

## DIRECT ELECTRONIC PAYMENT DELIVERY AGREEMENT

This Direct Electronic Payment Delivery Agreement (the "Agreement") is entered into as of October 12, 2017 ("Effective Date") between **Fiserv Solutions, LLC** ("Fiserv"), a Wisconsin limited liability company having its principal office at 255 Fiserv Drive, Brookfield, WI 53045, and **Lexington-Fayette Urban County Government** (the "Client"), having its principal office at 200 East Main Street, Lexington, Kentucky 40507 Federal Tax ID #61-0858140.

### 1. Services.

**1.1** Fiserv provides electronic bill payment services to consumers and businesses ("Customers") who utilize Fiserv to perform such services. Fiserv has developed payment and service systems to maximize the electronic delivery of Payments, and to minimize or eliminate the use of paper drafts and checks (the "Service"). At its Customer's instruction, Fiserv will process payments to Client for payment of the Customer's bill (the "Payment") by 1) electronically delivering such Payments to Client and 2) initiating a debit in the amount of such Payment from the applicable Customer's designated bank accounts (the "Debit Entry"). If mutually agreed and implemented by the parties, payment instructions for certain Payments shall be processed by Fiserv on the same day as Payment requests are received by Fiserv from Customers (the "Same-Day Payments"). Terms herein that are specific to Same Day Payments shall apply if Same Day Payments are mutually agreed and implemented by the parties. For the purposes of this Agreement, the term "Payments" shall include all payments unless specified as solely Same-Day Payments.

**1.2** Client's banking information and details about Payment limits and reversibility are set forth in **Exhibit A, Bank Information, Payment Details, and Fee Schedule**, which is attached hereto and incorporated herein by this reference.

**2. Fiserv Obligations.** All Payments transmitted by Fiserv shall be processed as follows:

**2.1** The data files of Payments' instructions will be electronically transmitted to Client daily by Fiserv in a mutually agreed upon format by the designated times (see Exhibit A) each Business Day. A "Business Day" is defined as each day, Monday through Friday that is not a Federal Reserve holiday. The data files will materially conform to specifications mutually agreed upon by Client and Fiserv. Fiserv will notify Client upon Fiserv's discovery of any occurrence that may delay transmission of the data files.

**2.2** Fiserv will send Client the applicable data files each Business Day that Client receives Payments. The associated Payments' funds for Client will be transmitted electronically in the designated Client account per Section 1 of Exhibit A no later than the Business Day following the date of transmission of the data file.

**2.3** Fiserv will maintain records of the data files and Payments made and provide such information related thereto as Client may reasonably request upon reasonable notice to Fiserv during normal business hours. Fiserv will notify Client of Debit Entries returned unpaid to Fiserv twice. Fiserv will submit the returned Debit Entries information in the payment data file, a separate electronic reversal file, or an Advice of Reversal to Client specifying the returns that are owed to Fiserv.

**2.4** Fiserv will designate specific personnel to work with Client in support of the implementation and electronic delivery of Payments provided that sufficient information is provided by Client to perform research. Using the mutually agreed upon procedures, Fiserv will use commercially reasonable efforts to respond to Client-initiated research requests involving Payments within three (3) Business Days provided Fiserv agrees to aid Client in the correction of invalid account numbers as a means of reducing future unidentified or paper transactions.

**3. Client Obligations.** All Payments received by Client shall be processed as follows:

**3.1** Client shall establish and maintain for the term of this Agreement an account at a financial institution (the "Settlement Account") for the purpose of allowing Fiserv to credit funds to Client. Client hereby grants Fiserv authorization to affect electronic credits to the Settlement Account and Client agrees to execute any required documentation to grant such authority. The Settlement Account shall be the account designated in Exhibit A's Section 1.

**3.2** Client will post Payments, other than Same-Day Payment, to Customers' accounts within one (1) business day of Fiserv transmitting the payments file to the Client; and Client will post Same-Day Payments to Customers' accounts on the same day Fiserv transmits the Same-Day Payments' file to Client.

**3.3** Client shall be responsible to Fiserv for the dollar amount of Payments credited to Client for which the corresponding Debit Entry is returned unpaid to Fiserv, irrespective of the reason for the return and shall reimburse Fiserv for all such Debit Entries as detailed in Section 7 of Exhibit A to this Agreement.

**3.4** Client will designate specific personnel to work with Fiserv in support of the electronic delivery of Payments. Client will use commercially reasonable efforts to respond to Fiserv-initiated research requests involving Payments within three (3) Business Days provided that sufficient information is provided by Fiserv to perform research. Client agrees to aid Fiserv in the correction of invalid account numbers as a means of reducing future unidentified or paper transactions.

**3.5** Client agrees to notify and provide new information to Fiserv if Client's banking information or any other Client information relative to the Service changes to ensure Fiserv's records remain current. If Client does not notify and provide updated Client information to Fiserv in a timely manner, Client shall be responsible for any errors, delays or disruptions to the Service.

**4. Rejected Payments.** No Payment transmitted hereunder may be rejected by Client unless the account data for such Payment is incorrect or incomplete or the account is blocked or closed. If any Payment is rejected hereunder, and Fiserv and Client are unable to determine the correct posting information, Client shall return the Payment data and funds in a mutually agreed upon format.

**5. Exceptions.** Client acknowledges that Payments will not be transmitted electronically in the following circumstances:

- (a) Where the Customer utilizes a financial institution that is not accessible through the Automated Clearing House ("ACH");
- (b) Where the Customer's account number is incomplete, incorrect or otherwise fails the account number edit procedures established by Fiserv and Client; or
- (c) For a Payment in excess of the Single Electronic Payment Limit.

### 6. Fees, Billing, and Payment.

**6.1** Each party will bear its own costs associated with efforts in systems development, operational implementation, marketing and research. Fees for the Service performed by Fiserv under this

Agreement shall be calculated and collected in accordance with Exhibit A attached hereto ("Fees"). Fiserv reserves the right to change Fees with sixty (60) days advance written notification.

**6.2** In addition to payment of Fees, Client shall be responsible for any taxes or other expenses, fees, and charges imposed by a governmental agency arising out of or incidental to Client's use of the Service ("Expenses"), excluding taxes, expenses, fees or charges based on the income or property of Fiserv. Client is responsible for the payment of all Expenses, and shall reimburse Fiserv for those Expenses that Fiserv is required to remit on behalf of Client.

**6.3** Invoices are due and payable upon Client's receipt of such invoice. If any invoiced amounts remain unpaid 30 days after Client's receipt of invoice, Client shall pay a monthly late charge based on the unpaid amounts equal to the lesser of 1.5% or the highest amount allowed by law until such invoice amount is paid in full. Client shall neither make nor assert any right of deduction or set-off from amounts invoiced. Fiserv reserves the right to suspend its Service and obligations to Client during any period in which Client's account is more than thirty (30) days delinquent. Continuance of Service during any period of delinquency shall not constitute a waiver of Fiserv's rights to suspension or termination.

**7. Use of Client Logo.** Client agrees to Fiserv's use of Client's logo in connection with identifying Client as a potential payee within Fiserv's electronic bill payment services for Fiserv's Customers.

**8. Confidentiality and Ownership.** The provisions of this section survive any termination or expiration of this Agreement.

**8.1** "Information" means the following types of information of the disclosing party (the "Discloser") and its Affiliates obtained or accessed by the receiving party (the "Recipient") from or on behalf of the Discloser or its Affiliates in connection with this Agreement: (A) trade secrets and proprietary information (with respect to Fiserv, including that of any Fiserv client, supplier, or licensor); (B) client or customer lists, information security plans, business continuity plans, and with respect to Fiserv: all information and documentation regarding the Services, all software Products (including software modifications and documentation, databases, training aids, and all data, code, techniques, algorithms, methods, logic, architecture, and designs embodied or incorporated therein), and the terms and conditions of this Agreement; (C) any personally identifiable information ("PII"), defined as information that can be identified to a particular person without unreasonable effort; and (D) any other information and data received from or on behalf of the Discloser or its Affiliates that the Recipient should reasonably be expected to know is confidential. The term "Affiliate" means an entity that controls, is controlled by, or is under common control with a party, where "control" means the direct or indirect ownership of more than 50% of the voting securities of such entity or party.

**8.2** No obligation of confidentiality applies to any Information that: (A) the Recipient already possesses without obligation of confidentiality, develops independently without reference to Information of the Discloser, or rightfully receives without obligation of confidentiality from a third party; or (B) is or becomes publicly available without Recipient's breach of this Agreement.

**8.3** Obligations. Recipient agrees to hold as confidential all Information it receives from the Discloser. All Information shall remain the property of Discloser or its suppliers and licensors. Recipient will use the same care and discretion to avoid disclosure of Information as it uses with its own similar information that it does not wish disclosed, but in no event less than a reasonable standard of care and no less than is required by law. Recipient may only use Information for the lawful purposes contemplated by this Agreement, including in the case of Fiserv use of Information for fulfilling its obligations under this Agreement, performing, improving and enhancing the Services, and developing data analytics models to produce analytics-based offerings. Client agrees that prior to providing Fiserv access to any Client PII, Client shall ensure that any necessary consent has been obtained that is required by law or regulation for Fiserv to access the information and to use it pursuant to the terms set forth in this Agreement. Recipient may disclose Information to: (i) its employees and employees of

permitted subcontractors and Affiliates who have a need to know; (ii) its attorneys and accountants as necessary in the ordinary course of its business; and (iii) any other person with Discloser's prior written consent. Before disclosure to any of the above persons, Recipient will have a written agreement with (or in the case of clause (ii) a professional obligation of confidentiality from) such person sufficient to require that person to treat Information in accordance with the requirements of this Agreement, and Recipient will remain responsible for any breach of this Section 8 by any of the above persons. Recipient may disclose Information to the extent required by law or legal process, provided that: (A) Recipient gives Discloser prompt notice, if legally permissible, so that Discloser may seek a protective order; (B) Recipient reasonably cooperates with Discloser (at Discloser's expense) in seeking such protective order; and (C) all Information shall remain subject to the terms of this Agreement in the event of such disclosure. At Recipient's option, Information will be returned to Discloser or destroyed (except as may be contained in back-up files created in the ordinary course of business that are recycled in the ordinary course of business over an approximate 30- to 90-day period or such longer period as required by applicable law) at the termination or expiration of this Agreement or the applicable Exhibit and, upon Discloser's request, Recipient will certify to Discloser in writing that it has complied with the requirements of this sentence. Recipient acknowledges that any breach of this Section 8 may cause irreparable harm to Discloser for which monetary damages alone may be insufficient, and Recipient therefore acknowledges that Discloser shall have the right to seek injunctive or other equitable relief against such breach or threatened breach, in addition to all other remedies available to it at law or otherwise.

**8.4** Ownership. With the exception of Client Information, all information, reports, studies, object and source code (including without limitation the Services and all modifications, enhancements, additions, upgrades, or other works based thereon or related thereto), flow charts, diagrams, specifications, and other tangible or intangible material of any nature whatsoever produced through or as a result of or related to any of the Services (collectively, "**Works**") or development of any data analytics or usage models hereunder, and all patents, copyrights, and other proprietary rights related to such Works and models, shall be the sole and exclusive property of Fiserv or its Affiliates or of their third party providers. Nothing in the Agreement shall convey to Client any title to or ownership of any Services, Works, or models. Client hereby irrevocably assigns and transfers to Fiserv all rights, title, and interest in any such Works and models. During the Term, Client may use any Works provided to or rightfully accessed by Client solely as necessary to use the Services in accordance with the applicable terms and conditions of this Agreement.

## **9. Warranties and Limitations of Liability.**

**9.1** Each Party warrants that it will exercise reasonable care in the performance of its obligations under this Agreement and that it will comply with all laws, rules and regulations applicable to its performance hereunder, including the ACH Rules published by the National Automated Clearing House Association. Subject to the limitation set forth in paragraph 9.2 below, Fiserv shall be liable only for loss due to its failure to properly maintain the Service and its failure to comply with Client's instructions regarding the Service. Fiserv shall not be liable for loss due to inaccurate or untimely information provided by Client or Customers.

**9.2** FISERV MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL FISERV BE LIABLE FOR LOSS OF GOODWILL, PROFIT, REPUTATION, OR BUSINESS, OR FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR TORT DAMAGES, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM ARISES IN TORT, CONTRACT, OR OTHERWISE. EXCEPT FOR CLAIMS RELATED TO PROPRIETARY RIGHTS OR OBLIGATIONS TO PAY AMOUNTS DUE OR OWING, NEITHER PARTY MAY ASSERT ANY CLAIM AGAINST THE OTHER RELATED TO THIS AGREEMENT MORE THAN 2 YEARS AFTER SUCH CLAIM ACCRUED. FISERV'S AGGREGATE LIABILITY TO CLIENT AND ANY THIRD PARTY FOR ANY AND ALL

CLAIMS AND OBLIGATIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL FEES PAID BY CLIENT TO FISERV HEREUNDER IN THE 2 MONTH PERIOD PRECEDING THE DATE THE LAST CLAIM ACCRUED

**10. Delays and Excuse from Performance.** Neither party shall be liable for any delay or other failure of performance caused by factors beyond the reasonable control of the applicable party, such as, but not limited to: strikes, insurrection, war, fire, lack of energy, acts of God, mechanical or electrical breakdown, governmental acts or regulations, computer malfunction or acts or omissions of third parties. Each party shall be responsible for notifying the other within a reasonable time if it is unable to perform.

**11. Term and Termination Provisions.**

**11.1** The term of this Agreement shall begin as of the Effective Date and shall continue for a period of three (3) years and shall renew automatically for additional one (1) year terms unless either party provides at least ninety (90) days written notice of non-renewal prior to the end of the then-current term. If either party shall default in the performance of any obligations under this Agreement and shall fail or refuse to remedy such default within thirty (30) days after written notice of the default, the other party may terminate this Agreement upon twenty-four (24) hours written notice. If either party shall cease doing business, or become insolvent or become a party to any bankruptcy or receivership proceedings, or make an assignment for the benefit of creditors, then the other party may terminate this Agreement immediately. If at any time Fiserv suspects or discovers that Client (i) is not complying with applicable laws, rules, or regulations, (ii) is involved in any fraudulent or illegal activity, (iii) no longer meets Fiserv's (or its processors' or routing banks') client profile requirements or (iv) otherwise poses risk to Fiserv, Fiserv shall in its sole discretion have the right to terminate the Agreement at any time. Additionally, if Client is in breach of any of its contractual obligations to Fiserv under this Agreement, Fiserv reserves the right to suspend the Service at any time. Additionally, Fiserv may at its sole discretion discontinue the Same-Day Payments Service to Client at any time. Additionally, Client may terminate this Agreement upon providing Fiserv with thirty (30) days' written notice in the event that its Urban County Council fails to provide sufficient funding for this Agreement.

If, after the Effective Date of this Agreement, any law, regulation, or ordinance, whether federal, state, or local, becomes effective which substantially alters Fiserv's ability to perform hereunder, Fiserv shall have the right to terminate this Agreement upon written notice to Client.

**11.2** Upon termination, the rights and obligations of the parties hereunder will cease, excepting only the following which will continue: (a) the rights of each party with respect to any breach of this Agreement by the other party; (b) the right of Fiserv to continue its relationships with its Customers; (c) for all transactions occurring on or before the effective date of termination, the rights and obligations of each party to make or accept Payments and the obligations of Client to pay Fees and Expenses and fund returns and reversals; and (d) the rights and obligations set forth in sections 8 and 9 and any rights and obligations which by their nature survive termination of the Agreement. In the event Client owes Fiserv any amounts hereunder upon termination or expiration (including without limitation for Reversed Items), Client shall pay such amounts to Fiserv promptly upon such termination or expiration.

**11.3** If Fiserv and Client desire to maintain an electronic remittance relationship upon termination or expiration of this Agreement, the parties must enter into a separate mutually agreed upon remittance agreement (with a mutually agreed upon remittance method, which may be different than that under this Agreement, and with mutually agreed upon pricing, which may be higher than that under this Agreement) prior to termination or expiration of this Agreement.

**12. Notices.** All notices and other official communications under this Agreement shall be in writing and sufficiently given if: (i) delivered by nationally recognized overnight courier service evidencing written receipt of delivery; or (ii) mailed by U.S. Certified mail, return receipt

requested, postage paid; or (iii) by facsimile with subsequent confirmation by delivery in any manner previously mentioned to:

Fiserv Solutions, LLC  
2900 Westside Parkway  
Alpharetta, Georgia 30004  
Attention: General Counsel, Biller Solutions

Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
Attention: Rusty Cook

or to such other address or addresses as either party may from time to time designate to the other by written notice. Any such notice or other official communication shall be deemed to be given as of the date it is personally delivered, or three (3) days following the date when placed in the U.S. Postal Service mail in the manner specified.

**13. Independent Contractor.** Each party shall perform all services hereunder as an independent contractor, and nothing contained herein shall be deemed to create, nor does it create and shall not be construed to create, any association, partnership, joint venture, or relationship of principal and agent or master and servant between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.

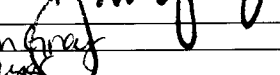
**14. Contacts.** Fiserv and Client mutually agree that if a Payment from a Customer of Client, which is transmitted by Fiserv to Client does not post, it may be necessary for Fiserv to contact Client in an attempt to resolve the problem (a "Contact"). Client acknowledges that when Fiserv makes a Contact, it is doing so as an agent for the Customer and Client agrees to provide the Customer information requested by Fiserv.

**15. Assignment.** Neither party may assign this Agreement, or any part thereof, without the prior written consent of the other party, and any such attempted assignment shall be void; provided, however, Fiserv may assign this Agreement, or any part thereof, to its parent, an affiliate (including any successor by merger or acquisition), or to any direct or indirect wholly-owned subsidiary without the prior written consent of Client.

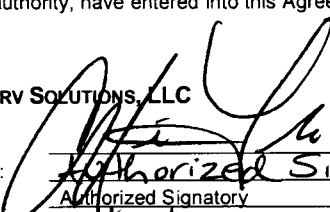
**16. General Provisions.** (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky without regard to its conflicts of law principles. (b) This Agreement shall not be amended except by written agreement signed by both parties. (c) In the event that any provisions, or any portion thereof, of this Agreement are determined by competent judicial, legislative, or administrative authority to be prohibited by law, then such provision or part thereof shall be ineffective only to the extent of such prohibition, without invalidating the remaining provisions of the Agreement. (d) This Agreement, along with any executed addenda attached, together with any Schedules or Exhibits, contains the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes all prior representations and understandings, whether oral or written. (e) No delay in enforcement or extension of time or failure to exercise any right hereunder will be deemed to be a waiver of any right by any party. No waiver of any earlier breach shall be construed as a waiver of a later breach. No waiver shall be effective unless such waiver is approved in writing by the waiving party. (f) This Agreement shall inure to the benefit of the parties hereto and is not intended to create any right or cause of action or remedy of any nature whatsoever in any third party. (g) This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument. Facsimile execution and delivery and email delivery of a signed electronic copy of this Agreement (e.g., a scanned image) is legal, valid and binding execution and delivery for all purposes.

IN WITNESS WHEREOF, the parties, each acting under due and proper authority, have entered into this Agreement as of the Effective Date.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By:   
Print: Jim Gray  
Title: Mayor  
Date: 10-12-17

FISERV SOLUTIONS, LLC

By:   
Print: Authorized Signatory  
Title: Authorized Signatory  
Date: 12/15/2017

**Exhibit A**  
**Bank Information, Payment Details, and Fee Schedule**

**Section 1 – Credit (of Payments) to Client by Fiserv**

Client Financial Institution to be credited:	40T
Client Account Number at Financial Institution:	40T
Client Account Name:	40T
ABA / Routing Number:	40T

**Section 2 – Debit (collections) from Client by Fiserv**

Client Financial Institution to be debited:	40T
Client Account Number at Financial Institution:	40T
Client Account Name:	40T
ABA / Routing Number:	40T

**Section 3 – Fee Information:**

**Implementation Fee:**                    \$2,500.00

**Service Fees:**

Monthly Maintenance Fee:    \$250.00

Per Transaction Fee:            \$0.10

Same-Day Per Transaction Fee: \$0.00

**Section 4 – Telecommunications:**

Telecommunication costs are the responsibility of Client. Should out-of-pocket telecommunication costs be incurred by Fiserv, they will be documented and invoiced at cost to Client. Fiserv will provide notice to Client prior to any such cost being incurred.

**Section 5 – Development, Maintenance and Alterations:**

(Above and beyond standard implementation under this Agreement)

Any post-implementation development, maintenance, alterations, changes and/or additional requests, or Client requested data preparation and/or reporting will be charged at \$275.00 per hour. All such projects and requests will be subject to an applicable statement of work process, and only projects and requests within the scope of Fiserv development will be considered; additional fees will be determined depending upon the nature of the project or request.

**Section 6 - Electronic Payment Limit**

With the exception of Same-Day Payments, the maximum amount of each Payment to be remitted electronically through the Service will be limited to \$3,500.00 ("Electronic Payment Limit"). Any Payment in excess of the applicable Electronic Payment Limit will be made by paper draft or check. For all Payments, Fiserv has the sole right to lower the Electronic Payment Limit at any time. Changes to the Electronic Payment Limit may require an amendment or replacement agreement to acknowledge the new Electronic Payment Limit.

For Same-Day Payments, Fiserv will determine the maximum amount of each Same-Day Payment through the electronic interface on a case by case basis, and Payments exceeding the maximum amount will not be accepted as Same Day Payments.

**Section 7 - Reversibility**

If Client elects "Reversibility," Fiserv will remit to Client an amount equivalent to the dollar value of the Payment before receiving such amount (or determining that it cannot obtain such amount) from the Customer via the

associated Debit Entry.

**Client declines Reversibility**

**Client elects Reversibility**

Client accepts full financial and unconditional responsibility for the dollar amount of all Payments Fiserv remits to Client but for which the corresponding Debit Entry is returned unpaid to Fiserv, and all such Payments shall be reversed (the "Reversed Items"). Client shall reimburse Fiserv for the amount of all Reversed Items as detailed in the option elected below:

**Reversibility Methods (if Client has accepted Reversibility above):**

**Net Settlement:** Client agrees that Fiserv will withhold the dollar amount of the Reversed Items from the amount of any future Payments to be transmitted to Client's designated account. Client agrees that if the amount of any Reversed Item(s) cannot be withheld from future Payments within five (5) business days after the date of reversal, Client shall pay such amounts to Fiserv promptly upon notification.

**Debit:** Client agrees that Fiserv is authorized to initiate a debit of Client's designated account in the amount of the Reversed Items on or after the day Fiserv notifies Client of the reversal. In the event Fiserv is unable to debit Client's designated account at any given time, Fiserv shall have the right to withhold any amounts due from future Payments.

**Section 8 – Mutually Agreed Upon Operational Details:**

Except for Same-Day Payments, Fiserv file availability time: 7 a.m. Eastern Time, Monday through Friday, other than Federal Reserve holidays.