



## Software License Agreement

1. **Orders.** This is a legal agreement between the entity which ordered the accompanying Software (our "Customer") and Harland Financial Solutions, Inc. ("HFS"). By signing an HFS order request referencing this Software License Agreement (the "Agreement") or by using the Software, Customer acknowledges that (a) Customer was the ordering entity; (b) the individual signing the order request or using the Software has authority to bind Customer to these terms; (c) Customer agrees to be bound by the terms of this Agreement; and (d) Customer agrees that the terms of this Agreement apply to any previously provided Software to which the accompanying Software is an update or an additional module.

An HFS order request referencing this Agreement along with the order request's other attachments and references (collectively the "Order Request") form the complete agreement for each transaction between HFS and Customer. However, if the parties have agreed that the terms of a pre-existing fully executed comprehensive agreement are to govern, those terms shall replace these as part of the contract. Order Requests may include licensing software ("Software"), rendering services ("Services") and furnishing other deliverables. Software or Services described in an Order Request include any documentation accompanying the applicable Software or Services ("Documentation"). An Order Request is not effective until accepted in writing by HFS and, once accepted, the Order Request is firm and noncancellable.

### **2. Software and Services.**

**A. Software.** Software may be licensed to Customer by HFS under the terms of an Order Request, which includes this Agreement. HFS grants a non-exclusive, non-transferable license to the Software under the license grant in the associated Order Request. Unless the Order Request otherwise defines the term of the license grant, it is perpetual. Each license grant is only for the United States and its protectorates and provides Customer with the right to use the Software, consistent with its accompanying Documentation, for its internal purposes and to perform financial services for Customer's retail accounts in the normal course of Customer's business. Should the Order Request fail to identify a license grant the default shall be a "Unit License", which authorizes use of the Software by Customer on a single workstation. Documentation is licensed for use with the applicable Software or Services for Customer's internal purposes.

**B. Services.** Services, such as core processing, internet banking, ATM and debit card processing, item processing, account opening and funding, consulting, implementation, and training may be provided to Customer under the terms of an Order Request, which references this Agreement.

**3. Maintenance.** If applicable, HFS will provide the maintenance and support ("Maintenance") for the Software specified in the applicable Order Request. Maintenance will commence upon delivery of the applicable Software. Maintenance is provided on an annual basis and will be automatically extended for an additional year absent ninety (90) days notice by either party prior to the end of the current annual maintenance term. Notwithstanding the foregoing, if HFS provides notice of a price change to Maintenance under Section 4.E. (Price Changes) of this Agreement, Customer may terminate Maintenance, effective at the end of the then-current term, by providing HFS with written notice within ten (10) business days of Customer's receipt of HFS' price change notice.

Should HFS decide to discontinue offering Maintenance for the Software generally, Customer will receive at least six (6) months advance written notice. After Maintenance is discontinued, HFS will no longer maintain or support the Software or Documentation.

### **4. Compensation.**

**A. Fees.** In addition to License fees, Services fees (if applicable), Maintenance fees, and fees for additional products and services, Customer will pay for labor and materials expended for Services or Maintenance related requests when the root cause is found to be outside HFS' responsibility as set forth herein, and out-of-pocket costs

including, but not limited to, shipping and reasonable travel and living expenses related to all the foregoing.

**B. Invoices.** Invoices shall be paid within thirty (30) days after receipt or as stated in the Order Request without deduction, withholding or offset. HFS may suspend any license grant, Maintenance and/or Services provided under this Agreement until payments are brought current.

**C. Taxes.** Customer will pay or reimburse HFS for all duties, taxes (other than taxes on HFS' income), fees or other similar amounts assessed or imposed by governmental authorities in relation to any Order Request.

**D. Interest.** Amounts not paid when due are subject to finance charges of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is less, compounded monthly from the due date until paid. Payment of finance charges does not excuse or cure late payment. Payments received are first applied to finance charges. Customer agrees to reimburse HFS for all reasonable costs HFS may incur for collection of any past-due amounts.

**E. Price Changes.** Except as otherwise indicated in an Order Request, HFS may change Maintenance fees and other periodic fees from time to time, effective on the upcoming anniversary of the commencement of the applicable period for such fees, by giving Customer no less than thirty (30) days notice prior to such anniversary. Notwithstanding the foregoing, HFS may change its prices on third-party products or services it resells or sublicenses upon reasonable notice to Customer.

### **5. Term; Termination.**

**A. Term.** This Agreement remains in effect until performance is complete and all license grants extended under the Order Request, if any, cease.

**B. Termination for Cause.** If a party fails to cure a breach of an Order Request within thirty (30) days after written notice explaining the breach, the non-breaching party may immediately terminate any license grants, Services or other deliverables to which the breach relates. Breach by Customer includes, without limitation, any failure to pay license, Maintenance or Services fees when due. Either party may terminate this Agreement immediately by giving the other party written notice of termination if the other party becomes insolvent, a receiver or conservator is appointed for any part of such party's assets, or a bankruptcy proceeding is commenced by or against the other party.

**C. Effect of Termination.** Termination of an Order Request terminates the license grant(s), if any, and any further performance under the Order Request and Customer will: (a) immediately stop using all Software and promptly remove it from any hardware on which the Software is installed; and (b) at HFS' direction, within twenty (20) days of termination return to HFS or destroy all copies of any Software and Documentation in Customer's possession or control and certify the return or destruction of all Software and Documentation. Termination does not relieve Customer of any payment obligations, which arise prior to the effective date of the termination.

### **6. Proprietary Rights.**

**A. Proprietary Rights.** The Software, Services (including any associated work product), and Documentation are protected by copyright, trade secret and other proprietary rights of HFS and its suppliers. The Software, work product and Documentation are licensed, not sold to Customer. The right to use Documentation is contingent upon the right to use the applicable Software or Services. Any recording of training or other Services provided by HFS is strictly prohibited. HFS reserves all rights in the Software, Services, work product and Documentation not expressly granted to Customer.

**B. Limitations on Use.** Customer is permitted to make a reasonable number of copies of the Software for disaster recovery and back-up purposes. Unless otherwise stated in the Order Request or this Agreement, Customer will not: (a) reproduce the Software or

Documentation; (b) market, license, distribute, sublicense or otherwise commercially exploit the Software, Services or Documentation or sell, lend, rent, give, assign or otherwise transfer or dispose of the Software, Services or Documentation; (c) permit the use of the Software, Services or Documentation by others or otherwise operate the Software for third parties (e.g., as a service bureau or data processing service); (d) modify or translate the Software or Documentation into any other computer or human language; or (e) disassemble, reverse engineer or decompile the Software or otherwise attempt to discover any portion of the object or source code or trade secrets related to the Software.

**C. Confidentiality/Privacy.** Both parties may acquire certain information that is confidential, proprietary or trade secret information of the other party or a third party ("Confidential Information") in the performance of the Order Request or in contemplation of the license or purchase of additional Software, Services or other deliverables. HFS acknowledges that Customer's Confidential Information includes Customer's customer information, including nonpublic personal information. Customer acknowledges that HFS' Confidential Information includes all source code, Software, Services and Documentation and any related system design, database design, algorithms, trade secrets, technology, pricing and licensing. Other Confidential Information of either party shall be clearly identified in writing as Confidential at the time of disclosure or promptly thereafter. The party receiving Confidential Information will: (a) use such information solely for performance under this Agreement; (b) not disclose such information to any third party (excluding agents which are not potential competitors of the disclosing party and, in the case of HFS, its affiliated companies); and (c) otherwise protect such information from any unauthorized use or disclosure. The receiving party shall see that its employees, agents and affiliates having access to Confidential Information are bound by confidentiality obligations consistent with this provision.

HFS will maintain and monitor policies and procedures to meet the data security objectives of the Gramm-Leach-Bliley Act, the Fair and Accurate Credit Transactions Act, the Fair Credit Reporting Act and related regulations, by addressing administrative, technical and physical safeguards designed to (i) ensure the security and confidentiality of nonpublic personal information relating to Customer's customers; (ii) protect against any anticipated threats or hazards to the security or integrity of such information; (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to Customer's customers; and (iv) ensure proper disposal of the information. HFS will provide prompt notice to Customer if HFS becomes aware of an unauthorized disclosure involving Customer's "sensitive customer or member information," as those terms are defined by regulatory guidance issued by the applicable federal agency which regulates Customer. Notification may be delayed to the extent necessary to prevent interference with a criminal investigation related to the disclosure. HFS will permit a review to assess whether appropriate key controls are in place and/or will provide reasonable documentation to verify that HFS has complied with its obligations under this paragraph, if (a) required of Customer by state or federal regulators; (b) conducted by either Customer and/or its regulator(s) at Customer's expense and during regular business hours; (c) limited to the scope of HFS' obligations with respect to the Software and pursuant to this paragraph; and (d) Customer provides reasonable advance notice. At HFS' option, in lieu of access, HFS may provide a SAS 70, SSAE 16 or similar third-party audit report. At Customer's request, HFS may provide additional services related to its obligations under this paragraph at HFS' then-current fees for such services.

Nevertheless, neither party will be obligated to keep confidential any information that is: (a) publicly available through no fault of the receiving party; (b) received by the receiving party from a third party who is not under a confidentiality obligation regarding the information; (c) independently developed by the receiving party without referring to the Confidential Information; or (d) required by applicable law to be disclosed by the receiving party, provided the receiving party shall give prompt notice to the disclosing party (unless notice is not allowed by a regulating agency seeking such information) and assist and support the disclosing party's efforts to maintain the confidentiality of the information, including, but not limited to, securing protective orders and limiting the information disclosed. HFS may reflect the Customer's name in a customer list and the respective products involved.

**D. Legends and Notices.** The receiving party agrees to maintain all proprietary legends and notices on all tangible and electronic copies of

Confidential Information, the Software and Documentation, particularly those legends and notices concerning ownership of trademarks and copyrights, and ownership and restricted usage of Software.

**E. Audit.** HFS or its designated agents shall have the right to enter and inspect Customer's records and/or its computer system for the purpose of auditing Customer's usage of the Software and ensuring accurate invoicing. Access will be permitted with reasonable notice during Customer's normal business hours.

**F. Nonsolicitation.** During the Term of this Agreement and for a period of one (1) year thereafter, no party will actively and directly solicit any employee of the other party that is involved with the Software or Services to leave his or her employment to engage in, be employed by, perform services for, participate in or otherwise be connected with that party or its subsidiaries or other affiliated companies in a capacity involved with the Software or Services without the prior written agreement of the other party.

## **7. Warranty.**

**A. Software Warranty.** For a period of thirty (30) days following delivery of the Software (the "Warranty Period"), HFS warrants that the Software will function in all material respects consistent with its specifications appearing in the applicable Documentation. HFS does not warrant that the Software is free from all bugs, errors or omissions. The warranty does not extend to any failure of the Software caused by: (a) any modification or change not made by HFS; (b) any noncompliance caused by use of the Software in combination with products, goods, services or other items furnished by anyone other than HFS; or (c) use of the Software in an operating environment other than as specified by HFS. HFS will use reasonable efforts at its facility to correct any Software or Documentation that fails to comply with the foregoing warranty by delivering one or more error corrections consisting of workaround instructions, updates, revisions or patches to the Software and/or revisions or supplements to the Documentation, provided (i) Customer gives HFS prompt written notice of such failure during the Warranty Period; (ii) Customer provides HFS with all reasonably requested information to assist HFS in reproducing the failure; and (iii) HFS is able to reproduce the noncompliance at its facility. If, after the expenditure of such reasonable efforts, HFS is unable to correct the Software such that it complies with the foregoing warranty, HFS will refund all or (if Customer's license to use such Software continues) a reasonable portion of the license fees Customer has paid with respect to such Software.

**B. Maintenance Warranty.** HFS warrants that Maintenance will be provided in a professional and workmanlike manner and that the Software will function in all material respects consistent with its specifications appearing in the applicable Documentation. This warranty does not extend to any failure of the Software caused by: (a) any modification or change not made by HFS; (b) any noncompliance caused by use of the Software in combination with products, goods, services or other items furnished by anyone other than HFS; and (c) use of the Software in an operating environment other than as specified by HFS.

HFS will use reasonable efforts at its facility to correct any Software that fails to comply with the foregoing warranty by delivering to Customer error corrections consisting of workaround instructions, updates, revisions or patches to the Software and/or revisions or supplements to the Documentation, provided (i) Customer gives HFS prompt written notice of such failure within thirty (30) days of its occurrence; (ii) Customer provides HFS with all reasonably requested information to assist HFS in reproducing the failure; and (iii) HFS is able to reproduce the noncompliance at its facility. If, after the expenditure of such reasonable efforts, HFS is unable to correct the Software such that it complies with the foregoing warranty, Customer may terminate Maintenance for the Software, and HFS will refund a pro rata portion of the annual Maintenance Fees that Customer has paid based on the remainder of the period paid relative to the total period paid.

**C. Services Warranty.** HFS warrants that Services will be provided in a professional and workmanlike manner consistent with the definition of the Services to be performed. Provided that Customer gives HFS written notice of failure to meet the foregoing warranty within thirty (30) days after completion of Services, HFS will use reasonable efforts to correct any Services that fail to comply with the foregoing warranty. If HFS is unable to correct or re-perform the Services, HFS will refund a reasonable portion of the fees paid with respect to such Services.

**D. Computer Viruses.** HFS warrants, based on use of commercially available virus detection programs, that, at the time of delivery of the Software or any applicable update, the Software does not contain any computer virus or other disabling device ("Virus"). If the Software fails to comply with the foregoing warranty, HFS shall replace the Software with a copy that is not affected by the Virus. Customer acknowledges that a Virus may not be capable of detection using commercially available virus detection programs and that it is Customer's responsibility to monitor and scan all computer programs and data that become part of Customer's computing environment.

**E. Exclusive Warranties and Remedies.** THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION 7 AND IN ANY APPLICABLE COMPLIANCE WARRANTY ARE EXCLUSIVE AND ARE IN SUBSTITUTION FOR ALL OTHER WARRANTIES AND REMEDIES WITH RESPECT TO ANY FAILURE OF THE SOFTWARE, MAINTENANCE OR SERVICES TO COMPLY WITH THE WARRANTIES CONTAINED IN THIS SECTION 7 OR ANY APPLICABLE COMPLIANCE WARRANTY. CUSTOMER HEREBY WAIVES ANY OTHER WARRANTIES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**F. Third-Party Products.** Some Software and Services may include or operate in conjunction with computer programs, data or hardware supplied by a third party. Other than third-party programs or data that are embedded in, and delivered as, an inseparable part of the Software, all third-party computer programs, data and hardware ("Independent Third-Party Products") are supplied "AS IS" by HFS. If Independent Third-Party Products are supplied with separate warranty and support terms which can be passed through to Customer, the third party that supplies such programs and data is responsible for fulfilling such warranty and support terms, and HFS makes no warranty and assumes no obligation with respect to such items.

#### **8. Limitations of Liability.**

**A.** HFS' ENTIRE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY SOFTWARE, DOCUMENTATION, MAINTENANCE, SERVICES OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT, BY ORDER REQUEST OR OTHERWISE, WILL IN NO EVENT EXCEED THE LICENSE OR SERVICES FEES PAID TO HFS BY CUSTOMER FOR THE APPLICABLE ITEM WHICH IS THE BASIS FOR THE CLAIM; PROVIDED, HOWEVER, THAT IF THE APPLICABLE ITEM WHICH IS THE BASIS FOR THE CLAIM IS PROVIDED OVER A DEFINED TERM (E.G., ANNUAL MAINTENANCE, TERM CONTRACT, SUBSCRIPTION OR LOAN BLOCK), HFS' ENTIRE LIABILITY WILL IN NO EVENT EXCEED THE FEES PAID TO HFS FOR SUCH ITEM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION. NO ACTION RELATED TO THIS AGREEMENT MAY BE BROUGHT MORE THAN TWO (2) YEARS AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

**B.** IN NO EVENT WILL HFS BE LIABLE TO CUSTOMER OR TO ANY OF CUSTOMER'S CUSTOMERS OR ANY OTHER PERSON OR ENTITY FOR LOST DATA, LOST PROFITS, INTEREST OR COST OF MONEY; OR FOR COVER; OR FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF HFS' PERFORMANCE OR NONPERFORMANCE OR THE USE OF, INABILITY TO USE OR RESULTS OF USE OF ANY ITEM OF MAINTENANCE, SERVICES, DOCUMENTATION OR SOFTWARE.

#### **9. Defense of Infringement Claims.**

**A.** HFS will defend Customer against any claim or proceeding based upon infringement of any U.S. copyright by the Software, provided that Customer notify HFS of such proceeding promptly after Customer receives notice thereof, HFS has exclusive control over the defense and settlement of the proceeding, Customer provides such assistance in the defense and settlement of the proceeding as HFS may reasonably request, and Customer complies with any settlement or court order made in connection with such proceeding (e.g., as to the future use of any infringing Software).

**B.** HFS will: (i) indemnify Customer against damages and costs, including attorneys' fees finally awarded against Customer in any such proceeding or, if the action is settled, pay any amounts agreed by HFS

in settlement of such covered claims, and (ii) reimburse the expenses Customer reasonably incurs at the request of HFS in providing assistance.

**C.** HFS' obligations under this Section 9 will not apply to any infringement to the extent arising out of (a) any use or combination of the Software with any other products, goods, services or other items furnished by anyone other than HFS; (b) any modification or change not made by HFS; (c) the use of an infringing version of the Software when a comparable noninfringing version has been made available to Customer; or (d) any Software developed to specifications which Customer has supplied or required of HFS.

**D.** In the event that HFS reasonably believes it will be required to discontinue use of the Software, HFS will do one of the following, selected by HFS at its option: (a) HFS will obtain for Customer the right to continue use of the Software; (b) HFS will modify the Software to make it noninfringing; or (c) if HFS is not reasonably able to accomplish the foregoing, HFS may terminate the license of the infringing Software and refund Customer a pro rata portion of the license fee Customer paid for such Software, amortized on a three (3) year straight line basis from the date of installation of the Software.

**E.** THIS SECTION 9 STATES THE ENTIRE LIABILITY OF HFS WITH RESPECT TO INFRINGEMENT BY ANY DELIVERABLE OF HFS OR RESULTING FROM THE PERFORMANCE OF SERVICES BY HFS.

#### **10. Miscellaneous**

**A. No Waiver.** The failure of either party to enforce any rights under this Agreement or to take action against the other party in the event of a breach will not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

**B. Assignment.** Neither this Agreement nor any Order Request may be assigned or transferred (e.g., change of control) in any way by Customer without the prior written consent of HFS. Any consent will require that Customer and/or its successor immediately bring all accounts current and make all adjusting payments, if any, required by any licenses and may impose an obligation on Customer to pay an administrative fee to HFS for effectuating such assignment. Without limiting the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**C. Excused Delays.** To the extent that a delay or failure to perform result from causes beyond the reasonable control of the affected party, that party will be excused and not liable for such delay or failure. If HFS experiences any delays in the delivery of the Software or Services which result from Customer's failure to meet Customer's obligations described in the Order Request, Customer will reimburse HFS for any reasonable additional costs HFS incurs as a result of such delays.

**D. No Export.** Customer shall not export, directly or indirectly, the Software or Documentation outside the United States without prior written approval from HFS. In the event HFS provides such approval, Customer will comply with the export laws and regulations of the U.S.

**E. Survival.** Sections 5.C, 6, 7.E, 8, and 9, together with all other provisions of this Agreement which may reasonably be interpreted or construed as surviving the termination or expiration of this Agreement, will survive.

**F. Independent Contractor.** In the performance of this Agreement, HFS will at all times be Customer's independent contractor, and not Customer's partner or joint venturer. HFS and not Customer will be responsible for any payments to or on behalf of any HFS employees including, without limitation, any wages, workers' compensation insurance or unemployment insurance.

**G. Notices.** Any notice or other communication under this Agreement given by either party to the other will be in writing and delivered in person, by first-class mail, or a nationally recognized courier service, postage prepaid. Notices will be deemed received only upon receipt. Notices will be directed to the intended recipient at the address then used for Customer invoices and the HFS office address issuing the invoice. Any notices related to Section 6.C, 7, 9, or 10.I are also to be directed to the attention of HFS' Corporate Legal Department.

**H. Applicable Law.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the local laws of the State of Oregon, USA, without reference to its choice of laws principles. The parties waive application of the 1980 UN Convention on Contracts

for the International Sale of Goods to this Agreement and the transactions contemplated by this Agreement.

**I. Dispute Resolution.** The parties will first attempt through earnest discussion to resolve their differences, including providing notice of the dispute, involving appropriate levels of management of both parties. Failing resolution, the parties will participate in mediation to be administered by the American Arbitration Association. Failing resolution through mediation, any dispute will be settled by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, except as provided herein. Any arbitration or mediation will be held in a major city in the continental United States selected by the party that is the non-complaining party in the arbitration. Arbitration will be before a single arbitrator, licensed by a state bar, with experience in banking or technology law, as applicable. The award of the arbitrator will be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The arbitrator shall award only damages consistent with the damages limitations in this Agreement. No party, witness, or arbitrator may disclose the contents or results of any arbitration hereunder without the prior written consent of all parties, unless, and then only to the extent necessary, required to enforce or challenge the award, as required by law, or as necessary for financial and tax reports and audits. Notwithstanding this Section 10.1, either party may seek equitable relief from any court having jurisdiction to the extent necessary to prevent irreparable harm.

**J. Attorneys' Fees.** In the event of any dispute or action to enforce this Agreement or on account of any breach or default under this Agreement, each party will bear its own attorneys' fees and costs related thereto.

**K. No Third-Party Beneficiaries.** The Order Request, including this Agreement, does not and is not intended to confer any rights or remedies upon any person or entity other than the Customer and HFS.

**L. Entire Agreement.** The applicable Order Request and its attachments and references, including this Agreement, form the complete agreement between Customer and HFS, and supersede any and all prior agreements among the parties related to the specific Software, Services and any other items provided under the respective Order Request. No modification of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by both parties.

- END -