



Government and/or Public Education with ACH ACH Processing Agreement Terms and Conditions

Welcome to Heartland Payment Systems®

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

1. **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings provided in the rules of the National Automated Clearinghouse Association, and any amendments that may be adopted from time to time. The following definitions shall apply for the purposes of this Agreement:
 - 1.1 **"ACH"** means the Federal Reserve Bank's Automated Clearing House, a funds transfer system, governed by the NACHA operating rules, that provides for the inter-bank clearing of electronic entries for participating financial institutions.
 - 1.2 **"EFT"** means Electronic Funds Transaction, electronic debits and credits processed through the ACH Network.
 - 1.3 **"Entries"** shall have the meaning provided in the Rules and shall also mean the data received from Merchant hereunder from which HPS prepares Entries.
 - 1.4 **"Initiation"** means the initial presentation by HPS of a transaction to Settlement.
 - 1.5 **"Merchant"** means the business customer that initiates ACH entries into the payment system according to an arrangement with a Receiver.
 - 1.6 **"Merchant Account"** means the commercial demand deposit checking account designated by Merchant for use in conjunction with ACH Services.
 - 1.7 **"NACHA"** means the National Automated Clearing House Association.
 - 1.8 **"ODFI"** means the bank acting as the Originating Depository Financial Institution as defined by NACHA Rules.
 - 1.9 **"RDFI"** means the Receiving Depository Financial Institution that receives ACH entries from the ACH Network and posts the entries to the Receiver's account.
 - 1.10 **"Receiver"** means the person or organization that has authorized a Merchant to initiate an ACH entry to the Receiver's account with the RDFI.
 - 1.11 **"Re-initiation"** or **"Re-presentment"** means the second or third attempt at Settlement by HPS of a previously Returned ACH transaction.
 - 1.12 **"Return"** means a Receiver transaction that is returned unpaid by either the Receiver's bank or the ACH Network.

- 1.13 "Returned Item Service Charge"** means the fee charged to Receiver as allowed by applicable law for a transaction that is returned unpaid by the Receiver's bank or ACH Network.
- 1.14 "Rules"** means the rules of the National Automated Clearinghouse Association (NACHA), and any amendments that may be adopted from time to time hereafter. Please refer to the following website for the Rules: <https://www.nacha.org/rules>
- 1.15 "Settlement"** means the movement of electronic information into the ACH Network under the ODFI sponsorship which results in the debiting or crediting of funds to designated bank accounts.
- 1.16 "Submit", "Submitted" and "Submission"** means the Merchant's action of utilizing HPS's ACH Services for the purpose of processing a transaction.
- 2. Entries and Related Warranties.** Merchant shall transmit only those types of Entries designated in the Application. Entries that are part of a payment transaction that involves a financial agency's office that is not located within the territorial jurisdiction of the United States must be identified using the International ACH Transaction (IAT) Standard Entry Class Code. With respect to each Standard Entry Class Code indicated by Merchant, Merchant shall comply with all requirements and warranties set forth in the Rules with respect to such Standard Entry Class Code.
- 3. Security Procedures.** Merchant is strictly responsible to establish and implement security procedures to safeguard against unauthorized transmissions. Merchant warrants that no individual shall be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices and related instructions provided by HPS. If Merchant discovers that any such information or instructions have been known or accessed by unauthorized persons, Merchant agrees to notify HPS within a reasonable time followed by written confirmation. The occurrence of unauthorized access shall not affect any transfers made in good faith by HPS prior to receipt of such notice and within a reasonable time after such notice.
- (a) If HPS accepted the Entry in good faith with respect to such Entry, then with respect to a credit Entry, Merchant shall be obligated to pay HPS the amount of such Entry, and with respect to a debit Entry, Merchant shall maintain sufficient funds in the Merchant Account to fund the reversal of such Entry.
- (b) If an Entry (or request for cancellation or amendment of an Entry) received by HPS was transmitted or authorized by Merchant, Merchant shall pay HPS the amount of any such credit Entry and shall maintain funds in the Settlement Account to fund the reversal of any debit Entry, whether or not that Entry was erroneous in any respect.
- 4. Recording and Use of Communications.** Merchant and HPS agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party for any reasonable use which is in compliance with this Agreement.
- 5. Processing Deadlines.** Merchant acknowledges that HPS has specific processing deadlines imposed by its ODFI and the ACH Operator for ACH Transactions and that HPS will process Merchant's ACH transactions within the constraints placed upon HPS.
- 6. Rejection of Entries.** HPS may reject any Entry which does not comply with the requirements of this Agreement.
- 7. Cancellation or Amendment by Merchant.** Merchant shall have no right to cancel or amend any Entry after its receipt by HPS. HPS shall use reasonable efforts to act on a request by Merchant for cancellation of a file prior to transmitting such file to the ODFI, but HPS shall have no liability if such cancellation is not effected. Merchant shall reimburse HPS for any expenses, losses, or damages HPS may incur in effecting or attempting to affect Merchant's request.
- 8. Merchant Account.** Merchant agrees to immediately reimburse HPS for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by HPS. Merchant also agrees to authorize HPS to suspend Settlement of all funds to Merchant Account, without prior notice to Merchant, if Merchant should breach or fail to comply with any terms of this Agreement, or if HPS or ODFI in its sole opinion deems itself at risk relative to any services performed under this Agreement.

9. **Returns.** For transactions provided for under this Agreement, unless otherwise provided herein, Returns for non-sufficient funds and uncollected funds will be electronically Re-initiated by HPS as applicable and allowed by current NACHA rules and regulations. Merchant agrees to be liable for all EFT items that are returned, dishonored, reversed or that cannot be collected through Receiver's account and that are not subsequently covered by debit against Merchant Account. In the event that funds in Merchant Account are not sufficient to cover Returns, Merchant shall immediately upon request from HPS, deposit sufficient funds in Merchant Account to cover such Returns. HPS may deduct or offset Returns against amounts to be paid Merchant for current or future ACH transactions. With regards to any Returns, Merchant shall promptly notify HPS if:
- (a) a Receiver makes any payment to Merchant on said transaction;
 - (b) a Receiver returns Goods or Services in whole or in part which were paid by said transaction, or
 - (c) there is a dispute concerning the Goods or Services or amount of said transaction.
10. **Returned Item Service Charges.** Returned Item Service Charges will be assessed as allowed by applicable law.
11. **Account Reconciliation.** Entries transmitted by HPS shall be reflected on Merchant's periodic statement issued by HPS with respect to the Merchant Account or the Reserve Account, as applicable, pursuant to the Application between HPS and Merchant with respect to such account. Merchant agrees to notify HPS promptly of any discrepancy between Merchant's records and the information shown on any periodic statement. If Merchant fails to notify HPS of any discrepancy within one hundred twenty (120) days of receipt of a periodic statement containing such information, then Merchant shall be precluded from asserting such discrepancy against HPS and HPS shall not be liable for any other losses resulting from Merchant's failure to give such notice or any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement.
12. **Merchant Representations.**
- (a) With respect to each and every Entry initiated by Merchant, Merchant represents and warrants to HPS and agrees that Merchant shall initiate Entries only in compliance with the provisions of Rules,
 - (b) Merchant agrees to assume the responsibilities of a Merchant under the Rules, including ensuring that all international payment transactions are properly labeled as IAT entries and include the appropriate data elements under the Rules, and Merchant makes the warranties and assumes the liabilities as provided in the Rules,
 - (c) each person shown as the Receiver on an Entry received by HPS from Merchant has authorized the initiation of such Entry and the debiting or crediting of its account in the amount and on the Effective Entry Date shown on such Entry,
 - (d) such authorization is operative at the time of transmittal or at the time of debiting or crediting by HPS as provided herein,
 - (e) Entries transmitted to HPS by Merchant are limited to those types of Entries agreed to by HPS and Merchant,
 - (f) Merchant shall perform its obligations under this Agreement in accordance with all applicable federal and state laws and regulations, including the sanctions laws administered by the Office of Foreign Assets Control ("OFAC"), and
 - (g) Merchant shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision making payment of a credit Entry by the Receiving Depository Financial Institution to the Receiver provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry.
 - (h) Merchant accepts responsibility for compliance with the Rules and will reimburse HPS for any fees or penalties for which it is responsible.
 - (i) Merchant specifically acknowledges that it has received notice of the Rules regarding provisional payment and of the fact that, if such settlement is not received, the Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Merchant shall not be deemed to have paid the Receiver the amount of the Entry.
13. **Responsibilities.**
- In the performance of the services required by this Agreement, HPS shall be entitled to rely solely on the information, representations, and warranties provided by Merchant pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. HPS shall be responsible only for performing the services expressly provided for in this Agreement, and, subject to the disclaimers and limits on HPS's liability set forth herein. HPS shall not be responsible for Merchant's acts or omissions, including without limitation the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Merchant or for the return of an Entry by such Receiver or Receiving Depository Financial Institution, and no such person shall be deemed HPS's agent.

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

14. **Interruption of Services.** Merchant acknowledges and agrees that HPS's provision of ACH services hereunder may be interrupted from time to time and that HPS shall have no liability whatsoever as a result of such an interruption or delay. Without limiting the generality of the foregoing provisions, HPS shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, loss of power, equipment or software error or malfunction, war, terrorist actions, acts of God, earthquakes, flood, embargo, riot, sabotage, labor shortage or dispute, emergency conditions or circumstances beyond HPS's control. From time to time HPS may need to temporarily suspend processing of a transaction (particularly an international ACH transaction) for greater scrutiny or verification, including, but not limited to, suspending processing to review for OFAC compliance in accordance with applicable OFAC guidance, and HPS shall be excused if this action causes delay in the settlement and/or availability of the transaction while review is in process. In addition, HPS shall be excused, while review is in process, from failing to transmit or delay in transmitting an Entry if such transmittal would result, in HPS's reasonable judgment, in violation of any rule or regulation of any U.S. governmental regulatory authority or NACHA Rule.
15. **Risk Mitigation.** In order to reduce the risk of loss to which HPS is subject under this Agreement, HPS may in its sole discretion establish such risk mitigation procedures as HPS deems necessary, including without limitation, requiring prefunding of credit Entries, delayed availability of funds to Merchant to cover returned debit Entries, and submission of unbalanced files (submission of a credit file for which HPS shall then create the offsetting debit file.)
16. **Inconsistent Name and Account Number.** Merchant acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, posting of the Entry transmitted by HPS to the RDFI may be made by the RDFI on the basis of the account number supplied by Merchant, even if such account number identifies a person different from the named Receiver, and that Merchant's obligation to settle the amount of the Entry to HPS is not excused in such circumstances.
17. **Payment for Services.** Merchant shall pay HPS the charges for the services provided in connection with this Agreement, as set forth in the Application. HPS may debit the Merchant Account, or if necessary, the Merchant Reserve Account, for the amount of any such charges. All fees and services are subject to change upon sixty (60) days prior written notice from HPS to Merchant. In the event HPS changes the fees and services pursuant to this section, Merchant shall have the right to terminate this Agreement upon thirty days' notice anytime thereafter without penalty. The charges set forth in the Application do not include, and Merchant shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Account Agreements.
18. **Right to Audit.** Upon ten (10) business days' notice, Merchant shall permit HPS, and any regulatory authority having jurisdiction over HPS, to review Merchant's operations as they relate to compliance with this Agreement and the Rules, and to examine and copy any books, records, and source documents related thereto.

19. Confidential Information.

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

20. Reserved.

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

22. Notices.

- (a) Except as otherwise expressly provided herein, HPS shall not be required to act upon any notice or instruction received from Merchant or any other person, or to provide any notice or advice to Merchant or any other person with respect to any matter.
- (b) HPS shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in the APPLICATION. Such notice shall be effective on the second business day following the day of receipt by HPS.
- (c) Notice of Receipt of Entry. Under the NACHA operating rules, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statement we provide to you.
- (d) All notices, requests, and approvals required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as indicated in the APPLICATION, unless notified in writing of a change in address, and (iii) shall be deemed to have been given either when personally delivered or when sent by regular United States mail, in which event it shall be sent postage prepaid upon delivery thereof, or, if sent by a delivery service, telegram, facsimile, or e-mail, upon delivery thereof.

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

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

25. **Term and Termination.** This Agreement shall become effective upon acceptance of the first Merchant deposit by HPS and shall continue in effect for a term of sixty (60) months therefrom. Thereafter, the Agreement will automatically renew for additional twelve (12) month periods unless terminated by any party by giving ninety (90) days written notice prior to the end of any term. HPS may terminate the Agreement immediately as required by the ODFI or as may otherwise be required by the Rules.
26. **Entire Agreement.** This Agreement is the complete and exclusive statement of the agreement between HPS and Merchant with respect to the subject matter hereof and supersedes any prior agreement between HPS and Merchant with respect to such subject matter. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which HPS is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and HPS shall incur no liability to Merchant as a result of such violation or amendment. No course of dealing between HPS and Merchant shall constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between HPS and Merchant regardless of whatever practices and procedures HPS and Merchant may use.
27. **Non-Assignment.** Neither party may assign this Agreement or any of the rights or duties hereunder to any person without the other parties' prior written consent except that upon notice to the other party, either party may assign the Agreement to a parent, subsidiary, or affiliate without the other's consent.
28. **Waiver.** Either party may waive enforcement of any provision of this Agreement. Any such waiver shall not affect the waiving party's rights with respect to any other transaction or modify the terms of this Agreement.
29. **No Third Party Beneficiary.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against HPS or Merchant hereunder.
30. **Headings.** Headings are used for reference purposes only and shall not be deemed a part of this Agreement.
31. **Severability.** If any provision of this Agreement is held void or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and the void or unenforceable term shall be amended such that it is enforceable to the maximum extent permitted by law.
32. **Relationship of the Parties.** HPS and Merchant are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between them. Except as provided in this Agreement, HPS and Merchant each shall bear its own costs and expenses in connection with the performance of its obligations under this Agreement. Neither HPS nor Merchant will have the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.
33. **Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with and governed by the laws of the State of residence of the government or public educational entity without regard to its choice of law provisions. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum. In any such action, the parties waive trial by jury.



Brad Anderson, President

Judy Anderson, Secretary



Brendan Kearns, Member

Attest,



James W. Bramble, Auditor