

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE USING HEARTLAND RESTAURANT SOFTWARE. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND HEARTLAND RESTAURANT.

This HEARTLAND RESTAURANT SERVICE AGREEMENT (this “**Agreement**”) is made by and between HEARTLAND PAYMENT SYSTEMS, LLC (d/b/a Heartland Restaurant) (“**Heartland Restaurant**”, “**we**”, “**our**”, “**us**”), and the party agreeing to these terms and conditions by clicking or checking the “Accept” icon pertaining to this Agreement on the Site (as defined below) (“**Customer**”, “**you**”, “**your**”). This Agreement is effective as of the date Customer clicks or checks such “Accept” icon (the “**Effective Date**”). Heartland Restaurant and Customer are sometimes referred to as the “**Parties**” and each individually as a “**Party**”.

RECITALS

- A. We operate an Internet website located at <https://hrpos.heartland.us> (the “**Site**”), which Site can be accessed through any computer, tablet or smartphone.
- B. We make available for free download in the Apple App Store our Heartland Restaurant POS iPad application and our Heartland restaurant patron application (together, the “**Applications**”).
- C. We operate an online, Web-based software subscription service which allows users to operate and manage a point of sale (POS) system for restaurants, bars, and other food and/or beverage service establishments (the “**Service**” and together with the Site and the Applications, the “**System**”). The Service is accessed and used through both the Site and the Application.
- D. You desire to subscribe to and use the Service.

Therefore, the Parties agree as follows with the intent to be legally bound.

AGREEMENT

- 1. **Subscription to Service.** You hereby subscribe to the Service and purchase the subscription described in this Agreement and in Exhibit A attached hereto. In connection with your subscription, you agree to perform your obligations described in this Agreement and in Exhibit A. You agree to access and use, and we agree to provide, the System under the terms and subject to the conditions in this Agreement. We shall be entitled to modify, change, and upgrade the functionality, features and capabilities of the System and the underlying technical infrastructure, in our sole discretion, to reflect the continuing development of the System and technical advances.
- 2. **License Grant; Use of Service.**
 - (a) **License.** We grant you a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable, limited right to access and use the System during the Term (as defined below).
 - (b) **Customer Responsibilities and Obligations.**
 - (i) You are solely responsible for (A) all activities occurring under your accounts; (B) for maintaining the confidentiality of your accounts and passwords; (C) for the content of all electronic data submitted by you and your users and customers to or through the System; (D) through your administrator, for setting and modifying your users’ profile and preferences for the System, authorizing and terminating individual user ID’s and passwords and specifying the access rights of those users to the System; and (E) the use of the System by your users and customers.

(ii) You shall (A) use commercially reasonable best efforts to prevent unauthorized access to, or use of, the System, and will notify us promptly of any unauthorized use you become aware of; and (B) comply with all applicable local, state, federal, foreign or international laws, rules, regulations, ordinances, treaties or governmental orders in using the System ("**Laws**").

(iii) You shall use the System solely for your internal business purposes. You shall not (A) make the System available to, or otherwise show the System to, any third party, other than to your customers for purposes of facilitating their experience; (B) send spam or similar unsolicited messages; (C) send or store infringing, obscene, threatening, libelous, defamatory, or otherwise unlawful material; (D) send or store viruses or other harmful or malicious code, files, scripts, agents or programs; (E) interfere with or disrupt the integrity or performance of the System or our sites, servers, or networks; or (F) attempt to gain unauthorized access to our systems, networks, infrastructure, the System.

(iv) "Customer Data" means any data, content or other materials of any type that you upload, submit or otherwise transmit to or through the System, including but not limited to data concerning or relating to your customers or your employees. You represent and warrant that (i) you have obtained all necessary rights, releases and permissions to provide all Customer Data to Heartland Restaurant and to grant the rights granted to Heartland Restaurant in this Agreement, (ii) you have an internal policy in place that provides notice to your employees that you disclose their identifying data (as defined herein) to third-party vendors like Heartland Restaurant, and (iii) the Customer Data and the transfer to and use by Heartland Restaurant of Customer Data as authorized by you under this Agreement do not violate any laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies or other applicable Laws. Heartland Restaurant assumes no responsibility or liability for Customer Data, and you shall be solely responsible for Customer Data and the consequences of using, disclosing, storing, or transmitting it. Customer shall defend, indemnify, and hold harmless the Indemnitees (as defined herein) from and against any claims, actions or demands, losses, liabilities, including, without limitation all reasonable attorney's fees and costs, made by any third party arising from or relating to Customer Data, including but not limited to any claim brought by a third party alleging that Customer Data, or your use of the System in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable Law.

Without limitation to the foregoing, to the extent you permit or authorize any third-party to access, interface with, or otherwise engage with the System in any respect ("Third Party Access"), you assume complete responsibility for any liability arising out of or in connection with such Third Party Access. This includes but is not limited to any claims arising out of or in connection with breaches of data security measures arising from such Third Party Access that affect Customer Data. You shall defend, indemnify, and hold harmless the Indemnitees from and against any claims, actions or demands, losses, liabilities, including, without limitation all reasonable attorney's fees and costs, made by any third party arising from or relating to such Third Party Access.

(c) Ownership of the System.

(i) The System (including, without limitation, all software, hardware, websites, technology, and documentation associated with or underlying the System, as well as all derivative works thereof), are our sole and exclusive property. Subject to the limited rights expressly granted in this Agreement, we reserve all rights, title and interest in and to the System (including, without limitation, all software, hardware, websites, technology, and documentation associated with or underlying the System, as well as all derivative works thereof), including all related intellectual property and proprietary rights (including, without limitation, all copyrights, patent rights, trademark and service mark rights, trade secret rights, and moral rights). No rights are granted to you other than as expressly described in this Agreement.

(ii) The term “**Intellectual Property**” means any and all discoveries, improvements, ideas, concepts, creative works, processes, methods, formulas, techniques, know-how, designs, works of authorship, trade secrets, copyrights, patent rights, trademarks, service marks, and any other intellectual property that relates to, or is used to develop or improve, the System or our business. Any Intellectual Property made, conceived, developed, or reduced to practice, or caused to be made, conceived, developed, or reduced to practice, by you, alone or in conjunction with others, during the Term will be deemed to have been made or developed by you solely for our benefit, will be held in trust for our exclusive use and benefit, and will be our sole and exclusive property. You will not, either during the Term of this Agreement or at any time thereafter, use or disclose to any party our Intellectual Property. You agree to assign, and do hereby assign, to us all right, title, and interest in and to any Intellectual Property, including, without limitation, any “moral” rights which you may have in the Intellectual Property under any copyright law or other similar law. You also agree, during the Term of this Agreement and at any time thereafter, at our request and expense but without further consideration, to review, execute, acknowledge, and deliver any and all papers necessary to secure legal protection for our Intellectual Property in any country in the world.

(iii) You shall not (A) license, sublicense, modify, copy, rent, loan, lease, sell, resell, assign, distribute, reverse engineer, grant a security interest in, transfer any right to, commercially exploit, create derivative works based on, or infringe or violate our intellectual property or other rights in, the System; (B) frame or mirror any content forming part of the System; (C) remove or alter any trademarks, or other proprietary notices, legends, symbols, or labels appearing in the System; or (D) access the System in order to (1) build a competitive product or service, or (2) copy any ideas, features, functions or graphics of the System.

(iv) You warrant that you own or have sufficient legal right to the intellectual property rights in your content and that your content (including, without limitation, any use of your content by us as described in this Agreement), does not violate applicable Laws or the rights of any third party. You grant us a worldwide, royalty-free, non-exclusive, sublicensable right during the Term to use, reproduce, distribute, publicly perform, publicly display, transfer, transmit, distribute, and publish your content and subsequent versions thereof; and to make and/or have made, and to practice any method embodying your content for purposes of delivering the Service and administering the System. This license will apply to the distribution and the storage of your content in any form, medium, or technology now known or later developed.

(v) Provided that we do not personally identify you or your customers, you hereby grant us the right to use the data generated, in aggregated form where applicable, from your and your customers' use of the System to maintain and improve the System, to manage the performance of the System, and for any other legal purpose.

(d) Hardware. We and other third parties (including, without limitation, our resellers and/or distributors) may, from time to time and in our/their discretion, sell or lease hardware for use with the System. All such hardware sales/leases and the terms and conditions thereof will be subject to a separate written agreement between you and the seller/lessor of such hardware. None of the terms contained in this Agreement will apply to such sale/lease.

3. Privacy Policy. All of the information that we collect from you, such as registration information, is subject to our privacy policy and applicable privacy Laws. Go to <https://hrpos.heartland.us/privacy-policy> to see our full privacy policy. This policy is incorporated into and made part of this Agreement.

4. Fees.

(a) Fees. We will provide you with access to and use of the System for the fees described in your Sales Order Form. You will pay the fees as set forth therein. We reserve the right to adjust the fees at

any time at our sole discretion; provided, that, no such adjustments will affect any fees already paid by you. All fees paid to us are non-refundable.

(b) Late Fees; Taxes. We may charge interest on all overdue fees at a rate equal to 1.5% per month (or, if lower, the maximum allowable by applicable Laws) on the unpaid amount until such amounts are paid. You will be solely responsible for, and will pay, any sales, use, transaction privilege, gross receipts, goods and services, value-added, and personal property taxes, any other taxes and levies, and any interest and penalties related to the foregoing (other than taxes based on our income) that are imposed by any governmental authority in connection with this Agreement and/or the provision of the Service.

(c) Suspension of Service. If you fail to pay, when due, any fees, late fees or other charges due to us under this Agreement, we may, in our sole and absolute discretion, immediately suspend your and your users' and customers' access to and use of the System. You expressly acknowledge and agree that we will have no liability to you whatsoever if we elect to suspend your access to and use of the System (even if we have been advised of the possibility of damages (which include, but are not limited to, loss of profits, loss of savings or revenue, and/or the claims of third parties)).

5. Term and Termination.

(a) Term. The term of your subscription will start on the Effective Date and will continue until terminated pursuant to Section 5(b) below (the "**Term**").

(b) Termination. This Agreement may be terminated pursuant to any of the following provisions:

(i) Upon Notice. Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party.

(ii) Insolvency/Bankruptcy. If you shall: (A) be unable to pay or admit in writing your inability to pay your debts as they mature; (B) make a general assignment for the benefit of creditors; (C) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of your assets; (D) file a petition or be the subject of an involuntary petition in bankruptcy or for reorganization or for an arrangement pursuant to a bankruptcy act or insolvency which petition is not dismissed within ninety (90) days from such filing; or (E) be adjudicated as bankrupt or insolvent, then we may terminate this Agreement effectively immediately upon written notice to you.

(iii) Default of Certain Customer Obligations. If you breach any of your obligations under Sections 2(b), 2(c), 4, or 10(b), we may terminate this Agreement effective immediately upon written notice to you.

(c) Effect of Termination.

(i) When this Agreement is terminated, (A) you and your users and customers will immediately stop using the System and (B) your and your users' and customers' access to and use of the System will be immediately terminated. You expressly acknowledge and agree that we will have no liability to you whatsoever with respect to the termination of your and your users' and customers' access to and use of the System (even if we have been advised of the possibility of damages (which include, but are not limited to, loss of profits, loss of savings or revenue, and/or the claims of third parties)).

(ii) Upon termination of this Agreement, you will pay us, within five (5) business days following the termination date, any fees which accrued prior to such termination date but remain unpaid.

(iii) If this Agreement is terminated by us pursuant to ~~Section 5(b)(i), 5(b)(ii), or 5(b)(iii)~~ above, you will pay any damages, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) that arise out of or in connection with such termination.

6. Representations and Warranties. You represent and warrant to, and covenant with, us as follows:

(a) You have the requisite power and authority to execute, deliver, and perform your obligations under this Agreement.

(b) Your execution, delivery, and performance of this Agreement, and the consummation of the transactions described in this Agreement, have been authorized by all necessary actions on your part. This Agreement is valid and binding on you, enforceable against you in accordance with its terms.

(c) The execution, delivery and performance of this Agreement by you do not and will not (i) conflict with, or constitute a default (now or in the future) of any agreement, instrument or other understanding to which you are bound, or (ii) result in a violation of any Law, judgment, injunction, decree or other restriction of any court or governmental authority to which you are subject.

(d) No consent, approval, order or authorization of, or registration, declaration or filing with, any government authority, body, or any other party is required by you to execute, deliver, and perform under this Agreement.

7. Disclaimers. THE SYSTEM IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. WE MAKE NO WARRANTY, REPRESENTATION, GUARANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, SECURITY, ACCURACY, COMPLETENESS, TITLE OR NON-INFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE SYSTEM OR ANY OF THE CONTENT, SERVICES, PRODUCTS, SOFTWARE OR OTHER MATERIALS AVAILABLE THROUGH THE SITE. WE DO NOT REPRESENT, WARRANT OR GUARANTY THAT (a) THE SYSTEM WILL BE AVAILABLE, 100% SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER APPLICATION, SOFTWARE, HARDWARE, SYSTEM OR DATA; (b) THE SYSTEM WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (c) ANY DATA STORED USING THE SYSTEM WILL BE ACCURATE, RELIABLE, OR SECURE; (d) ERRORS OR DEFECTS IN THE SYSTEM WILL BE CORRECTED; OR (e) THE SYSTEM OR THE THIRD PARTY PRODUCTS OR SERVICES USED BY US TO MAKE THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, AND SHALL HAVE NO RESPONSIBILITY WHATSOEVER, WITH RESPECT TO ANY THIRD PARTY PRODUCTS, SERVICES, CONTENT OR OTHER MATERIALS ACCESSED, ENCOUNTERED OR OBTAINED BY YOU THROUGH THE SYSTEM.

8. Limitation of Liability.

(a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE TO YOU, YOUR USERS, YOUR CUSTOMERS, OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR MULTIPLE DAMAGES IN CONNECTION WITH OR ARISING OUT OF (i) THE SYSTEM, (ii) USE OR MISUSE OF THE SYSTEM BY YOU, YOUR USERS, YOUR CUSTOMERS OR ANY THIRD PARTY, (iii) ANY PRODUCTS, SERVICES, CONTENT OR OTHER MATERIALS USED WITH THE SYSTEM, OR (iv) ANY PRODUCTS, SERVICES, CONTENT OR OTHER MATERIALS ACCESSED, ENCOUNTERED OR OBTAINED ON OR THROUGH THE SYSTEM THAT ARE SUPPLIED BY THIRD PARTIES, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH CLAIM IS BASED (WHETHER CONTRACT, TORT OR OTHERWISE) AND EVEN IF WE ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INJURY TO PERSON OR PROPERTY, LOSS OF PROFITS, BUSINESS

INTERRUPTION, LOSS OF GOODWILL, USE OR LOSS OF DATA, OR OTHER INTANGIBLE LOSSES). IF ANY JURISDICTION DOES NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OUR LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW AND IN NO EVENT SHALL SUCH LIABILITY EXCEED FIVE HUNDRED DOLLARS (\$500.00).

(b) YOU EXPRESSLY AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR OUR PERFORMANCE OR THE FAILURE OF SUCH PERFORMANCE HEREUNDER, OR FOR ANY BREACH BY US HEREOF, WILL BE TO TERMINATE THIS AGREEMENT PURSUANT TO SECTION 5(b)(i) ABOVE. YOU ACCEPT THE RESTRICTIONS ON YOUR RIGHT TO RECOVER ADDITIONAL DAMAGES AS PART OF YOUR BARGAIN WITH US, AND YOU UNDERSTAND AND ACKNOWLEDGE THAT, WITHOUT SUCH RESTRICTIONS, THE FEES WOULD BE HIGHER.

9. Indemnification. You shall defend, indemnify and hold harmless us and our affiliates, officers, directors, members, managers, equity holders, employees, insurers, legal counsel, representatives, and agents (each an “**Indemnatee**”) from and against any and all claims (including, without limitation, any investigation, action or other proceeding, whether instituted by a third party against an Indemnatee or by an Indemnatee for the purpose of enforcing its rights hereunder), damages, losses, liabilities, costs and expenses (including, without limitation, attorneys’ fees and court costs) that constitute, or arise out of or in connection with (a) any breach by you of your representations, warranties, agreements and covenants set forth in this Agreement; or (b) use or misuse of the System by you, your users or your customers.

10. Miscellaneous.

(a) **Audit.** We reserve the right to audit your compliance with this Agreement and your actual usage of the System. You will allow us and/or our representatives, during normal business hours, all necessary access to your books, records, personnel, information-technology systems, and other facilities in order to determine such compliance and usage. If any audit reveals that you have underpaid the fees (including, without limitation, in circumstances where your actual usage of the System increased but you failed to notify us regarding such increase and failed to pay us the applicable fees in connection with such increase), you shall promptly remit such underpaid amounts plus interest thereof at the rate of 1.5% per month (or, if lower, the maximum allowable by applicable Law). Further, if any audit reveals that the amount of underpaid fees exceeds five percent (5%) of the fees payable with respect to the period audited, you shall reimburse us for reasonable costs and expenses incurred by us in conducting the audit.

(b) **Confidentiality.**

(i) Except as provided in Section 10(b)(ii) below, during the Term of this Agreement and at all times thereafter, you will (A) keep confidential and not divulge, furnish or make accessible to any third party any Confidential Information, and (B) use the Confidential Information solely for purpose of utilizing the System during the Term pursuant to the terms and conditions set forth in this Agreement and not for the benefit of any third party.

(ii) You shall be permitted to disclose Confidential Information to the extent, but only to the extent, (A) we provide our express prior written consent to such disclosure; or (B) required by law; provided, that prior to making any disclosure of Confidential Information required by law (whether pursuant to a deposition, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, or other similar process), you must notify us of your intent to make such disclosure, so that we may seek a protective order or other appropriate remedy and may participate with you in determining the amount and type of Confidential Information, if any, which must be disclosed in order to comply with applicable law.

(iii) Promptly after the expiration or termination of this Agreement or upon our request at any time, you shall return to us, or confirm in writing the destruction of, any Confidential Information

which is in tangible form and which is then in your possession. As used herein, “**Confidential Information**” means all information concerning or related to our business, operations, financial condition or prospects (whether prepared by us, our affiliates or advisors, or otherwise, and regardless of the form in which such information appears and whether or not such information has been reduced to a tangible form), and shall specifically include (without limitation): (A) all information regarding our members, managers, officers, directors, employees, equity holders, customers, sales representatives, dealers, and licensees, in each case whether past, present or prospective; (B) all of our Intellectual Property, software, inventions, discoveries, trade secrets, processes, techniques, methods, formulae, ideas and know-how (including, without limitation, the System); (C) all of our financial statements, audit reports, budgets and business plans and forecasts; and (D) all analyses, compilations, forecasts, data studies, notes, translations, memoranda, or other documents or materials, prepared by or for you containing, based on, generated or derived from, in whole or in part, any Confidential Information.

(c) Electronic Signatures Effective. This Agreement is an electronic contract that sets out the legally binding terms of your purchase of a subscription for the Service and your use of the System. You indicate your acceptance of this Agreement by clicking or checking the “Accept” icon in connection with your purchase of a subscription for the Service from us. This action creates an electronic signature that has the same legal force and effect as a handwritten signature. By clicking or checking the “Accept” icon, you agree to the terms and conditions contained or referenced in this Agreement. When you click or check the “Accept” icon, you also consent to have this Agreement provided to you in electronic form. Please print a copy of this Agreement for your records.

(d) Entire Agreement; Amendment. This Agreement (including, without limitation, all Exhibits hereto) constitutes the entire agreement of the Parties with respect to the transactions contemplated hereby and supersedes all prior and contemporaneous written and oral agreements, representations and communications between the Parties relating to such transactions. This Agreement may be amended, supplemented, or otherwise modified only by a writing signed by both of the Parties, and any such amendment shall be effective only to the extent specifically set forth in such writing.

(e) Equitable Relief. You acknowledge and agree that we would be irreparably damaged in the event that any of the provisions of Sections 2(b), 2(c), 5(c), 10(a) and 10(b) are not performed by you in accordance with their specific terms or are otherwise breached, and that money damages would not be a sufficient remedy for such breach. Accordingly, you agree that we will be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach, without any requirement to post bond or other security or to prove actual damage or harm. Such remedies shall not be deemed to be the exclusive remedies for any such breach but shall be in addition to all other remedies available at law or in equity.

(f) Expenses. Except as may otherwise be specifically provided in this Agreement, each Party is responsible for any expenses incurred in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement.

(g) Force Majeure. Except as otherwise expressly provided herein, we shall not be liable to you for any delay in or failure of our performance under this Agreement (including, without limitation, our failure to make available the Service or any component thereof) resulting from any act of God, fire, flood, explosion or other natural disaster, actions or impositions by Federal, state or local authorities, strike, labor dispute, vandalism, riot, commotion, act of public enemies, blockage or embargo or any other cause beyond our reasonable control (“**Force Majeure**”). Upon the occurrence of any such event that results in, or will result in, a delay or failure to perform, we shall be relieved from fulfilling our obligations under this Agreement during the period of such Force Majeure event.

(h) Governing Law; Consent to Jurisdiction. This Agreement is governed by, and shall be construed and enforced in accordance with, the laws of the State of Georgia, without giving effect to any conflict of laws rules, and each Party irrevocably submits to the exclusive jurisdiction of the federal and state courts located in Atlanta, Georgia for the purposes of any action or proceeding arising out of or relating to this Agreement. Each Party hereby consents to such jurisdiction and agrees that venue shall lie in the state or federal courts in Atlanta, Georgia with respect to any claim or cause of action arising under or relating to this Agreement. Each Party hereby waives any objection based on *forum non conveniens* and waives any objection to venue of any action instituted under this Agreement. If any legal action or any arbitration or other proceeding is brought in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, accounting fees, and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(i) Non-Disparagement. During the Term of this Agreement, you agree that you will not make any statements (or cause or encourage others to make any statements), written or verbal, that defame or disparage us, the System, or our products or services.

(j) Notices. Any notice, demand or request required or permitted under this Agreement shall be in writing and deemed delivered (i) when delivered personally (including by recognized national courier), or (ii) five (5) business days after deposited in the U.S. mail, first class mail, registered or certified, with postage prepaid.. Notices to (A) us shall be addressed to Heartland Restaurant, 3550 Lenox Road, Suite 3000, Atlanta, Georgia 30326, Attn: Corporate Secretary, and (B) you shall be addressed to the mailing address on file with us.

(k) Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(l) Successors and Assigns. You may not assign your rights or delegate or cause to be assumed your obligations hereunder without our prior written consent (which consent may be withheld in our sole and absolute consent). Any attempted assignment, delegation or assumption not in accordance with this Section 10(l) shall be null and void and of no force or effect whatsoever. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

(m) Survival. The provisions of Sections 2(b)-(c), 3, 4, 5(c), 6-10 hereof will survive any termination or expiration of this Agreement.

(n) Waivers. The due performance or observance by the Parties of their respective obligations under this Agreement shall not be waived, and the rights and remedies of the Parties shall not be affected, by any course of dealing or performance or by any delay or failure of any Party in exercising any such right or remedy. The due performance or observance by a Party of any of its obligations under this Agreement may be waived only by a writing signed by the Party against whom enforcement of such waiver is sought.

(Exhibits to This Agreement Follow)

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