

**AMENDMENT No. 1
TO
SOFTWARE LICENSING AND SERVICES AGREEMENT
effective September 1, 2004 (the "Agreement")**

This Amendment, effective as of July 12, 2019 ("Amendment Effective Date"), by and between FIS AvantGard LLC, formerly known as SunGard AvantGard LLC ("FIS") and City of Santa Clara ("Customer"), is made to the Agreement. Capitalized terms shall have the meanings ascribed to them in the Agreement, unless otherwise defined herein.

BACKGROUND

Whereas, the parties entered into the Agreement under which Customer acquired certain limited scope licenses and services from FIS; and

Whereas, Customer now wishes to convert from an installed license of the Software to a SaaS deployment, and FIS wishes to grant this conversion.

INTENDING TO BE LEGALLY BOUND, and in consideration of the mutual agreements stated herein, FIS and Customer do hereby amend the Agreement as of the Amendment Effective Date as follows:

1. **INCORPORATION OF SCHEDULE A-1.** Schedule A-1 for the provision of APS2 SaaS is hereby incorporated in the Agreement.
2. **TERMINATION OF SCHEDULE A (LICENSE ORDER).** Schedule A will terminate as of the SaaS go-live date under Schedule A-1. As of such date of termination, neither party will have any further obligation thereto.
3. **TERM OF AGREEMENT.** Unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall commence on the Amendment Effective Date and terminate on September 30, 2021, with an option to extend the term of this Agreement for an additional two year term, which option may be exercised upon mutual agreement of the parties. Exercise of the foregoing option shall be in writing via an Amendment executed by the parties no later than thirty (30) calendar days prior to expiration, unless such other time frame is mutually agreed to by Customer and FIS. The initial 3 months will be free of any fees.

Except as expressly provided herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. To the extent any of the terms of this Amendment are inconsistent with the terms of the Agreement, the provisions of this Amendment shall control.

By signatures of their duly authorized representatives below, FIS and Customer agree to all of the provisions of this Amendment and ratify the terms of the Agreement.

FIS AvantGard LLC ("FIS")	City of Santa Clara ("Customer")
By: _____ (Signature)	By: _____ (Signature)
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APS2 SAAS

1. SOLUTION: APS2

The Base accounting module of AvantGard APS 2 fully tracks all transactions associated with Fixed, Equity, and Variable Rate instruments including:

Bonds, Corporate & Municipal, Callable Securities, Cash Accounts (e.g. Passbook, Foreign Bank Account, etc.), CD's, Money Markets, Variable Rate Securities

GASB 31, GASB 40 and GASB 72 Regulatory reporting

2. DOCUMENTATION: Standard user documentation (APS2 User Guide)**3. SCOPE OF USE**

NUMBER OF USERS: Five (5)

NUMBER OF PRODUCTION DATABASES: One (1)

(i) **START UP FEE:** Included in the Professional Services Fees

(ii) **MONTHLY FEES:**

USD \$780.00 per month

Payable from the Amendment Effective Date billed monthly in advance.

(iii) **ANNUAL INCREASE LIMITATION:**
CPI

4. SCHEDULED INSTALLATION DATE: A date to be agreed between FIS and Customer which shall be no later than forty-five (45) days from the Amendment Effective Date.

5. PROFESSIONAL SERVICES

a. **DESCRIPTION OF THE PROFESSIONAL SERVICES:** FIS shall perform certain Professional Services as described in the Professional Services section herein.

It is estimated these Professional Services will take 10 days. This estimate is provided based on Customer's known requirements documented at the time this Agreement is signed and does not represent a commitment to complete the Professional Services within this estimate, with actual effort potentially more or less than this estimate. Any Professional Services required in excess of 10 days must be approved in writing by Customer.

The minimum commitment in relation to these Professional Services shall be 7.5 days ("**Minimum Days**") and an amount of USD \$13,500. ("**Minimum Fee**"). In the event that the Minimum Days have not been utilized by December 31, 2019 (or such earlier date if this Agreement is cancelled by Customer as expressly permitted under this Agreement), FIS may invoice Customer for the unused days at the applicable rate, together with any expenses incurred by FIS and not yet invoiced (which expenses FIS cannot have waived by taking reasonable steps).

b. **PROFESSIONAL SERVICES FEES APPLICABLE TO THE PROFESSIONAL SERVICES DESCRIBED IN THIS AGREEMENT:** The Professional Services will be provided on a time and materials basis, invoiced monthly in arrears. The applicable rate is:

\$1,800.00 per day / \$225 per hour, excluding expenses and applicable taxes, valid for the period twelve (12) months from the Amendment Effective Date.

c. **OVERTIME:** If the Customer requests, and FIS agrees that FIS will provide the Professional Services outside of FIS' normal working hours (i.e. overtime), the rate shall be one hundred fifty percent (150%) of the applicable rate. Any request for Professional Services outside of FIS' normal working hours shall be made by the Customer in writing.

d. **POSTPONEMENT, RESCHEDULING OR CANCELLATION:** If Customer postpones, reschedules or (if expressly permitted in this Agreement) cancels all or part of the Professional Services (which

in the case of training services includes non-attendance), unless such postponement, rescheduling or cancellation is due to circumstances not in the reasonable control of the Customer, 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):

- i. If FIS receives the notice of postponement, rescheduling or cancellation less than ten (10) working days prior to (but before) the agreed commencement date of the relevant Professional Services, a charge equal to the following shall apply: the applicable rate multiplied by the number of days of Professional Services postponed, rescheduled or cancelled, based on the estimate (up to a maximum of five (5) days).
- ii. If FIS receives the notice of postponement, rescheduling or cancellation on or after the agreed commencement date of the relevant Professional Services, a charge equal to the following shall apply: the applicable rate multiplied by the number of days of Professional Services postponed, rescheduled or cancelled, based on the estimate (up to a maximum of ten (10) working days). Such Professional Services shall be rescheduled and provided by FIS at the rate provided herein, less any charges paid by Customer pursuant to this Section 7(d).

For the sake of clarity: (i) all fees due for the Professional Services performed up to the effective date of the postponement, rescheduling or cancellation shall also be payable by Customer and (ii) in the event of the cancellation of this Agreement, the charges payable under this clause shall be at least the Minimum Fee.

6. ADDRESSES

CUSTOMER ADDRESS FOR INVOICES:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
ATTN: Finance Department - Treasury

CUSTOMER ADDRESS FOR NOTICES:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
ATTN: Finance Department - Treasury

FIS' ADDRESS FOR NOTICES:

FIS AvantGard LLC
601 Riverside Avenue
Jacksonville, FL 32204
ATTN: Contract Administration

7. PERSONAL DATA: - No personal data on the system.

Customer will not use FIS as a Processor of Personal Data under this Agreement.

- 8. OTHER TERMS: Third Party Providers; Market Database Usage.** Customer hereby acknowledges and agrees that the Third-Party Data and Services that may be required for Customer's use of the Solution, including the Market Databases, are subject to the terms and conditions set forth below.

Third-Party Data; Market Database Usage
--

A. Third-Party Providers.

(i) Customer hereby acknowledges and agrees that the Third-Party Data and Services provided under this Agreement contain information obtained, selected and consolidated by the Third Party Providers under the authority of the Third Party Providers, that Customer's use of the Third Party Data and Services is authorized and regulated by the Third Party Providers and further that the Third Party Providers may require to be provided with information and data about Customer and its Affiliates, employees, agents, customers and other third parties

using, accessing or whose information is stored on Customer's System ("Third Party Users") in connection with their provision of Third Party Data and Services. Customer also acknowledges that the Third-Party Providers may modify the Third-Party Data and Services, discontinue availability of Third Party Data and Services or modify the rules concerning availability and applicable royalty fees of any of the Third-Party Data and Services or require changes to the Third-Party Data and Services, in which case none of FIS or the Third-Party Providers may be held responsible for such modification and discontinuance. Any changes required by the Third-Party Providers shall be made a part of this Agreement by FIS's written notice of any such changes to Customer. For a thirty (30) day period after receiving such notice from FIS, Customer may reject such changes and terminate the affected Third-Party Data or Service by written notice to FIS. If such notice is not received by FIS within such thirty (30) day period, this Agreement shall be modified by such changes, and shall remain in full force and effect.

(ii) Customer shall comply with all applicable laws and obtain all necessary consents from any person, including its employees and the Third-Party Users and their respective employees, if any, regarding the collection, use and distribution to FIS of any information or data regarding any Third-Party User and the use by Customer and the Third-Party Users of the Third-Party Data and Services for the purposes set forth herein. The information and data may include personal and other information about Customer, its employees, the Third-Party Users and their employees, including their use of the market data. FIS may use this information and data only to carry out its obligations under this Agreement, including the provision of such information to the Third-Party Providers pursuant to this Agreement or for its own internal purposes in carrying out its obligations hereunder. FIS shall provide Customer with advance written notice of the nature of all such reporting requirements.

(iii) Other than as may apply to royalties, costs, expenses and/or fees, Customer 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 for any representation, warranty or condition, express or implied, with respect to any services offered to the Third Party Users ("Customer's Services"), the data and information provided thereby to the Third Party Users or for any lost revenues, lost profits, loss of business, or any incidental, indirect, consequential, special, or punitive damages relating to the Third Party Users' use of the Customer's Services. Subject to any exception applicable solely to a particular Third Party Provider pursuant to the express terms of a written agreement between that entity and Customer, Customer shall indemnify and defend the Indemnified Group from and against any of the following: any and all claims, liabilities, and obligations (including reasonable lawyer's fees) asserted by any third party, including Third Party Users, against the Indemnified Group and arising out of Customer's or Third Party Users' use of the Solution or the Documentation.

(iv) The fees payable by Customer to FIS in accordance with this Agreement do not include any applicable royalties, costs, expenses and/or fees that may be imposed by the Third-Party Providers for the Third-Party Data and Services provided in accordance with this Agreement. FIS reserves the right to charge for any increases in the pricing to FIS of Third Party Data and Services Providers for the collection and distribution of the Third-Party Data. In the event of an increase in pricing to Customer, FIS shall provide written notice to Customer of the increase in pricing and Customer shall have the option to terminate use of the specific security database that is the subject of the price increase ("Increase Cost Database") by written notice to FIS. If Customer does not elect to terminate its use of the Increase Cost Database prior to the effective date of the cost increase, Customer shall be solely responsible for, and shall pay, all such third-party fees as and when directed by FIS or the Third-Party Providers.

B. All databases made available for Customer's use with the Solution will be made available on an "AS-IS" basis without warranty from FIS. Any warranty from a Third-Party Provider shall be only as set forth with respect to that particular Third-Party Provider pursuant to the express terms of a written agreement between that entity and Customer. FIS makes no representations or warranties as to the accuracy, content or availability of the information contained in any such database made available for Customer's use with the Solution. FIS agrees that in the event it decides to change such database(s) at any time during the term of this Agreement, FIS shall provide thirty (30) days advance written notice to Customer.

9. ADDITIONAL SAAS TERMS.

11.1 Provision of Services. FIS shall provide to Customer remote use of and access to FIS' proprietary applications software identified in this Schedule ("**Solution**") and the APS2 User Guide listed in this Schedule ("**Documentation**").

11.2. Support Services. During the Term, FIS shall provide the ongoing support services to Customer as set forth in this Schedule. Such on-going support services are included in the monthly

fee and therefore are not separately terminable. In consideration of the foregoing, the parties agree that for the purposes of this Schedule, Section 8.4 of the Agreement shall not apply.

11.3 Customer Data. Customer shall supply, or cause to be supplied, into the Solution the data to be processed by the Solution ("**Customer Data**") as described in the Documentation. Customer shall transmit the data to FIS by communications link or in another manner described in this Schedule. Customer shall be responsible for ensuring that any information or data which it introduces into the Solution is accurate and complete. Customer Data shall at all times remain the Customer's sole property. Customer may, once during any twelve (12) month period during the term, or upon termination, of this Schedule, request (in writing or as otherwise mutually agreed by the parties) that FIS provide a complete copy of all Customer Data in a format agreed upon by FIS and Customer. FIS shall use commercially reasonable efforts to fulfill such request within seventy-two (72) hours of receipt of such written request.

11.4 Scope of Use. Customer may use, and permit its Affiliates to use, the Solution and Documentation only in the ordinary course of Customer's and its Affiliates' internal business operations. Customer shall be liable for any breach of the terms of this Agreement by its Affiliates or their respective employees or agents ("**Authorized Users**"). Customer shall use the Solution only in accordance with the Documentation. Access to and use of the Solution and Documentation by Customer shall be limited to the Scope of Use, subject to increase by execution by the parties of an additional Schedule A hereto. Customer may copy the Documentation to the extent reasonably necessary for use of the Solution under this Schedule.

11.5. Security. FIS will implement commercially reasonable administrative, technical and physical safeguards as further detailed in the security annex referenced below to: (i) ensure the security and confidentiality of Customer Data, (ii) protect against any anticipated threats or hazards to the security or integrity of Customer Data, and (iii) protect against unauthorized access to or use of Customer Data. The current version of the FIS Statement on Technical and Organizational Measures for Information Security and Data Protection located at <https://www.fisglobal.com/solutions/legal/fis-information-security> is incorporated herein by reference. Customer assumes responsibility for determining and implementing Customer's own internal technical and procedural security measures with respect to the access and use of the Solution, including protection of passwords and grants of administration rights. FIS may provide assistance to Customer in determining security requirements with respect to Customer's access and use of the Solution, however, Customer acknowledges that FIS has limited ability to control or monitor access to any of Customer's information and FIS shall have no liability hereunder with respect to such Customer security requirements or access granted by Customer to persons with authorized passwords.

11.6. Passwords and Solution Access. Each of Customer's Authorized Users will be provided a unique access code in order to access the Solution (a "**Password**"). Customer agrees to hold the Passwords in strict confidence and will not assign, share, sell, barter, transfer, exchange, misuse or abuse the Passwords in any way or attempt in any way to disable, deactivate or render ineffective the password protection of the Solution. If Customer suspects or learns that a Password is being used to gain unauthorized access to the Solution, Customer will immediately notify FIS at which time FIS will change the Password. 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.

11.7. Data Exclusion. **UNDER NO CIRCUMSTANCES SHALL FIS OR ITS AFFILIATES BE LIABLE FOR TRUTH, ACCURACY, SEQUENCE, TIMELINESS OR COMPLETENESS OF ANY INFORMATION (INCLUDING THIRD PARTY DATA AND SERVICES) PROVIDED BY OR PROCESSED BY THE SOLUTION OR SUCH THIRD PARTY PROVIDERS, FOR ANY INCONVENIENCE CAUSED BY THE LOSS OF THE THIRD PARTY DATA AND SERVICES OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN.**

SPECIFIED CONFIGURATION

Internet Explorer 10.0 or higher

PROFESSIONAL SERVICES

The Professional Services provided under this Schedule include:

Software setup
Software configuration
Data base implementation
Portfolio Validation tables setup
Portfolio data conversion with full history of the Installed portfolio
Reports currently provided to Customer and other reports provided to FIS' customer base generally, as requested by Customer
Training

SAAS SUPPORT

NORMAL SUPPORT HOURS: 8 AM to 6 PM PST (Monday through Friday excluding FIS holidays)

METHOD OF REPORTING ERRORS: FIS Service Desk

SUPPORT TERMS:

1. FIS product specialists shall provide to Customer, during FIS' normal support hours as set forth above ("Normal Support Hours"), assistance regarding Customer's proper and authorized use of Customer's Latest Release (as defined in Section 3.1.1 of the Agreement)
2. FIS product specialists shall provide to Customer, during Normal Support Hours, commercially reasonable efforts in solving failures of the Solution to conform with the Documentation ("Errors") reported by Customer in accordance with this Agreement. Customer 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 Customer shall pay for FIS' investigation and related services at FIS' professional services rates then in effect.
3. FIS' periodic Releases shall be installed such that Customer remains on Customer's Latest Release . The preceding sentence notwithstanding, any Upgrade 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 Upgrades to 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 Customer shall channel all requests for assistance ("Support Requests") through their nominated FIS project team. Following the first day that Customer 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 Customer 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 may be contacted via the on-line incident reporting system located at the following URL - <https://support.sungard.com/avantgard>. FIS shall notify Customer of any change in the foregoing URL. Where such incident logging system is not accessible at the then current URL, then Customer personnel shall notify FIS using the contact details provided by FIS to Customer 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.

“Impact” means a measure of how widespread the Error is based on the percentage of Customer’s users impacted by the Error.

“Urgency” means a measure of the severity of the Error based on its potential effect on Customer’s business and the time period in which such effect is expected to occur.

Priority Levels:

Priority Classification	Definition	Initial Response Target (during Normal Support Hours)	Guideline for Escalation of Unresolved Support Request (during Normal Support Hours)
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 Customer.	1 business hour	2 business hours
B	An Error that materially impacts the performance of the Solution in a negative manner or materially restricts Customer’s use of the Solution.	4 business hours	1 business day
C	An Error that causes only minor impact on Customer’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’ on-line incident logging system (or, if such system is not accessible, at the time otherwise reported to FIS). FIS shall provide an email notification to Customer 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. Customer 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 Customer to escalate issues within its organization, including Customer’s IT department or third-party hardware and software vendors. FIS may request Customer’s escalation plan under such circumstance. During escalation of a Support Request, both FIS and Customer will provide timely progress updates covering their own responsibilities.

10. Where Customer is not able to provide the FIS product specialist(s) with access to the Solution remotely during the investigation process or is not able to provide sufficient information to document or resolve the Error, as is reasonably requested by FIS, Customer acknowledges that a site visit may be required to facilitate a resolution. If Customer approves such a site visit, Customer shall be separately charged fees at FIS’ then current standard professional fee rates for time spent at Customer’s site, as well as any required travel and out of pocket expenses in accordance with the Agreement. If Customer does not approve the site visit, then FIS shall not be liable in relation to the unresolved Error.