

Heartland School Solutions Master Software Services Agreement

This Master Software Services Agreement (the “Agreement”), together with all software-specific attachments, is made and entered into this day _____ of _____ (“Effective Date”), by and between by and between Heartland Payment Systems, LLC (d/b/a Heartland School Solutions) a Delaware limited liability company, with an office at 765 Jefferson Rd #400, Rochester, NY 14623 (“Heartland”), and Warren County School District, having its principal place of business located at 6820 Market Street Russell, PA 16345 (“Customer”). Heartland and Customer may individually be referred to herein as “Party” or collectively as “Parties”.

1. Definitions

- 1.1 Affiliate** means a business entity that controls or is controlled by another business entity or is associated with other business entities under common ownership or control of a business entity, such as a subsidiary or parent company.
- 1.2 Error** means a reproducible failure of the Software to perform in substantial conformity with the Documentation. An Error does not include a nonconformity resulting from customer’s improper use, alteration of or damage to the Software, or Customer’s combining or merging the Software with any Equipment or Software not approved by Heartland.
- 1.3 Customer Data** means all information, files, content, figures, images, text, files or other data, including data concerning school lunch purchases, as well as student Personal Identifiable Information, provided by the Customer to Heartland in connection with the Services.
- 1.4 Documentation** means all manuals, instructions, writings electronic or other media provided by Heartland relating to the Software.
- 1.5 End User(s)** means the Customer’s employees and agents using the Software on Customer’s behalf.
- 1.6 Feedback** means suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or End Users relating to Heartland’s products or services.
- 1.7 FERPA** means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations at 34 CFR Part 99.
- 1.8 Heartland Data** means all Heartland-created information, files, content, figures, images, text, files or other data provided by Heartland to Customer in connection with Customer’s or its End Users’ use of the Services.
- 1.9 Major Enhancement** means any major functional revision to the Subscription released by Heartland during the Term.
- 1.10 Minor Enhancement** means any minor release, update, modification or “bug fix” that does not necessarily provide materially new functionality, as determined by Heartland in its reasonable discretion, and made generally available to Customer.
- 1.11 Personally Identifiable Information or PII** means information provided to Heartland by Customer that consists of (a) student names; (b) students’ parent and family members’ names; (c) students and students’ families’ address; (d) personal identifiers, such as social security numbers, student number, or biometric record; (e) indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; or (f) other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty, as defined by the regulations governing FERPA, 34 CFR § 99.3.
- 1.12 Proposal** means the Heartland proposal identifying the Software and Subscriptions that Customer is purchasing.

- 1.13 Services** mean the Software, Support Services, websites, mobile applications, or online services owned or operated by Heartland and its Affiliates, and provided to Customer.
- 1.14 Software** means the specific Heartland software program(s) that Customer is using as shown on the Proposal.
- 1.15 Subscription** means the continued provision of Software after the Initial Term.
- 1.16 Support Services** means the services that Heartland provides Customer in connection with the Software.
- 1.17 Support Incident** is defined as one specific Error or other technical issue that begins when Customer calls Heartland Technical Support and ends when either the single specific Error or other technical issue is resolved or deemed non-resolvable. Each Support Incident generates a “ticket”, which will be opened, tracked and closed separately.
- 1.18 Support Times** means Monday through Friday, 7:00 a.m. through 7:00 p.m. EST, excluding the following holidays: New Year’s Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. Hours may be limited on other bank holidays.
- 1.19 Updates** means modifications, enhancements, changes and alterations to the Software provided by Heartland during the Subscription, including all Major Enhancements and Minor Enhancements.

2. Grant of License

- 2.1 Limited License.** Subject to the terms and conditions in this Agreement, and any applicable software-specific attachments, Heartland grants Customer a non-exclusive, non-transferable, non-sublicenseable license to access and use the Services on a remote-access, subscription basis via the Internet solely in support of Customer’s operations. This limited license includes standard maintenance, hosting and Support Services, patches, version releases, and upgrades that Heartland may provide or make available after initial implementation, together with any applicable additional or different terms..
- 2.2 Prohibited Uses.** Customer will not, and will not permit any third party to, (a) download, copy, sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available any Service to a third party except as may be expressly set forth in this MSA and its attachments; (b) intentionally access or use any portion of the Software delivered by Heartland but not expressly licensed and paid for by Customer (c) use any Service to provide, or incorporate any Service into, any general purpose data warehousing service for the benefit of a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or Heartland APIs to any Service, (d) disclose or publish performance benchmark results for the Software (as delivered or subsequently modified) without Heartland’s prior written consent; (e) transfer the Software to a different database platform or operating system, except as may be specifically allowed by Heartland in writing; (f) export or use the Software or Documentation in violation of United States, Canadian, or other applicable laws or regulations; (g) remove or obscure any proprietary or other notices contained in any Service; or (h) use any Service in violation of the terms and conditions of this Agreement or applicable law.
- 2.3 Heartland Technology.** Customer agrees that Heartland retains all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Service, all Documentation and Software, and any and all related and underlying technology; and any derivative works, modifications, or improvements of any of the foregoing, including any Feedback that may be incorporated (collectively, “**Heartland Technology**”). Except for the express limited rights set forth in this Agreement, no right, title or interest in any Heartland Technology is granted to Customer. Further, Customer acknowledges that the Service is offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for any Service.
- 2.4 Delivery.** Delivery shall be deemed complete when Heartland provides notification to Customer that

Customer has the ability to access the Software.

- 2.5 Commercial Computer Software.** The Software was developed at private expense, is commercial, and is published and copyrighted. The Software may be transferred to the U.S. government only with the prior written consent of Heartland and solely with “Restricted Rights” as that term is defined in 48 CFR § 52.227-19. In no event will the Software be licensed to Customer with rights greater than those set forth in 48 CFR § 52.227-19.

3. Privacy and Data Security

- 3.1 Data Security.** Heartland maintains compliance with industry standard information security and privacy standards, and complies with all applicable data privacy laws, including FERPA, the Children’s Online Privacy Protection Rule (“COPPA”), the California Consumer Privacy Act (“CCPA”), the California Privacy Rights Act (“CPRA”), the Payment Card Industry Data Security Standards (“PCI DSS”), and the National Automated Clearing House Association Standards (“Nacha”), as amended, together with regulations promulgated thereunder. Heartland’s security controls substantially comply with the NIST Cybersecurity Framework, and are reviewed by independent third parties for compliance with SSAE standards. Heartland has also implemented security controls, including using firewall technology, encrypting data, regularly updating antivirus software, restricting access to data based on business need, identifying and authenticating access to system components, restricting physical access to data, testing security systems and processes, and maintaining internal policies that address information security.
- 3.2 School Official.** Heartland complies with all FERPA requirements and uses PII only to provide the Services. If Customer’s Confidential Information is subject to FERPA, Customer, pursuant to 34 C.F.R. § 99.31(a)(1), hereby designates Heartland as an “official” with a legitimate educational interest in the Confidential Information. Heartland’s designation as an “official” of Customer is solely for the purposes of FERPA compliance and for no other purpose whatsoever, and to the extent Customer has policies, rules, and procedures binding on Customer “officials” generally, such policies, rules, and procedures will apply to Heartland only insofar as such compliance is directly relevant to compliance by Heartland and Customer with FERPA. Heartland agrees to: (i) abide by FERPA’s limitations on re-disclosure of Personally Identifying Information in education records; (ii) not use or disclose education records created or received from, by, or on behalf of Customer or its students for any purpose other than the purpose for which such disclosure is made; and, (iii) not use or disclose education records except as permitted by this Agreement, as required by law, or as authorized by Customer in writing.
- 3.3 Heartland’s Use of PII.** To the extent necessary to provide the Heartland Services, Customer authorizes Heartland to collect, access, use, transmit and/or otherwise process PII. Customer remains at all times in control of and the owner of PII that Heartland processes. By submitting or providing Heartland access to PII, Customer agrees that Heartland and its affiliates may process the PII for the sole purposes of (i) providing Heartland Services, (ii) maintaining, supporting, evaluating, improving and/or developing Heartland Services and developing new products or services, (iii) enforcing Heartland’s rights under this Agreement, (iv) as permitted by applicable law, and (v) as permitted with the End User’s consent, as communicated by Customer or End User to Heartland, solely with respect to their own PII. Heartland does not and will not use PII for targeted advertising.
- 3.4 Data Breach.** Heartland agrees to comply with the requirements of all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of Heartland’s security obligations or other event requiring notification under applicable law, Heartland will notify Customer as expediently as possible and without unreasonable delay, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with applicable law.

4. Software Support

- 4.1 Software Support Services.** During the Initial Support Term and any Renewal Support Term, Heartland shall provide Support Services to Customer subject to: Customer’s payment of the Support Fees set forth

in Exhibit A, attached hereto, and (ii) Customer's compliance with its obligations set forth in this Agreement.

- 4.1.1. Help Desk.** Heartland will provide Customer with reasonable Help Desk assistance during the Support Times regarding the installation and implementation of the Subscription, and the identification, diagnosis and correction of Errors. Heartland will attempt to resolve any support questions posed by Customer. If Heartland reasonably determines that it would be appropriate to do so, Heartland may defer resolution of a support question until a later time. At its discretion, Heartland may provide Customer with Help Desk support during times other than the Support Time and/or beyond the maximum number of monthly and/or annual Support Incident limits (if applicable) at Heartland's then standard rates. Customer shall be responsible for paying charges for such additional Help Desk support.
- 4.1.2. Web Site.** Heartland will provide Customer with access to technical information via its web site(s) on the internet.
- 4.1.3. Enhancements.** Heartland will provide Customer with copies of all Minor Enhancements at no additional cost. Major Enhancements are not included unless specifically agreed herein. Heartland may, but is not obligated to, offer Major Enhancements to Customer at a reduced fee.
- 4.1.4. Excluded Services.** Support Services do not include training, installation, consultant services, or on-site support. However, these services are available at an additional charge to the customer.

4.2 Procedures for Submitting Support Incidents or Subscription Enhancements.

- 4.2.1. Notification.** Customer must notify Heartland immediately of any suspected Error, and must provide reasonable detail of the nature of and circumstances surrounding the Error. "Reasonable detail" includes complete Subscription, hardware and network configuration information as requested by Heartland. **Notification means (listed in order of preference and efficiency):**
 - a) Logging a case directly into customer portal website;
 - b) Sending a detailed email to the support center; or
 - c) Calling into Heartland's technical Help Desk via Heartland's toll-free number.
- 4.2.2. Remote Diagnostics.** Heartland may perform any Error diagnostic or correction work via remote communication. If such remote support is unable to resolve the Error, Heartland may require Customer to provide data files on removable media via overnight courier (or other shipping method that provides end-to-end tracking) or other mutually agreed upon electronic medium at Customer's expense.
- 4.2.3. Error Correction.** Heartland will make reasonable efforts to resolve reported, reproducible Errors. Customer will promptly provide Heartland with all information requested by Heartland to reproduce and resolve Errors. For each Error, Heartland will use reasonable efforts to provide Customer with (a) a work-around, (b) a Software patch or, (c) if Heartland cannot provide Customer with either (a) or (b), a specific action plan, including a good faith timing estimate, for resolving the Error.

4.3 Error Priorities and Response Times. Heartland will use reasonable efforts to communicate with Customer, by telephone, e-mail, or Heartland's website as described below, regarding Errors that are reported during the Support Times. For purposes of this Agreement, a "response" means Heartland's acknowledgment of an Error, and does not indicate that a resolution will be reached.

- 4.3.1. Level One Response:** Where a major fault occurs such that a business critical function is not operational, and major user inconvenience is being caused then, during Support Times, Heartland shall endeavor to respond within two hours.
- 4.3.2. Level Two Response:** Where a fault occurs such that a function is not operational, and while a workaround is available, the fault is causing significant user inconvenience then, during Support

Times, Heartland shall respond within four hours.

4.3.3. Level Three Response: Where a fault occurs such that a non-critical function is not operational, which is causing an inconvenient problem but is not causing significant user inconvenience then, during Support Times, Heartland shall respond within one business day; or

4.3.4. Level Four Response: Where a fault occurs such that a cosmetic, non-urgent problem is being caused, e.g. a field is in the wrong position, then, during Support Times, Heartland shall respond within three business days.

4.4 Limitations on Support Services. Notwithstanding anything to the contrary elsewhere in this Agreement, Heartland will have no obligation to provide any support services to Customer if:

4.4.1. Such support relates to or involves any products, data, features, devices or equipment not provided or specified as compatible by Heartland;

4.4.2. Customer or a third party has altered or modified any portion of the Software in any manner without the prior written consent of Heartland;

4.4.3. Customer has not installed or used the Software in accordance with instructions provided by Heartland, including failure to follow implementation procedures;

4.4.4. Customer has failed to replace or update previous versions of the Software with Enhancements Heartland made available;

4.4.5. A party other than Heartland has serviced the Software and the Software no longer conforms to its specifications; or

4.4.6. Customer is not in full compliance with the other terms of this Agreement, or any other agreement between Heartland and Customer.

4.5 Hardware. Support Services do not include computer hardware, computer network, electrical, telephone, interconnection, or the installation or repair of accessories, alterations, parts or devices not provided by Heartland.

4.6 Additional Services. At Customer's request, Heartland may provide resources to perform additional services such as software development and testing for customization, modifications, additional training, custom reports and other custom developed services related to the Software (collectively "Professional Services"). Before providing Professional Services, the parties will mutually agree in writing on the scope and cost for Professional Services.

5. Customer Obligations

5.1 Customer Responsibility. Customer accepts sole responsibility for (i) Customer's system configuration, design and requirements, (ii) the selection of the Software to achieve Customer's intended results, and (iii) modifications, changes or alterations to the Software by anyone other than Heartland or its agents that is not an Update. Customer acknowledges that it has had an opportunity to review the Documentation, it understands the functionality of the Software and its ability to work with Customer's systems and to support Customer's operations, and that it has made its own evaluation in deciding to license the Software. Customer shall follow Heartland's procedures and recommendations in resolving Errors or submitting Support Incidents.

5.2 Self Help. Before contacting Heartland for Support Services, Customer should review the following (i) Heartland's FAQ's, which provide answers to many commonly asked questions, and are continually updated, (ii) Online Video Tutorials, (iii) the help documentation related to each Software module.

5.3 Access. During the Initial Support Term or any Renewal Support Term, Customer will provide Heartland with reasonable access (via remote or on-site access) to Customer's copies of the Software to the extent necessary, in Heartland's discretion, to enable Heartland to provide the Support Services.

5.4 Communications Link. During the Term, Customer will, at its sole expense, provide internet access to

Heartland, which Heartland may use to provide Support Services. Heartland will have no liability to Customer if Heartland's ability to provide Support Services is impaired by Customer's inability to provide the functionality required for remote support.

5.5 Support Contact. Customer shall designate one employee and one alternate as its Support Contacts to be generally available during the Support Times to confer with Heartland regarding Errors, Enhancements, and other support-related issues. Customer is responsible for ensuring that the above Support Contacts have sufficient training to attain and maintain competence in using the Software. Customer shall notify Heartland promptly of any changes in the Support Contacts. Heartland will provide technical support only to Customer's Support Contacts. Upon Customer request, Heartland may provide additional Support Services to any of Customer's employees, representatives, or consultants, which will be treated as Professional Services and subject to a written mutual agreement.

5.6 Verification and Audit. Within thirty (30) days after a written request by Heartland, submitted no more than once annually, Customer shall furnish to Heartland a certification signed by an appropriate officer of Customer certifying that Customer is using the Software in accordance with the terms of this Agreement. No more often than once annually, Heartland may conduct an audit of Customer's use of the Software to ensure compliance with this Agreement.

6. Term and Termination

6.1 Term. This Agreement will commence on the Effective Date and will continue for a term of five (5) years. Thereafter, the Agreement will automatically renew for additional one (1) year periods unless either Party terminates the Agreement by giving ninety (90) days written notice prior to the end of any term. The terms and conditions in this Agreement will remain in effect for as long as Heartland provides Services to Customer.

6.2 Software Subscription Terms. Unless otherwise agreed, Heartland will provide and bill for Services on an August 1 through July 31 basis. Customer's Initial Term is from the Effective Date through July 31st of the following calendar year. Customer's Renewal Term is the successive one (1) year periods from August 1 through July 31.

6.3 Termination for Cause. Either Party may terminate this Agreement if the other Party commits a material breach of the terms of this Agreement, and such noncompliance remains uncured for more than thirty (30) days after written notice thereof.

6.4 Effect of Termination. Upon termination, to the extent Customer has no legal or regulatory requirement to retain it, Customer shall immediately cease using and destroy or return to Heartland all copies of Heartland's Confidential Information, including, without limitation, all Software and Documentation in any form, including partial copies and modified versions, and shall certify in writing to Heartland that all such copies have been destroyed or returned.

6.5 Remedies. Except as expressly provided otherwise in this Agreement, (i) all remedies available to either party are cumulative and not exclusive; and (ii) termination of this Agreement or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief. Upon termination, all amounts owed under this Agreement and all Attachments shall immediately become due and payable.

7. Fees and Payment Terms

7.1 License Fees. The applicable software fees, including for the initial Software license, Subscription, and Support ("Software Fee") are set forth in the Proposal. Heartland reserves the right to increase the annual Subscription fees by not more than ten percent (10%) per year over the applicable amount for the immediately preceding year.

7.2 Payment Procedures. On or before the Effective Date, and on an annual basis 60 days prior to any Renewal Term, Heartland will invoice Customer for all Subscription Fees incurred by Customer pursuant to this Agreement. Customer shall pay all invoiced amounts in U.S. dollars within thirty (30) days of the

date of invoice. All Software fees are non-refundable and non-cancelable.

7.3 Late Fees. Late payments of fees are subject to a late charge equal to the lesser of eighteen percent (18%) per year or the highest rate permitted by applicable law.

7.4 Taxes. Customer is solely and exclusively responsible for the payment of any required federal, state and local taxes arising from or relating to the Services, except for taxes related to the net income of Heartland and any taxes or obligations imposed upon Heartland under federal, state and local wage laws. Customer shall fully reimburse and indemnify Heartland for any amounts actually paid by Heartland or withheld by Customer for any such taxes or levies within thirty (30) calendar days after the date on which Heartland gives notice thereof to Customer.

7.5 Nonpayment. In addition to all rights exercisable by Heartland, if Customer fails to pay for more than 60 days, Heartland reserves the right to suspend Services under this Agreement, and take any other action to which it is entitled under law.

7.6 Purchase Orders. If Customer requires a purchase order, Customer will inform Heartland of the purchase order number and dollar amount. Customer agrees that the absence of a purchase order, or other document may not be raised as a defense to avoid Customer's payment obligations hereunder. Terms and conditions contained in a Customer purchase order will not be binding on Heartland, and will have no effect on Heartland's provision of Services under this Agreement.

7.7 Title. Title to any tangible objects, including Hardware vests in Customer upon Heartland's shipment to Customer.

8. Indemnification

8.1 Intellectual Property Indemnification. Subject to Section 8.4 below, Heartland will indemnify, defend and hold Customer harmless from and against all claims for damages, losses, liabilities or expenses, including reasonable attorneys' fees, brought against the indemnified party by a third party (collectively, "Losses"), incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer alleging that the use of the Services as permitted hereunder infringes any United States copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (i) use of the Services in violation of this Agreement or applicable law, (ii) use of the Services after Heartland notifies Customer to discontinue use because of an infringement claim, (iii) any claim relating to any third party content or Customer Data or (iv) modifications to the Services made other than by Heartland. If the Services are held to infringe, Heartland will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Services with non-infringing Services; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Service Order Form and refund any prepaid unused fees Customer paid Heartland for the infringing Services. The rights and remedies granted Customer under this Section 5.1 state Heartland's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

8.2 Data Breach Indemnification. Heartland agrees to comply with the requirements of all applicable laws that require the notification of individuals in the event of unauthorized release of PII, or other security event requiring notification, to the extent such laws expressly apply to Heartland. In the event of a breach of any of Heartland's security obligations or other event requiring notification under applicable law, Heartland agrees to notify Customer promptly and in accordance with applicable law, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with applicable law, and to indemnify, hold harmless and defend Customer and its employees from and against any and all claims, damages, or causes of action directly related to the unauthorized release.

8.3 Customer Indemnification. To the extent permitted by applicable law, and subject to Section 8.4 below, Customer shall indemnify, defend, and hold Heartland harmless from and against any and all

Losses relating to Customer's production or distribution of any materials resulting from use of the Services: (i) are factually inaccurate, misleading or deceptive; (ii) infringe or misappropriate any intellectual property rights any third party; (iii) are libelous, defamatory, obscene or pornographic, (iv) comprise unsolicited commercial e-mail or spam, or (v) violate civil or criminal laws or regulations, including those regulating the use and distribution of content on the internet and protection of personal privacy, provided that such Losses are not solely attributable to (y) a nonconformity of the Software to perform substantially in accordance with the Documentation or (z) the Services violating any applicable civil or criminal laws or regulations.

8.4 Indemnification Procedure. The indemnified party shall (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

9. Warranty/Limitation of Liability

9.1 Heartland's Limited Warranty. Heartland warrants that the Services will be performed by in a timely and professional manner. Heartland further warrants that the Services will be performed in all material respects in compliance with the functions described in the Documentation. If Customer notifies Heartland within fifteen (15) days of Customer's discovery the performance of the Services that the Services are not functioning as intended, Heartland will use good faith efforts to make the Services function as intended at no additional cost to Customer. Heartland does not warrant that it will be able to correct all defects in the Services reported by Customer. Heartland makes no warranty regarding features or services provided by third parties. The remedies set out in this subsection shall only apply if the applicable Services have been utilized by Customer in accordance with the terms of this Agreement and applicable law.

9.2 NO OTHER WARRANTY. HEARTLAND DOES NOT REPRESENT THAT THE SERVICES OR THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR WILL MEET CUSTOMER'S OR ANY USER'S REQUIREMENTS. HEARTLAND DOES NOT REPRESENT THAT THE OVERALL SYSTEM THAT MAKES THE SERVICES AVAILABLE (INCLUDING, BUT NOT LIMITED TO, THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 6.1 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES OFFERED BY HEARTLAND. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES AND SOFTWARE ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

9.3 Consequential Damage Waiver. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOSS OF PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS AND COSTS, IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

9.4 Limitation of Liability. THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY AND ALL CLAIMS, DAMAGES OR LOSSES ("LOSS") ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO HEARTLAND FOR THE SERVICES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LOSS. THE PROVISIONS OF THIS SECTION ALLOCATE RISKS BETWEEN THE PARTIES AND THE PRICING OFFERED TO CUSTOMER

FOR THE SERVICES REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

10. Confidentiality.

10.1 Confidential Information. “Confidential Information” means all information provided to a Party (the “Receiving Party”) by the other Party (the “Disclosing Party”) that is designated in writing as proprietary or confidential or which a reasonable person familiar with the Disclosing Party’s business and the industry in which it operates ought to know is of a confidential or proprietary nature. Confidential Information includes, but is not limited to, the terms and pricing of this Agreement, any internal processes, and all personal information of any Users, including, but not limited to, names, addresses, telephone numbers, email addresses, account numbers, personal data, and demographic, financial, and transaction information.

10.2 Non-Disclosure of Confidential Information. During the term of this Agreement and following termination or expiration of this Agreement, and except as otherwise set forth in Sections 10.3 and 10.4, the Receiving Party shall only use the Disclosing Party’s Confidential Information for the purpose for which it was disclosed and shall not disclose such Confidential Information to any third party, except as required to perform under this Agreement or Service Order Form. The Receiving Party shall protect the Disclosing Party’s Confidential Information in the same manner it protects its own confidential information, but in no event shall it protect the Disclosing Party’s Confidential Information with less than commercially reasonable care. The Receiving Party shall only provide Confidential Information of the Disclosing Party to those of the Disclosing Party’s employees, agents or business partners who have a need to know such Confidential Information in the course of the performance of their job duties and who are bound by a contractual duty of confidentiality no less protective than the Receiving Party’s duties of confidentiality hereunder.

10.3 Exclusions. Notwithstanding the foregoing, Confidential Information will not include information that (i) was previously known free of any obligation to keep it confidential as evidenced by competent proof thereof; (ii) is or becomes publicly available, by other than unauthorized disclosure; (iii) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; (iv) is approved for release by prior written approval of the Disclosing Party; or (v) is otherwise required by law, legal process or government regulation, provided that it gives the Disclosing Party reasonable prior written notice to permit the Disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

10.4 Return and Retention of Confidential Information. Upon termination of this Agreement, Customer shall promptly return or destroy all Confidential Information of Heartland in its possession. Upon termination of this Agreement, Heartland shall retain all Customer Data and other documents relative to this Agreement subject to the protections herein for as long as legally required to meet its legal, regulatory, and PCI compliance obligations.

10.5 No Adequate Remedy at Law. The Parties acknowledge and agree that due to the unique nature of the Confidential Information, there may be no adequate remedy at law for any breach of the obligations of confidentiality in this Section 10. The Parties further acknowledge that any such breach may result in irreparable harm, and therefore, that upon any such breach or any threat thereof, a Party shall be entitled to seek appropriate equitable relief, including but not limited to injunction, in addition to whatever remedies it may have at law. In the event a Party should seek an injunction or other equitable relief, the other Party hereby waives any requirement for the submission of proof of the economic value of any Confidential Information or the posting of a bond or any other security.

11. Miscellaneous

11.1 Entire Agreement. This Agreement, together with any exhibits, constitutes the entire agreement between Customer and Heartland and supersedes any other prior agreements or understandings, whether oral or written, regarding the Services to be provided by Heartland. If a provision of this agreement is deemed null and void, invalid or without effect, the remainder of this agreement shall remain in effect.

No amendment to or modification of this Agreement will be binding unless in writing and signed by both parties.

11.2 Force Majeure. With the exception of Customer's obligations to pay Heartland monies due under this Agreement, neither party shall be liable to the other for delay or failure to perform any obligation hereunder resulting from an event of force majeure, including (without limitation) acts of God or of the public enemy, fire, storm, flood, explosion, earthquake, hurricane, riots, wars, hostilities, civil commotion, strikes or labor disputes, interruption of supply, law or regulation, governmental action, or any other cause beyond the control of that party.

11.3 Governing Law, Venue and Jurisdiction. This Agreement shall be construed and governed by the laws of the state in which the public entity is resident without regard to legal principles related to conflict of laws. Any action arising out of or relating to this Agreement shall be brought only in the courts of the state in which the public entity is resident or in the applicable United States District Court. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all actions, and further waive any claim that such Action is brought in an improper or inconvenient forum. In any action, the parties waive trial by jury.

11.4 Notices. Unless otherwise specified in this Agreement, all notices shall be in writing and shall be mailed (via registered or certified mail, return receipt requested), telecopied, telegraphed, delivered by a nationally recognized express courier service, or personally delivered to the other party at the address set forth below (or at such other address as either party may designate in writing to the other party). All notices will be effective upon receipt.

For Heartland: President, Heartland School Solutions
765 Jefferson Rd #400
Rochester, NY 14623

with a copy to: General Counsel
Global Payments Inc.
3550 Lenox Rd. NE, Suite 3000
Atlanta, GA 30342

For Customer: Warren County School District
6820 Market Street
Russell, PA 16345

11.5 Severability. If any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect under any applicable statute, rule of law, or public policy, such provision shall be considered inoperative to the extent of such invalidity, illegality, or unenforceability and the remainder of this Agreement shall continue in full force and effect. The parties agree to replace any such invalid, illegal, or unenforceable provision with a new provision that has the most nearly similar permissible legal and economic effect.

11.6 Headings. Headings are included in this Agreement as a matter of convenience only and shall not be controlling with regard to the interpretation of this Agreement.

11.7 Amendments. This Agreement shall not be modified except by written amendment signed by each of the Parties.

11.8 Assignment. This Agreement shall be binding upon and for the benefit of Heartland, Customer and their permitted successors and assigns. Heartland may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Any attempted assignment or delegation in violation of this section will be void.

11.9 Relationship of the Parties. Heartland and Customer are independent contractors, and nothing in

this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

Heartland Payment Systems, LLC

Customer

SIGNATURE: 

SIGNATURE: _____

BY: Jeremy Loch

BY: Warren County School District

TITLE: SVP & General Manager,
School Solutions

TITLE: _____

DATE: _____

DATE: _____

MySchool Services Attachment to Master Software Services Agreement Heartland School Solutions

The following terms and conditions in this MySchool Services Attachment (“MySchool Services Attachment”), together with the Master Software as a Service Agreement (“Agreement”), govern Heartland’s provision of MySchoolBucks, MySchoolApps, MSB Activities, MSB Accounting (also known as BlueBear), MSB Tickets, or other services (as defined below) to Customer.

1. Definitions. Terms not otherwise defined herein will have the meanings set forth in the Agreement.

- 1.1. “End User”** means any person who uses any of the MySchool Services to make a payment or receive information via the MySchool Services, including parents, guardians, Customer’s administrators, and any others who are authorized to access an account.
- 1.2. “MySchoolBucks Services”** mean the websites, mobile applications, or online services, including www.MySchoolBucks.com, provided by Heartland and its Affiliates that enable payments to be made to a student’s school account or accounts, or to Customer, for fees, purchases, etc., using a credit card, debit card, or an electronic check.
- 1.3. “MySchoolApps Services”** means the websites, mobile applications, or online services, including www.myschoolapps.com provided by Heartland and its Affiliates that enable End Users to apply for free or reduced meal services and other benefits on behalf of students.

2. Services.

- 2.1. Online MySchoolBucks Services.** Heartland will provide a website for an End User to enable registration activities, make purchases, and process payments to a school account(s) or to Customer, provided that Customer has enrolled in payment processing services. MySchoolBucks Services may also include Customer-managed student activity accounting.
- 2.2. Online MySchoolApps Services.** Heartland will provide a website for End Users to apply for free or reduced price meal plans or other benefits.
- 2.3. Fees.** Heartland reserves the right to increase pricing based on the number of registrations that Customer has on an annual basis.
- 2.4. Control of Funds.** Once an End User has made an online payment to Customer, Customer has sole discretion over the application and use of those funds, including providing refunds or returns. Heartland is not responsible for any funds, or Customer’s use of funds, after End User submits a payment using the Services.
- 2.5. MySchoolBucks Services include:**
 - 2.5.1.** Student participation in various school programs, events, and products, including funding a student’s lunch account, managed through the MySchoolBucks website;
 - 2.5.2.** Services and fees managed through the MySchoolBucks website;
 - 2.5.3.** District-to-parent messaging, and other information published through the MySchoolBucks website or mobile app.
- 2.6. MySchoolApps Services include:** Applying for free and reduced meals online through the MySchoolApps website: <https://www.myschoolapps.com/>.

3. Heartland Relationship with End Users

- 3.1. MySchoolBucks Services.** End Users may supply data, including confidential data and personally identifiable information (“PII”), to utilize the MySchoolBucks Services, and may be able to retrieve PII associated with their account via desktop or mobile devices. PII submitted by End Users, whether via letter, voice, fax, email, chat, SMS, social media, mobile application, or browser, will be processed in accordance with the MySchoolBucks Terms of Use and Privacy Policy, available at

www.myschoolbucks.com. Heartland may communicate with End Users about the MySchoolBucks Services, but does not sell any End User information or use any End User information for marketing purposes without consent.

3.2. MySchoolApps Services. End Users may supply data, including confidential data and personally identifiable information (“PII”), to utilize the MySchoolApps Services. PII submitted by End Users, whether via letter, voice, fax, email, chat, SMS, social media, mobile application, or browser, will be processed in accordance with the MySchoolApps Terms of Use and Privacy Policy, available at <https://www.myschoolapps.com>. Heartland may communicate with End Users about the MySchoolApps Services, but does not sell any End User information or use any End User information for marketing purposes without consent.

3.3. Heartland has implemented policies and practices pursuant to various security rules and regulations relating to the security and safeguarding of payment data, including the Payment Card Industry Data Security Standards (PCI-DSS). When sharing PII with its Affiliates, Heartland will require those Affiliates to comply with this Attachment.

4. MySchoolBucks Services Support. Customer may contact Heartland for assistance resolving issues with the MySchoolBucks Services by calling 1-855-832-5226, completing the online support request form at <https://www.myschoolbucks.com/ver2/etc/getsupportrequest>, or via chat at www.myschoolbucks.com. MySchoolBucks Services support is available Monday through Friday, from 8am – 5pm Eastern Time.

5. MySchoolApps Services Support.

- 1) Self help documentation is available at:
<https://mcssoftware.atlassian.net/wiki/spaces/MSA/pages/1238761482/Heartland+MSA+Supplements>
- 2) Email MSAsupport@e-hps.com with a question or a call back request. **Note:** MySchoolApps does not have a direct phone hot-line at the present time.
- 3) Request MySchoolApps Services assistance from your point of sale hot-line:

Mosaic	1-800-256-8224 Option #1	mosaicsupport@e-hps.com
Nutrikids	1-800-724-9853 Option #5	hss-nk-pos_support@e-hps.com
Café Enterprise	1-866-343-2594	Hss-CE-Help@e-hps.com
WebSMARTT	1-800-748-9631	websmarttsupport@e-hps.com