

## PAYPOINT SERVICE AGREEMENT

THIS PAYPOINT SERVICE AGREEMENT ("Agreement") is entered into October 7, 2010 ("Effective Date") between FIRST DATA GOVERNMENT SOLUTIONS, LP ("First Data"); and City of Tempe ("Customer").

FIRST DATA AND CUSTOMER AGREE AS FOLLOWS:

1. **Services.** First Data will provide Customer with a payment administration solution that will allow Customer to manage payment and payment transaction data ("Services") using an internet based gateway ("PayPoint Gateway") described below and in Schedule A.

1.1 **Gateway; Management Interface.** The PayPoint Gateway will enable Customer to submit Payments (defined below) initiated by its consumers ("Consumers") to First Data using batch files, web based applications, interactive voice response ("IVR"), customer representative assisted calls, point-of-sale devices, payment kiosk, Consumer walk-in or Customer drop box channels, or U.S. mail. The PayPoint Gateway will also provide Customer with the Payment management functionality necessary to (i) consolidate payment output files; (ii) review payment reporting; (iii) perform detailed payment research related to status, date tracking, time tracking and successful or negative payment results; (iv) review payment authorization and return processing information; (v) perform payment void and refund processing; (vi) track payment chargeback and settlement activity; (vii) apply notes to specific payments or transactions; (viii) process ad hoc payments; (ix) access and manage multiple individual Consumer accounts; and (x) make configuration changes to its Consumer payment interface (if this option is selected by Customer).

1.2 **Payments Supported.** The PayPoint Gateway will support multiple payment types, including credit and debit card (collectively, "Card") payments, electronic check ("eCheck") payments, business check ("Business Check") payments and Automated Clearing House ("ACH") payments (collectively, "Payments"). The PayPoint Gateway will support Card Payments initiated by Consumers and processed using American Express Card, Discover Card, MasterCard Card, or VISA Card as well as other Cards Payments that First Data identifies from time-to-time. The PayPoint Gateway will support eCheck and Business Check Payments initiated by Consumers and submitted by Customer for processing by First Data using the ACH system. The PayPoint Gateway supports the following ACH Payment entry classes: TEL, WEB, CCD, CCD+ and PPD, as defined by the National Automated Clearing House Association ("NACHA") Operating Rules and Guidelines (collectively, the "Rules").

1.3 **PayPoint Hosting.** First Data will upon Customer's written request and subject to payment by Customer in accordance with the terms of this Agreement, host the PayPoint Gateway for Customer through an application service provider ("ASP") model that provides Customer with a front-end solution capable of (i) integrating multiple Customer websites into the PayPoint Gateway; (ii) authenticating users based on Customer defined parameters; (iii) providing a user interface that can be customized pursuant to Customer's specifications (provided that such specifications can be reasonably accommodated by First Data and the First Data System) so users may initiate Payments based on personal preference; (iv) supporting point of sale Payment processing using web and interactive voice response channels; and (v) if elected by Customer, branding the consumer payments site with Customer's trademark and logo provided by Customer (collectively "Customer Logo"), in which case Customer hereby grants First Data a limited, royalty-free, non-transferable license to use such Customer Logo on the consumer payments site during the Term of this Agreement. To the extent the accommodation by First Data requires development of First Data System, such accommodation shall be subject to the custom development fees set forth in Schedule A. Alternatively, Customer may host the front end web site (the "Customer Site") through which Payment transactions may be initiated, in which case Customer will integrate the Customer Site with the PayPoint Gateway API.

1.4 **Payment Processing Obligations.** Customer will submit all Payments initiated by Consumers using the PayPoint Gateway and First Data's computer systems according to documentation provided by First Data from time-to-time (First Data's computer systems and documentation are the "First Data System"). Customer will provide all transaction data, Personal Information (defined below), related information and instructions (collectively "Payment Data") necessary for First Data to perform the Services. Unless another entity is acting as the "Originator" (as defined in the NACHA Rules) on Customer's behalf in connection with ACH Payments, Customer will be the Originator for any ACH Payments that Customer submits for processing. First Data will be a "Third Party Processor" (as defined in the NACHA Rules) and will facilitate processing ACH Payments submitted by Customer by transmitting ACH files among each appropriate Originating Depository Financial Institution ("ODFI") and Receiving Depository Financial Institution ("RDFI") (both as defined in the NACHA Rules). Customer assumes all responsibilities and liabilities under the NACHA Rules for ACH Payments it submits for processing; and will assume all liability for the amount of any ACH Payment that is rejected for non-sufficient funds. Customer assumes all responsibilities and liabilities under applicable association rules or regulations related to processing Card Payments of its users. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ENSURING THE VALIDITY, ACCURACY AND COMPLETENESS OF ALL PAYMENT DATA. FIRST DATA WILL RELY UPON AND USE PAYMENT DATA SUBMITTED BY CUSTOMER WITHOUT FURTHER VERIFICATION IN ORDER TO PROVIDE THE SERVICES. First Data will assume responsibility and liability for its delay or failure to process a Payment and properly transmit corresponding Payment files; provided, Payment Data submitted by Customer is accurate, complete and timely. First Data will have no responsibility or

liability for any error, omission, delay, failure to meet any processing timelines or accurately perform any of its Services due to Customer (or its Consumers) submitting inaccurate, incomplete or untimely Payment Data, or failing to perform its settlement obligations.

1.5 **Settlement Obligations.** Customer will be solely responsible for all settlement obligations and settlement fees that arise in connection with any and all Payments processed using the PayPoint Gateway or First Data's Services. Customer waives its right to assert any defense, set-off or counterclaim against First Data for any settlement obligation or liability that arises in connection with Customer's, or its users', use of the PayPoint Gateway or First Data's Services under this Agreement. Customer will assume all liability for the amount of any Payment that is rejected for non-sufficient funds after the expiration of any applicable settlement deadline, whether established by law, statute, regulation, system rule or otherwise.

1.6 **Election of Services.** Customer elects Services through their use. Customer will be invoiced only for Services used, subject to any minimum fees set forth in Schedule A.

## 2. **Payment for Services.**

2.1 **Fees.** Customer will pay First Data for the fees ("*Fees*") as set forth in Schedule A, excluding charges for taxes and interest. Customer will also require and pay for Services each Service Year sufficient to generate the minimum Processing Fees ("*Minimum Fees*") set forth in Schedule A.

2.2 **Taxes.** Customer will pay, or reimburse First Data for, any and all applicable sales, use, excise, franchise or other taxes (collectively, "*Taxes*"), whether federal, state or local, however designated, which are levied or imposed with respect to the Services. Customer will not pay, or reimburse First Data for income or employment taxes imposed upon or separately payable by First Data for its employees, agents, contractors or affiliates.

2.3 **Invoices.** First Data will invoice Customer monthly. Customer will pay all invoices within thirty (30) days from the date of the invoice.

3. **Term.** This Agreement commences on the Effective Date and will continue through the date of the Final system Acceptance by Customer plus a one (1) year warranty period ("*Initial Term*"). Upon the expiration of the Initial Term, Customer may renew this Agreement for successive twelve (12) month terms (each a "*Renewal Term*") up to a maximum of five (5) Renewal Terms, by giving First Data written notice of Customer's intention to renew this Agreement at least sixty (60) days prior to the end of the Initial Term or then current Renewal Term. Collectively the Initial Term and Renewal Term are referred to as the "*Term*" of this Agreement. Each year of the Term is a "*Service Year*."

## 4. **Termination.**

4.1 Either party may terminate this Agreement if the other: (a) breaches a material representation, warranty, term, condition or obligation under this Agreement, and fails to cure such breach within thirty (30) days after receiving written notice of such breach; or (b)(i) is dissolved, becomes insolvent, generally fails to pay or admits in writing its general inability to pay its debts as they become due; (ii) makes a general assignment, arrangement, or composition agreement with or for the benefit of its creditors; (iii) files a petition in bankruptcy or institutes any action under federal or state law for the relief of debtors; (iv) seeks or consents to the appointment of an administrator, receiver, custodian, or similar official for the wind up of its business; or (v) becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding related to insolvency, receivership, liquidation or composition for the benefit of creditors, and such proceeding is not dismissed or stayed within thirty (30) days.

4.2 First Data may terminate this Agreement or suspend all or a portion of its Services immediately if (i) Customer's performance of its obligations or use of the Services violates any federal, state or local law, rule or regulation, or network rule or regulation; (ii) Customer fails to provide any data or take any action in connection with Payment processing required under this Agreement five (5) times in any calendar month or twelve (12) times in any calendar year; (iii) it reasonably determines that a material adverse change has occurred in Customer's financial condition, or that such a change is reasonably likely to occur in the next twelve (12) months; (iv) Customer fails to pay any amount due within five (5) days of its due date; or (v) Customer fails to comply with any of its settlement obligations or liabilities incurred in connection with its use of the Services offered under this Agreement.

4.3 **Termination for Convenience.** Notwithstanding any other provision of this Agreement, Customer may terminate this Agreement without cause upon ninety (90) days advance written notice to First Data and paying the early termination fee ("*Early Termination Fee*") set forth in Schedule A. The Early Termination Fee will be due and payable in a single lump sum on the effective date of such termination. The Early Termination Fee represents reasonable compensation to First Data based on economic assumptions associated with the Services that are material to both parties, and does not constitute a penalty.

4.4 **Effect of Termination.** Termination will not affect First Data's right to recover any amounts for which Customer is liable or obligated under this Agreement. Termination will not affect Customer's responsibility to pay any amounts for which it is liable or obligated in connection with the Services provided under this Agreement.

#### 5. **Customer Obligations; Compliance with Law.**

5.1 **Financial Statements; Audit and Inspection.** Customer will provide quarterly and year-end financial statements and reports to First Data upon written request. First Data may audit or inspect Customer's records related to its performance, duties or obligations under this Agreement during normal business hours and upon reasonable notice.

5.2 **Compliance with Law.** Customer will comply with and will not use the Services in violation of any federal, state or local laws, regulations, judicial or administrative decisions, executive orders, rules or interpretations ("*Legal Requirements*") applicable to its business, and will be solely liable for any violation of applicable Legal Requirements. Customer will use the Services in accordance and compliance with this Agreement, the First Data System requirements and the written policies and procedures provided by First Data from time-to-time. Customer will not use the Services in connection with any gaming business, adult or sexually oriented business, or business opportunity business. First Data will comply with and will not provide the Services in violation of any Legal Requirements applicable to it in its role as the Services provider.

#### 6. **Representations and Warranties.**

6.1 Customer and First Data each represent and warrant: (i) they have corporate authority to execute this Agreement; (ii) executing this Agreement does not constitute a material conflict with, breach or default under any applicable law, their respective charter or bylaws, or any documents, agreements or other instruments which are binding upon the parties; and (iii) this Agreement creates valid, legal and binding obligations that are enforceable against the parties. Further, Customer represents and warrants that it owns the Customer Logo.

7. **Disclaimer of Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, FIRST DATA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH RELATE TO THE SERVICES PROVIDED UNDER THIS AGREEMENT. FURTHER, FIRST DATA DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THIS AGREEMENT IS A SERVICE AGREEMENT, ANY EQUIPMENT PROVIDED TO CUSTOMER UNDER THIS AGREEMENT IS INCIDENTAL TO THE SERVICES PROVIDED, AND THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE DO NOT APPLY TO THIS AGREEMENT.

#### 8. **Limitation of Liability.**

8.1 First Data's cumulative liability to Customer for any loss or damage, from any cause whatsoever, will be limited to two million dollars (\$2,000,000) per occurrence with an aggregate of five million dollars (\$5,000,000) annually. The foregoing limitation shall not apply with respect to: (a) Customer's obligations of indemnification pursuant to Section 9.1(v); (b) First Data's obligations of indemnification pursuant to Section 9.2(iv); or (c) any damages caused by any breach of any obligation of a party under Section 10.2. First Data shall be relieved of all liability where First Data performs any Service in accordance with instructions provided by Customer, and First Data may rely on the accuracy of any information set forth in any such instructions.

8.2 FIRST DATA AND CUSTOMER WILL NOT BE LIABLE TO EACH OTHER UNDER ANY THEORY FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), EXEMPLARY OR PUNITIVE DAMAGES; REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.3 Neither party may bring an action (regardless of form) for breach of this Agreement more than four (4) years after such party first knew or should have known of such breach; provided, however, this limitation will not apply to breaches of the confidentiality requirements herein. Each party will act to mitigate its damages.

#### 9. **Indemnification.**

9.1 **Customer Indemnity.** Customer will indemnify, defend and hold harmless First Data, its directors, officers, employees, affiliates and agents against any third party claims, losses, costs, fines, penalties or damages (including court costs and reasonable attorneys' fees) (collectively, "*Claims*") arising out of or connected with Customer's (its users, affiliates, employees, agents or representatives) (i) negligence or willful misconduct; (ii) breach of this Agreement; (iii) errors or omissions; (iv) handling of any Payment by First Data in accordance with Customer's or its Consumer's instructions; (v) actual infringement of any patent, copyright, trademark, service mark, trade secret or other proprietary right of a third party, including but not limited to First Data's use of the Customer Logo in accordance with this Agreement; and (vi) erroneous instructions or

information provided to First Data for use in providing the Services. Customer will not indemnify First Data for Claims arising from First Data's acts errors or omissions for which Customer is entitled to indemnification.

9.2 **First Data Indemnity.** First Data will indemnify, defend and hold harmless Customer, its directors, officers, employees, affiliates and agents against any third party Claims arising out of or in connection with First Data's (its affiliates, employees, agents or representatives) (i) negligence or willful misconduct; (ii) breach of this Agreement; (iii) First Data's errors or omissions in providing the Services under this Agreement; or (iv) actual infringement of any patent, copyright, trademark, service mark, trade secret or other proprietary right of a third party by the First Data System, except to the extent such claim is caused by, relates to or arises out of (a) Customer's failure to use the First Data System or Services as permitted under this Agreement or (b) Customer's configuration or use of the First Data System or Services in combination with other software, equipment, services, processes, elements, components or systems that are not provided by First Data. First Data will not indemnify Customer for Claims arising from any errors or omissions in any information, data or instructions Customer provides to First Data for use in connection with the Services, or Customer's or its users' acts or omissions for which First Data is entitled to indemnification.

9.3 In the event First Data or Customer receives threat of legal action or notice of a Claim from a third-party for which indemnification may be sought under this Agreement, the party seeking indemnification (the "*Indemnified Party*") agrees to (i) promptly notify the party responsible for indemnifying the other (the "*Indemnifying Party*") of the threat of legal action or the Claim; and (ii) promptly undertake resolution or defense of the threatened legal action or Claim using counsel of its choice (provided, such counsel will be reasonably satisfactory to the Indemnified Party). The Indemnifying Party will be entitled to direct the settlement or defense of the legal action or Claim; provided, the Indemnifying Party will keep the Indemnified Party informed about any proposed settlement and will not compromise or settle for anything other than the payment of money without the prior written consent of the Indemnified Party (not to be unreasonably withheld). The Indemnified Party will reasonably cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in connection with the defense of legal actions or Claims that are subject to indemnification.

#### 10. Confidential Information; Information Security.

10.1 **Confidential Information.** "*Confidential Information*" means all data or information that is competitively sensitive material and/or not generally known to the public; including, but not limited to, information which is marked confidential or proprietary, customer lists (but excluding Payment Data), technology, inventions, systems, operations, facilities, products, services, discoveries, ideas, concepts, research, development, processes, operating procedures, marketing, business and development plans, pricing, policies and financial information. Confidential Information does not include information which: (i) is or becomes part of the public domain; (ii) was already known to the receiving party prior to its disclosure; (iii) is lawfully obtained from a third party without obligations of confidentiality; (iv) is independently developed by the receiving party; or (v) must be communicated in response to a valid law, regulation or court order, provided the disclosing party uses reasonable efforts to notify the other party prior to disclosure (unless such notification is prohibited by law, regulation or court order) so such party may seek a protective order or otherwise prevent or limit such disclosure.

10.2 **Disclosure and Use Restrictions.** Neither party will disclose, reproduce, transfer or use the other party's Confidential Information; provided, however, that First Data's employees, affiliates, agents, advisors or subcontractors may access and use Customer's Confidential Information or Personal Information (defined below) in connection with providing the Services. First Data's employees, affiliates, agents, advisors or subcontractors with access to Customer's Confidential Information or Personal Information will comply with the confidentiality provisions of this Agreement. Each party will take commercially reasonable steps to prevent disclosure of Confidential Information; including, at a minimum, such steps it would take to protect its own Confidential Information.

10.3 **Information Security.** Each party is responsible for: (a) the security of non-public or personally identifiable information ("*Personal Information*") on the systems under its control; and (b) data security issues arising from its systems, or directly resulting from its use of third party vendors or subcontractors (if any) in connection with the Services. Each party will maintain information security practices designed to prevent unauthorized or unlawful access to, use, disclosure or alteration of Personal Information (collectively, a "*Security Incident*"). In the event of a Security Incident, the affected party will promptly (i) assess the nature and scope of the Security Incident; (ii) identify the Personal Information involved, if any; (iii) take appropriate steps to contain, control and stop the Security Incident; and (iv), in the event Personal Information was compromised and it is reasonably suspected that misuse will result, notify the other party of the Security Incident, subject to any request by law enforcement or other government agency to withhold such notice pending the completion of an investigation. First Data is not responsible for and does not control third party telecommunication lines used to provide the Services; and will not be responsible for the security of transmissions using these lines.

10.4 **Standards of Compliance.** First Data will comply with the Payment Card Industry Data Security Standard (PCI DSS). At a minimum the PCI DSS should focus on these six areas of operation: (a) Build and maintain a secure network; (b) Protect cardholder data; (c) Maintain a vulnerability management program; (d) Implement strong access control measures; (e) Regularly monitor and test networks; (f) Maintain an information security policy.

10.5 **Ownership.** This Agreement does not provide either party with any right, title or interest in or to the Confidential Information of the other party. Each party will, at the request of the other party, return or destroy (and certify the destruction of) the other party's Confidential Information.

10.6 **Equitable Relief.** First Data and Customer agree there is no adequate remedy at law for a breach of the confidentiality, disclosure, use, safeguarding and ownership requirements (collectively, the "*Confidentiality Requirements*") related to Confidential Information and Personal Information under this Agreement. A breach of the Confidentiality Requirements will cause irreparable harm such that the non-breaching party will not have an adequate remedy at law; and, therefore, the non-breaching party will be entitled to seek injunctive relief (without posting a bond or other security) against the breaching party in addition to any other rights or remedies available at law or in equity.

11. **Data Analytics.** First Data, its affiliates or subsidiaries may extract data or other information from Payment Data and use this data or other information itself or with any other data or information in connection with its research and development efforts, or creation of data and analytics tools and products. Customer represents that it has sufficient rights (and has made sufficient disclosure to its users) in the Payment Data to authorize this use. First Data, its affiliates or subsidiaries will own all right, title or interest in or to any information, products, services or intellectual property arising from their research and development efforts, and their creation of data and analytics tools and products. First Data's, its affiliates' or subsidiaries' access to or use of data or other information extracted from Payment Data, including use in commercial products developed as a result of or in connection with their research and development activities, will not be a violation of this Agreement.

## 12. Intellectual Property.

12.1 **Ownership.** This Agreement does not grant Customer with any right, title, interest, license (express or implied) to any patent, trademark, service mark, copyright, trade secret or proprietary right associated with the Services, First Data System, applications or business methods (or those of First Data's affiliates or subsidiaries) required or provided in connection with the Services; or arising from First Data's, its affiliates' or subsidiaries' research and development activities. Customer also acknowledges that an affiliate of First Data has a limited, minority, non-controlling, equity interest in Ronald A. Katz Technology Licensing L.P., an entity owning certain patent applications and patents which may apply to interactive or automated voice response products or services provided by First Data.

12.2 **Use of Marks and Publicity.** Neither party will use any trademark, service mark, trade name nor other proprietary designation (collectively, "*Marks*") owned, licensed or registered by the other party without prior written consent; provided, however, First Data may use Customer's name in publicity indicating that Customer and First Data have entered into a contractual relationship, as well as customer lists or other advertising identifying the customers of First Data. Neither party will use or reference the other's Marks in any manner that disparages or portrays the other in a negative light. Neither party may alter, modify, or change the other's Marks in any way. A breach of the terms of this Agreement related to the use of a party's Marks will cause irreparable harm such that the non-breaching party will not have an adequate remedy at law and, in addition to any other rights or remedies available at law or in equity, will be entitled to seek injunctive relief against the breaching party (without posting a bond or other security).

## 13. First Data System.

13.1 **Updates to the First Data System.** First Data may update or alter the logical, physical or archival structure or organization of the First Data System, including any applications, databases, files, documentation or other information used to provide the Services, from time to time in its sole discretion. Customer may test or assist First Data, at its request, to test the First Data System from time-to-time.

13.2 **First Data System Maintenance.** First Data will conduct regular maintenance on the First Data System during designated time periods ("*Scheduled Maintenance Windows*") during which it may limit or suspend the Services. Scheduled Maintenance Windows will be communicated, and may be modified upon prior written notice, by First Data to Customer from time to time during the Term of this Agreement. First Data will make commercially reasonable efforts to notify Customer prior to performing any maintenance that will interrupt the Services; provided, however, First Data may perform any emergency or other maintenance necessary to ensure the safety, security or stability of the First Data System at any time without prior notice to Customer.

13.3 **First Data System Availability.** The First Data System will be accessible 99.7% of the time each calendar month, excluding Scheduled Maintenance Windows.

## 14. General.

14.1 **Governing Law.** Arizona, and any claims relating to the agreement should be brought in Arizona, validity and enforcement of this Agreement, without regard to its conflicts of law.

14.2 Severability. Any provision of this Agreement that is determined to be illegal, invalid or unenforceable will be deemed void; and the remainder of this Agreement will continue in full force and effect. The parties will substitute a valid provision approximating the intent and economic effect of any invalidated provision.

14.3 Headings. The headings in this Agreement are reference only.

14.4 Entire Agreement; Amendments. This Agreement is attached to and made a of the Customer's Request for Proposal 10-137, as amended ("*Customer's RFP*"), and First Data's Proposal Offer dated April 13, 2010, including First Data's Best and Final offer dated July 2, 2010 ("*First Data's Response*"). Collectively, this Agreement, Customer's RFP and First Data's Response are referred to as the "*Governing Documents*". The Governing Documents constitute the entire agreement between Customer and First Data, and supersede all prior agreements, written or oral, related to the Services. In the event of any inconsistency in or conflict among the Governing Documents, such inconsistency or conflict shall be resolved by giving precedence to the Governing Documents in the following order: (1) Customer's RFP, (2) First Data's Response, (3) this Agreement. This Agreement includes, and incorporates, the attached schedules or exhibits. Any Amendment to this Agreement must be in writing and signed by First Data and Customer.

14.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original, and all of which together constitute one and the same instrument. Facsimile, electronic or other copies of the executed Agreement are deemed valid and effective.

14.6 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement and it will not be construed to create such rights, benefits or remedies generally; provided, however, any bank performing settlement services in connection with this Agreement will have certain, limited third party beneficiary rights associated with its settlement services that may be separately enforceable against Customer.

14.7 Assignment. This Agreement may not be assigned, voluntarily or by operation of law, by either party without prior written consent from the other party, which will not be unreasonably withheld. Consent, however, is not needed for either party to assign this Agreement to an affiliate or subsidiary, or in connection with a merger, acquisition or sale of all or substantially all of the assignee's assets. Any assignment in violation of this subsection will be deemed null and void. This Agreement will extend to and be binding upon any permitted successors and assigns.

14.8 Subcontractors. First Data may subcontract all or any portion of the Services using vendors both within and outside the United States; provided, First Data will remain responsible for the performance of the Services provided through its vendors (if any).

14.9 Notices. All notices or other communications under this Agreement will be deemed given when mailed by (i) first class registered or certified mail, postage prepaid, return receipt requested; or (ii) by nationally recognized courier service to the address below or such other address as such party may designate in writing. All notices or other communications will be effective upon receipt.

If to First Data:

First Data Government Solutions, LP  
Attn: Contract Manager  
11311 Cornell Park Drive, Suite 300  
Cincinnati, OH 45242

With a copy to:

First Data Government Solutions, Inc.  
Attn: General Counsel  
6855 Pacific Street  
Omaha, Nebraska 68106

If to Customer:

City of Tempe  
Attn: Ted Stallings – Procurement Officer  
20 East 6<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Tempe, Arizona 85281

With a copy to:

City of Tempe  
Attn: Carol Clark – Information Technology  
20 East 6<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Tempe, Arizona 85281

14.10 Survival of Obligations. Articles 2 and 6 through 12 will survive termination of this Agreement.

14.11 Independent Contractors. First Data and Customer are independent contractors. Nothing in this Agreement will be deemed to create a joint venture, partnership, employment or similar relationship between the parties. Except as specifically provided for herein, neither party is an agent or representative of the other; and neither party will represent otherwise.

14.12 Waiver. No delay or single, partial, failure, abandonment or discontinuance of either party to exercise any right, power or privilege hereunder will affect such right, power or privilege. The parties' rights and remedies under this Agreement are cumulative and not exclusive. Any waiver, consent or approval of any failure to comply, breach or default under this Agreement must be in writing, will be effective only to the extent set forth in such writing and will not continue to apply to additional failures to comply, breaches or defaults.

14.13 Force Majeure. Neither party will be in default under this Agreement, and will be excused from performing its obligations, if its performance is prevented, restricted, delayed or interfered with due to a Force Majeure Event, whether foreseen or not. A "Force Majeure Event" includes (i) labor disputes, strikes, riot or other civil unrest; (ii) flood, hurricane, tornado, lightning, severe weather, earthquake or other natural disaster; (iii) rationing or other shortage of materials; (iv) utility failures, electronic transmission failures or other electronic or communication failures or delays; (v) terrorism, embargo, blockade, revolution or other acts of war; (vi) any change in laws, orders, rules, regulations, ordinances or other governmental or judicial acts impairing performance, or (vii) other acts of God, all of which are beyond the parties' reasonable control.

IN WITNESS THEREOF duly authorized representatives of the parties have executed this Agreement as of the date first set forth above.

FIRST DATA GOVERNMENT SOLUTIONS, LP  
By: FDGS Group, LLC, its general partner

CITY OF TEMPE a municipal corporation

By:  \_\_\_\_\_

By: \_\_\_\_\_

Name: Chuck Eliassen

Name: \_\_\_\_\_

Title: Vice President

Title: Mayor

ATTEST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: City Attorney



**SCHEDULE A**

**SERVICES and FEES**

First Data's Fees for its Services are set forth below.

**1. Processing Fees.**

Name	Description of File Type Action	Fee
Corporate Site Set-Up Fee	The one-time charge for First Data to configure and deploy PayPoint.	\$0.00
Corporate Site Participant Set-Up Fee	The charge for the initial set-up of each participant enrolled by Customer at each corporate site level.	\$0.00
Credit Card Fee	The transaction charge to process each Payment initiated by a consumer using a credit card.	\$0.15
Debit Card Fee	The transaction charge to process each Payment initiated by a consumer using a debit card.	\$0.15
eCheck Fee	The transaction charge to process each Payment initiated by a consumer using an eCheck.	\$0.20
User Interface Surcharge	The charge for each transaction that is initiated by a consumer using the internet or interactive voice response.	\$0.00
Authentication Surcharge	The charge to validate data during a transaction when a consumer is required to upload additional data requested by the authentication-challenge data feature during a transaction.	\$0.00
Summary Presentment Surcharge	The charge to upload summary billing data and provide it to a consumer in connection with the consumer's review and completion of initiated payments using the summary presentment feature.	\$0.00
Enrollment Surcharge	The charge to process enrollment for each consumer that enables multiple methods (i.e., credit card, debit card and eCheck) for making its payments using the PayPoint Gateway.	\$0.00
Telecom IVR Surcharge	The per minute charge to process transactions using the Telecom IVR feature.	\$0.00

**2. Early Termination Fees.**

Service Year	Early Termination Fee (\$)
1	\$0.00
2	\$0.00
3	\$0.00
4	\$0.00

**3. Special Fees.**

3.1 **Application Development.** Customer will pay First Data One Hundred and Fifty Dollars (\$150.00) per hour for any additional computer programming, development or consulting services that Customer requests in connection with this Agreement. Further, Customer will reimburse First Data for its reasonable travel expenses, if any, that are incurred for any additional computer programming, development or consulting services that Customer requests in connection with this Agreement.

3.2 **Data Communication Fees.** Customer will pay for all data transmission costs, including the cost of high-speed connectivity (i.e., leased line charges) and the set-up fees associated with installation and configuration of Customer's high-speed connections. Customer will also pay any long-distance fees associated with dial-up connectivity solutions for data transmission.

*Jan*