



#### STANDARD TERMS AND CONDITIONS

The parties to this agreement are Heartland Business Systems, LLC ("Seller"), with corporate headquarters located at 1700 Stephen Street, Little Chute, WI 54140, and customer ("Buyer").

- 1) **ACCEPTANCE.** Buyer accepts these Standard Terms and Conditions as a condition of Buyer's purchase of any products or services from Seller.
- 2) **PAYMENT AND TERMS.** All invoices provided by Seller to Buyer shall be paid within 30 days of the invoice date with the exception of HBSFLEX Agreement invoices. HBSFLEX Agreement invoices shall be paid upon receipt of the invoice. A service charge of \$35.00 will be assessed for each check that is returned for insufficient funds.
- 3) **FORCE MAJEURE.** Seller's performance hereunder shall be excused if such nonperformance or delay of performance is due to causes beyond the reasonable control of Seller and is the direct or indirect result of, but not limited to, acts of God, acts of the public enemy, acts of the United States of America, or any state, territory or political subdivision thereof or of the State of Wisconsin, fires, war, riots, terrorism, floods, epidemics, quarantine restrictions, insurrection, strikes, labor shortage, materials shortage or freight embargoes. Any delay in performance due to the force majeure occurrence shall extend the period for performance for the duration of the delay.
- 4) **SHIPPING.** With respect to any products that are to be shipped, shipment shall be FOB Seller's place of business, by common or contract carrier, or, in the case of drop shipment, FOB a manufacturer's or distributor's place of business, by common or contract carrier. Freight charges shall be Buyer's responsibility. Delivery shall be deemed completed when the goods have been placed into the hands of the common or contract carrier.
- 5) **WARRANTY.** Any hardware, software, or parts sold to Buyer may be subject to a warranty made by the manufacturer or other third party to Buyer and, if so, the terms and conditions of such warranty are embodied in other documents. Buyer acknowledges that Seller is not a party to any such warranty, and that any rights or remedies that Buyer may have pursuant to said warranty are against the manufacturer or other third party directly, and is not assertable against Seller. **SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCTS OR SERVICES SOLD HEREUNDER. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTY OR REPRESENTATION BY SELLER WITH RESPECT TO THE PRODUCTS OR SERVICES SOLD HEREUNDER, EXCEPT AS ARE EXPRESSLY CONTAINED HEREIN. ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND ANY IMPLIED WARRANTY THAT THE PRODUCTS OR SERVICES SOLD HEREUNDER ARE FIT FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.**
- 6) **PROFESSIONAL SERVICES.** Seller may provide professional services as requested by Buyer. All services provided by Seller, which include labor and travel charges, are subject to the terms and conditions as set forth in this Agreement. Services provided by Seller to Buyer may be covered under a manufacturer or other third party warranty, may be applied to a pre-paid HBSFLEX Agreement purchased by Buyer, at the rates set forth in the most current version of the HBSFLEX Volume Service Schedule, as updated from time to time, or may be billed out to Buyer at the then-prevailing hourly rate. Regardless whether the services are covered under warranty, applied to a HBSFLEX Agreement or billed out at an hourly rate, all terms of this Agreement apply. Seller's records shall be the sole measurement of professional services and/or time expended by Seller. HBSFLEX Agreements may not be used to purchase products, and each HBSFLEX Agreement shall automatically expire eighteen months after the date of invoice for that HBSFLEX Agreement.
  - A) **Warranty.** If services provided are in connection with a problem that is covered by a manufacturer or other third party warranty, then such services shall not be counted against a HBSFLEX Agreement or billed out at the then-prevailing hourly rate, to the extent of the warranty coverage. Please refer to your manufacturer or third party provided documentation, which will define what is covered under warranty. Any labor or travel provided that is not covered under the manufacturer or third party warranty will be applied to a HBSFLEX Agreement or billed out at the then-prevailing hourly rate, whichever applies.
  - B) **HBSFLEX Agreements.** Buyer may choose to purchase a pre-paid HBSFLEX Agreement from Seller. When a HBSFLEX Agreement is purchased, labor and travel charges incurred will be applied against the HBSFLEX Agreement. Buyer will receive informational invoices detailing the services as they are provided.
    - 1) When a pre-paid HBSFLEX Agreement is exhausted an additional HBSFLEX Agreement may be purchased. If an additional HBSFLEX Agreement is not purchased, then services will be billed out at the then-prevailing hourly rates.
    - 2) Either party may terminate a pre-paid HBSFLEX Agreement by giving notice to the other, in writing by mail to the party's last known address, of such intent. If this Agreement is terminated before the HBSFLEX

Agreement is expended, then Seller shall refund 75% of the unused portion of the fee and may retain the balance.

C) Hourly Rates. Should services provided not be covered under a manufacturer or third party warranty or should Buyer not have purchased or not have time available on a HBSFLEX Agreement then all labor and travel will be billed out at Seller's then-prevailing hourly rates.

7) PROFESSIONAL SERVICE ESTIMATES. At times, Buyer may request time estimates for service situations. Seller will provide a best estimate based upon the information that is known at the time of the request. This is to be considered an estimate for service only and not a guarantee. Actual service hours may be less or may be more than the estimate provided.

8) FOUR-HOUR RESPONSE; AFTER HOURS WORK. For calls received on normal business days, excluding holidays, Seller will use its best effort to respond to Buyer's request for service within four business hours (the hours between 8:00 a.m. and 5:00 p.m. CT) of Buyer's request. Any work occurring after 5:00 p.m. or before 8:00 a.m. CT or on weekends is subject to a bill rate of 1.5 times the normal rates.

9) ASSIGNABILITY. Seller may delegate all, or any part of, its duties hereunder to a subcontractor.

10) EXCLUDED EQUIPMENT. Seller may discontinue providing services with respect to any hardware for which it can no longer readily obtain repair parts or technical assistance.

11) BUYER'S RESPONSIBILITY. Buyer shall use its best efforts to cooperate with Seller in connection with Seller's carrying out its duties hereunder, and Buyer shall refrain from any act or omission that could frustrate Seller's performance. In that regard, but not by way of limitation, Buyer shall designate one employee for each location at which services are expected to be rendered under this Agreement, with full authority to act for Buyer in the event that Buyer's input is required in order to affect any aspect of the services provided hereunder.

12) WARRANTY AS TO PROPER LICENSING. Buyer warrants and represents to Seller that it possesses a proper license for all software being used by Buyer's organization, and Buyer shall hold Seller harmless from any claims or suits premised upon breach of any third party's proprietary rights with respect to such software.

13) WARRANTY AS TO PROPER BACKUP AND SECURITY. Buyer warrants and represents to Seller that Buyer's data and system has been properly backed up, and Buyer understands that Seller shall have no liability whatsoever, under any circumstances, for any damages suffered by Buyer as a result of improper backup situations or data which has not been backed up and that is lost, for any reason, in connection with the services or use of the products sold hereunder. Buyer warrants and represents to Seller that Buyer has properly secured its network and systems, in accordance with current industry best standards, and Buyer understands that Seller shall have no liability whatsoever, under any circumstances, for any damages suffered by Buyer as a result of Buyer's failure to properly secure its network or systems.

14) NON-SOLICITATION OF PERSONNEL. During the term of this Agreement, and for a period of one (1) year after the termination of this Agreement by either party for whatever reason, Buyer shall not, directly or indirectly, encourage any employee of Seller, who became known to Buyer by virtue of such employee's providing services under this Agreement, to terminate his or her employment with Seller. In addition, during the term of this Agreement, and for a period of one (1) year after the termination of this Agreement by either party for whatever reason, Buyer shall not, directly or indirectly, solicit any employee of Seller, who became known to Buyer by virtue of such employee's providing services under this Agreement, for employment which would end or diminish that employee's service with Seller. Buyer acknowledges that Seller will suffer irreparable harm as a result of Buyer's violation of this paragraph and that Seller may bring an action for injunctive relief and/or actual damages to enforce this provision.

15) SUSPENSION OF PRODUCTS/SERVICES. Seller shall have the right to suspend providing any products and services in the event that Buyer is delinquent on payment of any outstanding invoices.

16) EXCLUSIVE REMEDY/LIMITATION OF LIABILITY. Notwithstanding any other provision herein, Seller's sole and exclusive liability to Buyer for any breach of this Agreement, or breach of any warranty, express or implied, found to have been made in connection with this Agreement, shall be to repair or replace, at its option, any defective hardware, software, or parts sold hereunder; Seller shall have no liability for any other damages, consequential or otherwise. Seller shall have no liability whatsoever to Buyer if computer software or computer hardware sold hereunder is subsequently upgraded, or is otherwise used with software or hardware that was not used with the software and/or hardware sold hereunder at the time of installation, or if any such software or hardware has been serviced by anyone other than Seller. Seller shall have no liability whatsoever, under any circumstances, for any damages suffered by Buyer arising out of or related to data that has not been backed up, or data that is lost, damaged, corrupted, compromised for any reason (including but not limited to weak passwords or network security), or otherwise unsecured, in connection with any services or use of any products sold hereunder, and Buyer shall indemnify Seller for the same. In the event that Seller recommends a course of action for an engagement, but Buyer instructs Seller to pursue a different course

of action despite Seller's recommendation, Buyer shall assume sole responsibility for any problems that arise from Buyer's course of action, and Seller shall have no liability for the same.

17) **ACCEPTANCE OF PRODUCTS.** Except as stated in the following sentence, Buyer shall be deemed to have irrevocably accepted the products and services sold hereunder if Buyer has not given to Seller a written notice of rejection, describing the basis for rejection, within ten business days after delivery. Product returns are only allowed pursuant to the manufacturer's return policy. All data and intellectual property provided by Seller in connection with this Agreement shall belong to Seller ("Seller Materials"). Seller shall retain all rights and interests in and to the Seller Materials after the completion of this Agreement.

18) **CLOUD SERVICES.** Buyer agrees and acknowledges that in order to provide a high level of service, Seller may store Buyer's information in the public cloud. This information may include but is not limited to drawings, pictures, equipment layouts, passwords, backups, or configuration files. Buyer agrees and acknowledges that the cloud is a separate and independent network, which is not controlled by Seller, and that Seller shall have no liability whatsoever, under any circumstances, for any damages arising out of or relating to the use of the public cloud, including but not limited to the loss of any information. In the event that Buyer has Seller perform services relating to Buyer's subscription based services, Buyer shall be responsible for any charges incurred relating to the use of the subscription based services.

19) **CHOICE OF LAW.** This Agreement, and any claim arising under it, or related to the transaction evidenced by it, shall be construed and determined under the laws of Wisconsin.

20) **ATTORNEY FEES.** In the event that legal action is taken by either party upon any claim arising from this Agreement or in any way related to the transaction that is evidenced by this Agreement, Seller shall, if it prevails, be entitled to recover from Buyer its actual reasonable attorney fees incurred in connection therewith.

21) **SEVERABILITY.** If any portion of this Agreement is determined by a court or government agency having competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect to the extent permitted by law.

22) **BINDING EFFECT.** This Agreement shall bind and inure to the benefit of the parties, and their respective heirs, successors, personal representatives, beneficiaries and assigns.

23) **ADDITIONAL WORK.** In the event that Seller agrees to provide additional products or services at any time, the terms and conditions of this Agreement shall govern.

24) **ENTIRE AGREEMENT.** This is the entire agreement of the parties respecting the sale of any products or services from Seller to Buyer. This Agreement supersedes and replaces any prior agreements between the parties with respect to the subject matter hereof. No modification, addition, or amendment shall be binding unless in writing and signed by both parties.