CONTRACT NAME: AGREEMENT BETWEEN HEARTLAND, INC. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: MySchoolBucks, a division of Heartland, Inc., will continue to be used by School Nutrition Services to provide an easy-to-use robust plan for accepting in-person and online payments for meal plans. MySchoolBucks boasts security and high-industry standards and is a full-featured management and administration portal that provides control and visibility.

The fiscal impact of this software is $6,000 and will be paid from Fund 13. No additional funding is being requested.

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DAVIS JOINT UNIFIED SCHOOL DISTRICT

AMENDMENT TO HEARTLAND PAYMENT SYSTEMS, LLC. MYSCHOOLBUCKS AGREEMENT INVOLVING PUPIL RECORDS

EDUCATION CODE SECTION 49073.1 AMENDMENT TO THE HEARTLAND MYSCHOOLBUCKS AGREEMENT BETWEEN THE DAVIS JOINT UNIFIED SCHOOL DISTRICT AND Heartland Payment Systems, LLC.

THIS AMENDMENT ("Amendment") to the Heartland Payment Systems, LLC.

MySchoolBucks Agreement by and between the Davis Joint Unified School District, a public school district of the State of California and Heartland Payment Systems, LLC.,

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a corporation, dated [insert effective date of MySchoolBucks Agreement] ("Agreement") (a true and correct copy of which is attached hereto as Exhibit "A" and is hereby made and entered into as of [insert date], 2017 as follows:

WHEREAS, Vendor provides a payment technology service that delivers innovative solutions to meet customer needs. They provide a broad range of products and services that allow customers to accept all payment types across a variety of distribution channels.

WHEREAS, as a California public school district, the District is subject to the California Education Code;

WHEREAS, Vendor is a "third party" under Education Code section 49073.1, which defines "third party" as a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records;

WHEREAS, Education Code section 49073.1 requests that any contract for the provision of services entered into between District and Vendor contain certain provisions specified in sections (b)(1) through (b)(9) of Education Code section 49073.1; and

WHEREAS, The District and Vendor desire to amend the terms in their Agreement that will satisfy the requirements of Education Code section 49073.1.

NOW, THEREFORE, DISTRICT AND VENDOR AGREE TO THE FOLLOWING TERMS IN COMPLIANCE WITH EDUCATION CODE SECTION 49073.1.

     1.   <u>Ownership and Control of Pupil Records</u>. Pupil Records shall continue to be the property of and under the control of the District in accordance with California Education Code section 49073.1. For purposes of this contract, "Pupil Records" means both any information directly related to a pupil that is maintained by the District and information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee. For purposes of this Agreement, "Deidentified Information" means information that cannot be used to identify an individual pupil. For purposes of this Agreement, "Pupil Records" does not include Deidentified Information, including aggregated Deidentified Information, used by Vendor to improve

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educational products for adaptive learning purposes and for customizing pupil learning; to demonstrate the effectiveness of Vendor's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

2. **Ownership and Control of Pupil-Generated Content**. Pupils may retain possession and control of their own Pupil-Generated Content, as defined herein, or may transfer Pupil-Generated Content to a personal account by notifying the District's Director of Technology in writing of such request. The District will provide a written request to Vendor and Vendor shall return the Pupil-Generated Content in a format acceptable to the District within five (5) days of receiving the District's request. For purposes of this contract, "Pupil Generated Content" includes essays, research reports, portfolios, creative writing, music or other audio files, photographs, but does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

3. **Use of Pupil Records**. Vendor shall not use any information in the Pupil Records for any purpose other than those required or specifically permitted by this Agreement.

4. **Review of Pupil Records**. A parent, legal guardian, or pupil who has reached the age of eighteen (18) may review personally identifiable information in the pupil's records and correct erroneous information by notifying the District's Director of Technology in writing of such request. The District will meet with parent, legal guardian, or pupil who has reached the age of eighteen (18) to review and correct any information in the Pupil's Records. The District will notify Vendor of the need to review Pupil Records and/or make corrections to any Pupil Records in writing. Vendor shall provide such Pupil Records and/or correct such errors within five (5) days of receipt of written notice. Vendor shall cooperate with the District in complying with this mandate.

5. **Security and Confidentiality of Pupil Records**. Vendor agrees to hold Pupil Records in strict confidence. Vendor shall not use or disclose Pupil Records received from or on behalf of District except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by District. Vendor agrees that it will protect the Pupil Records it receives from or on behalf of District according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Vendor will designate and train responsible individuals, to ensure the security and confidentiality of Pupil Records. Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Pupil Records received from or on behalf of District, as set forth in this contract. These measures shall be extended by contract to all subcontractors used by Vendor. If District reasonably determines in good faith that Vendor has materially breached any of its obligations under this Section, District may, in its sole discretion, terminate the Agreement immediately if cure is not possible. District shall provide written notice to Vendor describing the violation, the action it intends to take and the timeframe for such action.

6. **Breach Notification Process.** Vendor, within one (1) business day of discovery, shall report to District any use or disclosure of Pupil Records not authorized by the Agreement or otherwise authorized in writing by the District. Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the Pupil Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, requested by District. In the event of an unauthorized disclosure of a Pupil's Records,

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affected parents, legal guardians, or pupils who have reached the age of eighteen (18) will be notified in writing and provided with details and next steps to address the specific breach. Compliance with these requirements shall not, in itself, absolve Vendor of liability in the event of an unauthorized disclosure of Pupil Records.

7. **Retention and Destruction of Pupil Records**. Vendor certifies that a pupil's records shall not be retained or available to Vendor upon completion of the term of the contract. Upon termination, cancellation, expiration or other conclusion of the contract, and upon District's request, Vendor shall destroy any and all Pupil Records. Vendor shall not destroy any Pupil Records without express written permission of District. Vendor shall comply with any litigation hold or order to preserve Pupil Records.

8. **Compliance with Applicable Laws**. The District and Vendor will jointly ensure compliance with the federal Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. Sec. 1232g) through following the confidentiality provisions as set forth in this contract, as well as applicable District Board policies. The parties acknowledge and agree that the District is subject to federal and local laws relating to the protection of personally identifiable information ("PII") of students, including FERPA, and that Vendor is obtaining such PII as a "school official" under section 99.31 of FERPA for the purpose of providing the services hereunder. In addition to FERPA, Vendor shall comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Vendor; the services being provided by Vendor; Vendor's business, equipment and personnel engaged in operations covered by this contract; and the protection of Pupil Records and PII, including but not limited to Education Code section 49060 *et seq.*, the Children's Online Privacy Protection Act (COPPA) and the Student Online Personal Information Protection Act (SOPIPA). Vendor certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of Pupil Records and Vendor will comply with all such requirements.

9. **Prohibition on Targeted Advertising**. Vendor shall not use PII in Pupil Records to engage in targeted advertising.

10. **Governing Law and Venue**. The Agreement and this Amendment shall be governed by and construed in accordance with the laws of the State of California. Any dispute, claims, demands or actions arising out of or in relation to the Agreement and this Amendment shall be brought in and resolved by the Superior Court of the County of Yolo.

11. **Effect of Amendment**. If any provisions of this Amendment to the Agreement conflict or are otherwise contrary to the original terms of the Agreement, the terms of this Amendment prevail.

Except as specifically modified herein, all other terms and conditions contained in the Agreement between the District and Vendor shall remain unchanged and in full force and effect.

Dated this 3 day of April, 2017.

Davis Joint Unified School District   **Heartland Payment Systems, LLC.**

By: _____   By: _____

Title: _____   Title: _____

Date: _____   Date: _____

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MySchoolBucks Agreement
between
Heartland Payment Systems, LLC.
and
Davis Joint Unified School District

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THIS MySchoolBucks Agreement ("the Agreement") is made as of the date of the last signature below (the "Effective Date"), by and between Heartland Payment Systems, LLC (d/b/a Heartland School Solutions). ("HPS"), a Delaware corporation, with its principal place of business at 10 Glenlake Parkway North East, North Tower, Atlanta, GA 30328-3473 and
Davis Joint Unified School District
with its principal place of business at
526 B Street, Davis, CA 95616
("School"). HPS and School are collectively from time to time referred to herein as the "Parties" with each being individually referred to as a "Party."

1. DEFINITIONS

1.1 **"Affiliate"** means a company owned and/or controlled by HPS.

1.2 **"HPS Data"** means all HPS-created information, files, content, figures, images, text, files or other data provided by HPS to School in connection with School's or its Users' use of the Services.

1.3 **"Personal Identifiable Information"** means (i) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Included is all information as defined in §99.3 of the Family Educational Rights and Privacy Act (FERPA).

1.4 **"School Data"** means all information, files, content, figures, images, text, files or other data, including data concerning school lunch purchases, as well as student Personal Identifiable Information, provided by the School to HPS in connection with the Services.

1.5 **"Services"** mean the websites, mobile applications, or online services owned or operated by HPS and its Affiliates which provide a means for making payments to a child's school account or accounts or to the School for fees, purchases, etc. by using a credit/debit card or an electronic check. The application and use of funds, including prepayments, to and within a child's school account is governed exclusively by the School, and HPS is not responsible for the School's handling of prepayments after the School receives the funds from the Service. In addition, HPS will provide those services to School found in Schedule 1 hereto.

1.6 **"Student-generated content"** means any student materials created by a student including, but not limited to, essays, research papers, portfolios, creative writing, music or other audio files

or photographs, none of which shall be required, accepted or stored by HPS in providing the Services under this Agreement.

1.7 **"User"** means any person who uses MySchoolBucks to make a payment or receive information via the Services. Also included as Users are customer support, parents, school administrators, and any others who are authorized to access an account.

1.8 **"Work Product"** means any programs, interfaces, configurations developed by HPS in the performance of Services.

2. SERVICES

2.1 **Services.** HPS will provide a means for a User to make payments to a child's school account or accounts or to the School for fees, purchases, etc. by using a credit/debit card or an electronic check, provided that the School has payment processing services available. In addition, HPS will provide those services to School found in Schedule 1 hereto. Use of prepayments to a child's school account is governed exclusively by the School, and HPS is not responsible for the School's handling of prepayments after the School receives the funds from the Service.

3. FEES; PAYMENT TERMS

3.1 **Fees.** All fees to be paid to HPS are set forth in the Merchant Application, hereto attached.

3.2 **Taxes.** School shall be solely and exclusively responsible for the payment of required federal, state and local taxes arising from or relating to the Services, except for taxes related to the net income of HPS and any taxes or obligations imposed upon HPS under federal, state and local wage laws.

4. TERM

4.1 **Term.** This Agreement shall become effective upon acceptance of the first deposit to the School's account or accounts by HPS and shall continue in effect for the term of the attached Merchant Application.

4.2 **Termination.** This Agreement will terminate upon the termination of the attached Merchant Application.

5. DATA OWNERSHIP; USE OF DATA

5.1 **School Data.** School retains ownership and control of all right, title and interest in and to all School Data3.

5.2 **HPS Data**. HPS retains ownership of all right, title and interest in and to all HPS Data.

5.3 **Use of Data.** HPS will use School Data only for the purposes of this Agreement.

5.4 **Work Product**. HPS retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all Work Product compiled or developed by HPS in the performance of this Agreement.

6. SECURITY OF PERSONAL IDENTIFIABLE INFORMATION

6.1 HPS agrees that any and all Personal Identifiable Information will be stored and maintained in a secure location and solely on designated servers. No Personal Identifiable Information, at any time, will be processed on or transferred to any portable computing device or any portable storage medium, unless the data is encrypted at rest or that storage medium is in use as part of the HPS' designated support, backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the Service shall be contained within the United States unless an alternate location is specifically agreed to, in writing, by the School. Notwithstanding the foregoing, a User of the application, may retrieve Personal Identifiable Information associated with the account, from portable and non-portable devices alike. Personal Identifiable Information, collected from the Services' Users, whether via letter, voice, fax, email, chat, SMS, social media, mobile application, or browser, will be handled in accordance with MySchoolBucks Terms of Use and Privacy Policy.

6.2 HPS maintains reasonable administrative, technical and physical safeguards to protect the confidentiality of information transmitted online, including but not limited to encryption, firewalls, Secure Sockets Layer (SSL). HPS has implemented policies and practices pursuant to various security rules and regulations relating to the security and safeguarding of payment data, including the Payment Card Industry Data Security Standards (PCI-DSS). However, no precautions, means, or method of transmission which uses the internet or method of storage is absolutely 100% secure.

6.3 When sharing Personal Identifiable Information with its Affiliates, HPS will require those Affiliates to comply with this Agreement.

6.4 All of HPS' personnel are trained on information security. HPS' information security policy requires that all personnel who come into contact with School Data receive training on the proper techniques for handling such data. Such training is required on at least an annual basis.

6.5 Users may supply data, including confidential data, to utilize the Services. The MySchoolBucks Terms of Use and Privacy Policy govern the sharing of data supplied by MySchoolBucks Users.

7. CONFIDENTIALITY

7.1 **Confidentiality**. HPS agrees that any and all data obtained from the School shall be used expressly and solely for the purposes enumerated in this Agreement. School Data shall not be distributed, used, or shared for any other purpose HPS shall not sell, transfer, share or process any School Data for any purposes other than those under this Agreement, including commercial advertising, marketing, or any other commercial purpose. Notwithstanding the foregoing, HPS may, in its sole discretion, advertise the availability of MySchoolBucks to promote its use to make payments and to provide the services listed in Schedule 1 for the School.

7.2 HPS, in cooperation with the School, shall ensure compliance with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time.

7.3 **Disclosure**. HPS is permitted to disclose School Data to its employees, authorized subcontractors, agents, consultants and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to HPS at least as required by this Agreement. HPS will work cooperatively with the School to permit a student, parent, or guardian to review Personally Identifiable Information in student data that has been shared with HPS, and to correct any erroneous information. The confidentiality obligations shall survive termination of any agreement with HPS for so long as the information remains confidential, and will inure to the benefit of the School.

7.4 **Exclusions**. Notwithstanding the foregoing, confidential information will not include information that (i) is approved for release by prior written approval of the School; (ii) is otherwise required by law, legal process or government regulation, provided that HPS gives the School reasonable prior written notice to permit the School to contest such disclosure, and such disclosure is otherwise limited to the required disclosure; or (iii) is publicly available, by other than unauthorized disclosure.

7.5 **Return and Retention of School Data**. HPS agrees that, upon the School's request, if this Agreement is terminated or upon expiration, HPS shall erase, destroy, and render unreadable, all School Data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities. HPS shall certify in writing that these actions have been completed within thirty (30) days from receipt of the request by the School. Notwithstanding the foregoing, School Data may be retained or available to HPS upon termination of the Agreement if a student, parent or legal guardian of a student chooses to maintain an electronic account with HPS which requires the storing of School Data.

7.6 **Injunctive Relief**. HPS acknowledges and agrees that unauthorized disclosure or use of School Data may irreparably damage the School in such a way that adequate compensation could not be obtained solely in monetary damages. Accordingly, the School shall have the right to seek injunctive relief restraining the actual or threatened unauthorized disclosure or use of any protected information, in addition to any other remedy otherwise available (including reasonable attorney fees). HPS hereby waives the posting of a bond with respect to any action for injunctive relief.

8. LIMITED WARRANTY

8.1 **Warranty and Remedy**. HPS warrants that the Services will be performed in a timely and professional manner.

9. INDEMNIFICATION

9.1 **HPS Indemnification**. HPS will indemnify, defend and hold School harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against School alleging that the use of the Services as permitted hereunder infringes any United States copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (i) use of the Services in violation of this Agreement or applicable law, (ii) use of the Services after HPS notifies School to discontinue use because of an infringement claim, or (iii) modifications to the Services made other than by HPS. If the Services are held to infringe, HPS will, at its own expense, in its sole discretion use reasonable commercial efforts either (a) to procure a license that will protect School against such claim without cost to School; (b) to replace the Services with non-infringing Services; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the School any prepaid unused fees paid to HPS for the infringing Services. The rights and remedies granted School under this Section 9.1 state HPS's entire liability, and School's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

HPS agrees to comply with the requirements of all applicable laws that require the notification of individuals in the event of unauthorized release of Personal Identifiable Information or other event requiring notification to the extent such laws expressly apply to HPS. In the event of a breach of any of HPS' security obligations or other event requiring notification under applicable law, HPS agrees to notify the School immediately, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the School and its employees from and against any and all claims, damages, or causes of action directly related to the unauthorized release.

9.2 **Indemnification Procedure**. The indemnified party shall (i) promptly notify HPS in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove HPS' obligation except to the extent it is prejudiced thereby, and (ii) allow HPS to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified party shall also provide HPS with reasonable cooperation and assistance in defending such claim (at HPS' cost).

10. <u>LIMITATION OF LIABILITY</u>.

10.1   HPS AND ITS AFFILIATES, MAKE NO WARRANTY, AND DISCLAIM LIABILITY THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM VIRUSES OR OTHER DEFECTS OR HARMFUL COMPONENTS. HPS AND ITS AFFILIATES MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULL EXTENT PERMISSABLE BY APPLICABLE LAW, THIS DISCLAIMER OF LIABILITY APPLIES TO ANY CLAIMS, LOSSES, ACTIONS, DAMAGES OR INJURY RESULTING FROM ANY FAILURE OF PERFORMANCE OF THE SERVICE.

10.2   NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE THAT THE OTHER PARTY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE OTHER PARTY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY THAT THE OTHER PARTY MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM LOSS OF BUSINESS, PROFITS, OR SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM THE OTHER PARTY'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

11. <u>GENERAL PROVISIONS</u>

11.1   **Trademarks**. The MySchoolBucks name, logo, button icons, child character, and all related logos, products and services described in the MySchoolBucks website are trademarks or registered trademarks of HPS. All other trademarks that appear on the website that are not owned by HPS, or its Affiliates, are the property of their respective owners.

11.2   **Copyright**. All content, titles, graphics, logos, button icons, images and software on the MySchoolBucks website are the copyrighted material of HPS, or its licensors. The compilation of all content on the MySchoolBucks website is the exclusive property of HPS, and is protected by U.S. and international copyright laws.

11.3   **Use of Name and Logo**. School grants HPS a non-exclusive license during the term of this Agreement to list School's name and display School's logo in the School section of HPS's website and as may otherwise be necessary to provide the Services as requested by School.

11.4   **Governing Law**. This Agreement shall be construed and governed by the laws of the state of in which the government or public educational entity is located without regard to legal principles related to conflict of laws.

11.5   **Jurisdiction & Venue**. Any suit, action or proceeding (collectively "action") arising out of or relating to this Agreement shall be brought only in the courts of the state of which the government or public educational entity is located or in the applicable United States District

Court. The Parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum. In any such action, the Parties waive trial by jury.

11.6   Reserved.

11.7   **Amendments**. Except as otherwise provided herein, no provision of this Agreement may be waived, amended or modified except in writing signed by an authorized representative of each Party.

11.8   **Audit**. In accordance with applicable state and federal law, HPS agrees that auditors from any state, federal, or other agency, as well as auditors so designated by the School, shall have the option to audit HPS' Service. Records pertaining to the Service shall be made available to auditors during normal business hours upon reasonable prior notification.

11.9   **Severability**. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties herein set forth.

11.10 **No Waiver of Rights**. Any failure of either Party to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.

11.11 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. A facsimile or scanned version of an original signature transmitted to the other Party is effective as if the original was sent to the other Party.

11.12 **Assignment**. Neither Party hereto may assign this Agreement directly or by operation of law, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon the Parties hereto, their successors and permitted assigns. Any assignment without the prior written consent of the non-assigning Party shall be void.

11.13 **Relationship of the Parties**. HPS and School are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

11.14 **Section Headings; Interpretation**.   All section headings contained herein are for descriptive purposes only, and the language of such section shall control. All references to the

plural herein shall also mean the singular and the singular shall also mean the plural unless the context otherwise requires.

11.15 **Force Majeure**. Other than with respect to any payment or confidentiality obligation, neither Party will be liable to the other Party for any delay, error, failure in performance or interruption of performance resulting from causes beyond its reasonable control, including, but not limited to, work stoppages, fires, civil disobedience, earthquakes, floods, acts of God and similar occurrences. If a force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and its expected duration and use its best efforts to mitigate its effects and perform hereunder.

11.16 **Non-Discrimination**. In its performance of this Agreement, HPS warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, marital status or national origin.

11.17 **Notices**. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the Party set forth in the first sentence of this Agreement. Either Party may change its address by giving written notice of such change to the other Party.

11.18 **No Third Party Beneficiaries**. Nothing contained in this Agreement is intended or shall be construed to confer upon any third party any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

11.19 **Support**. School may contact HPS support for assistance resolving issues with the Service. HPS support can be accessed by calling 1-855-832-5226 or by filling out the support request form online: https://www.myschoolbucks.com/ver2/etc/getsupportrequest. The MySchoolBucks support center is open Monday through Friday, from 8am – 5pm Eastern Time.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized representative.

Davis Joint Unified School District

Heartland Payment Systems, LLC.

By: _____

By: _____

Title: _____

Title: President School Solutions

Date: _____

Date: _____

SCHEDULE 1

ADDITIONAL SERVICES

1. Dissemination of information to Users.

This information may include any or all of the following:

A. Menus, student participation in various school programs, including nutrition programs, events, and products sold through the MySchoolBucks website;

B. Services and fees managed through the MySchoolBucks website;

C. District-to-parent messaging, and other information published through the MySchoolBucks website.

**Addendum
to
Government and Public Education ACH Processing Agreement
between
Heartland Payment Systems, LLC.
and
Davis Joint Unified School District**

      THIS ADDENDUM ("Addendum") to the Government and Public Education ACH Processing Agreement dated _____ (the "Agreement") is made as of the date of the last signature below (the "Effective Date"), by and between Heartland Payment Systems, LLC. ("HPS"), a Delaware corporation, with its principal place of business at 10 Glenlake Parkway North East, North Tower, Atlanta, GA 30328-3473 and Davis Joint Unified School District with its principal place of business at 1919 5th Street, Davis, CA 95616 ("Merchant"). HPS and Merchant are collectively from time to time referred to herein as the "Parties" with each being individually referred to as a "Party."

      WHEREAS, Merchant and HPS desire to modify the terms of the Agreement.

      NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Merchant and HPS agree as follows:

1. TERMS & CONDITIONS, Clause 32 of the Agreement is hereby deleted in the entirety and is replaced with the following:

"32. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of California without regard to its choice of law provisions. The parties expressly consent and agree to the exclusive jurisdiction and venue of any California state court or California federal court for all purposes in connection with any suit between the parties arising out of or relating to this Agreement."

2. This Addendum does not, and shall not be construed to, modify any term or condition of the Agreement other than those specific terms and conditions expressly referenced in this Addendum. Except as herein provided, the Agreement shall remain unchanged and in full force and effect. In the event of any inconsistency or discrepancy between the Agreement and this Addendum, the terms and conditions set forth in this Addendum shall control. This Addendum may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

<div align="center">Signatures on following page.</div>

3. Except as otherwise modified herein, the capitalized terms used in this Addendum shall have the meaning specified in the Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Addendum to be executed on its behalf by its duly authorized representative.

Davis Joint Unified School District   **Heartland Payment Systems, LLC.**

By: _____   By: _____

Title: _____   Title: _____

Date: _____   Date: _____

Addendum
to
Government and Public Education Credit/Debit Card Processing Agreement
between
Heartland Payment Systems, LLC.
and
Davis Joint Unified School District

THIS ADDENDUM ("Addendum") to the Government and Public Education Credit/Debit Card Processing Agreement dated _____ (the "Agreement") is made as of the date of the last signature below (the "Effective Date"), by and between Heartland Payment Systems, LLC. ("HPS"), a Delaware corporation, with its principal place of business at 10 Glenlake Parkway North East, North Tower, Atlanta, GA 30328-3473 and Davis Joint Unified School District with its principal place of business at 1919 5th Street, Davis, CA 95616 ("Merchant"). HPS and Merchant are collectively from time to time referred to herein as the "Parties" with each being individually referred to as a "Party."

WHEREAS, Merchant and HPS desire to modify the terms of the Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Merchant and HPS agree as follows:

1. TERMS & CONDITIONS, Clauses 4.1, 14.11 and 14.12 of the Agreement are hereby deleted in the entirety and are replaced with the following:

"4.1 Reserved."

"14.11 Governing Law: This Agreement shall be construed and governed by the laws of the State of California without regard to legal principles related to conflict of laws."

"14.12 Jurisdiction & Venue: Any suit, action or proceeding (collectively "action") arising out of or relating to this Agreement shall be brought only in the courts of the State of California or in the applicable California United States District Court. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum. In any such action, the parties waive trial by jury."

2. This Addendum does not, and shall not be construed to, modify any term or condition of the Agreement other than those specific terms and conditions expressly referenced in this Addendum. Except as herein provided, the Agreement shall remain unchanged and in full force and effect. In the event of any inconsistency or discrepancy between the Agreement and this Addendum, the terms and conditions set forth in this Addendum shall control. This Addendum may be executed in multiple counterparts, each of which shall

be deemed an original, but all of which together shall constitute one and the same document.

3. Except as otherwise modified herein, the capitalized terms used in this Addendum shall have the meaning specified in the Agreement.

               IN WITNESS WHEREOF, each of the Parties has caused this Addendum to be executed on its behalf by its duly authorized representative.

Davis Joint Unified School District   **Heartland Payment Systems, LLC.**

By: _____   By: _____

Title: _____   Title: _____

Date: _____   Date: _____

Heartland

K-12 MERCHANT PROCESSING AGREEMENT
☐ Card Only   ☐ ACH Only   ☒ Dual

HEARTLAND CONTACT INFORMATION

RM: Andrew Izzio   Phone: 800-423-2113   Fax: 585-227-8594
Affiliate/Partner ID : K12   Affiliate Name: MySchoolBucks   Current MID:

COMPANY INFORMATION

Merchant DBA Name: Davis Joint Unified SD-Meals   **DBA Phone#:** (530) 757-5300
Address: 526 B Street   # Locations: N/A
City: Davis   **State:** CA   **Zip:** 95616
CS Phone #: 800-803-6755   Fax #: 585-227-8594
Primary Contact Name: Marcia Bernard   **Phone #:** (530) 757-5300
Authorized to Purchase: ☒ Yes ☐ No
Secondary Contact Name: _____   Phone #: _____
Authorized to Purchase: ☒ Yes ☐ No
Email Address: _____
(Heartland InfoCentral Admin User Email Address)
Email Contact: First Name: _____   Last Name: _____
Website Address: _____
District Name: Davis Joint Unified School District   Federal Tax ID / EIN: _____
(Please Complete – Must correspond with IRS Filing Name)   (Must correspond with Legal Name)
Address: Same as above   Phone #: Same as above
City: Same as above   State: Same as above   Zip: Same as above

CARD FEE SCHEDULE

Service Requested	Discount Rate	Discount Per Item	Trans Fee Dial	Trans Fee IP			
Visa	%	$ 1.95			**Annual Volume:** $ 25,000	**Average Ticket:**	$ 45.00
MasterCard	%	$ 1.95	$ 0	$ 0		**High Ticket:**	$ 45.00
Discover/JCB	%	$ 1.95			☒ Service Fee (Pass Through/Single Transaction)		
TSYS Authorization	%	$	$	$	☐ COST PLUS		
PIN Debit*					*Plus Applicable Debit Network Fees		

Fee Model: ☐ District Absorbed ☒ Parent Paid

RECURRING FEES / SETTLEMENT

Chargeback Fee:	$0	Voice Authorization Fee:	$0	☐Monthly ☒Daily Net

INTERCHANGE QUALIFICATION | CARD ACCEPTANCE | DEPOSIT METHOD

☒ MOTO / Internet ☐ Retail ☐ Small Ticket	☒ All Cards Accepted	☒ Standard

ACH FEE SCHEDULE

Transaction Fee	$ 1.95	%	**Annual ACH Volume:** $ 2,500.00	**Average ACH Amount:** $ 21.00
Monthly Fee		$ 0	**Average # of ACH Transactions per Month:** 40	
Return Item Fee		$ 0	**Max ACH Limit:** 500.00	

Re-presentment: ☐ Yes ☒ No   (Limitation of 2 per NACHA guidelines)   **Re-presentment Fee: $N/A**

☒ **K12-OnePay Program**
Fee: Single: $12.95   Multi: $26.95   ACH Settlement Method: ☒ Daily Net ☐ Monthly Net

MERCHANT DETAIL

Type of Business: [X] Public [ ]Private	Date Business Started: 01/01/1900	Business is Conducted: 100% Consumer

Type of Ownership: [ ] Corporation [X] L.L.C.	Do you process web based sales through HPS: Yes

What Products and / or services do you provide: Payment for nutrition and school fees

Is there a peak week / date in the month for processing recurring transactions: (i.e., 1st and 15th):	N/A

Define your Refund Policy: Managed by Heartland School Solutions

Sales Method				Card Processing Method	
On Premise Face to Face Sales	0 %	Mail Order Sales	%	Card Swipe	0 %
Off Premise Face to Face Sales	%	Real-Time Internet	%	Keyed / Card Not Present	100 %
Inbound Telephone Order Sales	%	Internet (keyed)	100 %	**Total = 100%**	
Outbound Telephone Order Sales	%	Recurring Billing	%	**ACH Processing Method**	
		Total = 100%		PPD %	WEB 100 %
What percentage of your Bankcard volume is future delivery			%	CCD %	TEL %

PCI Compliance

Is your business PCI Compliant: [X] Yes [ ] No

Does your company utilize a Data Storage Entity or Merchant Servicer that has access to card member data (i.e., Payment gateway or data warehouse, etc.): [ ] Yes [X] No

If yes, provide the name of the Data Storage Entity or Merchant Servicer being utilized:	N/A

PCI DSS and Card Network rules prohibit storage of sensitive authentication data after the transaction has been authorized (even if encrypted). If you or your POS system store, process, or transmit full cardholder's data, then you (merchant) must validate PCI DSS compliance. If you (merchant) utilize a payment application the POS software must be PA DSS (Payment Application Data Security Standards) validated where applicable. If you use a payment gateway, they must be PCI DSS Compliant.

As required under the Payment Card Industry Data Security Standard (PCI DSS), I do hereby declare and confirm the following:

Merchant will maintain full PCI DSS compliance at all times and will notify Heartland when it changes its point of sale software, system, application or vendor: [ ] Yes [ ] No [X] N/A

Do your transactions process through any other Third Parties (i.e. web hosting companies, gateways, corporate office): [ ] Yes [ ] No [X] N/A

Merchant utilizes the services of a PCI SSC Qualified Integrator Reseller (QIR) when POS payment applications are utilized: [ ] Yes [ ] No [X] N/A

The signing merchant listed below has experienced an account data compromise.*:
[ ] Yes [ ] No [X] N/A [ ] I have never accepted payment cards.)

If yes, what was the date of the compromise: N/A   (Copy of the completed forensic investigation is required with the app.)

The signing merchant listed below is storing Sensitive Authentication Data** (even if encrypted) after the transaction has been authorized: [ ] Yes [ ] No [X] N/A [ ] I have never accepted payment cards.)

Merchant utilizes an EMV enabled terminal: [ ] Yes [ ] No [X] N/A

*An Account Data Compromise is any incident that results in unauthorized access to payment card data and/or Sensitive Authentication Data.
**Sensitive Authentication Data is security related information (Card Verification Values, complete Magnetic Stripe Data, PINs, and PIN blocks) that is used to authenticate cardholders.

Please note that if you have indicated that your organization has experienced an account data compromise in the past, a PCI DSS Level 1 Compliance Assessment may be required upon Heartlands request. A compromise of cardholder data from your location(s) may result in the issuance of fines and/or penalties by the card brand, for which you will be responsible under your Merchant Agreement, notwithstanding this Compliance Statement.

It is imperative that you notify Heartland immediately should the information on this Compliance Statement change.

STATEMENT OPTIONS			DISPUTE LETTERS	
Statement Type:	☒ Standard		Mail Options:	☐ Legal ☐ DBA
Mail Statements To:	☐ Suppress Stmts ☐ District		Electronic Options* ☒ Email ☐ Fax (*Select mail option as backup)	
☒ All Electronic Communications (Including ACH Returns):				
☐ Same Email as InfoCentral ☐ Preferred Email Address:				

AUTHORIZED SIGNER(S) INFORMATION

Is any owner, officer, director, employee, or agent a current or former senior official in the executive, legislative, administrative, military, or judicial branch of any government (elected or not); a senior official of a major political party; an executive of a government-owned commercial enterprise; a family member of any of the foregoing officials; or a close personal or professional associate of any of the foregoing officials? ☐ Yes ☐ No If "yes," please attach details.

(1) District/Authorized Signer Name:		Title:	
SSN: N/A		Driver's License #: N/A	
Home Address N/A	City: N/A	ST: NA	Zip: N/A

(2) District/Authorized Signer Name:		Title:	
SSN: N/A		Driver's License #: N/A	
Home Address: N/A	City: N/A	ST: NA	Zip: N/A

DEBIT / CREDIT AUTHORIZATION

Merchant certifies that any starter check or verification of business provided is for a business account in good standing and that the Business name on the below checking account is the same as the Business name on the enclosed Heartland Payment Systems Merchant Application. In addition, Merchant hereby authorizes Acquirer to debit and credit Merchant's checking/savings account. This authority shall remain in full force until (a) Acquirer has received written notification from Merchant of its termination; and (b) all obligations of Merchant to Acquirer under this Agreement have been paid in full.

Depository Bank Name:		Phone #:	
City:		ST:	Zip:

CARD	TRANSIT ROUTER / ABA NUMBER (9 digits)		ACCOUNT NUMBER (14 digits)
ACCOUNT TYPE (check one)	X Checking Savings GL		
FUNDS TRANSFER METHOD	Deposits Fees X Both	Name as it appears on Account: Davis Joint Unified $D-Mea	

	TRANSIT ROUTER / ABA NUMBER (9 digits)		ACCOUNT NUMBER (14 digits)
ACCOUNT TYPE (check one)	☐ Checking ☐ Savings ☐ GL		
FUNDS TRANSFER METHOD	☐ Deposits ☐ Fees ☐ Both	Name as it appears on Account:	

ACH	TRANSIT ROUTER / ABA NUMBER (9 digits)		ACCOUNT NUMBER (14 digits)
ACCOUNT TYPE (check one)	X Checking Savings GL		
FUNDS TRANSFER METHOD	Deposits Fees x Both	Name as it appears on Account: Davis Joint Unified $D-Mea	

	TRANSIT ROUTER / ABA NUMBER (9 digits)		ACCOUNT NUMBER (14 digits)
ACCOUNT TYPE (check one)	☐ Checking ☐ Savings ☐ GL		
FUNDS TRANSFER METHOD	☐ Deposits ☐ Fees ☐ Both	Name as it appears on Account:	

AGREEMENT ACCEPTANCE, CERTIFICATION and CONSUMER REPORT AUTHORIZATION

Has your District filed Bankruptcy, had Judgments or Liens within the last 3 years: ☐ Yes ☒ No

Merchant authorizes Acquirer, reporting agency employed by Acquirer, or any agents thereof, to investigate the references, statements or data provided by Merchant or the undersigned for purposes of all matters generally connected to this business relationship. I further certify that I have received, read, understand and agree to the Merchant Processing Agreement Terms and Conditions which together with this application shall constitute the agreement(s) between the parties. **I further certify that this business or any Owner/Officer/Authorized Signer has never been terminated by any of the Card Brands.**

X   Marcia Bernard

(1) Authorized Signer Signature	Print Name & Title	Date
X		
(2) Authorized Signer Signature	Print Name & Title	Date

THE TERM OF THIS AGREEMENT IS 24 MONTHS

Heartland
PAYMENT SYSTEMS

Terms & Conditions Acknowledgement

"Merchant" acknowledges that Heartland Payment Systems, Inc. ("Heartland") has provided it with a copy of the Card Acceptance Policies, Procedures, Terms & Conditions (the "Terms and Conditions") and the Merchant Application, which together make up the entire agreement between the parties. Merchant has read, understands, and agrees to be bound by the Terms and Conditions, as may be amended from time to time. Merchant acknowledges that the Terms and Conditions are a fundamental part of the parties' agreement without which Heartland would not be able to enter into an agreement with the Merchant. The Terms and Conditions can be reviewed at any time by visiting the Heartland InfoCentral at www.HeartlandInfoCentral.com. In addition, Merchant can request another copy of the Terms and Conditions at any time by sending a written request for a copy to Heartland at the following address:

Heartland Payment Systems; Attn: Customer Care; One Heartland Way; Jeffersonville IN 47130

Marcia Bernard

Merchant Signature	Printed Name	Date

Merchant Signature	Printed Name	Date

Site Inspection

I hereby verify that (check one)

☒ This District and their locations have the proper facilities, equipment, inventory, and proper accreditation certificates required to conduct the business.

☐ I was not reasonably able to complete a Site Inspection of the Merchant at this Address, and the information stated below is correct to the best of my knowledge and belief. Please explain why a site inspection could not be performed:

Inspected By: Signature	Printed Name	Date

It is required that the following questions be completed.

Is business signage present: ☒ Yes ☐ No   Describe signage: N/A

Number of Terminals: N/A Locations: N/A   Are card acceptance logos displayed for easy view: ☒ Yes ☐ No

If this is an additional location to an existing HPS merchant under the same District, was a site inspection performed on any of the

locations? ☐ Yes ☒ No

Created 5.29.14

Member Sponsor Bank Disclosure

Heartland

Merchant Name: Davis Joint Unified School District

Address: 526 B Street

City: Davis   **ST:** CA   **Zip:** 95616

Contact Name: Marcia Bernard   **Phone #:** (530) 757-5300

IMPORTANT MERCHANT RESPONSIBILITIES
1. Merchant must ensure compliance with cardholder data security and storage requirements.
2. Merchant must maintain fraud and chargeback below thresholds.
3. Merchant must review and understand the terms of the Merchant Processing Agreement.
4. Merchant must comply with the Card Brands Operating Regulations.
5. Merchant must retain a signed copy of this Disclosure Page.

Note: The responsibilities listed above do not supersede terms of the Merchant Processing Agreement and are provided to ensure the merchant understands some important obligations of each party and that the Member Sponsor Bank (Acquirer) is the ultimate authority should the merchant have any problems.

IMPORTANT MEMBER SPONSOR BANK (ACQUIRER) RESPONSIBILITIES
1. The Member Sponsor Bank is the <u>only entity</u> approved to extend acceptance of Card Brand products directly to a Merchant.
2. The Member Sponsor Bank must be a principal (signer) to the Merchant Processing Agreement.
3. The Member Sponsor Bank is responsible for educating Merchants on pertinent Card Brand Operating Regulations with which Merchants must comply.
4. The Member Sponsor Bank is responsible for and must settle funds with the Merchant.
5. The Member Sponsor Bank is responsible for all funds held in reserve that are derived from settlement.

MERCHANT RESOURCES
1. You may download Visa Regulations from Visa's website at: http://usa.visa.com
2. You may download MasterCard Rules from MasterCard's website at: http://mastercard.com

Member Sponsor Bank (Acquirer) Information:*

Barclay Bank	**The Bancorp Bank**	**Wells Fargo Bank, N.A**
125 South West Street	409 Silverside Road, Suite 105	1200 Montego
Wilmington, DE. 19801	Wilmington, DE. 19809	Walnut Creek, CA 94598
Phone: (302) 662-8990	Phone: (302) 385-5000	Phone: (925) 746-4167

Debit Bank Sponsor
Bay Bank, FSB
7151 Columbia Gateway Drive
Suite A
Columbia, MD 21046

I, the undersigned hereby acknowledge and agree that Heartland Payment Systems will select one of the Member Sponsor Bank's listed above based on the following criteria; business type, POS equipment compatibility, depository institution and/or existing HPS relationship. Heartland Payment Systems will provide Merchant a written notification of the Member Sponsor Bank that is selected. By presenting any Card Brand Transaction to Heartland Payment Systems under the Merchant Processing Agreement from and after notice of the Member Sponsor Bank, you agree that the Member Sponsor Bank so selected shall be immediately a principal party (signer) to the Merchant Processing Agreement, regarding acceptance of Card Brand transactions.

Marcia Bernard

Merchant's Name Printed	**Merchant's Signature**	**Date**
Bank Use Only		
Date Received	Date Installed	HPS Rep Name

Revised: 03/15/16

GOVERNMENT AND PUBLIC EDUCATION CREDIT/DEBIT CARD PROCESSING AGREEMENT

TERMS & CONDITIONS

1. Services

HPS will, during the term of this Agreement and pursuant to its terms and conditions, (a) be responsible for and will settle funds with the Merchant; (b) provide the following payment processing solutions to the Merchant: (i) Web Payment Solutions; (ii) Cashiering Payment Solutions as may be selected by Merchant on the Merchant Application.

2. Definitions

2.1 **"Account"** means a commercial checking account maintained by Merchant for the crediting of collected funds and the debiting of fees and charges pursuant to the terms of this Agreement.

2.2 **"ACH"** means the Automated Clearing House service offered by the Federal Reserve.

2.3 **"Agreement"** means this Merchant Processing Agreement, the Merchant Application and the Addendum, as applicable. This contract incorporates the Merchant Processing Agreement, the Merchant Application, and the Addendum, as applicable, by reference, with the same force and effect as if it were given in full text. Upon request, HPS will make their full text available.

2.4 **"Authorization"** means the act of obtaining approval from the Card Issuer for an individual Transaction.

2.5 **"Card"** means a valid credit, debit, charge or other payment card accepted by Merchant under this Agreement with HPS.

2.6 **"Card Schemes" used interchangeably with Card Brands** means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., Discover Financial Services or any other Card Issuer that provides Cards that are accepted by Merchant under this Agreement with HPS, including on-line debit card Transactions and on-line debit networks.

2.7 **"Card Issuer"** means the financial institution or company that has provided a Card to the Cardholder.

2.8 **"Cardholder" used interchangeably with Card Member** means the person or Card Member whose name is embossed upon the face of the Card.

2.9 **"Card-Not-Present Transaction"** means any Transaction for which required data is not electronically captured by reading information encoded in or on the Card and includes mail order, telephone order and Internet Transactions.

2.10 **"Cashiering Payment Solution"** means an automated solution which will allow Cardholders to pay Merchant via an HPS-provided virtual terminal or physical terminal.

2.11 **"Chargeback"** means the procedure by which (i) a sales Transaction (or disputed portion thereof) is returned to HPS by a Card Issuer because such item does not comply with the Card Issuer's applicable rules or operating regulations or for any other reason as provided in this Agreement and (ii) the Merchant's Account is debited for such return.

2.12 **"Convenience Fee"** means a fee charged to a consumer that will cover the costs of providing the convenient alternative payment solutions such as the Web Payment Solution and certain Cashiering Solutions.

2.13 **"Credit Voucher"** means a document or transaction executed by Merchant evidencing any refund or price adjustment relating to products or services to be credited to a Cardholder account.

2.14 **"Debit Networks"** means the authorization networks utilized by Merchant for PIN Debit Transactions.

2.15 **"EMV Card"** refers to a form of smart payment card with technical standards originally created by Europay, MasterCard and Visa (EMV) embedded with a chip containing encrypted Cardholder account information, which is readable by an EMV-enabled device. An EMV Card may be used by: (1) inserting it into a card reader that is integrated with a point of sale system; or (2) by tapping it against a point of sale device's contactless reader. Visit http://www.emv-connection.com/ for more information on EMV.

2.16 **"EMV Transaction"** means the electronic acceptance of an EMV Card's chip data by point of sale equipment or other electronic payment device at the time of Sale, and the inclusion of that data with the electronic submission of the Sale. Only a "Card Swipe", "EMV Transaction" or its manual equivalent, an "Imprint", is acceptable by the Card Scheme as proof that the Card was present at the time of the Sale.

2.17 **"HPS"** means collectively Heartland Payment Systems, Inc., and its sponsoring banks, and other vendors and subcontractors.

2.18 **"Member Sponsor Bank"** is a bank that has obtained a membership with the Card Brands to allow processor access to the Card Brand Networks.

2.19 **"Merchant"** generally means the party identified as the recipient of this Agreement. It can cover the merchant itself and any third party that may be associated with them (i.e. VARs, gateway providers etc.).

2.20 **"MCC" also known as "Merchant Category Code"** is a 4 digit number used to describe the Merchants primary business.

2.21 **"Outbound Telemarketing Transaction"** means a transaction in which a sale of products or services results from a Merchant-initiated contact with a Cardholder via a telephone call, or a mailing (other than a catalog) that instructs the Cardholder to call the Merchant.

2.22 **"Pass Through"** means charging the Merchant the precise amount of monies designated as Interchange, Costs, Dues, Assessments and Fees as per the Card Schemes. Pass Thru or Pass Through means no mark-ups are taken by the Payment Processor or any other party when Interchange, Dues, Fees, Costs and Assessments are collected from the Merchant.

2.23 **"Payment Facilitator"** is a merchant of record who facilitates transactions on behalf of a sub-merchant whose volume is less than USD 100,000 in MasterCard and Maestro volume combined.

2.24 **"Payment Service Provider (PSP)"** is an entity contracting with a Visa, Discover or American Express member to provide payment services to sponsored merchants. The new term PSP replaces the old terminology IPSP which now includes all commerce type aggregation, including face-to-face in addition to ecommerce merchant aggregation.

2.25 **"Products"** means all goods and payment services that are sold or offered by the Merchant.

2.26 **"Rules"** means the operating regulations, requirements terms and conditions of the Card Schemes presently in effect and as they may be amended from time to time.

2.27 **"Sales Draft"** means an electronic receipt evidencing a sales Transaction.

2.28 **"Sub-merchant"** is a customer conducting business through a Third Party relationship acting as a Payment Facilitator (PF) or Payment Service Provider (PSP).

2.29 **"Third Party Agent (TPA)"** means entities that have been engaged by a Merchant or a member to perform contracted services on behalf of that Merchant or member, including value add resellers (VARs) and payment gateway providers.

2.30 **"Transaction"** means any retail sale of Products or Services, or credit therefore, from a Merchant for which the customer makes payment using any Card presented to HPS for payment.

2.31 **"Virtual Terminal"** means a credit Card processing equipment on a secure server on the Internet whereby Merchant can key enter credit Card Transactions manually.

2.32 **"Voice Authorization"** means an Authorization obtained by a direct-dialed telephone call.

2.33 **"Web Payment Solution"** may be used interchangeably with "Heartland/TouchNet Hosted Website" and means an automated solution that will allow Cardholders to pay a Merchant on a hosted website.

3. Data Security Requirements

3.1 The PCI Security Standards Council ("PCI SSC") was founded by American Express, Discover Financial Services, JCB, MasterCard Worldwide and Visa, Inc. All five founders agreed to incorporate PCI Data Security Standards ("PCI DSS") as the technical requirements of each of their data security compliance programs. The PCI SSC is responsible for the Payment Application Data Security Standard ("PA-DSS") and PIN Transaction Security Requirements for PIN-Entry Devices ("PED").

More information, including the complete PCI DSS specifications can be found at www.pcisecuritystandards.org.

Each of the Card Schemes has requirements based on PCI DSS that define a standard of due care and enforcement for protecting sensitive information. Merchant must meet the compliance validation requirements defined by the Card Schemes available at:
www.visa.com/cisp
www.mastercard.com/sdp
www.discovernetwork.com/fraudsecurity/disc.html
www.americanexpress.com/datasecurity - For American Express Direct Merchants Only.

The Card Schemes or HPS may levy fines, suspend or terminate services, or impose other restrictions if it is determined that Merchant is not compliant with applicable security standards. Merchant is responsible for all fines and fees assessed by any Card Scheme in connection with violation of data security standards.

4. Rights, Duties, and Responsibilities of Merchants

4.1 Merchant agrees that during the term of this Agreement HPS/TouchNet shall be the primary provider for all payment processing services provided hereunder.

4.2 Merchant's policy for the adjustment of payment rendered shall be disclosed to the Cardholder before a Card sale is made. If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. In no circumstances shall any cash refunds be given on any item originally charged to a card.

4.3 MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT CONSTITUTE (A) A WARRANTY THAT THE PERSON PRESENTING THE CARD

IS THE RIGHTFUL CARDHOLDER, OR (B) A PROMISE OR GUARANTEE BY HPS THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION. AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT CHARGEBACK OF AN AUTHORIZED TRANSACTION PURSUANT TO THIS AGREEMENT.

4.4   Merchant shall at all times maintain a direct deposit account (the "Account" or "DDA"), in good standing, at a bank that is a Receiving Depository Financial Institution (RDFI) of the Federal Reserve Bank ACH System or other ACH settlement network. Merchant agrees that all credits for collected funds shall be made automatically to the Account. Merchant also agrees that it is responsible for all fines, fees, Chargebacks, Credit Vouchers, payments and adjustments and other amounts due under the terms of this Agreement (including but not limited to attorneys fees and early termination charges) which shall be automatically made to the Account. Merchant shall not close, restrict or change the Account without prior written approval from HPS. Merchant agrees to pay HPS a twenty-five dollar ($25.00) fee on all returned ACH items. Merchant is solely liable for all fees and all overdrafts, regardless of cause. HPS shall have the unlimited right to debit without prior notice, any Account containing funds for the purpose of satisfying any liability incurred on behalf of Merchant.

4.5   Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance, or make a cash disbursement to any other Cardholder (including Merchant when acting as a Cardholder), or receive monies from a Cardholder and subsequently prepare a credit to Cardholder's account.

4.6   As partial consideration for this Agreement, Merchant expressly authorizes HPS to change the Member Sponsor Bank providing settlement services to Merchant. Merchant agrees to execute all necessary documents enabling HPS to effect such change, as may be required by HPS.

4.7   Intentionally Removed

4.8   Merchant shall give HPS immediate written notice of any complaint, subpoena, Civil Investigative Demand or other process issued by any state or federal governmental entity that alleges, refers or relates to any illegal or improper conduct of Merchant. Failure to give such notice shall be deemed to be a material breach of this Agreement.

4.9   Merchant shall not be assessed a Chargeback Fee for the first three Chargeback requests processed in any twelve month period beginning with the Merchant's anniversary date. Once three Chargeback requests have been submitted by the Card Scheme or Bank in any such 12 month period, HPS shall bill the Chargeback Fee applicable at that time. For purposes of this Section 4.9, the anniversary date shall be the date of Merchant's first deposit with HPS unless otherwise designated by HPS.

4.10   Merchant shall ensure HPS has the correct business taxpayer ID ("TIN") and legal name on file for Form 1099-K tax reporting purposes. Any merchant reporting an invalid TIN

and legal name combination is subject to backup withholding of an amount as defined by applicable state tax and IRS regulations.

4.11 Merchant shall at all times comply with the Rules and operating regulations of each of the Card Schemes and American Express as well as all applicable federal, state, and local, rules and regulations. Moreover, in the event of Merchant's non-compliance, Merchant accepts the responsibility for the payment of any and all fees and penalties levied because of its non-compliance.

4.12 Merchant agrees that it will not knowingly introduce into HPS' System any virus, "time bomb", or any other contaminant, including but not limited to, codes, commands, or instructions that could damage or disable HPS' System or property.

4.13 Merchant shall assume responsibility for managing the repair of problems associated with Merchant's own telecommunications and processing system (both hardware and software), including terminals.

4.14 MSP/TPA/PSP/PF must comply with all Rules as set forth in this Agreement and the following websites:

•http://usa.visa.com/merchants/risk_management/thirdparty_agents.html
•http://www.mastercard.com/us/merchant/pdf/BMEntire_Manual_public.pdf

4.15 Payment Service Provider (PSP)/ Payment Facilitator
(PF) agrees to promptly disclose to their Sub-merchant any new or increased Card Scheme related Dues, Assessments and Fees, including but not limited to Convenience fees, in accordance to the contracted services performed by the Merchant.

4.16 Merchant must meet requirements as defined by the Card Schemes. Information is available at:
www.visa.com
www.mastercard.com
www.discovernetwork.com
www.americanexpress.com/merchantopguide - For American Express OptBlue Program Merchants Only.
www.americanexpress.com - For American Express Direct Merchants Only.

5. Debit Card Processing

5.1 Merchant understands and agrees that HPS and Bay Bank, FSB or any other bank to which this agreement is assigned is a sponsored affiliate or member of each debit network and HPS is a service provider for processing Merchant's debit card Transactions pursuant to the terms herein.

5.2 Any claims Merchant may have regarding Debit services may not be offset against Bankcard sales.

5.3 Debit transactions are governed by network regulations as well as federal and state laws and regulations, including but not limited to the Electronic Funds Transfer Act, and Regulation E, pursuant to which consumers may have up to sixty (60) days to dispute a Transaction. Merchant shall comply with all applicable federal, state and local laws and regulations.

6. Fees

6.1 HPS may amend the Fees set forth in the Merchant Application as follows: If Convenience Fees are fixed, then HPS may amend such Fees if (i) any Card Scheme or third party changes its fees with HPS or (ii) the average ticket size increases from the average ticket size of the previous thirty (30) day period. If Convenience Fees are percentage-based, then HPS will only amend such Fees if any Card Scheme or third party changes its fees with HPS. The amended Fees shall be effective on the date specified in a written notice thereof, which date shall not be fewer than fifteen (15) days after the date of notice. Merchant shall attach each such revised Schedule of Fees, or written notice to the Merchant's copy of this Agreement.

6.2 Merchant shall pay all applicable sales taxes for services and products provided by HPS.

6.3 Merchant shall pay such fees and charges as may be set by HPS for any requested system enhancements or services in addition to those specified herein or in the Application or as may be requested by applicable law or changes in Card Scheme Rules.

7. Rights, Duties and Responsibilities of HPS

7.1 Merchant acknowledges that HPS may provide payment transaction processing services hereunder through contracts or subcontracts with third parties engaged in the business of transaction processing and authorizations, and specifically authorizes such third parties to exercise all of the rights of HPS hereunder. Upon request in writing by Merchant, HPS will identify the third parties involved in Merchant's processing.

7.2 HPS may, through its performance of the Services, provide Merchant with access to equipment and other hardware, software, including interface applications, processes and other such tangible or intangible property of HPS. HPS retains all ownership rights to such property and does not provide any license or any other use other than as specifically set forth herein.

7.3 HPS will accept all Sales Drafts deposited by Merchant that comply with the terms of this Agreement. HPS will pay to Merchant the total face amount of each Sales Draft, less any Credit Vouchers, or adjustments determined. All payments, credits and charges are

subject to audit and final review by HPS and prompt adjustment shall be made as required. Notwithstanding any other provision in this Agreement, HPS may refuse to accept any Sales Draft, revoke its prior acceptance, or delay processing of any Sales Draft for any reasonable period of time, as HPS deems necessary and appropriate. HPS shall have no liability to Merchant for additional charges, higher rates, or any other loss, expense or damage Merchant may incur directly or indirectly due to any such refusal, revocation or delay.

7.4   HPS will accept all customer service calls and other communications from Merchant, relating to the services provided under this Agreement including, but not limited to, equipment service, disbursement of funds, account charges, Merchant statements and Chargebacks. Merchant waives any claim relating to amounts charged to Merchant or amounts paid to unless presented within forty-five (45) days of statement date.

7.5   HPS will process all requests for Sales Drafts and Chargebacks from Card Issuers and will provide Merchant with prompt notice of requests and Chargebacks.

8. Chargebacks

8.1   Merchant agrees to pay HPS the actual amount of any Transaction processed by HPS pursuant to this Agreement whenever any Card or Debit Transaction is reversed.

8.2   Merchant agrees to pay HPS any fees or fines imposed on HPS resulting from Chargebacks and any other fees or fines imposed with respect to or resulting from acts or omissions of Merchant.

8.3   HPS agrees to mail or electronically transmit all Chargeback documentation to Merchant promptly at Merchant's address shown in the Application. Merchant is responsible for verifying its monthly statement and its daily deposit for Chargebacks and Chargeback handling fees pursuant to this Agreement. Merchant shall notify HPS in writing within forty-five (45) days after any debit or credit is or should have been affected. If Merchant notifies HPS after such time, HPS shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by HPS to assist Merchant in investigating such matters after the 45 day notification has expired, shall not create an obligation to continue such investigation or any future investigation. Merchant must provide all information requested by HPS by the time specified in a request for information; failure to do so shall constitute a waiver by Merchant of its ability to dispute or reverse a Chargeback or other debit, and Merchant shall be solely responsible. If HPS elects, in its sole discretion, to take action on a Chargeback or other debit after the time specified to respond has expired, Merchant agrees to pay all costs incurred by HPS. Merchant agrees to pay HPS a processing fee for Sales Draft retrieval requests at HPS discretion.

9. Limitation of Liability: Due Care

9.1 Except as provided in section 9.4 hereof, HPS's sole liability to Merchant hereunder shall be to correct, to the extent reasonably practical, errors that have been caused by HPS, except that any claim by the Merchant relating to statement accuracy or amounts owed by HPS to the Merchant is waived unless presented within forty-five (45) days of statement date.

9.2 No claim for damages for any performance or failure of performance by HPS under this Agreement shall exceed the Convenience Fee amount and any other fees or charges paid to HPS in connection with the Card Transaction that is the subject of the alleged failure of performance.

9.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES, AND BUSINESS OPPORTUNITIES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. Without limitation of the foregoing, HPS shall not be liable to Merchant for delays in data transmission. Merchant acknowledges that any losses pursuant to this Agreement are commercial in nature.

9.4 HPS MAKES NO WARRANTY WHATSOEVER REGARDING CARD AUTHORIZATIONS, DECLINES OR REFERRAL CODES, RESPONSES TO REQUESTS FOR AUTHORIZATION, PROCESSING, SETTLEMENT, OR ANY OTHER SERVICES PROVIDED BY OR ON BEHALF OF HPS HEREUNDER, AND HPS HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, and HPS shall have no liability to Merchant or any other person for any loss, liability or damage arising directly or indirectly in connection herewith. Without limitation of the foregoing, Merchant acknowledges that HPS has no liability or responsibility for the actions of any Card Scheme, Card Issuer or Cardholder.

9.5 Neither Party shall be liable for delays in processing or other non-performance caused by such events as fires; telecommunications failures; equipment failures; strikes; riots; war; non-performance of vendors, suppliers, processors or transmitters of information; acts of God or any other causes over which the Party has no control.

10. Display of Materials: Trademarks

10.1 If permissible under state law, Merchant agrees to prominently display the promotional materials provided by HPS in its place(s) of business or on an eCommerce site whereby Card Scheme logos must prominently be displayed. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with

Card(s) shall fully comply with specifications contained in applicable Card Scheme operating regulations.

10.2 Merchant shall not use any promotional materials or Marks in any way that suggests or implies that a Card Scheme endorses Merchant's products or services.

10.3 Merchant agrees that it will discontinue use of any Mark of a Card Scheme wherever such Marks are displayed, including on the Merchant's website(s), once (a) the Agreement is terminated or expires or (b) Merchant discontinues acceptance of a Card or participation in a Card Scheme Program.

11. Term: Termination

11.1 This Agreement shall become effective upon acceptance of the first Merchant deposit by HPS and shall continue in effect for a term of twenty four(24)months therefrom. Thereafter, the Agreement will automatically renew for additional twelve (12) month periods unless terminated by any party by giving ninety (90) days written notice prior to the end of any term, except that in case of an Event of Default by Merchant or as required by a Card Scheme, this Agreement may be terminated by HPS immediately, and HPS shall give Merchant written notice within ten (10) days thereafter.

11.2 In the event HPS fails to provide the Services as stated herein, prior to exercising any right of termination, Merchant must (i) notify HPS of such breach; (ii) give HPS a reasonable period to cure, depending on the nature of the breach. The parties shall agree on the duration of such reasonable period in writing; and if, HPS is unable to cure within such time, Merchant may terminate the Agreement subject to the terms herein.

11.3 If any of the following events shall occur (each an "Event of Default"):
(i) Merchant shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement; or
(ii) A reasonable belief by HPS that Merchant will constitute a risk to HPS by failing to meet the terms of this Agreement; or
(iii) Material adverse change in the business, financial condition, business procedure or services of Merchant; or
(iv) any information contained in the Application was or is incorrect in any material respect, is incomplete or omits any information necessary to make such information and statements not misleading to HPS; or

(v) irregular Card sales or credits by Merchant, Card sales substantially greater than the average ticket amount stated on Merchant's Application, excessive Chargebacks or any other circumstances which in the sole discretion of HPS, may increase the risk of Merchant Chargebacks or otherwise present a financial or security risk to HPS; or

(vi) reasonable belief by HPS that Merchant is engaged in practices that involve elements of fraud or conduct deemed to be injurious to Cardholders, including, but not limited to fraudulent, prohibited or restricted Transaction(s); or

(vii) any voluntary or involuntary bankruptcy or insolvency proceedings involving Merchant, its parent or an affiliated entity, or any other condition that would cause HPS to deem Merchant to be financially insecure; or

(viii) Merchants engages in any Outbound Telemarketing Transactions; or

(ix) Merchant or any other person owning or controlling Merchant's business is or becomes listed in any Card Scheme's security reporting;

Then, upon the occurrence of any Event of Default, all amounts payable hereunder by Merchant to HPS shall be immediately due and payable in full.

11.4   In the event of termination, regardless of cause, Merchant agrees that (a) all obligations and liabilities of Merchant with respect to any Sales Draft or Credit Voucher presented prior to the effective date of termination shall survive such termination and expressly authorizes HPS to withhold and discontinue the deposit to Merchant's Account for all Card and other payment transactions of Merchant in the process of being collected and deposited; and (b) it will discontinue all use of Marks of a Card Scheme or HPS.

11.5   Merchant agrees that all obligations incurred or existing under the terms of this Agreement as of the date of termination, shall survive such termination. After the termination or expiration of the terms of the agreement, Client shall discontinue using and shall remove all hyperlinks, signs, displays or other materials containing the name or logo of HPS/TouchNet and/or its suppliers.

11.6   Neither the expiration nor termination of this Agreement shall terminate the obligations, or rights of the parties pursuant to provisions of the Agreement, which by their terms are intended to survive or be perpetual or irrevocable.

11.7   If any Event of Default shall have occurred and be continuing, HPS may, in its sole discretion, exercise all of its rights and remedies under in equity, contract or applicable law, including, without limitation, those provided in this Agreement.

11.8   The provisions governing processing and settlement of Card Transactions, all related adjustments, fees and other amounts due from Merchant and the resolution of any related Chargebacks, will continue to apply after termination of this Agreement until all Card Transactions made prior to such termination are settled or resolved. Upon termination of this Agreement, Merchant agrees to promptly send HPS all data relating to Card Transactions made to the date of termination.

12. Terminated Merchant File

12.1   If Merchant is terminated for any of the reasons specified as cause by Visa, MasterCard and Discover Network, HPS may report Merchant's business name and the names and

other identification of its principals to the Terminated Merchant File. Merchant expressly agrees and consents to such reporting, and HPS shall have no liability to Merchant for any loss, expense or damage Merchant may sustain directly or indirectly due to such reporting.

13. Notices

13.1   All notices and other communication required or permitted under this Agreement shall be deemed delivered when mailed first-class mail, postage prepaid, addressed to the Merchant at the address stated in the Application and to HPS at the address set forth below, or at such other address as the receiving party may have provided by written notice to the other:

Heartland Payment Systems
Attn: Customer Care
One Heartland Way
Jeffersonville, IN. 47130
1 (888) 963-3600

Member Bank Sponsors

Issues Regarding Credit Cards
Barclay Bank
125 South West Street
Wilmington, DE 19801
Phone #: 1 (201) 622-8990
The Bancorp Bank
409 Silverside Road, Suite 105
Wilmington, DE 19809
Ph #: 1 (302) 385-5000

Wells Fargo Bank, N.A.
1200 Montego
Walnut Creek, CA 94598
Phone #: 1 (925) 746-4167

Issues Regarding Debit Cards
Bay Bank
7151 Columbia Gateway Drive
Suite A
Columbia, MD 21046

14. Additional Terms

14.1   **Truth of Statements:**   Merchant represents to HPS that all information and all statements contained in the Application are true and complete and do not omit any information necessary to make such information and statements not misleading to HPS.

14.2   **Entire Agreement:**   This Agreement constitutes the entire understanding of HPS and Merchant and supersedes all prior agreements, understanding, representations, and negotiations, whether oral or written between them.

14.3   **Amendments:**   Except as otherwise provided herein, no provision of this Agreement may be waived, amended or modified except in writing signed by an authorized representative of each party.

14.4   **No Waiver of Rights:**   Any failure of a Party hereto to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.

14.5   **Section Headings:**   All section headings contained herein are for descriptive purposes only, and the language of such section shall control.

14.6   **Assignability:**   Neither Party hereto may assign this Agreement directly or by operation of law, without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld, Either party may assign this Agreement to a parent, subsidiary, or affiliate without the other's consent. This Agreement shall be binding upon the parties hereto, their successors and permitted assigns. Any assignment without the prior written consent of the non-assigning party shall be void.

14.7   **Damages:**   In any judicial or arbitration proceedings arising out of or relating to this Agreement, including but not limited to these actions or proceedings related to the collection of amounts due from merchant, the providing party shall recover, in addition to all damages awarded, all court costs, fees and expenses of experts.

14.8   **Relationship of the Parties:**   Nothing contained herein shall be deemed to create a partnership, joint venture or, except as expressly set forth herein, any agency relationship between HPS and Merchant.

14.9   **Severability:**   If the performance by either party of any provision of this Agreement is determined to be unlawful or in violation of any state, federal or local statute, law, ordinance, regulation or rule, or of the rules of any Card Scheme, said party shall seek to cure the illegality or violation within thirty (30) days following the date that such party is first informed of such violation or illegality. If such cure is not affected within such thirty (30) days period, the illegal or violating provision shall be null and void, and this Agreement shall remain in full force and effect and the parties shall use their best efforts to agree upon legal and non-violating substituted provisions that will serve the intent of the parties.

14.10 Privacy Policy: All financial and personal information about Merchant and a Merchant's vendors and suppliers, is considered confidential data. Merchant acknowledges and agrees that this information or other personal information will be used only in connection with the services provided by HPS and third parties designated by HPS to Merchant under the terms of this agreement and the performance of this Agreement. Notwithstanding the foregoing or anything else contained herein, Merchant information may be provided by HPS to any third party including but not limited to, Card Schemes, collection agencies, financial institutions or organizations, or merchant associations in the event of a default by merchant in any obligation under this agreement.

14.11 Governing Law: This Agreement shall be construed and governed by the laws of the state of in which the government or public educational entity is located without regard to legal principles related to conflict of laws.

14.12 Jurisdiction & Venue: Any suit, action or proceeding (collectively "action") arising out of or relating to this Agreement shall be brought only in the courts of the state of which the government or public educational entity is located or in the applicable United States District Court. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum. In any such action, the parties waive trial by jury.

14.13 No Third Party Beneficiary. Under no circumstance, shall any third party be considered a third party beneficiary of Merchant's rights or remedies under this Agreement or otherwise be entitled to any rights or remedies of Merchant under this Agreement.

14.14 Changes: HPS may change the terms of or add new terms to this Agreement at any time in accordance with applicable law. Any such changes or new terms shall be effective when notice thereof is given by HPS either through written communication or on its merchant website located at https://infocentral.heartlandpaymentsystems.com.

14.15 Public Statements. Merchant shall obtain the prior written consent of HPS prior to making any written or oral public disclosure or announcement, whether in the form of a press release or otherwise, which directly or indirectly refers to HPS.

15. Optional Card Brand Fees:

Convenience Fee: A fee charged to the Cardholder by the Merchant for a true convenience for accepting a credit or debit card. Examples of a "true convenience" are payment through the internet, mail order or phone order. All Card Schemes allow Merchants to charge a convenience fee. All Card Schemes must be charged equally. The Merchant is required to disclose the fee to the Cardholder and provide the Cardholder with the opportunity to cancel the Transaction, if the Cardholder does not want to pay the convenience fee. In addition to the foregoing, (i) Visa requires Merchants to have a brick

and mortar location in order to be allowed to charge a convenience fee; (ii) MasterCard requires processors to register any Government or Education merchant; and (iii) AMEX requires that the convenience fee be shown as a separate charge on the Cardholder's receipt for the goods or services.

Surcharge: A charge in addition to the initial amount of the sale on a credit card to cover the Merchant's cost of acceptance. All Card Schemes allow surcharging. Visa, MasterCard and Discover require Merchants to register with the Card Schemes. The Merchant is required to disclose the fee at the entry of their establishment and at the point of sale. The cardholder must be given the opportunity to cancel the Transaction if they do not want to pay the surcharge fee. The amount of the charge cannot exceed the amount of the Merchant's discount fee on Visa, MasterCard and Discover and is capped at 4%. The surcharge must appear on the sales receipt separately from the sales amount. All Card Schemes must be charged equally. Currently there are several states that prohibit surcharging. Merchants should check their state and local laws prior to initiating a surcharge.

Service Fee: Visa allows government and education Merchants to charge a different type of fee called a "service fee". This fee is assessed for accepting payments for taxes, fees and fines for government MCCs and for tuition, room and board, lunch programs, etc. for education MCC Merchants. The service fee can be charged on credit and debit Transactions, in a face-to-face or card not present environment. The service fee must appear separate from the sales amount on the receipt. Merchants must be registered through Visa. Service fee must be disclosed prior to completion of the transaction, allowing the cardholder to cancel the Transaction if they do not wish to accept the service fee. MasterCard allows government and education merchants to charge "convenience fees" and has no separate "service fee" for these MCCs.

Other Fees: Handling fees and payment fees are allowed on all Card Schemes as long as these fees are charged on all payment channels; cash, checks, ACH, etc. These are not governed by the Card Schemes specifically. State and local laws may apply and merchants should ensure the fees are allowed in their area of business.

Revised: 02/19/16

GOVERNMENT AND PUBLIC EDUCATION ACH PROCESSING AGREEMENT
TERMS & CONDITIONS

If you chose ACH processing on the Heartland Payment Systems Merchant Processing Agreement (the "Application"), this ACH Processing Agreement (the "Agreement") is a part of your Application. The "Effective Date" is the earlier of the date that HPS approved your Application or the date on which HPS processed your first ACH transaction.

1.   **Definitions**. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the rules of the National Automated Clearinghouse Association, and any amendments that may be adopted from time to time. The following definitions shall apply for the purposes of this Agreement:

   1.1   **"ACH"** means the Federal Reserve Bank's Automated Clearing House, a funds transfer system, governed by the NACHA operating rules, that provides for the inter-bank clearing of electronic entries for participating financial institutions.

   1.2   **"EFT"** means Electronic Funds Transaction, electronic debits and credits processed through the ACH Network.

   1.3   **"Entries"** shall have the meaning provided in the Rules and shall also mean the data received from Merchant hereunder from which HPS prepares Entries.

   1.4   **"Initiation"** means the initial presentation by HPS of a transaction to Settlement.

   1.5   **"Merchant"** means the business customer that initiates ACH entries into the payment system according to an arrangement with a Receiver.

   1.6   **"Merchant Account"** means the commercial demand deposit checking account designated by Merchant for use in conjunction with ACH Services.

   1.7   **"NACHA"** means the National Automated Clearing House Association.

   1.8   **"ODFI"** means the bank acting as the Originating Depository Financial Institution as defined by NACHA Rules.

   1.9   **"RDFI"** means the Receiving Depository Financial Institution that receives ACH entries from the ACH Network and posts the entries to the Receiver's account.

   1.10   **"Receiver"** means the person or organization that has authorized a Merchant to initiate an ACH entry to the Receiver's account with the RDFI.

   1.11   **"Re-initiation"** or **"Re-presentment"** means the second or third attempt at Settlement by HPS of a previously Returned ACH transaction.

   1.12   **"Return"** means a Receiver transaction that is returned unpaid by either the Receiver's bank or the ACH Network.

1.13 **"Returned Item Service Charge"** means the fee charged to Receiver as allowed by applicable law for a transaction that is returned unpaid by the Receiver's bank or ACH Network.

1.14 **"Rules"** means the rules of the National Automated Clearinghouse Association (NACHA), and any amendments that may be adopted from time to time hereafter. Please refer to the following website for the Rules: https://www.nacha.org/rules

1.15 **"Settlement"** means the movement of electronic information into the ACH Network under the ODFI sponsorship which results in the debiting or crediting of funds to designated bank accounts.

1.16 **"Submit"**, "Submitted" and "Submission" means the Merchant's action of utilizing HPS's ACH Services for the purpose of processing a transaction.

2. **Entries and Related Warranties.** Merchant shall transmit only those types of Entries designated in the Application. Entries that are part of a payment transaction that involves a financial agency's office that is not located within the territorial jurisdiction of the United States must be identified using the International ACH Transaction (IAT) Standard Entry Class Code. With respect to each Standard Entry Class Code indicated by Merchant, Merchant shall comply with all requirements and warranties set forth in the Rules with respect to such Standard Entry Class Code.

3. **Security Procedures.** Merchant is strictly responsible to establish and implement security procedures to safeguard against unauthorized transmissions. Merchant warrants that no individual shall be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices and related instructions provided by HPS. If Merchant discovers that any such information or instructions have been known or accessed by unauthorized persons, Merchant agrees to notify HPS within a reasonable time followed by written confirmation. The occurrence of unauthorized access shall not affect any transfers made in good faith by HPS prior to receipt of such notice and within a reasonable time after such notice.

    (a) If HPS accepted the Entry in good faith with respect to such Entry, then with respect to a credit Entry, Merchant shall be obligated to pay HPS the amount of such Entry, and with respect to a debit Entry, Merchant shall maintain sufficient funds in the Merchant Account to fund the reversal of such Entry.

    (b) If an Entry (or request for cancellation or amendment of an Entry) received by HPS was transmitted or authorized by Merchant, Merchant shall pay HPS the amount of any such credit Entry and shall maintain funds in the Settlement Account to fund the reversal of any debit Entry, whether or not that Entry was erroneous in any respect.

4. **Recording and Use of Communications.** Merchant and HPS agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party for any reasonable use which is in compliance with this Agreement.

5. **Processing Deadlines.** Merchant acknowledges that HPS has specific processing deadlines imposed by its ODFI and the ACH Operator for ACH Transactions and that HPS will process Merchant's ACH transactions within the constraints placed upon HPS.

6. **Rejection of Entries.** HPS may reject any Entry which does not comply with the requirements of this Agreement.

7. **Cancellation or Amendment by Merchant.** Merchant shall have no right to cancel or amend any Entry after its receipt by HPS. HPS shall use reasonable efforts to act on a request by Merchant for cancellation of a file prior to transmitting such file to the ODFI, but HPS shall have no liability if such cancellation is not effected. Merchant shall reimburse HPS for any expenses, losses, or damages HPS may incur in effecting or attempting to affect Merchant's request.

8. **Merchant Account.** Merchant agrees to immediately reimburse HPS for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by HPS. Merchant also agrees to authorize HPS to suspend Settlement of all funds to Merchant Account, without prior notice to Merchant, if Merchant should breach or fail to comply with any terms of this Agreement, or if HPS or ODFI in its sole opinion deems itself at risk relative to any services performed under this Agreement.

9. **Returns.** For transactions provided for under this Agreement, unless otherwise provided herein, Returns for non-sufficient funds and uncollected funds will be electronically Re-initiated by HPS as applicable and allowed by current NACHA rules and regulations. Merchant agrees to be liable for all EFT items that are returned, dishonored, reversed or that cannot be collected through Receiver's account and that are not subsequently covered by debit against Merchant Account. In the event that funds in Merchant Account are not sufficient to cover Returns, Merchant shall immediately upon request from HPS, deposit sufficient funds in Merchant Account to cover such Returns. HPS may deduct or offset Returns against amounts to be paid Merchant for current or future ACH transactions. With regards to any Returns, Merchant shall promptly notify HPS if:
   (a) a Receiver makes any payment to Merchant on said transaction;
   (b) a Receiver returns Goods or Services in whole or in part which were paid by said transaction, or
   (c) there is a dispute concerning the Goods or Services or amount of said transaction.

10. **Returned Item Service Charges.** Returned Item Service Charges will be assessed as allowed by applicable law.

11. **Account Reconciliation.** Entries transmitted by HPS shall be reflected on Merchant's periodic statement issued by HPS with respect to the Merchant Account or the Reserve Account, as applicable, pursuant to the Application between HPS and Merchant with respect to such account. Merchant agrees to notify HPS promptly of any discrepancy between Merchant's records and the information shown on any periodic statement. If Merchant fails to notify HPS of any discrepancy within one hundred twenty (120) days of receipt of a periodic statement containing such information, then Merchant shall be precluded from asserting such discrepancy against HPS and HPS shall not be liable for any other losses resulting from Merchant's failure to give such notice or any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement.

12. **Merchant Representations.**
   (a) With respect to each and every Entry initiated by Merchant, Merchant represents and warrants to HPS and agrees that Merchant shall initiate Entries only in compliance with the provisions of Rules,
   (b) Merchant agrees to assume the responsibilities of a Merchant under the Rules, including ensuring that all international payment transactions are properly labeled as IAT entries and include the appropriate data elements under the Rules, and Merchant makes the warranties and assumes the liabilities as provided in the Rules,
   (c) each person shown as the Receiver on an Entry received by HPS from Merchant has authorized the initiation of such Entry and the debiting or crediting of its account in the amount and on the Effective Entry Date shown on such Entry,
   (d) such authorization is operative at the time of transmittal or at the time of debiting or crediting by HPS as provided herein,

(e)   Entries transmitted to HPS by Merchant are limited to those types of Entries agreed to by HPS and Merchant,

(f)   Merchant shall perform its obligations under this Agreement in accordance with all applicable federal and state laws and regulations, including the sanctions laws administered by the Office of Foreign Assets Control ("OFAC"), and

(g)   Merchant shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision making payment of a credit Entry by the Receiving Depository Financial Institution to the Receiver provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry.

(h)   Merchant accepts responsibility for compliance with the Rules and will reimburse HPS for any fees or penalties for which it is responsible.

(i)   Merchant specifically acknowledges that it has received notice of the Rules regarding provisional payment and of the fact that, if such settlement is not received, the Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Merchant shall not be deemed to have paid the Receiver the amount of the Entry.

13.   **Responsibilities.**

In the performance of the services required by this Agreement, HPS shall be entitled to rely solely on the information, representations, and warranties provided by Merchant pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. HPS shall be responsible only for performing the services expressly provided for in this Agreement, and, subject to the disclaimers and limits on HPS's liability set forth herein. HPS shall not be responsible for Merchant's acts or omissions, including without limitation the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Merchant or for the return of an Entry by such Receiver or Receiving Depository Financial Institution, and no such person shall be deemed HPS's agent.

LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE THAT THE OTHER PARTY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE OTHER PARTY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY THAT THE OTHER PARTY MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM LOSS OF BUSINESS, PROFITS, OR SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM THE OTHER PARTY'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT. IN ADDITION TO THE FOREGOING, HPS's LIABILITY UNDER THIS AGREEMENT FOR PROVEN AND DIRECT DAMAGES SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR TO BE PAID BY MERCHANT TO HPS UNDER THIS AGREEMENT FOR A SIX MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CLAIM AROSE.

14.   **Interruption of Services.** Merchant acknowledges and agrees that HPS's provision of ACH services hereunder may be interrupted from time to time and that HPS shall have no liability whatsoever as a result of such an interruption or delay. Without limiting the generality of the foregoing provisions, HPS shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, loss of power, equipment or software error or malfunction, war, terrorist actions, acts of God, earthquakes, flood, embargo, riot, sabotage, labor shortage or dispute, emergency conditions or circumstances beyond HPS's control. From time to time HPS may need to temporarily suspend processing of a transaction (particularly an international ACH transaction) for greater scrutiny or verification, including, but not limited to, suspending processing to review for OFAC compliance in accordance with applicable OFAC guidance, and HPS shall be excused if this action causes delay in the settlement and/or availability of the transaction while review is in process. In addition, HPS shall be excused, while review is in process, from failing to transmit or delay in transmitting an Entry if such transmittal would result, in

HPS's reasonable judgment, in violation of any rule or regulation of any U.S. governmental regulatory authority or NACHA Rule.

15. **Risk Mitigation.** In order to reduce the risk of loss to which HPS is subject under this Agreement, HPS may in its sole discretion establish such risk mitigation procedures as HPS deems necessary, including without limitation, requiring prefunding of credit Entries, delayed availability of funds to Merchant to cover returned debit Entries, and submission of unbalanced files (submission of a credit file for which HPS shall then create the offsetting debit file.)

16. **Inconsistent Name and Account Number.** Merchant acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, posting of the Entry transmitted by HPS to the RDFI may be made by the RDFI on the basis of the account number supplied by Merchant, even if such account number identifies a person different from the named Receiver, and that Merchant's obligation to settle the amount of the Entry to HPS is not excused in such circumstances.

17. **Payment for Services.** Merchant shall pay HPS the charges for the services provided in connection with this Agreement, as set forth in the Application. HPS may debit the Merchant Account, or if necessary, the Merchant Reserve Account, for the amount of any such charges. All fees and services are subject to change upon sixty (60) days prior written notice from HPS to Merchant. In the event HPS changes the fees and services pursuant to this section, Merchant shall have the right to terminate this Agreement upon thirty days' notice anytime thereafter without penalty. The charges set forth in the Application do not include, and Merchant shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Account Agreements.

18. **Right to Audit.** Upon ten (10) business days' notice, Merchant shall permit HPS, and any regulatory authority having jurisdiction over HPS, to review Merchant's operations as they relate to compliance with this Agreement and the Rules, and to examine and copy any books, records, and source documents related thereto.

19. **Confidential Information.**
    (a)   In performing its obligations pursuant to this Agreement, each party may have access to and receive disclosure of certain confidential information about the other party, including but not limited to data and other information identifying or otherwise concerning HPS's consumers or customers, marketing representatives, marketing plan, methods, objectives and test results, and proprietary computer source code (hereinafter "Confidential Information"). HPS and Merchant each agree that it will use the Confidential Information of the other solely in the performance of its obligations pursuant to this Agreement. A party receiving Confidential Information may disclose such Confidential Information pursuant to a judicial or other governmental order, provided that such receiving party shall first provide the disclosing party with prompt notice prior to any such disclosure so that the disclosing party may seek other legal remedies to maintain the confidentiality of such Confidential Information, and the receiving party shall comply with any applicable protective order or its equivalent. The Confidential Information shall constitute "trade secrets" defined by applicable law. The parties also acknowledge that the restrictions on the disclosure of the Confidential Information set forth in this Agreement constitute efforts reasonable under the circumstances to maintain the secrecy thereof.
    (b)   Upon request or upon the termination of this Agreement, each party shall return to the other party all Confidential Information in its possession in hard copy or electronic form.
    (c)   HPS and Merchant acknowledge that to the extent Confidential Information is disclosed to any affiliate or third party the disclosing party shall have a written contract protecting the

confidentiality of same and shall ensure that such affiliates and third parties use and disclose Confidential Information only as needed for purposes of this Agreement.

(d)   During the term of this Agreement and any renewal, Merchant shall retain information and data as is necessary to demonstrate compliance with this Agreement and applicable law.

20.   Reserved.

21.   Amendments. From time to time HPS may amend any of the terms and conditions contained in this Agreement. Notice of such amendments shall be made in writing to Merchant and shall become effective thirty (30) days after written notice is given. Merchant may, at its sole discretion, terminate this Agreement, without fee or penalty, if it does not wish to accept the amendments to the Agreement.

22.   Notices.

(a)   Except as otherwise expressly provided herein, HPS shall not be required to act upon any notice or instruction received from Merchant or any other person, or to provide any notice or advice to Merchant or any other person with respect to any matter.

(b)   HPS shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in the APPLICATION. Such notice shall be effective on the second business day following the day of receipt by HPS.

(c)   Notice of Receipt of Entry. Under the NACHA operating rules, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statement we provide to you.

(d)   All notices, requests, and approvals required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as indicated in the APPLICATION, unless notified in writing of a change in address, and (iii) shall be deemed to have been given either when personally delivered or when sent by regular United States mail, in which event it shall be sent postage prepaid upon delivery thereof, or, if sent by a delivery service, telegram, facsimile, or e-mail, upon delivery thereof.

23.   Tapes and Records. All diskettes, Entries, security procedures and related records used by HPS for transactions contemplated by this Agreement shall be and remain HPS's property. HPS may, at its sole discretion, make available such information upon Merchant's request. Any expenses incurred by HPS in making such information available to Merchant shall be paid by Merchant.

24.   Evidence of Authorization/Provision of Information. Merchant shall obtain, or shall ensure that all applicable consents and authorizations required under the Rules are obtained and shall retain, or shall ensure that all applicable consents and authorizations are retained for two (2) years after they terminate. Within five (5) banking days of a request by HPS, Merchant shall provide HPS with any information requested pursuant to this Agreement or required to comply with the Rules.

25.   Term and Termination. This Agreement shall become effective upon acceptance of the first Merchant deposit by HPS and shall continue in effect for a term of   twenty four (24) months therefrom. Thereafter, the Agreement will automatically renew for additional twelve (12) month periods unless terminated by any party by giving ninety (90) days written notice prior to the end of any term. HPS may terminate the Agreement immediately as required by the ODFI or as may otherwise be required by the Rules.

26.   Entire Agreement. This Agreement is the complete and exclusive statement of the agreement between HPS and Merchant with respect to the subject matter hereof and supersedes any prior agreement between HPS and Merchant with respect to such subject matter. In the event performance

of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which HPS is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and HPS shall incur no liability to Merchant as a result of such violation or amendment. No course of dealing between HPS and Merchant shall constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between HPS and Merchant regardless of whatever practices and procedures HPS and Merchant may use.

27. **Non-Assignment.** Neither party may assign this Agreement or any of the rights or duties hereunder to any person without the other parties' prior written consent except that upon notice to the other party, either party may assign the Agreement to a parent, subsidiary, or affiliate without the other's consent.

28. **Waiver.** Either party may waive enforcement of any provision of this Agreement. Any such waiver shall not affect the waiving party's rights with respect to any other transaction or modify the terms of this Agreement.

29. **No Third Party Beneficiary.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against HPS or Merchant hereunder.

30. **Headings.** Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

31. **Severability.** If any provision of this Agreement is held void or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and the void or unenforceable term shall be amended such that it is enforceable to the maximum extent permitted by law.

32. **Relationship of the Parties.** HPS and Merchant are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between them. Except as provided in this Agreement, HPS and Merchant each shall bear its own costs and expenses in connection with the performance of its obligations under this Agreement. Neither HPS nor Merchant will have the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.

33. **Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with and governed by the laws of the State of residence of the government or public educational entity without regard to its choice of law provisions. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum. In any such action, the parties waive trial by jury.