

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 **"HPS"** means collectively Heartland Payment Systems, Inc., and its sponsoring banks, and other vendors and subcontractors.
- 2.16 **"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.).
- 2.17 **"MCC" also known as "Merchant Category Code"** is a 4 digit number used to describe the Merchants primary business.

- 2.18 **“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.
- 2.19 **“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.
- 2.20 **“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.
- 2.21 **“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.
- 2.22 **“Products”** means all goods and payment services that are sold or offered by the Merchant.
- 2.23 **“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.
- 2.24 **“Sales Draft”** means an electronic receipt evidencing a sales Transaction.
- 2.25 **“Sub-merchant”** is a customer conducting business through a Third Party relationship acting as a Payment Facilitator (PF) or Payment Service Provider (PSP).
- 2.26 **“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.
- 2.27 **“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.
- 2.28 **“Virtual Terminal”** means a credit Card processing equipment on a secure server on the Internet whereby Merchant can key enter credit Card Transactions manually.
- 2.29 **“Voice Authorization”** means an Authorization obtained by a direct-dialed telephone call.
- 2.30 **“Web Payment Solution”** may be used interchangeably with “Heartland 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 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 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- For American Express Direct Merchants Only.

5. Debit Card Processing

- 5.1 Merchant understands and agrees that HPS and Carrolton Bank 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 sixty (60) 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 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

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 Merchant further waives 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 www.HeartlandInfoCentral.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.