

CITY OF COACHELLA
SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

This Software License and Professional Services Agreement (hereinafter referred to as “**Agreement**”) is made by and between the CITY OF COACHELLA, a California municipal corporation (herein “City”), and Paylt, LLC, a Missouri corporation, having a principal place of business at 1100 Main St, Ste 700, Kansas City, MO 64105 (herein “Provider”) on [REDACTED], 2026 (“Effective Date”). City and Provider may be individually referred to as “Party” and collectively as the “Parties”.

RECITALS

- A. City is a public agency of the State of California and desires to procure a certain utility billing and payment software subscription, related technology products, and any related services necessary for City operations (“Software” and “Services”, as defined below).
- B. Region 14 Education Service Center issued Request for Proposals No. 15-21 for Cloud-Based, SaaS Solution for Government Transaction Processing, and Provider submitted a proposal in response thereto
- C. Pursuant to that solicitation, Region 14 Education Service Center entered into a Master Agreement with Provider, referenced as Contract No. 15-21 (“Master Agreement”), and the National Cooperative Purchasing Alliance, now OMNIA Partners, administers purchases under that cooperative contract for eligible public agencies.
- D. The Master Agreement is operative through July 31, 2027.
- E. Public Contract Code section 10298(a) authorizes the cooperative use by public agencies of another public agency’s competitively awarded contract.
- F. Coachella Municipal Code Section 4.08.120(D) authorizes the City to make purchases without complying with the City’s general procurement requirements, when another public agency has conducted a competitive procurement process for the goods or services that the City is looking to purchase.
- G. City desires to procure the Software and Services from the Provider pursuant to the Master Agreement and the City’s cooperative purchasing authority, in accordance with the terms and on the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Use of the Software. Provider shall provide City with access to hosted software and services, which are described in the Provider's Proposal and attached hereto as Exhibit "A" and incorporated herein by reference ("Software"). The specifications, performance and functionality of the Software shall comply in all respects with the requirements set forth in the Provider Proposal and any documentation for the Software ("Functional Requirements"). Provider grants City a limited, non-exclusive, non-transferable subscription right during the term of this Agreement to access and use the hosted Software solely for City's internal operations. No perpetual, fully paid, or ownership license is granted.
2. Services. Provider shall further provide City with implementation, installation, project management, and training services in connection with the implementation of the Software as further described in Exhibit "A" ("Services").
3. Project Schedule. Provider shall provide the Software in a prompt and timely manner. Any delays or changes in implementing the Software shall be subject to the terms of Section 10.
4. Compensation.
 - a. Subject to paragraph 4(b) below, the City shall pay for the Software, including the related Services, in accordance with the schedule of costs set forth in Exhibit "A."
 - b. In no event shall the total amount paid for the Software, including related services, rendered by Provider under this Agreement exceed **a one-time fee of Three Thousand, Five Hundred Dollars (\$3,500) and a monthly fee of Seven Thousand, Five Hundred Dollars (\$7,500)** unless there is a change in the scope of the Services and such change is reflected in the execution of a written amendment pursuant to Section 7 of this Agreement. Payment by City shall be due within 30 days of receipt of an accurate invoice from Provider.
 - c. Payment to Provider shall be considered as full compensation for all personnel, materials, supplies, and equipment used in performing the Services.
 - d. City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to request Provider to correct such work or billings or seek any other legal remedy.
5. Maintenance and Support Services. Following the warranty period for the Software, Provider has agreed to make maintenance and support services for the Software available to City in accordance with the terms of the Provider Proposal, which is attached hereto as Exhibit "A." The Software Support and Maintenance Provisions contain mutually agreed upon pricing for such services, which pricing shall remain in effect for so long as City makes the payments set forth in Exhibit "A."

6. Contract Documents. The following documents shall govern the performance of the Scope of Work and the terms and conditions for the provision of the Software and Services (collectively, the "Contract Documents"):
 - a. This Agreement;
 - b. Provider Proposal (Exhibit "A");
 - c. City Insurance Requirements (Exhibit "B");
 - d. Payment Processing Terms and Conditions (Exhibit "C")

In the event of any conflict between the terms and conditions of the Contract Documents, the Contract Documents shall govern in accordance with the foregoing order of priority with this Agreement acting as the primary agreement.

7. Additional Work. If changes in the Project and the Contract Documents seem merited by Provider or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Provider with a statement of the estimated changes in the Provider Proposal. An amendment to the Agreement shall be prepared by the City and executed by both parties before any change becomes binding upon City. Provider acknowledges that any material amendment to the Contract Documents, particularly with respect to the schedule of charges in the Provider Proposal, may be subject to approval by the City Council. Such amendment shall not render ineffective or invalidate unaffected portions of the Contract Documents.
8. Maintenance of Records. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Provider and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement for inspection by the City; provided that Provider source code, security procedures, vulnerability information, trade secrets, confidential technical information, or information of other Provider customers shall not be included or made available.
9. Notice to Proceed. The obligations of Provider to commence performance shall be triggered by Provider's receipt of notice from the City to proceed. Thereafter, Provider shall proceed in accordance with the Project Schedule. The Notice to Proceed shall set forth the date of commencement of the Project Schedule.
10. Delays in Performance.
 - a. Neither the City nor Provider shall be considered in default of the Contract Documents for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to: abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor

disturbances; sabotage or judicial restraint; or other such events not foreseeably occasioned by the fault or negligence of the delayed party.

- b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance under the Contract Documents. It is not intended by the parties that any such delay shall extend for a period in excess of sixty (60) days.

11. Confidentiality. Each Party may receive Confidential Information of the other Party in connection with this Agreement. "Confidential Information" means nonpublic information or documentation disclosed by a Party that is marked confidential or that should reasonably be understood to be confidential, including business, technical, security, financial, product, customer, and data information. Confidential Information does not include information that the receiving Party can demonstrate was already known without confidentiality obligation, independently developed without use of the disclosing Party's Confidential Information, obtained from a source without confidentiality obligation, or publicly available through no breach by the receiving Party. Each Party shall hold the other Party's Confidential Information in strict confidence, use at least reasonable care to protect it, use it only to perform or exercise rights under this Agreement, and disclose it only to employees, agents, subcontractors, professional advisors, or representatives who have a need to know and are bound by confidentiality obligations. If disclosure is legally compelled, the receiving Party shall provide prompt notice to the disclosing Party, unless prohibited by law, so the disclosing Party may seek protective treatment. Upon termination or written request, the receiving Party shall return or destroy Confidential Information, except for archival or legal compliance copies maintained subject to this Section. Provider shall maintain commercially reasonable administrative, physical, and technical safeguards designed to protect City data and shall comply with PCI requirements to the extent applicable to the Services. City is responsible for its users, credentials, systems, and third-party integrations. This Section applies equally to Provider and City and is subject to the California Public Records Act and other applicable disclosure laws. Provider's or City's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement, for which City or Provider may terminate the Agreement. Provider agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

12. Compliance with Law.

- a. In carrying out its obligations under the Contract Documents, Provider shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including but not limited to Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

- b. If required, Provider shall assist the City, as requested, in obtaining and maintaining all permits required of Provider by federal, state and local regulatory agencies.
- c. Provider is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is one thousand dollars (\$1,000) or more, Provider agrees to fully comply with such Prevailing Wage Laws. Provider shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Provider and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code Section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- d. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Provider and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Provider shall maintain registration for the duration of the Agreement and require the same of any subconsultants, as applicable. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Provider’s sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.
- e. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Provider’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Provider or any subconsultant that affect Provider’s performance of Services, including any delay, shall be Provider’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Provider caused delay and shall not be compensable by the City. Provider shall defend, indemnify and hold the City, its officials,

officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Provider or any subconsultant.

13. Warranty

- a. Software Warranty. Provider warrants that during the term of this Agreement the Software will materially conform to the applicable Documentation and Exhibit "A" when used in accordance with this Agreement. Provider's sole obligation and City's exclusive remedy for breach of this warranty is for Provider to use commercially reasonable efforts to correct the nonconformity or provide a reasonable work around.
- b. Exclusions. The foregoing warranties do not apply to nonconformities caused by third-party systems or integrations not provided by Provider, misuse, unauthorized use, unsupported environments, or failure to use the Software in accordance with Provider-issued documentation or Provider's reasonable instructions.
- b. Malware. Provider warrants that the Software shall not contain any lock, counter, CPU reference, virus, worm, or other malware or device capable of halting operations or erasing or altering data or programs. Provider further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the Software (or any hardware) or Services.
- c. Service Warranty. Provider warrants that all Services provided under this Agreement will be performed in a professional, competent and workmanlike manner in accordance with the requirements of the Project Schedule. City shall notify Provider in writing of any breach of this warranty no later than ninety (90) days following Go-Live. Provider shall further provide a sufficient number of properly trained and competent staff to carry out the Services in a skilled and professional manner consistent with the best practices in the software industry and in compliance with the Project Schedule.
- d. Remedies. Provider covenants that it will make commercially reasonable corrections of program malfunctions or errors which are reported in writing to Provider during the Warranty Period and which are necessary for the Software to conform to the warranties set forth in Section 13 of this Agreement. City agrees to allow Provider the opportunity to make repeated efforts within a thirty (30) day time period to correct programming errors or malfunctions as warranted in this Agreement. Provider agrees that program malfunctions that result in an inoperable system resulting in a financial impact to the City, or inefficient work-around, will be given its highest priority with the problem corrected as soon as practicably possible, consistent with a high priority item under the Software Support and Maintenance Provisions, using its most

experienced and knowledgeable resources. Provider will strive to have any and all malfunctions resolved within no more than five calendar days.

14. Acceptance Testing; Final Acceptance. All Software and Services shall be subject to acceptance testing by City to verify, to its reasonable satisfaction, that each deliverable conforms to the requirements of a particular phase or milestone as set forth in the Exhibit "A" hereto or with respect to the Software, that it conforms to the Functional Requirements in all material respects and does not contain errors. City and Provider will agree on a reasonable testing methodology for the Software. Acceptance testing will not begin for any deliverable until sufficient data, as mutually agreed by City and Provider, has been converted and loaded into the Software or component thereof to enable City to test the functionality of the Software or any component thereof in a test environment that approximates a live production environment. If City determines that any Software deliverable or Services do not conform with the foregoing requirements, City shall promptly deliver to Provider a notice of non-conformity, and Provider shall work diligently to correct all nonconformities free of charge to City by issuing one or more error corrections or re-performing the defective Services. Each error correction shall be subject to additional acceptance testing by City. Notwithstanding the acceptance of any deliverable by City, such deliverable shall remain subject to the warranty obligations of Provider for the entire Warranty Period. "Final Acceptance" shall occur ninety (90) days after Go-Live provided that the Software is operating properly in accordance with all of the Functional Requirements and there are no material warranty issues that adversely impact the ability of City to operate the Software.
15. Assignment and Subcontractors. Provider shall not subcontract, assign or transfer this Agreement or any rights under or interest in the Contract Documents without the written consent of the City, which may be withheld for any reason at the sole discretion of the City. Nothing contained herein shall prevent Provider from employing independent contractors, as well as employees, to provide Services as Provider may deem appropriate, provided, however, that Provider shall remain fully responsible for such independent contractors.
16. Independent Contractor.
 - a. Provider enters into this Agreement as an independent contractor and not as an employee of the City. The Provider shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Provider are employees, agents, contractors or subcontractors of the Provider and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Provider by any such employees, agents, contractors subcontractors, or any other person resulting from performance of this Agreement.
 - b. Provider agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials

needed, and that its decision to execute this Agreement is based on such independent investigation and research.

17. Integration. The Contract Documents represent the entire understanding of the City and Provider as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.
18. Title to Software. Provider represents and warrants that it is the sole owner of the Software or, if not the owner, that it has received all legally required authorizations from the owner to license the Software as contemplated herein, has the full power to grant the rights required by this Agreement, and that neither the Software, nor its use in accordance with the Contract Documents, will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or City.
19. Ownership; Intellectual Property. Provider and its licensors retain all right, title, and interest in and to the Software, hosted platform, Documentation, updates, improvements, derivative works, configurations, know-how, and all related intellectual property. City receives only the limited subscription access rights expressly granted in Section 1. City owns its Customer Data. City shall not, and shall not permit its users or any third party to, reverse engineer, decompile, disassemble, copy, modify, create derivative works of, resell, sublicense, host, lease, time-share, publicly benchmark, or otherwise exploit the Software except as expressly permitted by this Agreement. To the extent City provides suggestions, comments, ideas, or other feedback relating to the Software or Services, Provider may use such feedback without restriction or obligation, provided Provider does not identify City as the source without City's consent.
20. Infringement and Performance Breach Remedies. If it is claimed that any work furnished by Provider, whether first developed by Provider for the City or not, infringes any intellectual property right or is otherwise unlawful, Provider agrees to defend or settle any such claim or suit at Provider's expense and to indemnify and hold the City harmless from any losses, damages or harm, including attorney's fees and legal expenses, incurred as a result of such claim. Without the City's prior written approval, Provider shall not accept any liability on the City's behalf for the infringement, nor shall Provider reach a settlement that from the City perspective impairs the value or usefulness of the work that is the subject of the infringement claim. Provider will also pay all damages and costs that by final judgment, settlement or other resolution are assessed against the City due to such alleged or proven infringement and reimburse the City for any direct damages suffered by the City as a result of the infringement claim, including but not limited to attorney's fees. Should Provider find, or be found, to have infringed on any intellectual property rights, Provider will procure; (i) a right for the City to continue using the applicable Software or Work Product, (ii) a solution to mitigate the infringement, or (iii) a product to replace the infringing product that provides the functionality and complies with the specifications contained in the Contract

Documents. The City shall not incur any additional costs related to the aforementioned remedies.

21. Termination

- a. Termination for Default. Subject to the right to cure contained in Section 20.b., the City may terminate this Agreement in whole or in part, at any time that the City determines that Provider is in material default of its obligations under the Contract Documents. Termination for default is effective on the date specified in the City's written notice of default. Should Provider fail to cure a default, then in addition to any other remedies provided by law or the Contract Documents, Provider shall compensate the City's actual costs to obtain substitute performance. A termination for default shall be deemed a termination for convenience if the termination for default is later found to be without justification.
- b. Cure. Provider shall have a period of thirty (30) days following a written notice of default to either cure such default or if such default cannot be cured within such period, to provide evidence satisfactory to City, in its sole discretion, that Provider is taking action to cure such default.
- c. Termination for Convenience. This Agreement may be terminated by the City, in whole or in part, upon ninety (90) days written notice to Provider, when the City determines this to be in its best interest. The termination for convenience is effective on the date specified in the City's written notice. Termination for convenience may entitle Provider to payment for reasonable costs allocable to the Contract Documents for work or costs incurred by Provider up to the date of termination. Provider shall not be paid compensation as a result of a termination for convenience that exceeds the amount payable under the schedule of charges in Exhibit "A."
- d. Termination for Non-Appropriation. City's payment obligation under this Agreement extends only to funds appropriated annually by City's governing body for the purpose of this Agreement. For each succeeding fiscal period covered by this Agreement, City's applicable department responsible for this Agreement agrees to include in its budget request appropriations sufficient to cover the annual financial obligations under this Agreement. However, City's governing body has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. If City is appropriated insufficient funds to continue annual payments under this Agreement, City may terminate this Agreement effective upon the last day of the fiscal year for which funds were appropriated. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to the effective termination date. Provider's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This Section controls against any and all other provisions of the Agreement.
- e. Effect of Termination on Software Access. Upon expiration or termination of this Agreement for any reason, City's right to access and use the Software shall

cease, and City shall discontinue use of the Software. Upon City's written request, Provider will return or make available Customer Data in accordance with Exhibit "A" or Provider's then-current data return policies. Provider retains all ownership of the Software, hosted platform, Documentation, updates, improvements, and related intellectual property.

22. Indemnification. Provider shall indemnify, defend (with counsel approved by City), and hold harmless the City, its officers, officials, agents, and employees (collectively, the "Indemnitees") from and against third-party claims, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, to the extent arising from: (a) bodily injury, death, or tangible property damage caused by Provider's negligence or willful misconduct; (b) Provider's breach of its confidentiality or data security obligations resulting in unauthorized disclosure of City's Confidential Information or Customer Data; (c) Provider's gross negligence or willful misconduct; or (d) the IP infringement claims described in Section 19 (all of the foregoing collectively "Claims"), including without limitation court costs and reasonable attorneys' fees, which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, Provider's performance of services pursuant to this Agreement, including Claims arising on account of injury to or death of persons or damage to property. City does not and shall not waive any rights against Provider which City may have pursuant to this Section because of Provider's provision of insurance policies required by this Agreement. Provider's obligations to defend and indemnify the City shall survive the expiration or termination of this Agreement. Provider shall not be required to indemnify City for Claims arising from the sole negligence or willful misconduct of the Indemnitees.

23. Conflicts of Interest.

- a. Provider covenants that neither it, nor any of its employees, agents, contractors, or subcontractors has any present interest, nor shall they acquire any interest, direct or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of its Services hereunder.
- b. Provider shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City's Contract Administrator determines in writing that Provider's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Provider also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this Agreement, City determines and notifies Provider in writing that Provider's duties under this Agreement warrant greater disclosure by Provider than was originally contemplated. Provider shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.

24. Liability of Contractor. Provider shall be responsible for performing the services under this Agreement in a manner which is consistent with the generally-accepted standards of the Provider's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be

done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Provider or its employees, agents, contractors or subcontractors.

25. Insurance.

- a. Provider will comply with the "Insurance Requirements" of City which are attached hereto as Exhibit "B" and included as a part of this Agreement.
- b. No limitation on liability contained in the Contract Documents shall apply to any third party claim for personal injury or wrongful death arising from the negligent acts or willful misconduct of either party, its agents or assigns. Furthermore, no limitation on liability applicable to Provider shall apply to any third party claim that the Software infringes upon the intellectual property rights of another party, nor to the obligation of Provider to deliver the Software and Services in accordance with the Scope of Work and Provider's warranty obligations.

26. Laws, Venue, and Attorneys' Fees. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in a state or federal court situated in the County of Riverside, State of California.

27. Documents. Provider shall deliver to City no less than one (1) full set of applicable documentation, manuals, and training materials for the Software. City shall have the right to copy such documents and materials for its own internal use of the Software.

28. Project Manager. Provider shall assign a qualified Implementation Manager. Provider may replace personnel, including the Project Manager, with comparably qualified personnel upon notice to City.

29. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered in person or sent via commercial overnight delivery or by certified mail, addressed to each party at the address set forth below or such other address for which a party has given notice in accordance with this section. Notice will be effective upon receipt, or within five (5) days of delivery.

City:

City of Coachella
53990 Enterprise Way
Coachella, CA 9223
Attn: Lincoln Bogard, Finance
Director

Provider:

PayIt, LLC
1100 Main Street, Ste 700
Kansas City, Missouri 64105
Attn: Contracts Department

30. City Not Obligated to Third Parties. City shall not be obligated or liable for payment hereunder to any party other than the Provider.

31. Non-Discrimination. Provider shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.
32. Prohibited Interests. Provider maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Provider, to solicit or secure this Agreement. Further, Provider warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Provider, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
33. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.
34. Counterparts. This Agreement and any exhibits, amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Agreement or any amendment or renewal. A signature by any party to this Agreement provided by facsimile or electronic mail is binding upon that party as if it were the original.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF COACHELLA

By: _____
Hannah Shin-Heydorn
City Manager

PAYIT, LLC

By: _____
Its: _____
Printed Name: _____

ATTEST:

By: _____
Patricia Vazquez
City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

**EXHIBIT A
SOFTWARE SERVICES**

[Exhibit begins on following page.]

EXHIBIT B INSURANCE REQUIREMENTS

1. Insurance. Provider shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Provider shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Additional Insured

The City of Coachella, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Provider's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

b. Commercial General Liability

(i) The Provider shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

Insurance Services Office Commercial General Liability
coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX)
exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its elected and appointed officials, officers, employees, agents, and City-designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements

providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

c. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Provider shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its elected and appointed officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

d. Workers' Compensation/Employer's Liability

(i) Provider certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Provider has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Provider shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Provider shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

e. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Provider shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Provider. "Covered Professional Services" as designated in the policy must

specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer's duty to defend.

f. Privacy/Network Security (Cyber)

At all times during the performance of the work under this Agreement, the Provider shall maintain privacy/network security insurance for: (1) privacy breaches, (2) system breaches, (3) denial or loss of service, and the (4) introduction, implantation or spread of malicious software code, in a form and with insurance companies acceptable to the City.

g. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$2,000,000 per occurrence/\$4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)
Cyber Liability	\$1,000,000 per occurrence and aggregate

(ii) Defense costs shall be handled in accordance with the applicable policy terms and shall not expand Provider's liability beyond this Agreement.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

h. Evidence Required

Prior to execution of the Agreement, the Provider shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified

representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

i. Policy Provisions Required

(i) Provider shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Provider shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of the premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Provider shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Provider's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the Effective Date of this Agreement. Provider shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Provider shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the Effective Date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Provider or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Provider hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Provider from liability in excess of such coverage, nor shall it limit the Provider's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

j. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VIII and admitted to

transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

k. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Provider, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Provider pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Provider or City will withhold amounts sufficient to pay premium from Provider payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Provider to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

l. Subconsultant Insurance Requirements. Provider shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Provider, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

EXHIBIT C

PAYMENT PROCESSING TERMS AND CONDITIONS

This Payment Processing Terms and Conditions Exhibit (the "Payment Terms") is entered into, to be effective upon execution ("Effective Date"), by and between **City of Coachella, CA** ("City" or "Subscriber"), and Paylt, LLC located at 1100 Main Street, Suite 700, Kansas City, MO 64105 ("Service Provider" or "Paylt") in connection with the agreement between the City and Service Provider executed on **[DD, Month, YEAR]**.

Recitals

WHEREAS, Subscriber requires third-party hosted "software as a service" with respect to a transaction processing platform;

WHEREAS, Subscriber has selected Service Provider to provide and manage the Services;

WHEREAS, the Services include Service Provider providing to City services that facilitate City's acceptance of card payments, e-check, and/or ACH payments for goods and services provided, and Service Provider as an agent for City, may accept settlement payments from the Acquirer on behalf of City;

WHEREAS, Service Provider is party to an agreement with an Acquirer and a Bank under which Acquirer and Bank provide payment processing and Association sponsorship services to Service Provider on behalf of City and other sub-merchants of Service Provider;

WHEREAS, as a condition of providing services to Service Provider on behalf of City, Acquirer, and Bank require that Service Provider include certain terms and conditions in these Payment Terms relating to the payment processing services being provided to City;

WHEREAS, Service Provider wishes to perform the Services; and,

WHEREAS, Service Provider has agreed to provide the Services to Subscriber, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in these Payment Terms, the parties hereby agree as follows:

1. Payment Processing Services.

1. **Capacity of Service Provider and City.** On and subject to the terms and conditions hereof, Service Provider is: (i) acting in the capacity of a "Payment Service Provider" (under the Visa Rules) and a "Payment Facilitator" (under the MasterCard Rules) and will provide City card processing services as a Sub-Merchant as described herein; and (ii) will provide City with additional services as agreed by the Parties. Service Provider provides processing services with respect to credit card transactions including Visa U.S.A., Inc. ("Visa"), MasterCard Worldwide ("MasterCard"), DFS Services LLC ("Discover Network"), American Express, PayPal, JCB, Discover, Diners Club ("Associations"), as well as e-check and ACH transactions.
2. **Acceptance of Cards.** The parties agree they will honor a card by accepting it for payment. The parties will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular card type elected and approved by Service Provider, in favor of any competing card brand also elected and

approved. Both parties understand and agree that they are expressly prohibited from presenting sales transactions for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities. For all Cards issued by U.S. Issuers, the parties will honor all cards within the card types elected and approved in accordance with these Payment Terms.

3. City Obligations and Requirements. The City shall comply with the Associations' operating rules ("Operating Rules"), including the Operating Rules applicable to the Visa PSP and MasterCard Payment Facilitator programs and all applicable local, state, and federal laws, rules, and regulations ("Applicable Laws"). The Associations make excerpts of their Operating Rules available online.

Each applicable Association's complete Operating Regulations are incorporated by reference into these Payment Terms and will control with respect to any conflict in terms between these Payment Terms and such Operating Regulation. The City will not discriminate against Cards or Issuers (e.g., limited acceptance options) except in full compliance with the Operating Regulations, and will comply with all Operating Regulations, applicable laws, and regulations related to its business operations, PCI DSS obligations, the use of an Association's marks, and each transaction acquired hereunder. Sub-merchant expressly agrees that it will accept Cards and protect, utilize, or restrict transaction data, including the magnetic stripe and CVV2, in accordance with the terms of these Payment Terms, applicable law or regulation, and the Operating Regulations, and will cooperate with any audit requested by an Association until such audit is completed.

In addition to complying with each Association's obligations or prohibitions related to acceptance, disbursement, or resubmission of a transaction, City may not submit any illegal, fraudulent, or unauthorized transaction and shall only submit transactions for the sale of its own goods or services, and not any other person or company, and may not receive payment on behalf of or, unless authorized by law, redirect payments to any other party. City covenants that it is not a third-party beneficiary under any agreement with an Association, however, an Association may be a third-party beneficiary of these Payment Terms, and shall have the rights, but not any obligation, necessary to fully enforce the terms of these Payment Terms against the City.

Without limiting the foregoing, City agrees that it will fully comply, with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Associations, including but not limited to Payment Card Industry Data Security Standard ("PCI"), the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. In the event of any inconsistency between any provisions hereof and the Operating Rules, the Operating Rules will govern to the fullest extent possible under Applicable Laws.

City authorizes Paylt to conduct checks of City's background, credit, or banking information, as necessary, and agrees that all information obtained under these Payment Terms may be shared with an Association. City acknowledges and agrees that it is responsible for its employees' actions, it will notify Paylt of any 3rd party that will have access to cardholder data, and it will immediately report all instances of a data breach to Paylt immediately after it reasonably identifies an incident.

4. Processing Locations. On an ongoing basis and as applicable, City must promptly provide Service Provider with the current address of each location, all “doing business as” (DBA) names used by City, and a complete description of goods sold and services provided by City.

5. Identity of City to Cardholders. To the extent City interacts with a Cardholder, City will prominently and unequivocally inform the Cardholder of the identity of the City at all points of interaction so that the Cardholder readily can distinguish the City from the Service Provider or any other party, such as another supplier of products or services to City. Further, City must ensure that the Cardholder understands who is responsible for the card transaction, including delivery of the products (whether physical or digital) or provision of the services that are the subject of the card transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the card transaction.

6. Third Parties. Service Provider and City may use one or more third party service providers (“TPSP’s”) in connection with the Services and/or the processing of some or all of its Card transactions. In no event shall City use a TPSP unless such TPSP is compliant with PCI and/or the Payment Application Data Security Standard (“PA-DSS”), depending on the type of TPSP, as required by the Operating Rules. City acknowledges and agrees that City shall cause its TPSP to complete any steps or certifications required by any Association (e.g., registrations, PA-DSS, PCI, audits, etc.). City shall cause its TPSP to cooperate with Acquirer in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such TPSP. City shall be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations and certifications. City expressly agrees that neither Acquirer, Bank, or Service Provider shall in any event be liable to City or any third party for any actions or inactions of any TPSP used by City.

7. Auditing. Service Provider may audit from time to time City’s compliance with the terms of these Payment Terms. City shall provide all reasonable information requested by PayIt necessary to complete the audit. City shall assist Service Provider in any and all investigations of Transactions in a timely manner and will provide written reports of investigated transactions to Service Provider upon request. City authorizes Service Provider to make on-site visits to any and all of the City’s locations with regard to all information necessary or pertinent to the Services.

2. Term.

1. **Term:** These Payment Terms are legally binding as of the Effective Date and shall continue until terminated in accordance with the terms of the Master Agreement. These Payment Terms shall automatically terminate upon the termination or expiration of the Master Agreement, subject to the notice and termination provisions set forth therein.