



Services Agreement

By accepting these terms or by signing an HFS order request referencing this Services Agreement (the "Agreement"), Customer acknowledges that the individual purchasing the services has authority to bind Customer to these terms, and agrees to be bound by the terms of this Agreement. If these terms are incorporated by reference in an order request, the agreement between the parties includes this Services Agreement, the order request, and all other attachments and schedules attached to the order request signed by the parties (together, the "Order Request"). Services requests are not effective until accepted or otherwise acknowledged in writing by HFS. Once accepted, the resulting contract based on this Agreement is firm and non-cancelable, although it may be modified with the written consent of both parties. Terms of any other communication which are inconsistent with or in addition to the terms of this Agreement are not binding on either party unless such terms are accepted in writing by such party.

1. Services

This Agreement governs the performance of services purchased pursuant to an Order Request or other order mechanism (the "Services"). If the Services include delivery of custom software or programming ("Software"), HFS grants to Customer a non-exclusive, non-transferable license to the Software under the license grant identified in the Order Request. If no license is identified, Customer's license for the Software shall be consistent in all respects with its license to the underlying HFS software for which the customization is intended. Unless otherwise stated, the license 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 Customer's internal purposes in the normal course of Customer's business.

2. Compensation

Customer will pay HFS for Services at the stated rate or price. If no such rate or price is stated, Customer will pay HFS on a time and materials basis at HFS's then-current rates for such services. In addition, Customer will pay any out-of-pocket costs related to the Services, including reasonable travel and living expenses. HFS will prepare and submit invoices for amounts payable consistent with the applicable payment schedule or, if there is no relevant payment schedule, on a monthly basis. Invoices shall be paid within thirty (30) days after receipt unless otherwise agreed in writing, without deduction, withholding or offset. HFS may suspend performance of Services and the provision of related deliverables until payments are brought current. 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. If Customer is required under any applicable law to withhold any taxes or duties from the amounts specified under any applicable Order Request, then the amounts specified will be increased so that the net amounts actually paid to HFS equal the amounts specified. Amounts not paid when due are subject to finance charges of 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.

3. Term and Termination

This Agreement remains in effect until performance of the Services is complete. Either party may terminate this Agreement immediately if a party fails to cure a material breach within thirty (30) days after written notice explaining the breach. A material breach by Customer includes, without limitation, any failure to pay fees when due under this Agreement. Either party may terminate this Agreement immediately by giving the other party written notice of termination if such party becomes insolvent or subject to a bankruptcy proceeding. Customer's termination for any reason does not relieve Customer of any payment obligations for Services performed prior to the effective date of the termination.

4. Proprietary Rights

A. Proprietary Rights. Software, documentation and other deliverables provided in conjunction with the Services (collectively "Work Product") are protected by copyright, trade secret and/or other proprietary rights of HFS and its suppliers. Work Product is licensed to Customer only for its internal use. Neither title to nor ownership of any Work Product, nor the copyright, trademark, trade secret or other proprietary rights to any Work Product, is transferred to Customer under this Agreement. HFS reserves all rights in Work Product not expressly granted to Customer in this Agreement and any Order Request referencing this Agreement. All modifications, adjustments, or error corrections to Work Product resulting from HFS's performance of any Services under this Agreement will become part of the Work Product and will remain the exclusive property of HFS. Unless otherwise stated in the Order Request, Customer will not: (a) make unauthorized copies of Work Product; (b) market, license, distribute, sublicense or otherwise commercially exploit Work Product; (c) permit the use of Work Product by others; (d) modify or translate Work Product; or (e) disassemble, reverse engineer or decompile Work Product or otherwise attempt to discover any portion of the trade secrets related to Work Product.

B. 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 Order Requests. HFS acknowledges that Customer's Confidential Information includes Customer's customer information, including nonpublic personal information. Customer acknowledges that HFS's Confidential Information includes all source code, Software and documentation, Services 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 affiliate 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. The receiving party agrees to maintain all proprietary legends and notices on all tangible and electronic copies of Confidential Information, the Software and documentation, and particularly those legends and notices concerning ownership of trademarks and copyrights, and ownership and restricted usage of Software.

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; 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's obligations with respect to the Services and pursuant to this paragraph; and (d) Customer provides reasonable advance notice. At HFS's option, in lieu of access HFS may provide a SAS 70 or similar third-party audit report.

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 such 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 that 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 its 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 and respective Services involved in a customer list.

5. Warranty

- A.** HFS warrants that the Services and related Work Product 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 any material failure to meet the foregoing warranty within thirty (30) days after completion of Services, HFS will use reasonable efforts to correct or re-perform the 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. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND ARE IN SUBSTITUTION FOR ALL OTHER WARRANTIES AND REMEDIES WITH RESPECT TO ANY FAILURE OF THE SERVICES TO COMPLY WITH THE FOREGOING WARRANTY. CUSTOMER HEREBY WAIVES ANY OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- B.** To the extent HFS renders the Services pursuant to the directions or specifications of Customer, Customer warrants that completion of the Services and delivery of any Work Product in accordance with such directions or specifications will not violate the intellectual property rights of a third party. To the extent arising from or relating to such directions or specifications, Customer will: (i) defend and indemnify HFS against any and all damages, costs and attorneys' fees finally awarded against HFS in any proceeding based upon a claim that the Services or Work Product resulting from those Services infringe the patent, copyright or trade secrets of a third party, or (ii) if the action is settled, pay any amounts agreed by Customer in settlement of any claims of infringement. Customer will reimburse HFS for the expenses it reasonably incurs in assisting Customer with any defense of a claim or settlement.

6. Limitations of Liability

- A.** 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 SERVICES, WORK PRODUCT OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT, BY ORDER REQUEST OR OTHERWISE, WILL IN NO EVENT EXCEED THE FEES PAID TO HFS BY CUSTOMER FOR THE SPECIFIC SERVICES WHICH ARE THE BASIS FOR THE CLAIM; PROVIDED, HOWEVER, THAT IF THE SPECIFIC SERVICES WHICH ARE THE BASIS FOR THE CLAIM ARE PROVIDED OVER A PERIOD OF GREATER THAN TWELVE (12) MONTHS, HFS'S ENTIRE LIABILITY WILL IN NO EVENT EXCEED THE FEES PAID TO HFS BY CUSTOMER FOR SUCH SERVICES 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'S PERFORMANCE OR NONPERFORMANCE OR THE USE OF, INABILITY TO USE OR RESULTS OF USE OF ANY SERVICES OR WORK PRODUCT.

7. 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 in any way by Customer without the prior written consent of HFS. Any consent will require that Customer bring all accounts current, and may impose an obligation on Customer to pay an administrative fee to HFS for effectuating such assignment.
- C. Excused Delays.** To the extent that a delay or failure to perform results 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 Services which result from Customer's failure to meet Customer's stated obligations, Customer will reimburse HFS for any reasonable additional costs HFS incurs as a result of such delays.
- D. Survival.** All 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.
- H. Dispute Resolution and Venue.** The parties will first attempt through earnest discussion to resolve their differences, including providing notice of the dispute and involving appropriate levels of management of both parties. Failing informal resolution, each party consents to the exclusive jurisdiction of the applicable court located in Portland, Oregon, and waives any available jurisdictional or venue defenses otherwise available. 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.** These terms supersede any and all prior agreements among the parties related to the Services. No modification will be valid unless set forth in a written instrument signed by both parties. Any remedy of HFS set forth in this Agreement is in addition to any other remedy afforded to HFS by law, or otherwise.