



Hardware and Stand-Alone Third-Party Software Agreement

The customer signing the order request referencing this agreement ("Customer") and Harland Financial Solutions, Inc. ("HFS") on behalf of itself and its subsidiaries agree to the terms of this Hardware and Stand-Alone Third-Party Software Agreement (the "Agreement") as follows:

1. **Orders.** An HFS order request referencing this Agreement along with the order request's other attachments and references, if any, (collectively the "Order Request") form the complete agreement for hardware and third-party software sales between HFS and Customer. Hardware includes any equipment or device that forms part of Customer's computing environment (e.g., CPUs, printers, scanners, signature pads, keyboards, monitors, servers, routers, etc.) and financial institution specific peripherals, such as cash dispensers, MICR printers, and the like (collectively, "Hardware"). Third-party software includes any non-HFS software that is not embedded in HFS software ("Software"). An Order Request is not effective until accepted in writing by HFS and, once accepted, the Order Request is firm and noncancellable.
2. **Factory Defaults.** Unless otherwise specified in the Order Request, all Hardware is shipped with factory installed defaults, operating system version, and software service patch levels. All Software is shipped factory-sealed and new.
3. **Hardware and Software License Agreement.** Hardware and Software may require the acceptance of click-wrap or shrink-wrap terms and conditions in order to use it. Customer is responsible for accepting such terms and conditions which are between Customer and the Hardware or Software manufacturer.
4. **Delivery.** Unless otherwise specified in the Order Request, HFS shall ship the Hardware and Software as soon as practicably possible following HFS's receipt of the Hardware and Software from the manufacturer, if applicable, and completion of any applicable configuration services. All Hardware and Software is shipped FOB Shipping Point. Shipping and handling charges shall be passed through by HFS to Customer.
5. **Installation and Other Professional Services.** HFS may provide configuration, installation or other professional services as set forth in the Order Request. If on-site installation services are being provided, in addition to any fees for such services, Customer shall reimburse HFS for its reasonable travel and living expenses.
6. **Services Warranty.** HFS warrants that any services performed by HFS will be provided in a professional and workmanlike manner consistent with the description of the service(s) to be performed. Provided Customer gives HFS written notice of HFS's failure to meet the foregoing warranty within thirty (30) days of completion of the applicable service(s), HFS will use reasonable efforts to correct any service(s) that fail to comply with the foregoing warranty. If HFS is unable to correct or re-perform the service(s), as Customer's exclusive remedy for the service(s) failing to be provided in a professional and workmanlike manner consistent with the description of the service(s) to be performed, HFS will refund a reasonable portion of the fees paid with respect to such service(s).
7. **Disclaimer of Warranties.** Other than the Services Warranty set forth herein and any Hardware and/or Software manufacturers' standard warranties, which HFS shall pass through to Customer, if applicable, HFS is providing the Hardware, Software and Services AS-IS. CUSTOMER HEREBY WAIVES ALL OTHER WARRANTIES RELATING TO THE HARDWARE, SOFTWARE AND SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
8. **Limitations of Liability.** HFS'S 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 HARDWARE, SOFTWARE, SERVICES, OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT, WILL IN NO EVENT EXCEED THE FEES PAID TO HFS BY CUSTOMER FOR THE PARTICULAR PIECE OF HARDWARE, SOFTWARE, SERVICE OR OTHER ITEM GIVING RISE TO THE CLAIM. IN NO EVENT WILL HFS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR LOST DATA, LOST PROFITS, INTEREST OR COST OF MONEY; OR FOR COVER; OR FOR ANY DIRECT, PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF HFS'S PERFORMANCE OR NONPERFORMANCE OR THE USE OF, INABILITY TO USE, OR RESULTS OF USE OF ANY HARDWARE, SOFTWARE, SERVICES OR OTHER ITEMS PROVIDED UNDER THIS AGREEMENT.
9. **Default Payment Terms.** Unless otherwise specified in the Order Request, one-hundred percent (100%) of the fees specified on the Order Request shall be invoiced upon delivery of the Hardware and Software. Invoices shall be paid within thirty (30) days after receipt or as stated in the applicable Order Request without deduction, withholding or offset. 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.
10. **Taxes.** Customer will pay or reimburse HFS for all duties, taxes (other than taxes on HFS's income levied by any of the United States or the U.S. government), fees or other similar amounts assessed or imposed by governmental authorities.
11. **Returns.** Hardware and Software that are unopened and still in original sealed packaging may be eligible for a return credit or refund of the purchase price paid, less shipping and handling and applicable restocking fees. Return requests are evaluated by HFS on a case-by-case basis. Unless the product is defective or the return is a direct result of HFS's error, a minimum restocking fee of fifteen percent (15%) will be charged on Hardware or Software approved for return. Customer is responsible for return shipping expenses.
12. **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 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.
- D. Survival. Sections 6, 7, 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.
- E. 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.
- F. 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.
- G. 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.
- H. 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, either party may seek equitable relief from any court having jurisdiction to the extent necessary to prevent irreparable harm.
- I. 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.
- J. 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 between the parties related to the specific Hardware, Software, Services or any other items provided. No modification of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by both parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.