard Terms.
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. If and to the extent specifically permitted under an Order, 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 Section 3 of the FIS Standard Terms, 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.** SBBC is tax exempt. SBBC shall provide to FIS a tax-exempt certificate issued by Florida Department of Revenue.
  - 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 FIS Standard Terms, 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 of FIS Standard Terms), 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 OF THE FIS STANDARD TERMS, 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 OF THE FIS STANDARD TERMS; (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 OF THE FIS STANDARD TERMS.
- 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 FIS' Standard Terms, **Attachment B**.
- 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.

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

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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, **Attachment B**, 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, **Attachment B** 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

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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. Refer to Special Condition 2.17 – Travel and Attachment C**
- 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.
- 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") Refer to Attachment A of this Agreement. At the end of the Initial Term, the Order will terminate unless it is extended by mutual written agreement of the parties.
- 7.2 **Termination.** See General Condition 3.04 and 3.05 of this Agreement.
- 7.3 **Effect of Termination.** The provisions of Sections 3, 4, 5, 7.3 and 11 of Attachment B shall survive any termination of this Agreement, whether under this Section 7, General Condition 3.04 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

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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, Attachment B, 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 **ATTACHMENT B**

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.

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

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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, **Attachment B**.
- (b) If Client has not accepted the Solution under Section 9.3(a), **Attachment B**, 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), **Attachment 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 of **Attachment B**) 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; **Attachment B**, (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, **Attachment B**, 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**").

## **ATTACHMENT B**

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, **Attachment B**, 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 **FIS Solution 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.**

- 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.
- 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

**ATTACHMENT B**

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) of **Attachment 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, 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 of **Attachment B**.
- (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 of **Attachment B**.
- (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 of **Attachment B**.

## ATTACHMENT B

- (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.



## ATTACHMENT B

- (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, **Attachment B**.
- (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, **Attachment B** 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 same meaning given to it in Section 2, **Attachment B**.
- (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, **Attachment B**.

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 Affiliate); 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, **Attachment B** 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, **Attachment B ("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, **Attachment B**, 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 **Section not used.**
- 11.10 **Insurance. See Special Condition 2.13 of this Agreement.**
- 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.
- 11.12 **Language.** It is the express wish of the parties that this Agreement and all related documents be drawn up in English.
- 11.13 **Jurisdiction and Governing Law. Refer to General Condition 3.08 – Governing Law and Venue of 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.

# SBBC POLICY 3400 - ATTACHMENT C

**3400**

**3400**

## **PER DIEM AND TRAVELING EXPENSES FOR BOARD MEMBERS, BOARD EMPLOYEES AND OTHER AUTHORIZED INDIVIDUALS**

REIMBURSEMENT(S) FOR PER DIEM AND TRAVELING EXPENSES SHALL BE PAID AT RATES ESTABLISHED IN ACCORDANCE WITH FLORIDA STATUTES, STATE BOARD REGULATIONS AND BOARD POLICY, RULES AND REGULATIONS.

POLICY ADOPTED: 11/26/69; 9/5/74; 12/20/94  
AUTHORITY: LAWS OF FLORIDA, CHAPTER 2003-125

POLICY READOPTED: 01/20/04

### **RULES**

1. All travel, including per diem and/or traveling expenses when pertinent, must be approved by the appropriate individual(s). (See Policy 4007 prior to the beginning of the trip.)
2. In this Policy, Rules and Regulations, the words listed below shall be defined as follows:
  - a. Travel Expense(s) - The usual ordinary and incidental expenses necessarily incurred by a traveler, such as transportation, lodging, meals, etc.
  - b. Common Carrier(s) - A train, bus, commercial airline (operating scheduled flights), or rental car from an established firm.
  - c. Travel Day - A period of twenty-four (24) hours, consisting of four (4) quarters of six (6) hours each.
  - d. Travel Period - The period of time between the time of departure and time of return.
  - e. Class A Travel - A continuous travel period of twenty-four (24) hours or more away from official headquarters.
  - f. Class B Travel - A continuous travel period of less than twenty-four (24) hours which involves overnight absence from official headquarters.
  - g. Class C Travel - A travel period involving short or day trips, but not involving an overnight trip away from official headquarters.
  - h. Per Diem Rate for lodging, Per Diem Rate for meals and incidental expenses - A daily payment instead of reimbursement for actual expenses for lodging, meals and related incidental expenses (as defined in the Federal Travel Regulation contained in 41 Code of Federal Regulation (CFR) Chapter 300-3.1).
  - i. Incidental Expenses - Examples of Incidental Expenses are fees and tips. Incidental Expenses are only payable as part of a Per Diem payment. (As defined in the Federal Travel Regulation contained in 41 Code of Federal Regulation (CFR) Chapter 300-3.1.)
3. Reimbursement for travel time shall be computed as follows:
  - a. The Travel Day for Class A Travel shall be a calendar day (midnight to midnight).
  - b. The Travel Day for Class B Travel shall begin at the time of departure.
  - c. For Class A and Class B Travel, the traveler shall be reimbursed at one-fourth of the authorized per diem rate for meals only for each quarter or major fraction thereof of the Travel Day included within the travel period.
  - d. A traveler shall not be reimbursed for lodging for Class C Travel, but shall receive an allowance for meals based on the following schedule:
    - Breakfast - When travel begins before 6 a.m. and extends beyond 8 a.m.
    - Lunch - When travel begins before 12 noon and extends beyond 2 p.m.
    - Dinner - When travel begins before 6 p.m. and extends beyond 8 p.m.

**3400 (continued)****3400****IN-STATE AND OUT-OF-STATE TRAVEL**

1. Per diem and subsistence allowance rates for all travelers attending conventions, organized conferences or meetings in-state and/or out-of-state to conduct official business shall be computed by one of the following, whichever is greater:
  - a. The Per Diem rate for lodging and the Per Diem rate for meals are the standard rates for travel within the continental United States as published in the Internal Revenue Service Publication 1542 'Per Diem Rates' (for travel within the continental United States) by using the regular Federal Per Diem rate method. The Treasurer's Office will issue a memorandum annually updating the current Per Diem rates.
  - b. Actual expenses, for meals up to the amounts permitted by the Per Diem rate, plus actual expenses for lodging at a single occupancy rate, to be substantiated by paid bills, when approved by the appropriate administrator.
2. When lodging or meals are provided by an organization, the traveler is not eligible for the normal maximum allowances and may be reimbursed only for actual expenses of lodging or meals, not to exceed the normal maximum allowances.

**ALL TRAVEL**

1. For Class C Travel, all individuals on official business shall be reimbursed at the standard rate published in the Internal Revenue Service Publication 1542 'Per Diem Rates' (for travel within the continental United States) by using the regular Federal Per Diem rate method. The Treasurer's Office will issue a memorandum annually updating the current Per Diem rates.
2. Neither subsistence nor per diem shall be allowed for any class of travel in Broward County except for authorized business or workshops occurring before 6:00 a.m. or extending beyond 8:00 PM
3. Rules and regulations pertaining to travel and transportation expenses shall be as follows:
  - a. All travel must be by acceptable routes.
  - b. The individual approving the request to travel shall designate the most economical method of travel for each trip, keeping in mind the following conditions:
    - (1) The nature of the business.
    - (2) The most efficient and economical means of travel (considering time of the traveler, cost of transportation, and per diem or subsistence required).
    - (3) The number of individuals making the trip.
  - c. Transportation by common carrier paid for personally by the traveler shall be substantiated by a receipt.
  - d. When a privately owned vehicle is used, reimbursement shall be at the Internal Revenue Service Standard Mileage rate that becomes effective January of each calendar year. The Treasurer's Office will issue a memorandum annually updating the current mileage rate.
 

Vicinity mileage for conduct of official business shall be reimbursed but must be shown as a separate item on the travel or expense voucher and supported by a statement of mileage, point of origin and destination.
  - e. An employee may be reimbursed for approved business travel on a private aircraft for the actual amount charged for his/her fare, not to exceed the cost of a commercial airline ticket for the same flight. Such reimbursement is payable to the employee even when the owner or pilot of the aircraft is also entitled to travel reimbursement for the same flight.
  - f. The following other traveling expenses may be reimbursed:

3400 (continued)3400

- (1) Ferry fare and bridge, road and tunnel tolls (receipt required if over \$5.00)
  - (2) Storage and parking fee (receipt required if over \$5.00).
  - (3) Communication expense for official business.
  - (4) Convention or conference registration fee (receipt required), provided; however, any meals or lodging included in the registration fee will be deducted in accordance with the allowances provided for in the paragraph related to Class C Travel meal allowance.
  - (5) Taxi fare (A statement of point of origin, destination and fare may be substituted for a receipt).
- g. An employee who is on temporary duty authorization (TDA) out of Broward County who becomes sick or injured and is therefore unable to perform official School Board business may continue to receive subsistence as provided in this policy during the period of illness or injury until such time as the affected employee is able to perform the business of the Board or return to work at his/her normal work location in Broward County, whichever is earlier. However, under no circumstances may the affected employee receive subsistence for more than fourteen (14) consecutive calendar days without the permission of the Superintendent.
- h. In emergency situations as determined by the Superintendent or his/her designee, an employee may be reimbursed for a specific meal for an amount greater than that authorized above, provided that the total cost of all meals during a day does not exceed the standard Per Diem rate for meals.
4. Travel advances and/or payment directly to a vendor may be made only in exceptional cases and upon specific approval of the Superintendent or the appropriate administrator.
- a. Any sum so advanced shall be deducted from the total allowable reimbursement at the completion of travel. Any amount advanced in excess of the allowable reimbursement must be returned to the Board immediately upon completion of travel.
  - b. All required supporting information or receipts for regular reimbursement shall be required in the case of advancements.
  - c. When an employee is required to incur overnight travel, on an emergency notice, the employee may request payment for the cost of his/her meals and lodging directly to the vendor. The Board is authorized to make payment directly to the vendor for the actual costs of lodging and for meals in an amount not to exceed the authorized rate for per diem.
5. All forms required for implementation of this policy shall be provided by the Superintendent's office or designated department.
6. Guidelines as required for consistent handling of travel reimbursement requests may be initiated by the Comptroller.

Rules Adopted: 11/26/69Rules Amended: 9/25/71; 12/7/72; 7/1/74Rules Readopted: 9/5/74Rules Amended: 9/16/76; 3/3/77; 8/4/77; 7/1/79; 7/1/807/1/81 per 1981 Legislative Act

AUTHORITY: LAWS OF FLORIDA, CHAPTER 2003-125

4/10/84; 6/19/86; 10/1/87; 6/2/92

Amended Rules Approved: 01/20/04