

PRODUCT AND SERVICES AGREEMENT

CLIENT INFORMATION			
ORGANIZATION FULL LEGAL NAME:	Minneapolis Park and Recreation Board	ADDRESS:	217 West River Road N Minneapolis, MN 55411
CONTACT NAME:	Meg Forney	TELEPHONE:	612-230-6443
EMAIL:	mforney@minneapolisparcs.org		

OVERVIEW OF AGREEMENT
This Agreement consists of this cover page, the Schedule, the General Terms, and the following Product Attachments:
Recreation Management Product Attachment

NOTE: If Client is tax exempt, certificate must be provided along with signed contract.

In consideration of the mutual promises and covenants contained in this Agreement, Client and Active hereby agree to be bound by this Agreement. By signing below, Client acknowledges and confirms that it has read this Agreement.

CLIENT	ACTIVE NETWORK, LLC
Signature: _____	Signature: _____
Name: Meg Forney _____	Name: _____
Title: President Of The Board _____	Title: _____
Date: _____	Date: _____

Active Network, LLC
 717 N Harwood Street, Suite 2500, Dallas, TX 75201
 Telephone: (469) 291-0300

Products and Services General Terms

Client's relationship with Active and Client's use of Active's products and services (including Client's licensing of Active's SaaS, Client's use of Services, and/or Client's purchase or leasing of Hardware) are subject to the terms and conditions set forth herein and are between Client and Active. Capitalized terms are defined in [Section 7](#) below, unless otherwise defined within the body of this Agreement, the applicable Product Attachment, or Schedule. In order to use the Products, Client must first agree to this Agreement. Client represents and warrants that Client has the necessary and full right, power, authority, and capability to accept this Agreement, to bind Client's organization, and to perform Client's obligations hereunder. Client can accept this Agreement by: (a) clicking to accept or agree to this Agreement, where this option is made available to Client by Active in the user interface for any Product; (b) signing a document where a link to this Agreement appears in an order form, Schedule, or other document provided to Client by Active; (c) by signing this Agreement, if there is a designated area to sign; or (d) by actually using the Products. In the case of (d), Client understands and agrees that Active will treat Client's use of the Products as acceptance of this Agreement from that point onwards. Client may not use the Products and may not accept this Agreement if (i) Client is not of legal age to form a binding contract with Active, or (ii) Client is a person barred from receiving the Products under the laws of the United States or other countries, including the country in which Client is a resident or from which Client uses the Products. Client may not use the Products if Client does not accept this Agreement. By accepting this Agreement, Client agrees as follows:

1. AGREEMENT STRUCTURE AND SCOPE.

1.1. General Terms and Incorporation of Product Terms. This Agreement establishes the general terms and conditions to which the parties have agreed to in order to facilitate the licensing of SaaS and the provision of Products. Additional Product-specific terms and conditions are set forth in one or more documents referenced in the applicable Schedule, each of which is incorporated herein (each, a "**Product Attachment**"). All references to the "**General Terms**" mean this document, exclusive of Product Attachments and Schedules.

1.2. Incorporation of Schedules. The parties may enter into new Schedules from time to time. Each Schedule incorporates the terms of these General Terms and the applicable Product Attachment.

1.3. Incorporation of EULAs. Client's use of any Third Party Products hereunder may be subject to, and Client will comply with, this Agreement and any applicable Third Party EULA(s).

1.4. Incorporation of Exhibits. Client's use of any payment processing services hereunder will be subject to, and Client will comply with, this Agreement and an applicable Exhibit(s).

1.5. Affiliates. Client's Affiliates may order Products from Active (or one of Active's Affiliates) by entering into a Schedule. In the event that a Client Affiliate enters into a Schedule with Active (or an Affiliate of Active), reference in this Agreement to "**Client**" and "**Active**" will mean the respective entity that accepts (as described in the Preamble) the applicable Schedule. Each such Schedule will be deemed to be a separate agreement.

2. FINANCIAL TERMS.

2.1. Fees; Payment Terms; Currency. Fees, currency, and payment terms are specified in the applicable Schedule. Unless otherwise specified in the Schedule, all amounts owed by Client that are not directly collected by Active are due from Client within forty-five (45) days from either (a) the end of the remittance cycle during which the fees accrued (if related to registrations or transaction processing), or (b) the date of the applicable invoice. Past due fees will accrue interest at the lesser of the annual rate of 10% per annum or the maximum amount permitted by applicable law. In the event of any non-payment or delay in paying a fee, Client agrees to reimburse Active for any fees and expenses incurred in its collection efforts. Payment of fees is under no circumstances subject to, or conditioned upon, the delivery of future Products or functionality. Except as otherwise expressly provided in a Schedule, Active may modify the fees once per calendar year upon 30 days' notice, provided that any such increase will not exceed 12.5% over the then-current transaction fees or 3% over the then-current subscription fees.

2.2. Additional Payment Terms. If Active reasonably believes that a transaction by Client, Licensee, or End User, as applicable, may be fraudulent or otherwise contrary to law, Active may issue an invoice or offset an equivalent amount from Client's account or any payment Active owes to Client and return the value to the End User (as set forth below) and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

2.3. Credit Card Surcharging. All fees described in the applicable Schedule are in consideration of the SaaS and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any End User.

2.4. Taxes. The prices stated in this Agreement do not include Taxes. Client is responsible for, and agrees to pay, any and all required Taxes which may be assessed on Client's invoices. If Client is tax-exempt, Client will send Active a copy of its valid tax-exempt certificate (or, as applicable, its reseller's certificate) prior to execution of any Schedule. Client is solely responsible for determining which, if any, Taxes apply to End Users or Licensees in connection with Client's use of the Products and for collecting, remitting, and reporting the correct amounts of all such Taxes to the applicable governmental authorities, even if Active provides Client with tools that assist Client in doing so. In the event that a governmental authority requires Active to pay any Taxes attributable to Client's use of the Products, to the extent not prohibited by law, to the extent not prohibited by law, Client agrees to defend, indemnify, and hold Active harmless from all such Taxes and all costs and expenses related thereto. Active reserves the right to modify this section and apply all required Taxes to this Agreement upon providing a thirty (30) day written notice to Client in order to comply with applicable laws. When Active is acting as the payment facilitator and Client elects to include an additional fee in the End Users' cart that is identified as a "sales tax" or similar designation, then, no more frequently than once per calendar year during the Term of the Agreement, Active may, upon at least five (5) business days' prior written notice, (a) require Client to send to Active Client's books and records related to its sales tax payments, and/or (b) visit Client's premises during Client's normal business hours to review Client's sales tax payments.

3. LIMITED RIGHTS AND OWNERSHIP; INDEMNIFICATION.

3.1. Reservation of Rights. All rights not expressly granted in this Agreement are reserved by Active and its licensors. Client acknowledges that: (a) all Protected Materials are licensed and not sold; (b) Client acquires only the right to use the Products in accordance with this Agreement, and Active and/or its licensors will retain

sole and exclusive ownership of and all right, title, and interest in the Products, including the following: (i) all Intellectual Property embodied or associated with the Products, (ii) all deliverables and work product associated with the Products, and (iii) all copies and derivative works thereof; and (c) the Products, including the source and object codes, logic, and structure, contain and constitute valuable trade secrets of Active and its licensors.

3.2. Restrictions. Unless otherwise set forth in a EULA, Product Attachment, or Schedule, Client will not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party: (a) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Protected Materials; (b) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of the Products in whole or in part, for competitive purposes or otherwise; (c) allow access to, provide, divulge, or make available the Protected Materials to any user other than those who are licensed pursuant to this Agreement to have such access; (d) write or develop any derivative works based upon the Products; (e) modify, adapt, translate, or otherwise make any changes to the Products or any part thereof; (f) use the Protected Materials to provide processing services to third parties, or otherwise use the same on a service bureau basis; (g) disclose or publish, without Active's prior written consent, (i) performance or capacity statistics, or the results of any benchmark test performed on the Products, or (ii) the terms (but not the existence) of this Agreement or other valuable trade secrets of Active or its licensors; (h) without Active's prior written consent, perform or disclose or cause to be performed or disclosed any information related to any security penetration or similar tests; (i) disclose or otherwise use or copy the Protected Materials except as expressly permitted herein; (j) remove from any Products identification, patent, copyright, trademark, or other notices or circumvent or disable any security devices' functionality or features; (k) contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or Intellectual Property rights, title, or interests of Active in and to any Products; (l) use the Products for other than authorized and legal purposes, consistent with this Agreement and all applicable laws, regulations, and the rights of others; (m) take any steps to avoid or defeat the purpose of security measures associated with the Products, such as sharing of login and password information, or attempt to circumvent any use restrictions; or (n) except as expressly permitted by this Agreement, use the Protected Materials for hosting purposes. Further, Client will: (o) not use the SaaS to transmit, publish, or distribute any material or information: (i) for which Client does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the intellectual property rights of any third party; (ii) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the SaaS; (iii) that is inaccurate or misleading; (iv) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) that contains a virus or malicious code; or (vi) that includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable person would consider private in nature; (p) not attempt to gain access to any systems or networks that connect to the Services or SaaS except for the express purpose of using the SaaS for their intended use; (q) not engage in any activity that interferes with or disrupts the SaaS; and (r) not use the SaaS in violation of the CAN-SPAM Act, Canadian Anti-Spam Legislation, or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications.

3.3. Enforcement. Client will (a) ensure that all Client users of Products comply with the terms and conditions of this Agreement; (b) promptly notify Active of any actual or suspected violation thereof; and (c) cooperate with Active with respect to any investigation and enforcement of this Agreement.

3.4. Active Indemnification. Active agrees to defend, settle, and pay damages (including reasonable attorneys' fees) relating to any third party claim, demand, cause of action, or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Client to the extent that such Claim is based upon Active's proprietary Products (excluding Professional Services and Third Party Products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement.

3.5. Client Indemnification. To the extent not prohibited by law, Client will defend, indemnify, and hold Active harmless from and against any and all third party claims, demands, causes of action or proceedings (whether threatened, asserted, or filed) ("**Claims**") against Active to the extent that such Claim is based upon (a) any actual, alleged or anticipated breach by Client of this Agreement; (b) injury or death to a person or damage to property resulting from the participation in an Event operated by Client in connection with the Services and/or SaaS; (c) Client's provision to Active of materials, products, or services as part of Client's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used by Active in accordance with the Agreement; (d) use or unauthorized disclosure of Participant Information (as defined in the Product Attachment) by Client or other third parties to whom access is given to Participant Information as provided hereunder; (e) Client's use of the Services and/or SaaS in violation of Section 3.2 of these General Terms; and/or (f) any claims for refunds or chargeback requests from End Users.

4. DISCLAIMERS AND LIMITATION OF LIABILITY.

4.1 EXCEPT AS OTHERWISE SET FORTH HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, CLIENT ACKNOWLEDGES AND AGREES THAT THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE WARRANTIES, IF ANY, SET FORTH HEREIN AND IN THE PRODUCT ATTACHMENTS ARE LIMITED TO THEIR EXPRESS TERMS AND ARE IN LIEU OF, AND ACTIVE, ITS LICENSORS, AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY (a) WARRANTY THAT THE PRODUCTS ARE ERROR-FREE OR "BUG"-FREE, ACCURATE, SECURE, OR RELIABLE; (b) WARRANTY THAT THE PRODUCTS WILL OPERATE WITHOUT INTERRUPTION; (c) WARRANTY THAT ALL ERRORS WILL BE CORRECTED OR THAT THE PRODUCTS WILL COMPLY WITH ANY LAW, RULE, OR REGULATION; (d) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT; (e) IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (f) WARRANTY THAT THE PRODUCTS WILL MEET CLIENT'S REQUIREMENTS. ACTIVE WILL NOT BE LIABLE FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT, STATUTE, TORT, OR OTHERWISE), INCLUDING DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT SERVICES, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, WHETHER OR NOT ACTIVE HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HOWEVER, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION ONLY APPLIES WHERE ALLOWED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO (I) THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT AS CONSIDERATION FOR THE SPECIFIC PRODUCT UNDER THE APPLICABLE SCHEDULE GIVING RISE TO SUCH CLAIMS DURING THE 12 MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CAUSE OF ACTION AROSE LESS ANY AMOUNTS PAID BY ACTIVE WITH RESPECTIVE TO LIABILITIES UNDER THIS AGREEMENT, OR (II) IF NO SUCH PAYMENTS HAVE BEEN MADE OR SUCH AMOUNTS CANNOT BE CALCULATED, 10,000 U.S. DOLLARS (OR THE EQUIVALENT THERETO AS DETERMINED BY THE APPLICABLE COUNTRY'S CURRENCY), AS APPLICABLE. NOTWITHSTANDING THE ABOVE, IF CLIENT RESIDES OUTSIDE OF THE U.S., THIS DOES NOT AFFECT ACTIVE'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE, NOR FOR FRAUDULENT MISREPRESENTATION, MISREPRESENTATION AS TO A FUNDAMENTAL MATTER, OR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

4.2 TO THE EXTENT THIS AGREEMENT IS GOVERNED BY ENGLISH LAW, THE FOLLOWING APPLIES: ACTIVE IS LIABLE UNDER APPLICABLE STATUTORY PROVISIONS FOR INTENT AND GROSS NEGLIGENCE. THE SAME APPLIES TO ASSUMPTIONS OF GUARANTEES, STRICT LIABILITY, OR INJURY TO LIFE, LIMB, OR HEALTH. ACTIVE IS LIABLE FOR ANY NEGLIGENT BREACHES OF ESSENTIAL CONTRACTUAL OBLIGATIONS BY ACTIVE BUT THE AMOUNT SHALL BE LIMITED TO THE TYPICALLY OCCURRING FORESEEABLE DAMAGE. ANY ADDITIONAL LIABILITY OF ACTIVE IS EXCLUDED.

4.3 TO THE EXTENT THIS AGREEMENT IS GOVERNED BY AUSTRALIAN LAW, THE FOLLOWING APPLIES: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND EXCEPT FOR ANY CONDITION OR WARRANTY, THE EXCLUSION OF WHICH COULD BE VOID OR OTHERWISE CONTRAVENE THE TRADE PRACTICES ACT 1974 (CTH) OR ANY OTHER APPLICABLE LAW ("NON EXCLUDABLE CONDITION"), ALL SOFTWARE AND SERVICES OF ACTIVE ARE PROVIDED TO CLIENT ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY NON-EXCLUDABLE CONDITION OR OTHERWISE AS CONTAINED IN THIS AGREEMENT, ACTIVE EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF ITS SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SPECIFICATIONS WILL MEET CLIENT'S REQUIREMENTS. WHERE LEGISLATION IMPLIES INTO THIS AGREEMENT ANY NON-EXCLUDABLE CONDITION, ACTIVE'S LIABILITY FOR ANY BREACH OF SUCH NON-EXCLUDABLE CONDITION WILL BE LIMITED AT ACTIVE'S SOLE DISCRETION TO ONE OR MORE OF THE FOLLOWING: (1) IN THE CASE OF GOODS, ANY ONE OR MORE OF THE FOLLOWING: (I) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; (II) THE REPAIR OF THE GOODS; (III) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (IV) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; (2) IN THE CASE OF SERVICES: (I) THE SUPPLYING OF THE SERVICES AGAIN; OR (II) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. (B) ACTIVE SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFIT, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, ANTICIPATED SAVINGS OR COMPUTER FAILURE WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF ACTIVE OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH LOSS OUGHT REASONABLY TO HAVE BEEN IN THE CONTEMPLATION OF THE PARTIES AT THE AGREEMENT DATE. DESPITE ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE LESS ANY AMOUNTS PAID BY ACTIVE WITH RESPECTIVE TO LIABILITIES UNDER THIS AGREEMENT.

4.4 FOR THE PURPOSES OF THIS SECTION 4 AND ANY INDEMNIFICATION PROTECTING ACTIVE UNDER THIS AGREEMENT, REFERENCE TO ACTIVE WILL ALSO INCLUDE ITS SUPPLIERS AND LICENSORS.

5. TERM AND TERMINATION.

5.1. Term. The Term for each Product or Service offered under this Agreement will be as set forth in the applicable Product Attachment. This Agreement will continue until either party terminates all Schedules and Product Attachment as provided hereunder.

5.2. Termination. Either party may terminate this Agreement, including any or all Product Attachments and Schedules executed hereunder, immediately upon written notice: (a) in the event that the other party commits a non-remediable material breach of this Agreement and/or the applicable Product Attachment or Schedule, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach, except for breach of [Section 2](#) of these General Terms which will have a 10 day cure period; or (b) in the event of institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against either party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within 30 days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by either party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the United States Bankruptcy Code. Where a party has the right to terminate this Agreement, such party may at its discretion either terminate the entire Agreement or the applicable Product Attachment or Schedule; provided however, that termination of a Product Attachment will automatically terminate all Schedules entered into pursuant to such Product Attachment. Product Attachments and Schedules that are not terminated will continue in full force and effect under the terms of these General Terms. Following termination of this Agreement or a Product Attachment (for whatever reason), if requested by Active, Client will certify that it has returned or destroyed all copies of the applicable Protected Materials and acknowledges that its rights to use the same are relinquished. Termination for any reason will not excuse Client's obligation to pay in full any and all amounts due, nor will termination by Active result in a refund of fees paid.

5.3. Suspension. Active will be entitled to suspend any or all Services or deactivate Client's account, including suspending its performance and obligation to remit payments hereunder, upon 10 days' written notice to Client in the event Active reasonably believes that Client is in breach of this Agreement, Client's use of the Services or SaaS is not in compliance with applicable law or the Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Client-associated party to perform hereunder. Further, Active, in its sole discretion, may terminate Client's password, accounts (or any part thereof), and/or Client's right to use the Services, and remove and discard any and all of Client's content within the Services, at any time for any reason or no reason, including, without limitation, for lack of use, failure to timely pay any fees or other monies due Active, or if Active believes Client has violated or acted inconsistently with the letter or spirit of this Agreement. Client agrees that any termination of its use of the Services may be effected without prior notice, and acknowledges and agrees that Active may immediately deactivate or delete Client's account and all related content and files related to Client's account and/or bar any further access to such files or Services. Further, Client agrees that Active shall not be liable to Client or any third party for any termination of use of or access to the Services. All provisions of this Agreement that by their nature should survive termination of Client's right to use the Services shall survive (including, without limitation, all limitations of liability, releases, indemnification obligations, disclaimers of warranties and intellectual property protections and licenses).

6. GENERAL PROVISIONS.

6.1. Force Majeure. Neither party will incur any liability to the other party on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement, if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without any negligence on the part of the party seeking protection under this subsection, including internet service provider or third party payment delays or failures, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, or explosions. Dates by which performance obligations are scheduled to be met will be extended for a time equal to the time lost due to the delay so caused.

6.2. Assignment. Active may assign this Agreement and any or all of its rights and obligations herein without Client's approval. Client may not resell, assign, or transfer any of its rights or obligations under this Agreement except as expressly provided herein, and any attempt to resell, assign, or transfer such rights or obligations without the prior written consent of Active will be null and void.

6.3. Change of Control. Client will cause each Schedule hereunder to be assigned to (a) the purchaser of all or substantially all of Client's assets or equity securities or (b) to any successor by way of merger, consolidation, or other corporate reorganization of Client ((a) and (b) together, a "Change of Control"). Client will provide written notice to Active of any proposed or completed Change of Control as soon as permissible and in any event within 5 days of the public announcement or close of the transaction, whichever occurs first. Within the 30 day period following such notice, Active will have the right to immediately terminate each applicable Schedule if Active determines, in its reasonable good faith discretion that the purchaser or assignee is a competitor of Active or a party with whom Active does not want to do business. Client agrees to require that the purchaser or assignee (as outlined in this Section 6.3) agree, in writing, to be bound by the terms and conditions of the Agreement and each applicable Schedule.

6.4. Export; Anti-Bribery. The Products may include encryption software or other encryption technologies that may be controlled for import, transfer, export, or other purposes under Export Laws. Client may not export, re-export, transfer, or re-transfer or assist or facilitate in any manner the export, re-export, transfer, or re-transfer of, or provide access to, any portion of the Products in violation of Export Laws, as determined by the laws under which Client operates, including: (a) to any country on Canada's Area Control List; (b) to any country subject to U.N. Security Council embargo or action; (c) contrary to Canada's Export Control List Item 5505; (d) to countries subject to U.S. economic sanctions and embargoes; and (e) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items, including, to any person or entity appearing on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; the Bureau of Industry and Security's Denied Persons List, Entity List, or Unverified List; or the Department of State Debarred List. Client hereby represents and covenants that: (i) Client is eligible to access the Products under Export laws and all other applicable laws; and (ii) Client will import, export, re-export, transfer, or re-transfer the Products to, or use or access the Products in, any country or territory only in accordance with Export Laws and all other applicable laws. Furthermore, Client hereby represents and covenants that, in connection with its respective activities conducted under this Agreement, it will comply with the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act of 2010, as amended, and the Convention on Combating Bribery of Foreign Public Officials and has not, and will not, make or receive, directly or indirectly, any payments or gifts, or offers or promises of payments or gifts or things of value in exchange for anything that may arise out of this Agreement in a manner that would violate these laws and rules or any other applicable anti-corruption or anti-bribery laws or regulations.

6.5. Notices. Any notices required to be given under this Agreement will be in writing sent to the address on file with Active for Client or, in the case of Active, to the address set forth in [Section 7](#) of these General Terms to the attention of Legal Department. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or 3 days after deposited in the mail sent certified or registered.

6.6. Relationship. This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

6.7. Severability. If any part or provision of this Agreement is held to be unenforceable, illegal, or invalid by a court of competent jurisdiction for any reason whatsoever, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) will not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the unenforceable, illegal, or invalid provision will be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable, illegal, or invalid provision and this Agreement will be deemed amended accordingly.

6.8. Survival. The following provisions will survive any termination, cancellation, or expiration of this Agreement: [Sections 1, 2, 3.2, 3.5, 4, 5.2, 6, and 7](#) of these General Terms, and such other provisions that should reasonably survive termination, cancellation, or expiration hereof.

6.9. Amendments; No Waiver. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing and signed by both parties.

6.10. Entire Agreement. This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, conditions, representations, and warranties, or other communication between the parties relating to its subject matter as well as any prior contractual agreements between the parties. All pre-printed terms of any Client purchase order, business processing document, or on-line terms will have no effect. There have been no material representations or statements by any person or party to this Agreement as an inducement for a party hereto to accept this Agreement other than what is expressly set forth in writing herein.

6.11. No Third Party Beneficiaries. This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that all rights and benefits afforded to Active under this Agreement will apply equally to its licensors and suppliers, and the owner of the Third Party Products with respect to the Third Party Products, and such third parties are intended third party beneficiaries of this Agreement, with respect to the Third Party Products as applicable.

6.12. Governing Law and Venue. Except as set forth below, this Agreement will be governed by the laws of the State of Minnesota, without giving effect to the conflict of law provisions thereof and as applicable under United States federal law. . THE PARTIES HERETO IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. Notwithstanding the above, for purposes of this Agreement, certain of the terms and conditions will vary depending on the location of the Client. If a country or term is not specified below, then the Governing Law and Venue set forth above shall apply.

If Client's principal place of business is in:	The governing law is:	The courts having exclusive jurisdiction are:
Canada	Province of British Columbia	Province of British Columbia
United Kingdom, Ireland, Germany, France, or Austria	England	England
Singapore	Singapore	Singapore

New Zealand	England	England
Hong Kong	Hong Kong	Hong Kong
Australia	New South Wales	Sydney, New South Wales
Switzerland	England	England
Denmark	England	England
Netherlands	England	England
Spain	England	England
Sweden	England	England

6.13 Order of Precedence. To the extent any terms and conditions of these General Terms conflict with the terms and conditions of any Product Attachment, the provisions of the Product Attachment will control. To the extent any provision of these General Terms or any Product Attachment conflict with the provisions of a Third Party EULA, the Third Party EULA will control. In the event of a conflict between a Schedule and these General Terms or the applicable Product Attachment, the General Terms or the applicable Product Attachment will control, provided, however, that such standard variable terms such as price, quantity, license scope, payment terms, shipping instructions, and the like will be specified on each Schedule. Further, Client agrees and acknowledges that it shall not itself, or through any Affiliate, employee, consultant, contractor, agent, or other third party, amend, alter, or contract away (or seek to amend, alter, or contract away) any of its rights, liabilities, or obligations under this Agreement through any means (including, but not limited to, through any waiver, contract, terms, or communication with End Users (individually and collectively, "Client Terms")). Client agrees and acknowledges that any such amendment, alteration, or contracting away of any such liabilities, or obligations under this Agreement shall be void, and of no force or effect. Active shall bear no liability or obligation to any End User under any Client Terms, and any provision of any Client Terms that is inconsistent with this Agreement, or that expressly, implicitly, or effectively imputes any liability or obligation upon Active to any End User or to any other third party shall be void, and of no force or effect.

6.14 Interpretation. Any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time. The headings and pronouns contained herein are for convenience and ease of reference only and will not affect the construction or interpretation of this Agreement. The word "including" in this Agreement means "including, without limitation." All references to days means calendar days. This Agreement will not be construed in favor of or against a party based on the author of the document.

6.15 Counterparts. These General Terms and each Product Attachment, Schedule, and any exhibits thereto may be executed in one or more counterparts, each of which will constitute an enforceable original of this Agreement, and the parties agree that electronic or digital signatures, as well as pdf scanned copies of signatures, will be as effective and binding as original signatures.

6.16 Remedies Cumulative; Injunctive Relief. All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Furthermore, in the event of a breach or threatened breach of the intellectual property obligations in this Agreement, Active, in addition to any and all other rights (at law or in equity) which may be available, will have the right of injunctive relief and other appropriate equitable remedies to restrain any such breach or threatened breach, without the requirement of posting a bond.

6.17 U.S. Government Restricted Rights. The Products are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (b)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is Active Network, LLC or one of its Affiliates or subsidiaries.

7. DEFINITIONS.

"Active" means Active Network, LLC, or, if Client's principal place of business is in Canada, The Active Network, Ltd., together with their Affiliates, with a principal place of business at 717 N. Harwood St., Suite 2500, Dallas, TX, 75201.

"Affiliates" of a designated corporation, company, partnership, or other entity means all entities which control, are controlled by, or are under common control with the named entity, whether directly or through one or more intermediaries. For purposes of this definition "controlled" and "control" mean ownership of more than 50% of the voting capital stock or other interest having voting rights with respect to the election of the board of directors or similar governing authority.

"Agreement" means these General Terms, together with all Product Attachments and Schedules accepted by the parties (as described in the Preamble).

"Client" means the individual who accepts this Agreement (as described in the Preamble) and any business entity on behalf of which such individual accepts this Agreement.

"Documentation" means the user instructions, release notes, manuals, or on-line help files in the form generally made available by Active, regarding the use of the applicable SaaS or Services, as updated by Active from time to time.

"Effective Date" means the date of last signature on page one of this Agreement.

"Export Laws" means export control laws and regulations of the countries and/or territories in which Active operates or in which the Products are used, accessed, or from which the Products are provided.

"Hardware" means computer hardware, equipment, and/or utilities supplied by Active pursuant to a Schedule.

"Intellectual Property" means any and all intellectual property and proprietary rights (in whole or in part) recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed, or recorded, including inventions, technology, patent rights (including patent applications, divisions, and disclosures), copyrights and all works of authorship (whether or not copyrightable), moral rights, trade secrets, trademarks and other indicators of source (and the goodwill associated therewith), service marks, trade dress, logos, methodologies, procedures, processes, know-how, tools, utilities, techniques, protocols, various

concepts, ideas, methods, models, templates, software, source code, algorithms, tools, utilities, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, layouts, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, which Active has created, acquired, or otherwise has rights in, and may, in connection with the Products or the performance of Services hereunder, create, employ, provide, modify, create, acquire, or otherwise obtain rights in, and in each case includes any derivative works, alterations, and other modifications using, incorporating, based on, or derived from the foregoing.

"Maintenance Services" means the provision of Updates and Upgrades related to the SaaS all as more particularly set out in the applicable Product Attachment and/or Schedule.

"Preamble" means the first paragraph of these General Terms.

"Products" means, collectively, SaaS, Services, Hardware, and all other services, products, or materials provided by Active to Client under the terms of this Agreement.

"Professional Services" means the implementation, site planning, configuration, integration, and deployment of the SaaS, training, project management, or other consulting services.

"Protected Materials" means Products, except for Hardware.

"SaaS" means (a) the software as a service which is hosted by Active or its hosting providers and which is accessed by Client and its users via the internet; (b) Active's web sites; and (c) associated services, as more fully described in the applicable Product Attachment. SaaS functionality is subject to change from time to time at Active's sole discretion.

"Services" means, collectively, (a) Professional Services; (b) Maintenance Services; (c) Support Services; and (d) any other services set forth in a Schedule.

"Schedule" means the document, schedule, quote, pricing form, web page, order form, or similar document and the terms and conditions contained therein "accepted" (as described in the Preamble) by the parties that describes order-specific information, such as a description of Products ordered, features, options, license details, and fees.

"Support Services" means the provision of technical assistance for SaaS or Hardware as further described in an applicable Product Attachment and/or Schedule.

"Taxes" means any and all applicable taxes, including sales, use, excise, withholding, assessments, stamp, transfer, value-added, duties, tariffs, export charges, import charges, and other taxes or assessments (however designated) imposed by any foreign, federal, provincial, state, or local governmental authority upon or applicable to Products arising out of this Agreement, other than those based on Active's net income.

"Third Party EULA" means the end user license agreement, if any, that accompanies the Third Party Products, which governs the use of or access by Client to the applicable Third Party Products.

"Third Party Products" means those hardware, firmware and/or software products, including updates and enhancements thereto, if any, owned by third parties, together with all user manuals and other documents accompanying the delivery of the Third Party Products.

"Updates" means bug fixes, patches, error corrections, minor releases, or modifications or revisions that enhance existing performance of the SaaS that are provided as part of Maintenance Services. Updates exclude Upgrades.

"Upgrades" means a new SaaS release that contains major functionality enhancements or improvements; and which is designated by an incremental increase in the release number to the left of the decimal point (by way of example only, release 5.0 designates an Upgrade from release 4.x). Upgrades exclude new products, modules or functionality for which Active generally charges a separate fee.

Recreation and Membership Management Product Attachment

This document is a "Product Attachment" as defined in the General Terms entered into by Client and Active and is subject to and incorporates by reference the provisions of the General Terms. This Product Attachment is effective as of the date it is "accepted" (in accordance with the Preamble to the General Terms). Any capitalized terms not defined herein have the meaning ascribed to them in the General Terms.

1. SERVICES. Active will provide Services related to events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "**Events**"), including without limitation access to its SaaS. Client agrees to cooperate with Active and to provide Active with certain information relating to Client's organization as necessary for Active to provide the Services and SaaS. SaaS provided hereunder are deemed delivered when access is made available to Client.

2. LICENSE TO INTELLECTUAL PROPERTY/PROMOTION.

2.1. Active hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicensable license during the Term of this Product Attachment (a) to use the SaaS for the purposes of offering, promoting, managing, tracking, and collecting fees in connection with Client's Event(s) solely in accordance with the Agreement and the Schedule, which for purposes hereof will include the support and maintenance handbook applicable to the Products (available for review in the Client portal), as may be updated from time to time, and (b) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this [Section 2](#). Client hereby grants to Active a limited license to use information provided by Client relating to Client's organization and Event, which may include content regarding the Event, Client's organization's name, trademarks, service marks, and logo (collectively, the "**Marks**"), in connection with the promotion of Client's organization or Events and the Services that Active provides.

2.2. Client will make reasonable efforts to promote and encourage the use and availability of the SaaS in connection with the promotion of Events. During the Term of this Product Attachment, Active will be the sole and exclusive provider of registration software and other services similar to the SaaS and Services provided to Client hereunder for all of Client's Events for which registration begins during the Term of this Product Attachment until the Event occurs. For clarity, if an Event occurs after this Agreement is terminated, other than for Active's uncured material breach, and registration for such Event begins during the Term of this Agreement, then Active SaaS shall be used. Client expressly understands and agrees that the exclusivity set forth in this [Section 2.2](#) is consideration in exchange for the pricing and other benefits being provided to Client hereunder. Without limiting the foregoing, Client will not enter into any agreement, arrangement, or relationship with any other party that offers online registration or transaction processing services similar to the SaaS provided to Client hereunder.

2.3. Notwithstanding Section 2.2 above, provided Client gives Active proper written notice of termination as further described in Section 5, Client's exclusivity obligations shall be modified to permit the use of alternative software products for the sole purpose of testing and evaluation beginning twelve months prior to the end of the Renewal Term and continuing until the date of termination. Client acknowledges and agrees that this modification does not permit Client to process registrations, transactions, or events using any other software or services than Active's Software and Services.

2.4. Active may present commerce offers to users who register for, sign up, or otherwise use the SaaS in connection with the Events ("**End Users**"). Any such End Users may opt in to receive information, items, or promotions/deals from Active or third parties, in which case, Active or such third party will be responsible for fulfillment and providing customer service for any such offers. Client will not present any competing offers to End Users.

3. INFORMATION COLLECTION.

3.1. Active collects certain information from End Users, individuals, and/or Licensees as part of the registration process for Events (collectively, "**Participant Information**"). Client may login to Active's data management system to access the Participant Information. Client is responsible for the security of its login information and for the use or misuse of such information. Client will immediately disable a user's access who is using the SaaS on its behalf or notify Active in writing if any such user is no longer authorized or is using such information without Client's consent. Active may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiaries, and affiliated entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives, to the extent not prohibited by law, covenant not to sue and agree to defend, indemnify, and hold harmless Active from any claims arising from Active providing, denying, suspending, or modifying access to or use of the SaaS and Services of any individual as directed by Client or by someone who Active reasonably, under the circumstances, believes is authorized to act on behalf of Client. In the event of any dispute between two or more parties as to account ownership, Client agrees that Active will be the sole arbiter of such dispute in its sole discretion and that Active's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties. Client agrees not to use the SaaS or Services to collect or elicit (a) any special categories of data (as defined in the General Data Protection Regulation, as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions other than as expressly directed by Active, and in such event, only in pre-defined fields within the SaaS that are intended for that purpose; or (b) credit card information other than in pre-defined fields within the SaaS that are intended for that purpose.

3.2. Both parties agree to use the collected information in compliance with (a) all applicable laws, rules and regulations, including, without limitation, those governing privacy and personal information (e.g., by including an appropriate CAN-SPAM Act and Canadian Anti-Spam Legislation opt out mechanism in email communications) and the use of credit card data (e.g., using credit card information only for purposes authorized by the cardholder); (b) applicable credit card network rules and Payment Card Industry Data Security Standards; and (c) Active's privacy policy, as published on its website or otherwise provided by Active from time to time.

4. FEES.

4.1. Client will pay the fees as more fully described in the applicable Schedule. Unless otherwise set forth in the applicable Schedule, Active will charge registration fees to individuals who register for the Events or purchase goods or services online, and will process and collect such fees as a payment facilitator according to the card networks. On a bi-weekly basis, unless otherwise set forth in the applicable Schedule, Active will pay Client sums due to Client based on the total fees collected, net of Active's service fees as set forth in the applicable Schedule and any other deductions provided herein. The applicable currency will be set forth in the Schedule.

4.2. Any minimum volume commitment will be set forth in the applicable Schedule. The minimum volume calculation will begin on the date of the first live operational use of the SaaS for the Event(s) (“Go-Live Date”). If the Schedule indicates that Client is paying on a subscription basis, Client will be invoiced for the first month of subscription fees upon the Go-Live Date, with subsequent subscription fees being invoiced monthly.

4.3. If (a) there are any overdue or overage amounts owed by Client; or (b) there are returned charges or items, including those resulting from any error or complaint related to an Event, Active has the right to charge fees owed to Active by Client by issuing an invoice, or by offsetting the deficiency from any account balance Client maintains with Active or any payment Active owes Client.

4.4. In the event Client is entering into this Product Attachment and using the Services and/or SaaS for the benefit of a third-party Event or organization (“Third Party Recipient”), Client agrees that Active can remit amounts directly to the Third Party Recipient identified by Client. In addition, Client will cause each Third Party Recipient to agree to and comply with provisions that are at least as protective of Active as Sections 3 and 4 of the General Terms in Client’s agreement with such Third Party Recipient. Should Client fail to obtain such agreement to such provisions and the failure results in costs or damages to Active, to the extent not prohibited by law, Client agrees to defend, indemnify, and hold Active harmless from any such costs and damages, including, without limitation, reasonable attorneys’ fees. In addition, Client is responsible and liable for each Third Party Recipient’s compliance with the terms and conditions of the Agreement.

4.5. It is Client’s responsibility to notify End Users of Client’s refund policy. Client must ensure that Client’s refund policies are consistent with the Agreement. Client agrees that all fees for a given Event are earned by Client only following either the conclusion or delivery of the applicable Event (as applicable) and all amounts ultimately due to Client will be net of all service fees, reversals, refunds, disputed charges, chargebacks and other deductions whether due to customer complaints, allegations of fraud, discrepancies related to the applicable Event or otherwise. No payments will be made to Client with respect to any Event that is cancelled. If payments have already been made by Active to Client for a cancelled Event or if Active reasonably determines that it is prudent or otherwise necessary to pay a refund to or honor a chargeback request from an End User, Active may issue an invoice or offset an equivalent amount from Client’s account or payment owed by Active to Client and return the value to the End User, and if sufficient funds are not available, Client must reimburse Active on demand. Active will notify Client of the reason for such offset provided that it is lawful to do so.

5. TERM AND TERMINATION.

5.1. Unless otherwise set forth in the applicable Schedule, this Product Attachment will commence on the Effective Date and will continue in effect until the earlier to occur of (i) its termination in accordance with the terms and conditions below and (ii) the third anniversary of the Effective Date (the “Initial Term”). This Product Attachment shall renew following the Initial Term for up to two (2) subsequent renewal terms thereafter of one (1) year (the “Renewal Term(s)”, and, together with the Initial Term, the “Term”) by mutual written agreement of the parties. Unless otherwise set forth in the applicable Schedule, to the extent that Client enters into a Schedule for additional Services and/or SaaS that are related to or interoperable with Services or SaaS set forth in a previously entered into Schedule, the Term of such subsequent Schedule will be concurrent and coterminous with the Term of the previously entered into Schedule.

5.2. If Client has entered into a sub-merchant agreement for payment processing services, and such agreement is terminated by the applicable acquiring bank, Active may terminate this Product Attachment and the effected Schedule.

6. NON-APPROPRIATION.

Client’s obligations and all amounts payable hereunder are contingent upon sufficient appropriations therefore by Client’s Governing Body. If sufficient appropriations are not made, Client will notify Active of the same, and this Agreement will terminate forthwith. Client represents that it intends to fulfill its obligations under this Agreement and reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, Client shall use its best efforts to satisfy any requirement for payment from any other source of funds legally available for this purpose. Notwithstanding the foregoing, Client shall notify Active within ten (10) days of any action by Client’s governing body not to appropriate funds for payment of Client’s obligations hereunder, and will provide with such notice a copy of the resolution, minutes or recording of such action.

7. MISCELLANEOUS.

7.1. Sections 5 and 7 of this Product Attachment and any fees owed by Client will survive any termination or expiration of the Agreement.

7.2. The “Liquidated Damage Amount” equals the “Annual Projected Contract Value” (to the extent such amount is specified in the applicable Schedule(s)) times the number of years in the then-current Term, minus the amount of revenue already paid to Active during the then-current Term, net of all refunds, credit card chargebacks, and all other deducted amounts. Client agrees that (a) it will pay Liquidated Damages to Active if (i) Client breaches its exclusivity obligations under Section 2.2 of this Product Attachment; (ii) Active terminates a Schedule and/or the Agreement in accordance with Section 5.2 of the General Terms; (iii) Client fails to cause an assignment as specified in Section 6.2 of the General Terms; and/or (iv) Active terminates a Schedule and/or the Agreement pursuant to Section 6.3 of the General Terms; (b) all Liquidated Damage Amounts set forth in the Agreement will automatically reset during each Renewal Term; (c) Active may offset any Liquidated Damages Amount set forth in the Agreement from any account balance Client maintains with Active or any payment Active owes Client; (d) because of the difficulty in making a precise determination of actual damages incurred by Active, the Liquidated Damage Amount will be assessed, not as a penalty, but as a reasonable approximation of costs incurred by Active and Active’s loss of revenue; and (e) that in any suit or other action or proceeding involving the assessment or recovery of liquidated damages, the reasonableness of the Liquidated Damage Amount will be presumed and the liquidated damages assessed will be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Agreement.



Schedule

Company Address 717 North Harwood Drive, Suite 2500
 Dallas, TX 75201
 US

Contract # 00078006
 Created Date 03/14/2022
 Quote Number 00123583
 Currency USD

Prepared By Sharon Kramer
 Opportunity Owner Marcus Timms
 Owner Email marcus.timms@activenetwork.com

Contact Name Adam Larson
 Phone 612-230-6451
 Email alarson@minneapolisparks.org

Bill To Name Minneapolis Parks and Recreation Board
 Bill To Contact Adam Larson
 Bill To Address 2117 West River Road N
 Minneapolis, MN 55411 United States

Ship To Contact Adam Larson
 Ship To Address 2117 West River Road
 Minneapolis, MN 55411 United States

Product	Product Type	Description	Quantity	Fee %	Total Price	Total Discount Amount
ACTIVE Services - Other	Service	List price \$10,100.00 discounted to \$4,500.00 Business Process Review	1		4,500.00	USD -5,600.00
ACTIVE Services - Project Management	Service	Business Process Review - Project Management	1		500.00	
ACTIVENet - (credit card refunds - flat fee)	SaaS		1		0.10	
ACTIVENet - ACH Remittance- Every 1 week	Service		1			
ACTIVENet - Annual Subscription Fee	SaaS		1		65,000.00	
ACTIVENet - Credit Card Processing Fee (%)	SaaS		1	2.90		
ACTIVENet - Functionality: Facilities	SaaS		1			
ACTIVENet - Functionality: FlexReg	SaaS		1			
ACTIVENet - Functionality: Memberships	SaaS		1			
ACTIVENet - Functionality: POS (Point-of-sale)	SaaS		1			
ACTIVENet - Functionality: Program & Activity Registration	SaaS		1			
ACTIVENet - Public Interface - Online Transaction Fee	SaaS		1	2.90		
ACTIVENet - Public Interface Fee Set up - absorbed by client	SaaS		1			
ACTIVENet - SaaS						



Schedule

Total Price USD 70,000.00

Annual Projected Contract Value USD 191,087.00

Active reserves the right, and may take additional measures to verify Client's account which may consist of reviewing publicly available data and confirmation of Client provided information. Such verification measures will be completed in advance of remittance.

All fees described herein are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agree not to impose such a surcharge on any End User. The payment options we offer may include MasterCard, Visa, American Express and Discover.

*Sales tax and shipping not included in total price. Sales tax and shipping, where applicable, will be added to your invoice.

Attachment: Heartland - Merchant Processing Agreement

Quote Acceptance Information

Signature: _____

Printed Name: _____

Title: _____

Date: _____

PO# (if applicable): _____



Merchant Processing Agreement Card Acceptance Policies | Procedures | Terms & Conditions

Welcome to Heartland Payment Systems®

Thank you for selecting Heartland Payment Systems® as your payments processor and welcome to the Heartland family!

We look forward to bringing you worry-free payments processing, processing your payments quickly, efficiently and accurately and providing full and honest disclosure with easy-to-read statements so you can focus on what really matters most: improving and growing your business.

Heartland Payment Systems believes in fairness and transparency in credit and debit card processing. That's why we developed and adhere to The Merchant Bill of Rights®, a public advocacy initiative that educates business owners about the complexities of card processing and managing the associated costs.

The Merchant Bill of Rights calls for:

1. The right to know the fee for every transaction and who's charging it.
2. The right to know the markup on Visa®, MasterCard®, American Express® and Discover Network® fee increases.
3. The right to know all Visa, MasterCard, American Express and Discover fee reductions.
4. The right to know all transaction middlemen.
5. The right to know all surcharges and bill-backs.
6. The right to a dedicated local service representative.
7. The right to encrypted card numbers and secure transactions.
8. The right to real-time fraud and transaction monitoring.
9. The right to reasonable equipment costs.
10. The right to live customer support 24/7/365.

To learn more, visit MerchantBillOfRights.com

By using equipment or services by Heartland Payment Systems, you (the merchant) acknowledge you have reviewed and understand the policies, procedures, terms and conditions outlined in this document, and further agree the information you supplied to obtain such services is, and remains, accurate.

Merchant Processing Agreement

PLEASE READ SECTION 17 (“DISPUTE RESOLUTION”) CAREFULLY AS IT RELATES TO ARBITRATION AND CLASS ACTIONS

The following are the Terms & Conditions of the Merchant Processing Agreement (“Agreement”):

1. Services

- 1.1 Merchant agrees that during the Term of this Agreement, Heartland Payment Systems, LLC (“HPS®” or “Heartland”) shall be the exclusive provider of the types of services received hereunder, including for all electronic payments processing, for Merchant and each of its Locations, and it will not use the services of any bank, corporation, entity or any other person other than HPS for the processing of bankcard Transactions, unless otherwise approved by HPS.
- 1.2 Merchant acknowledges and agrees that HPS may provide payment processing services hereunder through the Card Schemes and contracts or subcontracts with third parties engaged in the business of processing and Authorization, and specifically authorizes such third parties, including the Card Schemes, to exercise all of the rights of HPS hereunder, including but not limited to, the rights under Section 4.18 to debit Merchant’s Account for all fees, costs, charges, and other liabilities. Upon request in writing by Merchant, HPS will identify the third parties involved in Merchant’s processing.
- 1.3 Merchant agrees that it:
- (a) shall comply with the Rules and this Agreement;
 - (b) shall cause, to the extent applicable, each of its Locations and Third Party Agents to comply with the Rules and this Agreement; and
 - (c) is responsible for any non-compliance by its Locations and/or Third Party Agents.

2. Definitions

- 2.1 “**ACH**” means the Automated Clearing House service offered by the Federal Reserve.
- 2.2 “**Agreement**” means this Merchant Processing Agreement and the Merchant Application as may be amended from time to time and any product-specific addenda executed by the parties for additional services. It includes the application submitted and executed by the Merchant and HPS.
- 2.3 “**Authorization**” means the act of attempting to obtain an approval from the Card Issuer for an individual Transaction.
- 2.4 “**Card**” means:
- (a) a valid credit, debit, charge or payment card in the form issued under license from a Card Scheme; or
 - (b) any other valid credit, debit, charge or payment card accepted by Merchant under this Agreement with HPS.
- 2.5 “**Card Schemes**” used interchangeably with **Card Brands** means VISA U.S.A., Inc., VISA International, Inc., MasterCard International, Inc., Discover Financial Services, American Express Travel Related Services Company, Inc., PayPal® or any other payment network, as well as any other Card Issuer that provides Cards that are accepted by Merchant under this Agreement with HPS and, with respect to on-line debit Card Transactions the on-line Debit Networks.
- 2.6 “**Card Issuer**” means the financial institution or company that has provided a Card to the Cardholder.
- 2.7 “**Cardholder**” means the person or Card member whose name is embossed upon the face of the Card.
- 2.8 “**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 without limitation mail order, telephone order and Internet Transactions.

- 2.9** “**Card Swipe**” means the electronic capture of a Card’s magnetic stripe data or microprocessor chip by point of sale equipment or other electronic payment device at the time of Transaction, and the inclusion of that data with the electronic submission of the Transaction.
- 2.10** “**Chargeback**” means the procedure by which a Transaction (or disputed portion thereof) is disputed by a Cardholder or Card Issuer or returned to HPS by a Card Issuer, for any reason.
- 2.11** “**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.
- 2.12** “**Debit Networks**” means the Authorization networks utilized by Merchant for PIN Debit Transactions.
- 2.13** “**Discount**” means the fee paid by Merchant to HPS expressed as a percentage of the Transaction amounts processed by HPS.
- 2.14** “**EBT Transaction**” means any retail sale of Products, from a Merchant for which the customer makes payment using an EBT Card presented to HPS for payment.
- 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 microprocessor 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 microprocessor chip data by point of sale equipment or other electronic payment device at the time of the Transaction, and the inclusion of that data with the electronic submission of the Transaction.
- 2.17** “**HPS**” means collectively Heartland Payment Systems, LLC, a registered Independent Sales Organization (ISO) of Member Sponsor Banks, and subsidiary of Global Payments Inc.
- 2.18** “**Imprint**” means:
(a) a physical impression of a Card on a Sales Draft manually obtained through the use of an imprinter; or
(b) the electronic equivalent obtained by swiping, inserting or tapping a Card using equipment and electronically printing a Sales Draft.
- 2.19** “**Internet Merchant**” means a Merchant that accepts Transactions electronically via the World Wide Web (www).
- 2.20** “**Locations**” means an entity that receives Authorization and settlement from or through Merchant pursuant to a contractual arrangement with Merchant; including Merchant-owned Locations and Locations owned by third parties for whom Merchant assumes complete responsibility, including but not limited to licensees, franchisees, jobbers, and dealers.
- 2.21** “**Merchant**” generally means the party identified as the recipient of this Agreement and its principals and owners and, as applicable each separate Location of Merchant.
- 2.22** “**MCC**” also known as “**Merchant Category Code**” is a 4 digit number used to describe the Merchant’s primary business.
- 2.23** “**Member Sponsor Bank**” is a bank that has obtained a membership with the Card Brands to allow a processor to access the Card Schemes.
- 2.24** “**Merchant Servicer**” means a Third Party Agent that:
(a) is engaged by a Merchant;
(b) is not a Member of the Card Schemes;
(c) is not directly connected to VISANet;
(d) is party to the Authorization and/or clearing message; and
(e) has access to Cardholder data, or processes, stores, or transmits Transaction data.

- 2.25 “Non-Qualified” or “Non-Qualifying”** means a Transaction that did not meet the Card Schemes’ Authorization and/or settlement requirements and is not eligible for the best rate possible. Some of these Transactions may be prevented while other Non-Qualified Card type Transactions are assessed higher rates than preferred rates by the Card Schemes and may not be prevented.
- 2.26 “Outbound Telemarketing Transaction”** means a Transaction in which a sale of Products 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.
- 2.27 “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 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.
- 2.28 “Payment Facilitator (PF)”** is a Merchant of record who facilitates transactions on behalf of a sub-merchant whose volume is less than USD 1,000,000 in MasterCard and Maestro volume combined.
- 2.29 “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.
- 2.30 “PCI DSS”** means the Payment Card Industry Data Security Standard, the technical and operational requirements of each of the data security compliance programs of the Payment Card Industry Security Standards Council (“PCI SSC”) to protect Cardholder data.
- 2.31 “Products”** means all goods and services that are sold or provided by Merchant.
- 2.32 “Recipient”** means a recipient of benefit of an EBT Program.
- 2.33 “Reserve Account”** means a non-interest bearing account established by HPS based upon Merchant’s processing history and anticipated risk of loss to HPS.
- 2.34 “Rules”** means the operating rules and regulations, requirements, and terms and conditions of the Card Schemes or Debit Networks presently in effect and as they may be amended from time to time.
- 2.35 “Sales Draft”** means the paper form, whether electronically or manually imprinted (solely to the extent expressly permitted by the Rules), evidencing a Transaction.
- 2.36 “Service Providers (SP)”** means non-members that are registered by MasterCard International Incorporated as Service Providers to provide processing services to a member, including any member that is registered by MasterCard International Incorporated as a SP to provide Third Party Processor (TPP) Program Services to another member.
- 2.37 “Sub-merchant”** is a customer conducting business through a Third Party relationship acting as a Payment Facilitator (PF) or Payment Service Provider (PSP).
- 2.38 “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 added resellers (VARs) and payment gateway providers.
- 2.39 “Transaction”** means any retail sale of Products, or credit therefor, from a Merchant for which the customer attempts to make payment using any Card presented to HPS for payment.
- 2.40 “Transaction Data”** means any information or data collected, recorded, generated or otherwise created or obtained by HPS in relation to the provision of Card services to Merchant hereunder, including without limitation, Cardholder data.
- 2.41 “Virtual Terminal”** means a credit Card processing equipment on a secure server on the Internet whereby Merchant can key enter credit Card Transactions manually.

2.42 “Voice Authorization” means an Authorization obtained by a direct-dialed telephone call.

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 the 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”).

PCI DSS applies to HPS and any Merchant and Merchant Servicer that stores, processes or transmits Cardholder information. HPS acknowledges that it has an obligation to comply with PCI DSS for Cardholder information it possesses.

For the avoidance of doubt, as between Merchant, HPS and the Member Sponsor Bank, Merchant shall be solely responsible for any unauthorized access to Cardholder information or Transaction Data while such Cardholder Information or Transaction Data resides on Merchant’s or its Third Party Agent’s systems or networks. Any such unauthorized access shall be considered an Event of Default.

All eligible Merchants, regardless of size, must comply with these standards. The following are standards that, at a minimum, Merchant must comply with:

- (a) Install and maintain a firewall configuration to protect Cardholder data.
- (b) Do not use vendor-supplied defaults for system passwords and other security parameters.
- (c) Protect stored Cardholder data.
- (d) Encrypt transmission of Cardholder data across open, public networks.
- (e) Use and regularly update anti-virus software or programs.
- (f) Develop and maintain secure systems and applications.
- (g) Restrict access to Cardholder data by business need-to-know.
- (h) Assign a unique ID to each person with computer access.
- (i) Restrict physical access to Cardholder data.
- (j) Track and monitor all access to network resources and Cardholder data.
- (k) Regularly test security systems and processes.
- (l) Maintain a policy that addresses information security for all personnel.

More information, including the complete PCI DSS specifications can be found at:

<https://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

In cases where payment application software is used as a part of Authorization or settlement of Cardholder data, Merchant must use a PA-DSS compliant payment application or have current proof of PCI DSS compliance validation. The List of Validated Payment Applications may be found at:

https://www.pcisecuritystandards.org/approved_companies_providers/vpa_agreement.php

In cases where PIN-based debit Transactions are processed, Merchant must use a compliant PIN Entry Device (“PED”). The List of PCI SSC Approved PIN Transaction Security Devices may be found at:

https://www.pcisecuritystandards.org/assessors_and_solutions/vpa_agreement

Transactions must comply with the Triple Data Encryption Standard (TDES) and any successor technologies or standards connected therewith.

In addition, Merchant must immediately notify HPS of its use of any agent or Merchant Servicer that will have any access to Cardholder data and provide the full name and business address of such agent or Merchant Servicer and any changes thereto.

- 3.2** A Card Scheme may require Merchant, by notice to either HPS, Member Sponsor Bank or Merchant, to conduct an independent forensics review due to its data security procedures and/or Transaction activities. Upon notice of such request from either a Card Scheme or HPS, Merchant, at its sole cost and expense, shall retain the requisite forensics services and provide, through the requisite forensic review process, information as may be required by the Card Scheme. If Merchant fails to retain the requisite forensics services, HPS may retain such forensics services on Merchant's behalf, and Merchant shall remain responsible for payment and/or reimbursement to HPS of all cost and expense associated with such forensics services. In addition, Merchant shall be solely responsible for the cost and expense associated with any changes to its systems or other remediation required by the Card Scheme as a result of the forensic review process.
- 3.3** Merchant agrees that it will not introduce into HPS's or Member Sponsor Bank's system any virus, "time bomb," or any other contaminant, including but not limited to, codes, commands, or instructions that could damage or disable HPS's or Member Sponsor Bank's system or property.

4. Rights, Duties, and Responsibilities of Merchants

- 4.1** Merchant shall make a selection on Card acceptance as follows: All Cards Accepted, Credit/Business Cards Only and Consumer Prepaid/Debit (Check Cards) Only. At the time of signing of the Agreement, Merchant will select one of the options, which will be indicated on the Agreement. Merchant shall honor the Card types selected provided that the Card is valid and is presented to Merchant at the time of the sale by the Cardholder or an authorized user of the Card. A Card is valid only if it is presented on or after the valid date, if any, and before the expiration date shown on its face and the Card is used as payment for Products that are sold or rendered by Merchant under the terms of this Agreement. Merchant represents and warrants that no one other than Merchant has any claim against indebtedness submitted under this Agreement except as authorized in writing by HPS and Member Sponsor Bank. Merchant hereby assigns to HPS and Member Sponsor Bank all of its right, title, and interest in and to all indebtedness submitted hereunder, agrees that HPS and Member Sponsor Bank have the sole right to receive payment on any indebtedness purchased hereunder, and further agrees that Merchant shall have no right, title or interest in any such funds, including any such funds held in a Reserve Account (as defined below).
- 4.2** In accordance with applicable law and the Rules:
- (a) Merchant may establish a minimum sale amount as a condition for honoring credit Card Transactions, so long as such minimum amount does not exceed \$10.00. This amount shall be subject to automatic increase as provided by applicable law. In accordance with applicable law and the Rules, a maximum sale amount for Card Transactions may only be set by Merchants that are federal agencies or institutions of higher learning;
 - (b) Except as specifically set forth in this Section 4.2, Merchant shall not establish a minimum or maximum sale amount as a condition for honoring PIN Debit, Signature Debit (non-PIN Debit) and/or prepaid Cards.

Merchant shall not request or require that a Cardholder provide any personal information as a condition for honoring PIN Debit, Signature Debit (non-PIN Debit) and/or prepaid Cards Transactions unless such information is required to provide delivery of goods and services or Merchant has reason to believe the identity of the person presenting the Card may be different from that of the Cardholder.

- 4.3** Merchant shall complete a Sales Draft or Credit Voucher, in a form approved by HPS and in compliance with the Rules, which shall be legible and adhere to or contain the following:
- (a) the Merchant and Cardholder's electronically printed copy shall not contain the expiration date and should only display in legible print the last four digits of the Card number. Any other portion of the Card number must be represented by fill characters such as "x", "**", or "#";
 - (b) the information embossed on the Card being presented;
 - (c) the date of the Transaction;
 - (d) a brief description of the Products involved in detail sufficient to identify the Transaction;
 - (e) the total amount of the sale or credit (including any applicable taxes) or the words "deposit" or "balance" if full payment is to be made at different times on different Sales Drafts;
 - (f) the city and state where such Transaction occurred; and
 - (g) if required by the applicable Card Scheme, the signature of the Cardholder of the Card.

In cases where prompted by the equipment to do so, Merchant shall key enter the last four digits of the Card to verify the contents of the magnetic stripe and shall deliver a completed copy of the Sales Draft to the Cardholder.

This provision shall not apply to those Transactions specifically excluded from these requirements by the Rules.

- 4.4** For all mail or telephone orders, Merchant shall type or legibly print on the signature line of the Sales Draft the letters or words indicated: "Mail Order," "MO," or "Telephone Order," "TO."
- 4.5** In the event a Transaction cannot be completed via a Card Swipe or EMV Transaction, then an alternate form of payment should be requested. Merchant shall not manually key enter unembossed cards (unless Merchant participates in the CVV2 with the Magnetic Stripe Failure process) or manually write the account number on a paper draft. Only a Card Swipe or EMV Transaction is acceptable by the Card Scheme as proof that the Card was present at the time of the Transaction.
- 4.6** Merchant's policy for the exchange or return of goods sold and adjustment for services rendered shall be established and posted in accordance with applicable regulations of the applicable Card Scheme and laws. Merchant agrees to disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned:
- (a) no refund, or less than full refund, will be given;
 - (b) returned merchandise will only be exchanged for similar merchandise of comparable value;
 - (c) only a credit toward purchases will be given;
 - (d) a restocking fee will be charged; or
 - (e) special conditions or circumstances apply to the sale (e.g. late delivery, delivery charges or other non-credit terms).

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.

The foregoing disclosures must be made on all copies of Sales Drafts across all Card Schemes issued at the time of the sale in letters approximately ¼ inch high in close proximity to the space provided for the Cardholder's signature. In circumstances where credits or adjustments are due, Merchant shall prepare and deliver to the Cardholder a properly completed Credit Voucher. Merchant will input Credit Vouchers into the equipment on the day of the credit Transaction for inclusion in Merchant's daily transmission of Transactions.

- 4.7** Merchant shall not transmit for processing and payment any Transaction(s) representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations:
- (a) previously owed to Merchant;
 - (b) arising from the dishonor of a Cardholder's personal check; or
 - (c) representing the collection of any other pre-existing debt.
- 4.8** Merchant shall not, under any circumstances, (a) disclose, sell, purchase, provide or exchange, or (b) use for any purpose other than completing a Transaction, any Cardholder's account number or any credit information relating to any Cardholder's account or any Sales Drafts or Credit Vouchers that may have been obtained or imprinted with any Card to any person other than HPS, except as expressly authorized in writing by the Cardholder, HPS, or as required by law.
- 4.9** On the date of the Transaction and prior to honoring any Card, Merchant agrees to obtain an Authorization on all Transactions for the total amount of the Transaction by physically sliding, dipping, or inserting the Card through the Card reader of the equipment (or tapping the NFC-enabled Card in the case of an NFC-enabled Transaction) thereby causing the equipment to electronically read a magnetically encoded stripe or EMV chip on the reverse side of each Card, except for Card-Not-Present Transactions, which are governed by Section 4.15 hereof.

Any Transaction that cannot be authorized electronically through the equipment or manually key entered is subject to a Voice Authorization call. Merchant shall obtain an Authorization prior to completing a Card-Not-Present Transaction.

Any Transaction that is not properly authorized is made with full recourse and may be charged back to Merchant; furthermore, any Card-Not-Present Transaction will be subject to additional charges for a Mid-Qualifying or Non-Qualifying Transaction. An Authorization does not constitute a guarantee of payment, only an indication of available credit, and may be subject to dispute or Chargeback.

Except at such times as the equipment may be inoperable, Merchant shall not engage in soliciting or accepting Card-Not-Present Transactions without the prior written permission of HPS, and then only for such Products and in such amounts as stated in such written permission. Merchant shall not utilize the service of any third party (e.g. telemarketer) to solicit or accept orders or engage in Outbound Telemarketing Transactions.

- 4.10** 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.
- 4.11** When possible to do so, Merchant shall utilize the equipment as the exclusive method for obtaining Authorization codes. Voice Authorization service is for use during equipment downtime periods only. Use of Voice Authorization systems will result in additional charges for such use being assessed to Merchant based on HPS then-current rates. Merchant will record for every Transaction applicable Authorization and reference numbers on each Sales Draft to facilitate the timely and accurate retrieval of information as requested by HPS.
- 4.12** Merchant shall use its best efforts, by reasonable and peaceful means, to recover the Card when:
(a) Merchant is advised to recover the Card in response to an Authorization request; or
(b) Merchant has reasonable grounds to believe that the Card is counterfeit, fraudulent or stolen. Merchant shall take no action to recover a Card that may result in a breach of the peace.
- 4.13** Merchant may utilize the equipment's keypad to input Card number(s) in the following instances:
(a) Card-Not-Present Transactions; or
(b) the magnetic stripe on a Card is damaged and therefore unreadable by the equipment; or
(c) the equipment's Card reader is inoperative, in which case Merchant shall immediately advise HPS.
- 4.14** If a Merchant is approved as an Internet, Mail Order or Telephone Order Merchant, the following sections of this Agreement shall not apply: 4.3 (b) and (g), 4.5, 4.9, 4.12, and 4.13 and such sections shall be replaced by the following:
(a) Merchant shall obtain an Authorization for all Transactions. Any Transaction that cannot be authorized electronically is subject to a Voice Authorization call. Any Transaction that is not properly authorized is made with full recourse and may be charged back to the Merchant. An Authorization does not constitute a guarantee of payment, but may be subject to dispute or Chargeback;
(b) Merchant shall print legibly the following information on the Sales Draft; Merchant's name and address;
(i) the Card Issuer's name;
(ii) the truncated account number of the Card;
(iii) the expiration date of the Card and any effective date on the Card; and
(iv) the Cardholder's name. Merchant shall be deemed to warrant to HPS the Cardholder's identity as an authorized user of the Card;
(c) Merchant is required to use a real-time Internet payment gateway authorized in advance by HPS to obtain Authorization codes and process Transactions;
(d) Internet Transactions are Card-Not-Present Transactions and must be performed on the Internet by the customer; or
(e) In the case of a Virtual Terminal, the Internet Merchant Store Front (the customer interface) must be Web Hosted so that the credit Transactions are received over a secure socket layer (SSL) by the Merchant;
(f) In any Card-Not-Present Transaction, as a material part of the consideration for HPS to enter into this Agreement, Merchant accepts such Transactions solely at its own risk, and further assumes all risks of loss attendant to non-imprint Card-Not-Present Transactions.
(g) Internet Merchant Website Requirements. Internet Merchant shall use the eCommerce Gateway solely for Merchant's internal business purposes and shall not allow any third party use of or access to the eCommerce Gateway. An Internet Merchant agrees to adhere to those Rules governing electronic commerce as well as HPS requirements as set forth herein; which include, but are not limited to ensuring the following information is included or properly referenced on the Internet Merchant website:
(i) Contact information including: customer service telephone number, email and URL addresses, legal name and permanent corporate address including the country of domicile which should be located on the check-out screen, along with the final purchase amount or those pages accessed by a Cardholder during the checkout process;
(ii) a complete description of the Products offered for sale and related prices, form of currency, as well as how to complete a purchase and the point at which the purchase is complete;

- (iii) Include a method by which the Cardholder can affirmatively consent to the Transaction (i.e., an “order now” or “purchase now” option);
- (iv) Provide clear disclosure of all material terms of the Transaction: (i.e., all sales are final, applicable restocking fees, returns, etc.);
- (v) shipping and delivery policies will be clearly and accurately stated;
 - 1) if providing age restricted products/services, Merchant shall clearly state the age restrictions on the website and implement an age verification process;
- (vi) refund and returned merchandise policies and terms of use;
- (vii) Merchant’s privacy policy clearly and accurately in accordance with all applicable laws and the Rules, including, but not limited to, the content, location and accessibility of its privacy policy;
- (viii) security policy indicating that:
 - 1) the transmission of payment and will adhere to the PCI DSS for storing and transmitting Cardholder data;
 - 2) Merchant remains fully responsible and liable for the security of Transaction and personal data submitted to and/or processed through your website or as may otherwise be in Merchant’s or its agents or vendors’ control, including implementing fraud prevention measures as required by law or industry regulation;
 - 3) Merchant will use Cardholder Data for the sole purpose of supporting payment for and delivery of Merchant’s goods and services and consistent with Merchant’s privacy policy;
 - 4) Merchant will maintain the security of any and all passwords, ID number or other access control methods to use the e-Commerce Payment Gateway; and
- (ix) any other legal policies, including export control and terms of use.

4.15 The following additional terms apply to Card-Not-Present Transactions:

- (a) Merchant shall use, and retain for not less than one year, proof of a traceable delivery system utilized for the delivery of Products to customers.
- (b) Merchant shall use an address verification service to verify each Transaction.
- (c) Merchant must utilize if available through their gateway a Payer Authentication Program. This program identifies the Cardholder by authenticating their personal PIN entry. Specific programs could include Verified by VISA and MasterCard Secure Code.
- (d) Except where Merchant has specified future delivery on the Application, a customer’s Card shall not be debited until the Product purchased has been shipped.
- (e) Upon request by HPS, Merchant shall provide copies of all advertisements, catalogues, brochures or other materials used to solicit mail or telephone orders and any forms used in recording or transmitting orders.

4.16 In all cases, unless stipulated otherwise in the Merchant Processing Agreement, the shipment of goods to a Cardholder will be no later than the business day following the date on which that Transaction was transmitted to HPS for processing.

4.17 Merchant agrees to electronically deposit Sales Drafts and Credit Vouchers no later than the day of the Transaction. The time of receipt by HPS will affect the timing of payment to Merchant. If Merchant fails to submit Transactions on a timely basis as provided herein, Merchant will be charged and agrees to pay the additional fees assessed to HPS by the Card Schemes.

4.18 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 represents and warrants that: (a) the Account will always be in the same legal and DBA (if applicable) name as Merchant’s name on the Merchant Application; (b) Merchant will own and maintain control of the Account and will keep such Account open at all times during the term and as long as any Reserve Account is in effect; and, (c) the Account will not be associated with any merchant processing activity that is illegal or prohibited by the Rules or applicable law, including without limitation merchant processing activity associated with other accounts and/or processors. Merchant agrees that all credits for collected funds and debits for fines, fees, Chargebacks, Credit Vouchers, payments and adjustments and other amounts due under the terms of this Agreement (including but not limited to attorney’s fees and early termination charges) may be 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) handling fee to change the DDA information and 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 DDA Account containing funds for the purpose of satisfying any liability incurred by or on behalf of Merchant.

- 4.19** Merchant agrees to retain original Card Scheme Sales Drafts and Credit Vouchers as specified by the Rules and Merchant assumes liability for all fines, fees, failures, charges and penalties charge to Merchant or HPS for a failure to comply therewith.

Such documents shall be stored in a secure manner permitting retrieval and submission of legible copies on the same day that Merchant receives a request from HPS. Since a Card Issuer may over a period of time request duplicate copies of the same Sales Draft, Merchant must retain at least one legible copy of each Card Transaction.

Failure to provide HPS with requested documentation within five (5) business days after receipt of such request may result in the Transaction being charged back to the Merchant and HPS shall have the right to debit the Account for the full amount of the Transaction. Merchant agrees that it shall destroy material containing Cardholder account information in a manner that renders the data unreadable.

- 4.20** Merchant shall not submit any Transaction for processing 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.
- 4.21** As partial consideration for this Agreement, Merchant expressly authorizes HPS to change the financial institution providing settlement services to Merchant. Merchant will execute all necessary documents enabling HPS to effect such change.
- 4.22** Merchant shall provide HPS with immediate notice of its intent to:
- (a) transfer, sell or liquidate any substantial part of its assets;
 - (b) change the basic nature of its business, including selling any Products not related to its current business;
 - (c) change ownership or transfer control of its business; or
 - (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes more than a ten percent (10%) interest in Merchant's business.

Merchant also shall provide HPS with prompt written notice of any material changes regarding any information provided in the Application, including Merchant's address, ticket size or monthly volume.

Merchant and principal owner(s) identified on an approved Application and any new owner of Merchant or successor Merchant shall be jointly and severally liable to HPS and remain liable for any and all losses, costs and expenses suffered or incurred by HPS in accordance herewith, unless the original Merchant or successor thereof is released in writing by HPS.

- 4.23** Merchant agrees to pay HPS the face amount of any Transaction processed by HPS pursuant to this Agreement whenever any Card Transaction is reversed in accordance with the Rules, any state or federal statute, regulation, court or administrative order or terms of this Agreement, or in the event of a Chargeback.
- 4.24** Merchant agrees to pay Member Sponsor Bank and/or HPS any fees, fines, penalties or assessments imposed directly or indirectly on Member Sponsor Bank and/or HPS by a Card Scheme resulting from all acts or omissions of Merchant, including without limitation, any fines, fees, penalties or assessments (such as Card replacement cost) imposed by Card Schemes in relation to Merchant's or a Third Party Agent's non-compliance with PCI DSS and/or Rules.
- 4.25** HPS agrees to use commercially reasonable efforts to mail or electronically transmit all Chargeback documentation to Merchant promptly at Merchant's address shown in the Application; however, HPS may at any time without prior notice may debit Merchant's DDA or any other Merchant Account for Chargebacks without prior notice in accordance with this Agreement.

If Merchant notifies HPS after such time, HPS may, in its discretion, assist Merchant, at Merchant's expense, in investigating whether any adjustments are appropriate and whether any amounts are due to or from other parties; however, HPS shall not have any absolute obligation to investigate or effect any such adjustments. Any voluntary efforts by HPS to assist Merchant in investigating such matters 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 respond within the specified time shall constitute a waiver by Merchant of its ability to dispute or reverse a Chargeback or other debit, and Merchant shall be solely responsible where it fails to timely provide information concerning any Chargeback.

If HPS elects, in its sole discretion, to take action on a Chargeback 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.

- 4.26** Merchant agrees to reimburse HPS for the amount of the Sales Draft in the event of a Chargeback together with a handling fee for each Chargeback, which fee may be amended from time to time. Merchant hereby irrevocably authorizes HPS to debit without notice Chargebacks and Chargeback handling fees and all other amounts due hereunder from Merchant's daily deposit and if such collection is inadequate, agrees to reimburse HPS immediately for any shortage that occurs as a result of such charges.
- 4.27** Merchant will be subject to debit for a Chargeback in accordance with the Rules in effect at the time of the Chargeback. The basis for Chargebacks and the rules for their processing are governed by the Rules. However, all disputes that are not resolved through established Chargeback procedures shall be settled between Merchant and the Cardholder, and Merchant will indemnify HPS for all expenses, including reasonable attorneys' fees, that may be incurred as the result of any Cardholder claim that is pursued outside the Rules. Merchant acknowledges and agrees that it is bound by the rules of the Card Schemes with respect to any Chargeback.
Merchant further acknowledges that it is solely responsible for providing HPS and Member Sponsor Bank with any available information to re-present a Chargeback and that, regardless of any information it provides or does not provide HPS and Member Sponsor Bank in connection with a Chargeback, or any other reason, Merchant shall be solely responsible for the liability related to such Chargeback. If any such amount is uncollectible through withholding from any payments due hereunder or through charging Merchant's Account or the Reserve Account, Merchant shall, upon demand by HPS, pay HPS the full amount of the Chargeback.
- 4.28** Merchant shall not accept or deposit any fraudulent Transaction, or any Transaction about which Merchant has knowledge or notice of circumstances that would impair the validity of the Transaction or the indebtedness thereunder or its collectability.
- 4.29** Merchant unconditionally represents and warrants to HPS that all Sales Drafts submitted to HPS hereunder will represent the indebtedness of the Cardholder with whom Merchant has completed a Transaction in amounts set forth therein for Products only and shall not involve any element of credit for any other purposes, and shall not be subject to a defense, dispute, offset or counterclaim that may be raised by Cardholder under the Card Schemes Rules, the Consumer Credit Protection Act (15 USC § 1601) or other relevant state or federal statute or regulation. Further, Merchant warrants that any Credit Voucher that it issues represents a bona fide refund or adjustment on a Transaction by Merchant with respect to which a Sales Draft has been accepted by HPS.
- 4.30** Merchant shall not, under any circumstances, present for processing or credit, directly or indirectly, a Transaction that originates with any other Merchant or any other source.
- 4.31** Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any adjustments for duplicate Transactions and shall be liable for any Chargebacks which may result therefrom.
- 4.32** Merchant shall not initiate a Transaction in an attempt to collect a Chargeback.
- 4.33** To the extent legally permitted, 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, its owner(s) or other entity under common ownership or control. Failure to give such notice shall be deemed to be a material breach of this Agreement.
- 4.34** Merchant must obtain final approval by HPS of Debit Network sponsorship prior to submitting any debit Transaction.
- 4.35** Merchant shall not be assessed a Chargeback fee for the first three (3) 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 a card issuer in any such 12 month period, HPS shall bill all applicable Chargeback fees. For purposes of this Section 4.37, the anniversary date shall be the date of Merchant's first deposit with HPS unless otherwise designated by HPS.
- 4.36** HPS shall have no liability for customer data that is lost or stolen from the Merchant's POS system or equipment and Merchant shall indemnify HPS from any claim or loss arising out of or relating to such lost or stolen data.

- 4.37** 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 a backup withholding amount as defined by IRS and state regulations.
- 4.38** Merchant shall at all times comply with the Rules, as well as all applicable federal, state and local rules and regulations.
- 4.39** Merchant, at its own expense, will have installed and will maintain the equipment, unless otherwise agreed to by the parties in writing. Each equipment type installed at a Location must be compatible with HPS’ System and HPS has the right to test the equipment to assure compatibility. Merchant will submit each equipment type and all new core hardware, and any releases of modifications to the implementation software, to HPS for quality assurance testing at least thirty (30) days prior to the equipment, hardware or software’s first use at a Location; provided however, both parties acknowledge that the quality assurance test may take less than thirty (30) days and HPS will use commercially reasonable efforts to accomplish the testing as soon as practicable. Quality assurance testing is applicable to each implementation software release for each equipment type.

If Merchant changes the method used to communicate with HPS’ System from one form of technology to another, e.g. dial to frame relay, once any necessary quality assurance testing has been completed, Customer will arrange for, with the assistance of HPS, if necessary, the equipment to be connected to HPS and then tested to ensure that the new method of communication works properly, which test will be conducted in accordance with Merchant’s and HPS’ procedures and paid by each party, respectively. Once the new technology has been tested and approved, it will not be necessary for each Location that adopts the new technology to perform the testing referred to in this paragraph.

- 4.40** 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.
- 4.41** Special pricing through an agreement between HPS and a Merchant association shall apply to Merchant members in good standing of such Merchant association; any special pricing may be discontinued without notice.
- 4.42** Merchant agrees to provide HPS such financial statements and other information concerning Merchant as HPS may reasonably request from time to time. Merchant agrees that HPS, or its duly authorized representative, may examine Merchant’s books and records related to its receipt of the services from HPS hereunder, including records of Transactions submitted hereunder.
- 4.43** Merchant shall not engage in any services that require registration with the applicable Card Schemes as a Payment Service Provider (PSP) or Payment Facilitator (PF) without prior written approval from HPS. In the event Merchant is registered as a PSP/PF, Merchant agrees to promptly disclose to all Sub-merchants 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. For the avoidance of doubt, all Service Providers, Third Party Agents, Payment Service Providers, and Payment Facilitators must comply with all Rules, including those found at the following websites (or their successor websites):
- <https://usa.visa.com/dam/VCOM/download/merchants/third-party-agent-due-diligence-risk-standards.pdf>
 - <https://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf>
- 4.44** 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; EBT Services

If Merchant elects to receive Debit Card processing services, the following terms will apply:

- 5.1** Merchant understands and agrees that HPS and any bank which is a party to this Agreement (or 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 Until and unless otherwise authorized by HPS, Merchant agrees to utilize compliant and compatible equipment/PIN-pads or systems capable of processing all ACH debit Card Transactions as well as online-Debit Card Transactions at its Locations.
All HPS applications software residing on the equipment or systems is the sole property of HPS. Any software residing in Merchant owned or leased equipment or systems must be HPS compatible.

Merchant's placement of the equipment or system at its Locations shall constitute acceptance of all terms and conditions set forth in this section. Merchant understands and agrees that HPS has no responsibility whatsoever for inoperative equipment or systems (or software if applicable).

In the case of inoperative terminal or system, Merchant shall consult Merchant's warranty or equipment maintenance agreement as applicable. Merchant also acknowledges that all equipment/pin-pads or systems capable of processing all debit Card Transactions at its Locations must remain compliant with the data security requirements of Section 3 of this Agreement.

5.3 Merchant shall utilize HPS compatible equipment/pinpad or system to process all debit Card Transactions and to abide by all applicable Rules of the applicable debit Card on-line network selected by HPS. HPS has no responsibility or liability for any of the debit Card Networks.

5.4 Merchant agrees to indemnify and hold HPS harmless from any and all claims, actions, proceeding and other liability, which may arise pertaining to such debit Transactions.

5.5 Any claims Merchant may have regarding Debit services may not be offset against bankcard sales.

5.6 Merchant assumes all responsibility for retention of paper copies of debit Card Transactions; pursuant to the appropriate debit Card network Rules.

5.7 Within one (1) business day of the original Transaction, Merchant must balance each Location to the system for each business day that each Location is open. If Merchant determines that any Transaction(s) have been processed in error, Merchant will initiate the appropriate Transaction for adjustment. Merchant is responsible for all applicable adjustment fees assessed by the Card Schemes.

5.8 Merchant shall be responsible for all telephone message unit costs, if any, as they are incurred by Merchant for any of the services provided.

5.9 HPS will provide installation, training, service and support for all purchased and rented equipment provided by HPS. Equipment purchased and provided by a third party vendor should be supported and maintained by the vendor.

5.10 Merchant shall be responsible for the following debit related fees:

- (a) HPS Debit Fee (does not include Debit Network Fee);
- (b) Debit Network Set-up Fee;
- (c) Service & Regulatory Mandate Fee.

5.11 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.

5.12 Non-Request for PIN Disclosure Procedures. Merchant agrees to ensure that no employee or agent requests a Cardholder to divulge their PIN number.

5.13 Prevention of PIN Entry Observation. Merchant agrees to undertake commercially reasonable actions to prevent others from observing the entered PIN number. Some prevention examples could be, but not limited to:

- (a) Placement of security cameras in relation to PIN Entry Device (PED);
- (b) PED shielding; or
- (c) PED placement on POS counter.

5.14 EBT Transactions

If Merchant elects to accept Electronic Benefit Transactions ("EBT"), the additional following terms and conditions will apply:

5.14.1 EBT Services.

Merchant will participate in, and HPS will provide access to, the programs for debit card access to electronically distributed government benefits as agreed to between the parties from time to time. ("EBT Programs"). Each EBT Program shall be treated as a "Network" for purposes of the Agreement and each EBT card issued for access to government benefits issued under such EBT Programs shall be treated as a "debit card" under the Agreement.

5.14.2 Rights, Duties and Responsibilities of Merchant.

- (a) At all times during the term, including any renewal thereof, Merchant shall remain a participant in good standing in each EBT Program selected hereunder.
- (b) Merchant shall submit to HPS written requests to participate in each EBT Program as amended from time to time, for each Location where EBT will be offered. HPS must receive such EBT request a minimum of fourteen (14) days prior to the desired activation date.
- (c) Merchant shall notify HPS at least thirty (30) days prior to the termination or withdrawal of its participation in any such EBT Program, or if such participation is terminated involuntarily and without prior notice to Merchant, immediately following such notice.
- (d) Merchant shall pay to HPS all EBT related fees set forth in the Agreement.
- (e) Merchant will comply with all applicable laws, regulations, Rules, or administrative guidelines related to its participation in each EBT Program and acceptance of EBT Cards, including any Network Rules. Without limiting the foregoing, Merchant shall not resubmit any EBT Transactions except as specifically permitted by Rules related to such EBT Program. In addition, if Merchant accepts EBT under the Food Stamp Program, Merchant shall deploy and identify its equipment consistent with Department of Agriculture requirements. Merchant will not take any action that would cause HPS to be in violation of any law, regulation, rule or administrative guideline applicable to an EBT Program, including any Network Rules.
- (f) With respect to each EBT Program in which Merchant participates, Merchant shall comply with any obligations or duties imposed on merchants participating in such EBT Program under an Agreement ("Processor Agreement") between HPS and the administrator of the EBT Program ("EBT Provider") pursuant to which HPS is authorized to process Transactions for the EBT Program, and the EBT Provider shall have the right to directly enforce the terms and conditions of the Processor Agreement against Merchant in the event that Merchant breaches its obligations hereunder.
- (g) Merchant agrees that HPS may release information regarding Merchant's use of the EBT Program upon request by any federal or state agency, and that Merchant shall not have a claim or cause of action for such release of information.
- (h) Merchant will accept EBT Cards only for Transactions and purchases permitted under the applicable EBT Program.
- (i) Regardless of Merchant's standard operating procedure for handling refunds, it shall provide refunds with respect to EBT Transactions only in accordance with applicable laws, regulations, Rules, or administrative guidelines related to its participation in each EBT Program, including Network Rules.
- (j) If required by an EBT Program, Merchant shall seek to obtain telephone Authorization of each EBT Transaction in situations in which it is unable to obtain electronic response from the Card Authorization system for the EBT Program. If HPS processes manual Sales Drafts for Merchant; Merchant shall complete any such manual Sales Draft for an EBT Transaction in accordance with the requirements of the EBT Program.
- (k) Merchant shall maintain records of EBT Transactions as required by applicable laws, regulations, Rules or administrative guidelines related to its participation in each EBT Program, including Network Rules.
- (l) Merchant shall not use or disclose any information concerning a Recipient for any purpose not directly connected with the performance of Merchant's duties under an EBT Program.
- (m) Merchant shall not discriminate in the provision or denial of any EBT Transactions on the basis of a Recipient's disability or handicap (if any), age, race, color, religion, sex, sexual preference, political belief, national origin, creed, marital status or veteran's status.

- (n) Merchant shall provide to HPS and any EBT Provider any information reasonably required by HPS or the EBT Provider to assist HPS or the EBT Provider in ensuring the integrity, security and successful performance of the EBT Network.
- (o) Merchant shall, at its own expense, ensure that its employees receive appropriate training in the use of equipment and procedures with respect to each EBT Program in which Merchant participates. If Merchant so requests, HPS and Merchant shall enter into a written agreement pursuant to which HPS shall provide such training to Merchant's employees, provided that Merchant shall pay HPS the usual and customary fees charged by HPS for its employees time in conducting such training and shall reimburse HPS for employee travel, lodging and other reasonable out-of-pocket expenses incurred in conducting on-site training.

5.14.3 HPS Representations and Warranties.

HPS hereby represents and warrants that it is a qualified processor in each EBT Program identified and that it has obtained any and all Authorizations, certifications or other evidence of authority and has properly executed and delivered any and all applications, agreements or other documents necessary to participate in each such EBT Program.

5.14.4 Rights, Duties and Responsibilities of HPS.

(a) HPS shall provide the EBT services identified in accordance with the terms of EBT, the Agreement and applicable laws, regulations, Rules and administrative guidelines applicable to each selected EBT Program, including any Network Rules.

(b) HPS shall have the authority, without any liability, to terminate or suspend the provision of services hereunder with respect to each and every EBT Program, at the direction of any federal, state or other authority with responsibility for oversight or implementation of such EBT Program, or upon HPS determination to terminate support for such EBT Program for all customers.

If HPS is directed to terminate or suspend the provision of services hereunder with respect to an EBT Program, HPS may also terminate or suspend provision of services hereunder for any other EBT Program without liability.

5.14.5 Indemnity.

In addition to any indemnification obligations of Merchant set forth elsewhere in this Agreement, Merchant agrees to indemnify and hold harmless HPS and Member Sponsor Bank from and against any and all claims or losses arising out of:

- (a) any act or omission by Merchant in violation of any applicable federal, state or local law or regulation, or rule or administrative guideline related to any EBT Program, including a Network Rule;
- (b) any negligent or fraudulent act or omission or intentional misconduct by Merchant;
- (c) any failure by Merchant to comply with any obligation or duty imposed on Merchants participating in an EBT Program under a Processor Agreement; or
- (d) any act or omission of Merchant that causes HPS to breach any undertaking under a Processor Agreement, including any performance standards hereunder.

5.14.6 Limitation of Liability.

In addition to any other limitations of liability set forth in this Agreement, Merchant agrees and acknowledges that HPS and Member Sponsor Bank shall have no liability to Merchant arising out of any act or omission by an EBT Provider. Without limiting the foregoing, HPS and each EBT Provider shall have no liability to Merchant for an EBT Provider's rejection, Chargeback or other failure to fully process in the ordinary course and without penalty any adjustment based upon a restriction on any EBT Provider's ability to process such adjustment to the Account of a recipient of government benefits, regardless of whether the error being adjusted was caused, in whole or in part, by HPS.

5.14.7 Deluxe EBT Program.

If Merchant is a participant in an EBT Program in the State of Kansas, Louisiana, (or any other state where Deluxe Data Systems, Inc. ["Deluxe"] is the prime contractor for the state), Merchant agrees that Deluxe, which is the EBT Provider for those states, shall have no liability to Merchant arising out of Deluxe's management of the EBT Program or processing of Transactions except for Merchant's direct damages caused by fraud or intentional misconduct committed by Deluxe's employees.

In no event shall Deluxe be liable to Merchant for indirect, incidental or consequential damages. Merchant agrees and acknowledges that Deluxe is a third party beneficiary of EBT for purposes of this limitation liability.

6. Fees

- 6.1** As consideration for the services to be provided by HPS, Merchant shall pay HPS various fees in the manner and pursuant to the Fee Schedule set forth herein and in the Application. The Fee Schedule may be amended as set forth in Section 19.11 of this Agreement. For the avoidance of doubt, Merchant is responsible for all Pass Through fees charged by the Card Schemes. Merchant is responsible for verifying the accuracy of its monthly statements received from HPS for the services provided hereunder.
- 6.2** Merchant shall pay fees charged to Merchant by third parties for telephone equipment, the preparation of the site(s) prior to installation of electronic data capture equipment and/or peripheral equipment, installation, maintenance, line charges, and utility costs. In addition, Merchant shall be responsible for any increase in long-distance communication costs, internet access, gateway costs, IP, SSL, DSL, lease, frame, and processing charges from third party vendors.
- 6.3** Merchant shall pay all applicable sales taxes for services and products provided by HPS.
- 6.4** All Card-Not-Present Transactions will be subject to the applicable interchange rates as defined by the Card Schemes. Notwithstanding the fees and costs listed in the Fee Schedule, Merchant shall pay any additional costs and fees associated with "Non-Qualifying Transactions" (including, but not limited to, Card-Not-Present Transactions, or Transactions involving corporate, business, purchasing and/or rewards Cards or any other types of Cards subject to Non-Qualifying rates). In addition, Merchant shall pay a voice Authorization fee \$0.65 per Transaction or HPS' then current rate for Voice Authorizations.
- 6.5** 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 the Rules.

7. Rights, Duties and Responsibilities of HPS

- 7.1** HPS will accept all Sales Drafts and Credit Vouchers deposited by Merchant that comply with the terms of this Agreement. HPS will pay to Merchant the total face amount of each valid Sales Draft, less any Credit Vouchers, Discounts, fees or adjustments determined daily, weekly or monthly. 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 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.
- 7.2** HPS will accept 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.
- 7.3** HPS will process requests for Sales Drafts from Card Issuers and all Chargebacks and will provide Merchant with notice of requests and Chargebacks.
- 7.4** HPS may provide terminals, printers and peripheral equipment at Merchant's request and expense. HPS will obtain repair and replacements on purchased and rented equipment. Merchant shall be liable for all non-warranty repairs, shipping and handling costs.
- 7.5** HPS may provide online data management information concerning Merchant to Member Sponsor Banks, Card Schemes, Card Issuers or any other party. This information includes but is not limited to Merchant identification information, Transaction information, deposits, ACH, batches, equipment, Chargebacks, retrievals, online statements and monthly affiliate reports.
- 7.6** Upon receipt of written request by Merchant, HPS may provide Merchant with certain supplies to complete and document Transactions at Merchant's request and expense as set forth in HPS product price list in effect at the time of such request.

- 7.7** From time to time HPS may refer Merchant to certain independent third party providers of certain products or services. Any Agreement relating to the provision of such products or services shall be solely between the provider and Merchant. Under no circumstance shall HPS have any liability arising out of or related to the performance or non-performance of any product or service to be provided by any such third party provider.
- 7.8** HPS reserves the right, without notification, to change or modify all or part of the network configuration used to provide the services. Selection of equipment, hardware, etc. to be used by HPS or HPS's system shall be left solely to HPS's discretion. HPS shall not change its equipment protocol or HPS's compatibility requirements without notice to Merchant.

8. Privacy, Data Sharing & Confidentiality

- 8.1** Merchant is solely responsible for compliance with any privacy laws applicable to its use of HPS products and services, and its acceptance of Card Transactions. If Merchant is a Covered Entity, HealthCare Provider, or Business Associate under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules"), Merchant represents and warrants that it shall not transmit to HPS any Protected Health Information ("PHI"), as defined in 45 C.F. R. §164.501. HPS operates under an exemption in the HIPAA Rules for financial institutions performing consumer conducted payment Transactions.

Furthermore, any exposure to PHI shall be random, infrequent and incidental to the provision of services by HPS, as allowed under the HIPAA Rules, and is not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI. Any transmission of PHI by Merchant to HPS shall be the responsibility of Merchant and Merchant agrees to pay HPS any fees or fines imposed on HPS by any agency of the U.S. Government with respect to or resulting from acts or omissions of Merchant regarding PHI.

- 8.2** As between HPS and Merchant, HPS shall be deemed the owner of all Transaction Data. Merchant shall have no rights in or title to Transaction Data, notwithstanding HPS's provision of access to certain Transaction Data in relation to the provision of Services hereunder.
- 8.3** Merchant authorizes HPS to use, make available to third parties and/or exchange information, including Transaction Data, and information that relates to an identifiable individual ("Personal Information"), about Merchant (and about its partners, principals, proprietors, officers, shareholders and managing agents who have provided their written consent pursuant to this Agreement) with other financial institutions, payment networks, and any other persons or entities for the purpose of providing services under this Agreement or as HPS otherwise deems appropriate or necessary.
- 8.4** Merchant authorizes HPS to use, make available to third parties, and/or exchange information, including Transaction Data and Personal Information, about Merchant (and about its partners, principals, proprietors, officers, shareholders and managing agents who have provided their written consent pursuant to this Agreement) for statistical analysis, marketing purposes, and any other purpose related to the provision of HPS or a third party's products and services.
- 8.5** Merchant acknowledges that HPS may use, make available to third parties or exchange information, including Transaction Data and Personal Information, about Merchant (and about its partners, principals, proprietors, officers, shareholders and managing agents who have provided their written consent pursuant to this Agreement) with other entities that have products or services that may be of interest to Merchant. Personal Information regarding Merchant or Merchants customers will not be used in any way contrary to any applicable laws.
- 8.6** Upon acceptance of this Agreement, Merchant confirms it has read, understood and accepted the HPS Online Privacy Policy.
- 8.7** Confidential Information. Merchant and HPS will take reasonable steps to protect and maintain the confidentiality of confidential information as defined below ("Confidential Information"). bank account
(a) The types of Confidential Information that HPS may collect, share or make available to Merchants will depend on the products or services provided to the Merchant. Confidential Information may include, but is not limited to, financial information, such as transaction data and financial account information of Merchant and/or its customers.

Confidential Information further includes Personal Information, including but not limited to: social security number, driver's license number, credit or debit card number, personal identification number or password that would permit access to a financial account, personal bank account number, passport number or email address. Confidential Information further includes information HPS provides to Merchant about HPS's products, services, systems, and business.

(b) Confidential Information shall not include information that is lawfully obtained and publicly available or that is derived from federal, state, or local government records lawfully made available to the public.

(c) HPS may otherwise share or disclose Confidential Information pursuant to Sections 8.1, 8.2 and 8.3 or if it determines, in its sole discretion, that it is required to do so pursuant to any applicable law, regulatory requirement, and/or contractual obligation.

9. Reserve and Payment Obligations

9.1 At any time, HPS may establish a Reserve Account to secure the performance of Merchant's obligations hereunder, including without limitation in the event of: (a) a breach of this Agreement by Merchant; (b) a material adverse change in Merchant's financial condition;

(c) Merchant receives excessive Chargebacks as determined by HPS, a Member Sponsor Bank or any Card Scheme; (d) Merchant has submitted fraudulent or suspicious Transactions; (e) HPS has reasonable grounds to believe that it may be or become liable to third parties due to Merchant's action or inaction hereunder; (f) a change in Merchant's transaction volume or average ticket, or (g) HPS has reasonable grounds to believe that material fines, fees, or penalties may be assessed against HPS or a Member Sponsor Bank by a Card Scheme arising out of or relating to Merchant's failure to comply with the Rules. The amount of such Reserve Account shall be set and may be revised by HPS in its sole discretion at any time, based upon Merchant's processing history and the anticipated risk of loss to HPS.

9.2 HPS may require that such Reserve Account be funded by all or any combination of the following:

(a) debits to Merchant's Account or any other Accounts owned by Merchant;

(b) deductions or offsets to any payments otherwise due to Merchant;

(c) Merchant's delivery of a letter of credit; or

(d) Merchant's pledge to HPS of a freely transferable negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to HPS.

In the event of termination of this Agreement by either Merchant or HPS, an immediate Reserve Account, if not already established, may be established by HPS and the Reserve Account will be held by HPS for six (6) months after termination of this Agreement or for such longer time as HPS may, in its discretion, deem reasonably necessary based upon Merchant's liability to HPS arising prior to or after termination of this Agreement and HPS may deposit into and retain in the Reserve Account any and all amounts otherwise payable to Merchant.

Funds held in a Reserve Account may be held in a commingled Reserve Account for the reserve funds held in relation to HPS's other Merchants, without involvement by an independent escrow agent. Merchant agrees that it shall have no right, title or interest in or to the commingled Account and shall receive no interest on funds held in a Reserve Account. However, Merchant may have an unsecured contractual claim against HPS with respect to any amount which may be due to Merchant after the expiration of the period described herein. Alternatively in the sole discretion of HPS, HPS may place the funds in a Reserve Account in Merchant's name, and such funds shall be payable to Merchant therefrom in accordance with this Agreement. Any amount remaining in the Reserve Account when HPS determines that the Reserve Account may be closed shall be released to Merchant.

9.3 To secure the Merchant's obligations to HPS under this Agreement, and any other agreement for the provision of related equipment or related services ("Obligations"), Merchant grants to HPS a lien and security interest in and to any of Merchant's funds now or hereafter in the possession of HPS, whether now or hereafter due or to become due to Merchant from HPS. HPS is hereby authorized (any related notice and demand are hereby expressly waived), to set off, recoup, appropriate, and apply any and all such funds against and on account of Merchant's obligations under this Agreement, whether such obligations are liquidated, un-liquidated, fixed, contingent, matured or un-matured. Merchant agrees to duly execute and deliver to HPS such instruments and documents as HPS may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and appropriation set forth in this Agreement.

- 9.4 Merchant agrees that HPS may withdraw funds from the Reserve Account at any time without notice to Merchant in the amount of any obligation of liability of Merchant to HPS hereunder, arising prior to or after termination, including any applicable Early Termination Fees pursuant to Section 13.4. If the Reserve Account funds are not sufficient to cover the Chargebacks, adjustments, fees and other charges due from Merchant, or if the funds in the Reserve Account have been released, Merchant agrees to promptly pay HPS the amount of such deficiency upon request.

10. Indemnification; Due Care

- 10.1 Merchant shall indemnify and hold harmless HPS and Member Sponsor Bank from all claims, liability, loss and damage, including reasonable attorney's fees and costs, whether direct or indirect, arising out of: (i) any breach by Merchant of the terms of this Agreement; (ii) any act or omission of Merchant, (iii) Merchant's failure or alleged failure to comply with the Rules, or any federal or state law, rule or regulation, including, without limitation, any rules or regulations promulgated by the PCI SSC or any other applicable security standards; (iv) death or injury caused by the Products sold by Merchant, (v) all web-based, internet or electronic commerce transactions including Merchant's insecure transmission of card transaction data and/or storage of cardholder information, (vi) any agreement to permit Merchant to access other financial services through point of sale equipment provided by HPS and/or Member Sponsor Bank, (vii) the services provided to Merchant from a Merchant Servicer or Third Party Agent, including any and all claims related to the performance or non-performance of Merchant Servicer or Third Party Agent pursuant to such agreement or non-compliance thereof or (viii) HPS's and/or Member Sponsor Bank's reporting of Merchant's business name and the names and other identification of its principals to the Terminated Merchant File in accordance with Section 14.1 hereof. Merchant shall pay all fees, costs associated with any action brought by HPS and/or Member Sponsor Bank to collect amounts owed by Merchant to HPS and/or Member Sponsor Bank under this Agreement.

11. Limitation of Liability

- 11.1 HPS and Member Sponsor Bank shall have no liability whatsoever and for any reason for:
- (a) increased fees or other charges resulting from Merchant's use of equipment or other software provided or serviced by any Service Provider or Third Party Agent, or
 - (b) for any act, omission or damages arising from services provided to Merchant from a Merchant Servicer or Third Party Agent.
- 11.2 **IT IS AGREED THAT IN NO EVENT WILL HPS OR MEMBER SPONSOR BANK BE LIABLE FOR ANY CLAIM, LOSS, BILLING ERROR, DAMAGE, OR EXPENSE ARISING OUT OF OR RELATING TO THIS AGREEMENT WHICH IS NOT REPORTED IN WRITING TO HPS OR MEMBER SPONSOR BANK BY MERCHANT WITHIN SIXTY (60) DAYS OF SUCH FAILURE TO PERFORM, OR IN THE EVENT OF A BILLING ERROR WITHIN NINETY (90) DAYS OF THE DATE OF THE INVOICE OR APPLICABLE STATEMENT. MERCHANT HEREBY EXPRESSLY WAIVES ANY SUCH CLAIM THAT IS NOT BROUGHT WITHIN THE SPECIFIED TIME PERIODS.**
- 11.3 **THE LIABILITY FOR HPS AND MEMBER SPONSOR BANK FOR ANY LOSS ARISING OUT OF OR RELATING IN ANY WAY TO THIS CARD SERVICES AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM THE UNAVAILABILITY OR MALFUNCTION OF THE SERVICES PROVIDED HEREUNDER, PERSONAL INJURY, OR OTHER PROPERTY DAMAGE, SHALL, IN THE AGGREGATE, BE LIMITED TO ACTUAL, DIRECT, AND GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED ONE (1) MONTH'S AVERAGE CHARGE PAID BY MERCHANT HEREUNDER (EXCLUSIVE OF INTERCHANGE FEES, ASSESSMENTS, AND ANY OTHER FEES OR COSTS THAT ARE IMPOSED BY A THIRD PARTY IN CONNECTION WITH MERCHANT'S PAYMENT PROCESSING) FOR THE SERVICES PROVIDED HEREUNDER DURING THE PREVIOUS TWELVE (12) MONTHS OR SUCH LESSER NUMBER OF MONTHS AS SHALL HAVE ELAPSED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS AGREEMENT.**
- 11.4 IN NO EVENT SHALL HPS OR MEMBER SPONSOR BANK BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES AND BUSINESS OPPORTUNITIES. MERCHANT AGREES TO REIMBURSE HPS FOR ALL COSTS AND EXPENSES, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES INCURRED AS A RESULT OF ANY SUCH ACTION, PROCEEDING OR LIABILITY. 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.

- 11.5** HPS AND MEMBER SPONSOR BANK MAKE 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 AND MEMBER SPONSOR BANK HEREUNDER, AND HPS AND MEMBER SPONSOR BANK HEREBY DISCLAIM ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY TITLE, OR NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE and HPS and Member Sponsor Bank 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 and Member Sponsor Bank have no liability or responsibility for the actions or failures of any Card Scheme, Card Issuer or Cardholder.
- 11.6** HPS AND MEMBER SPONSOR BANK SHALL BE EXCUSED FOR UNTIMELY PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES PROVIDED HEREUNDER INCLUDING PROCESSING DELAYS 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 HPS OR MEMBER SPONSOR BANK HAS NO CONTROL.

12. Display of Materials: Trademarks

- 12.1** Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with each Card Scheme shall fully comply with specifications contained in applicable Rules.
- 12.2** Merchant shall only use each Mark in a way to indicate that the Card Scheme is accepted at Merchant and that Merchant is customer of HPS. Marks may not be edited or combined with other Marks. 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.

13. Term: Termination

- 13.1 THIS AGREEMENT SHALL BECOME EFFECTIVE UPON ACCEPTANCE OF THE FIRST MERCHANT DEPOSIT BY HPS AND SHALL CONTINUE IN EFFECT FOR A TERM OF THIRTY-SIX (36) MONTHS THEREFROM ("TERM"). THEREAFTER, THE AGREEMENT WILL AUTOMATICALLY RENEW FOR ADDITIONAL TWELVE (12) MONTH PERIODS UNLESS TERMINATED BY ANY PARTY BY GIVING WRITTEN NOTICE TO THE OTHER PARTY AT LEAST SIXTY (60) DAYS PRIOR TO THE END OF THE TERM OR ANY RENEWAL TERM, EXCEPT THAT IN CASE OF AN EVENT OF DEFAULT BY MERCHANT, OR AS REQUIRED BY A CARD SCHEME OR MEMBER SPONSOR BANK, THIS AGREEMENT MAY BE TERMINATED OR SUSPENDED IMMEDIATELY AND HPS SHALL GIVE MERCHANT WRITTEN NOTICE WITHIN FIFTEEN (15) DAYS THEREAFTER.**
- 13.2** Upon the occurrence of any Event of Default, all amounts payable hereunder by Merchant to HPS shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Merchant. For the purposes of this Section 13 an "Event of Default" occurs when:
- (a) Merchant shall default in any material respect in the performance or observance of any term, covenant, condition contained in this Agreement, including, but not limited to, the establishment of or maintenance of funds in a Reserve Account in accordance with the provision of Section 9.1 and 9.2; or any noncompliance with the Rules or the operating regulations of a Card Issuer or a reasonable belief by HPS that Merchant will constitute a risk to HPS by failing to meet the terms of this Agreement;

- (b) Material adverse change in the business, financial condition, business procedure, prospects, Products or services of Merchant;
- (c) 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;
- (d) any assignment or transfer of control of Merchant or its parent;
- (e) a sale, transfer or liquidation of all or a substantial portion of Merchant's assets;
- (f) irregular Card sales or credits by Merchant, Card sales substantially greater than the annual volume or 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;
- (g) 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);
- (h) 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;
- (i) Merchant engages in any Outbound Telemarketing Transactions;
- (j) Merchant or any other person owning or controlling Merchant's business is or becomes listed in any Card Schemes security reporting; or
- (k) Early termination of the Agreement by Merchant without cause, including without limitation by Merchant's use of another processor to provide services similar to those provided by HPS hereunder.

Then, upon occurrence of any Event of Default, all amounts payable hereunder by Merchant to HPS, including any applicable Early Termination Fees (payable as set forth in Section 13.4), shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Merchant.

- 13.3** In the event of termination, regardless of cause, Merchant agrees that all obligations and liabilities of Merchant including all Chargebacks, fees, credits and adjustments 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.
- 13.4** **MERCHANT MAY BE CHARGED A FEE OF \$295 PER LOCATION ("EARLY TERMINATION FEE" OR "ETF") IF MERCHANT TERMINATES THE AGREEMENT PRIOR TO THE EXPIRATION OF THE TERM (EXCEPT IF AS A RESULT OF HPS' MATERIAL UNCURED BREACH OF THE AGREEMENT). THE ETF MAY BE DEDUCTED IN A SINGLE PAYMENT FOR THE FULL AMOUNT VIA ACH DEBIT TO THE ACCOUNT, AT HPS' OPTION, UPON OR AT ANY TIME AFTER HPS' RECEIPT OF MERCHANT'S NOTICE OF TERMINATION.**
- 13.5** 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.
- 13.6** 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.
- 13.7** Supply orders are shipped via ground and any additional shipping fees such as overnight, second day, third day and Saturday delivery will be charged to the Merchant. HPS will collect all charges for supplies and shipping via ACH.

14. Terminated Merchant File

- 14.1** If Merchant is terminated for cause by a Card Scheme, including but not limited to fraud, counterfeit, duplicate or unauthorized Transactions, excessive Chargebacks or suspect activity, HPS and/or Member Sponsor Bank 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 and Member Sponsor Bank have no liability to Merchant for any loss, expense or damage Merchant may sustain, directly or indirectly, due to such reporting.

15. Additional Locations

- 15.1** Merchant may wish to utilize services provided by HPS under this Agreement at its other business Locations (“Additional Locations”). Merchant may apply to add such Additional Locations provided that such Locations conduct the same type of business and sell the same type of Products. Additional Locations submitted to receive Services under this Agreement shall be subject to approval by HPS and Member Sponsor Bank, and Merchant shall submit a new Application for any such Additional Location(s).

16. Notices

- 16.1** All notices and other communications required or permitted to be sent to Merchant under this Agreement may be made: (1) by written communication sent to Merchant at the address stated on the Merchant Application or as updated by Merchant thereafter; (2) by electronic communication sent to Merchant at the electronic mail address stated on the Merchant Application or as updated by Merchant thereafter; or (3) via an electronic posting or notification accessible to Merchant on the Heartland website located at: <https://infocentral.heartlandpaymentsystems.com>. All notices and other communication required or permitted to be sent to HPS 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, LLC

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

Member Sponsor Banks

Issues Regarding Credit Cards

Barclays Bank

125 South West Street
Wilmington, DE 19801
Phone: (302) 622-8990

Deutsche Bank Trust Company Americas

60 Wall Street
New York, NY 10005
Email: COMPL.Card_Acquiring@list.DB.com

Wells Fargo Bank, N.A.

P.O. Box 6079
Concord, CA 94524
Phone: (844) 284-6834

Issues Regarding Debit Cards

Old Line Bank

1525 Pointer Ridge Place
Bowie, MD 20716
(800) 617-7511

17. DISPUTE RESOLUTION – ARBITRATION AND CLASS ACTION WAIVER

NOTE: PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS AND THE RESOLUTION OF DISPUTES

- 17.1 MANDATORY ARBITRATION: ANY DISPUTE OR CLAIM ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT OR THE RELATIONSHIPS WHICH RESULT FROM THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION, RATHER THAN IN COURT; HOWEVER, YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF (1) THE CLAIMS QUALIFY FOR**

SMALL CLAIMS COURT; (2) THE MATTER REMAINS IN SMALL CLAIMS COURT AT ALL TIMES; AND (3) THE MATTER PROCEEDS ONLY ON AN INDIVIDUAL (NOT A CLASS OR REPRESENTATIVE) BASIS). ARBITRATION DOES NOT PROCEED BEFORE A JURY AND MAY INVOLVE MORE LIMITED DISCOVERY THAN A COURT PROCEEDING.

ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED.

The arbitrator's award or decision will not affect issues or claims involved in any proceeding between HPS and any person or entity who is not a party to the arbitration. The arbitrator may award monetary, declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator's award, if any, will not apply to any person or entity that is not a party to the arbitration. However, nothing in this Section or Agreement shall preclude any party from bringing issues to the attention of federal, state or local agencies. Such agencies can, if the law allows, seek relief on your behalf.

Further, notwithstanding the foregoing, nothing in this Section or this Agreement prohibits a party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief.

The Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs the interpretation and enforcement of the arbitration provisions of this section. Arbitration will be administered by JAMS (www.jamsadr.com). For claims greater than \$250,000, the JAMS Comprehensive Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply (if no such rules are in effect, JAMS default arbitration rules shall apply). For claims equal to or less than \$250,000, the JAMS Streamlined Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply (if no such rules are in effect, JAMS default arbitration rules shall apply). Unless the arbitrator(s) determine that justice or fairness require otherwise: (i) any arbitration will proceed in Muscogee County, Georgia (although, for the convenience of the Merchant or guarantor (as applicable), any party or its counsel may participate telephonically); and (ii) the arbitrator(s) will oversee limited discovery, taking into account the amount in controversy and the parties' desire to keep proceedings cost-effective and efficient. Any decision rendered in any arbitration proceeding shall be final and binding on each of the parties to the arbitration and judgment may be entered thereon in any court of competent jurisdiction. The parties will maintain the confidential nature of the arbitration proceeding except as may be necessary to enforce any award or to comply with applicable law.

If the total damage claims in an arbitration are \$10,000 or less, not including the Merchant's attorney fees ("Small Arbitration Claim"), the arbitrator may, if the Merchant, prevails, award the Merchant reasonable attorney fees, expert fees and costs (separate from Arbitration Costs as defined below), but may not grant HPS its attorney fees, expert fees or costs (separate from Arbitration Costs) unless the arbitrator determines that the Merchant's claim was frivolous or brought in bad faith. In a Small Arbitration Claim case, HPS will pay all arbitration filing, administrative and arbitrator costs (together, "Arbitration Costs"). The Merchant must submit any request for payment of Arbitration Costs to JAMS at the same time the Merchant submits its Demand for Arbitration. However, if the Merchant wants HPS to advance the Arbitration Costs for a Small Arbitration Claim before filing, HPS will do so at the Merchant's written request which must be sent to HPS at the address in paragraph 16.1 above.

If the Merchant's total damage claims in an arbitration exceed \$10,000, not including the Merchant's attorney fees ("Large Arbitration Claim"), the arbitrator may award the prevailing party its reasonable attorneys' fees and costs, or it may apportion attorneys' fees and costs between the Merchant and HPS (such fees and costs being separate from Arbitration Costs).

In a Large Arbitration Claim case, if the Merchant is able to demonstrate that the Arbitration Costs will be prohibitive as compared to the costs of litigation, HPS will pay as much of the Arbitration Costs as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive.

Merchant hereby agrees that claims applicable to American Express may be resolved through arbitration as further described in the American Express Merchant Requirements Guide (the "American Express Guide").

17.2 Choice of Forum: A court, not the arbitrator, will decide any questions regarding the validity, scope and/or enforceability of Section 17.1. Any litigated action (as opposed to an arbitration) regarding, relating to or involving the validity, scope and/or enforceability of Section 17.1, or otherwise, shall be brought in either the courts of the State of Georgia sitting in Muscogee County or the United States District Court for the Northern

District of Georgia, and Merchant and guarantor (if applicable) expressly agree to the exclusive jurisdiction of such courts. Merchant and guarantor (if applicable) hereby agree and consent to the personal jurisdiction and venue of such courts, and expressly waive any objection that Merchant or guarantor might otherwise have to personal jurisdiction or venue in such courts.

- 17.3** Class Action Waiver: MERCHANT AND GUARANTOR (IF APPLICABLE) ACKNOWLEDGE AND AGREE THAT ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE RESOLVED ON AN INDIVIDUAL BASIS WITHOUT RESORT TO ANY FORM OF CLASS ACTION AND SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PARTIES. MERCHANT AND GUARANTOR (IF APPLICABLE) FURTHER AGREE TO WAIVE, AND HEREBY WAIVE, THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR TO LITIGATE OR ARBITRATE ON A CLASS-WIDE BASIS.

18. Additional Services

- 18.1** Merchant may request additional systems and services (“Additional Services”) from HPS beyond those originally requested in the Application. In order to expedite the establishment of Additional Services, Merchant hereby authorizes HPS to take whatever measures necessary to promptly establish any Additional Service that Merchant might request in writing and to execute necessary authorization(s) on Merchant’s behalf on the warranty hereby given that Merchant’s signature on the Agreement shall be valid for all Additional Services. Delivery of any requested Additional Services shall be deemed to have occurred upon Merchant’s first use of any such Additional Services. Merchant acknowledges that all Additional Services shall be governed by this Agreement and the Rules.
- 18.2** In the event that Merchant elects to receive Tokenization Services, the following terms and conditions of this Section 18 shall apply with respect thereto. HPS will tokenize each cardholder primary account number (“PAN”) submitted to HPS by Merchant in connection with a Transaction. HPS’s tokenization of each PAN submitted to HPS by Merchant will occur after Authorization. Merchant hereby acknowledges that tokens may be assigned to a token group which may be shared among other HPS merchants. Merchant further acknowledges and agrees that all tokens provided or created in connection herewith remain the sole and exclusive property of HPS and cannot be transferred or removed from HPS and will not follow Merchant to any other provider without prior written approval from HPS, which approval may be approved or withheld by HPS in its sole discretion.

19. Additional Terms

- 19.1** 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.
- 19.2** Personal Guarantees & Guarantor(s): Any individual(s) by execution of the application as guarantor, hereby unconditionally and irrevocably guarantees to HPS the full and faithful performance or payment by Merchant of each and all of its duties and obligations herein set forth, including payment of all sums due and owing and any attorney’s fees and cost associated with the enforcement of terms hereof, whether prior or subsequent to termination or expiration of this Agreement. HPS shall not be required to proceed against Merchant or enforce any other remedy before proceeding against the guarantor(s). This is a continuing guaranty and shall not be discharged or affected by the sale or assignment of the merchant’s business or death of the guarantor(s) unless such release is in writing signed by an authorized HPS representative. It shall bind the heirs, administrators, representatives and assigns of the guarantor(s) and may be enforced by or for the benefit of any successor of HPS.
- 19.3** Entire Agreement: This Agreement constitutes the entire understanding of HPS and Merchant and supersedes all prior agreements, understandings, representations, and negotiations, whether oral or written between them.
- 19.4** No Waiver of Rights: Any failure of HPS to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.
- 19.5** Section Headings: All section headings contained herein are for descriptive purposes only, and the language of such section shall control.

- 19.6** Assignability: Merchant may not assign this Agreement directly or by operation of law, without the prior written consent of HPS. Any assignment by Merchant without the prior written consent of HPS shall be void. HPS and Member Sponsor Bank may assign this Agreement without Merchant's consent. This Agreement shall be binding upon the parties hereto, their successors and permitted assigns.
- 19.7** 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.
- 19.8** Severability: If any term or provision of this Agreement is found 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 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.

No part or portion of 17.1 (Mandatory Arbitration), Section 17.2 (Choice of Forum), or Section 17.3 (Class Action Waiver) shall be deemed so integral to either this Agreement as a whole, or to the remaining parts or portions of Sections 17.1 through 17.3 hereof, that the unenforceability of that part or portion should have any impact on or render the remainder unenforceable.

- 19.9** Choice of Law: HPS, Member Sponsor Bank, Merchant, and guarantor (if applicable) agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort, or otherwise) arising out of, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation, or enforceability of the choice of law and forum provisions of this Agreement, shall be governed by the laws of the State of Georgia, notwithstanding any conflicts of laws rule; provided, however, that the Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs the interpretation and enforcement of Section 17.1 when permitted.
- 19.10** 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.
- 19.11** Amendments: HPS may change the terms of or add new terms to this Agreement at any time and 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>. Notwithstanding anything herein to the contrary, all fees, charges and/or discounts charged to Merchant hereunder may be changed immediately and without prior written notice to Merchant, provided that HPS will notify Merchant of any such changes promptly, either through written communication or on the Merchant website listed above.
- 19.12** 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.
- 19.13** Financial Accommodation: This Agreement creates a contract for the extension of financial accommodations to Merchant within the meaning of Section 365 of the Bankruptcy Code. In the event Merchant becomes a debtor in bankruptcy, this Agreement cannot be assumed or enforced against HPS and HPS shall be excused from performance hereunder.
- 19.14** Electronic Signatures: Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (1) your electronic signature is associated with the Agreement and related documents, (2) you consent and intend to be bound by the Agreement and related documents, and (3) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign. By pressing Submit, you agree (i) that the Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that you have the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize us to conduct an investigation of your credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the applicant for merchant status or equipment leasing. This information is kept strictly confidential and will not be released.

20. 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.

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.

MERCHANT	
Signature:	_____
Name:	_____
Title:	_____
Date:	_____