

**MealViewer Agreement**  
**between**  
**Heartland Payment Systems, LLC.**  
**and**  
**Lincolnwood School District 74**

This **MealViewer Agreement** (“Agreement”) is made as of the date of the last signature below (the “Effective Date”), by and between Heartland Payment Systems, LLC, d/b/a Heartland School Solutions, (“Heartland”), a Delaware corporation, with its principal place of business at 10 Glenlake Parkway North East, North Tower, Atlanta, GA 30328-3473 and **Lincolnwood School District 74**, with its principal place of business at **6950 N East Prairie Road, Lincolnwood, IL** (“School”). Heartland and School are collectively from time to time referred to herein as the “Parties” with each being individually referred to as a “Party.”

**1. Definitions**

- 1.1. **“Documentation”** means all manuals, instructions, writings electronic or other media provided by Heartland relating to the MealViewer Software.
- 1.2. **“Order Agreement”** means any document or form in which Heartland effectively provides School with one or more Subscriptions in exchange for payment thereof.
- 1.3. **“MealViewer Software Services”** or **“MealViewer Software”** means any software application (including web-based or cloud-based software) that is created, operated, or sold by Heartland pursuant to this Agreement.
- 1.4. **“MealViewer Services”** means all MealViewer Software and any associated hardware from any source.
- 1.5. **“Subscription”** means a grant from Heartland of a non-exclusive, limited right to access and/or use MealViewer Software Services.
- 1.6. **“School Data”** means all electronic data or information submitted by School or School’s Users of the MealViewer Software Services and any data derived directly therefrom by any MealViewer Software.
- 1.7. **“Updates”** means modifications, enhancements, changes and alterations to the Software provided by Heartland after the initial delivery of the Software, including all Major Enhancements and Minor Enhancements as defined in the Software Support Agreement; the term Software includes all Updates
- 1.8. **“User(s)”** means individuals who School authorizes to use the MealViewer Software Services. Users may include but are not limited to employees, consultants, contractors, agents, parents, students (including minors), and any third parties School authorizes to use and access the MealViewer Software Services.
- 1.9. **“User Data”** means the data that a parent or other User enters into the MealViewer Software. User Data may include a student’s name and allergen information, but the entry of personally identifiable information is not required.

**2. Software License**

- 2.1. **Grant of Rights.** Heartland grants School an annually renewable, nonexclusive, nontransferable, non-sublicensable license, subject to termination and all other provisions hereof, to (a) install, store, load, execute, run and display the MealViewer Software; (b) provide access to and allow use of the MealViewer Software by Users; (c) make and use copies of the Documentation; (d) provide access to the MealViewer Software and allow use by third parties that have a need to access the MealViewer Software in the course of providing services to School concerning School’s use of the MealViewer Software subject to the terms and conditions specified herein; and (e) utilize the MealViewer Software in any other manner agreed to by Heartland.
- 2.2. **Restrictions on Use.** School shall not use or access the MealViewer Software or provide access to any third party for any of the following: (i) to make secured areas (those for which a password, or other credential is required) of the MealViewer Software available to anyone other than authorized Users; (ii) to directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Software or Documentation, or any portion thereof; (iii) to store or transmit obscene, pornographic, libelous, unlawful or tortious material, or material in violation of third-party privacy or intellectual property rights; (iv) to use the MealViewer Software to store or transmit any harmful, exploitative or malicious code or program;

(v) to interfere with, access without authorization, or disrupt the integrity or performance of the MealViewer Software, data contained therein, or any third-party dependencies; (vi) to reverse engineer the MealViewer Software; (vii) to create any competing product or service or product with similar features to the MealViewer Software; (viii) to create any application, web site or program code incorporating any interfaces, APIs or URLs exposed by the MealViewer Software without written authorization from Heartland; (ix) to copy, frame or mirror any graphics, code, content or portion of the MealViewer Software without written authorization from Heartland; (x) to disseminate performance information or analysis from any source relating to the MealViewer Software; (xi) remove any product identification, copyright notice or other proprietary marking from the MealViewer Software; or (xiii); use the MealViewer Software to create new applications, modules, products or services.

**2.3. MealViewer Software Support.** Subject to the terms of this Agreement and the applicable Order Agreement, Heartland will: (a) provide access to MealViewer Software Services that perform the functions and/or services described in any Order Agreement; (b) provide standard email support for the MealViewer Software Services at no additional charge; (c) use commercially reasonable efforts to make the Software Services available 24 hours a day, 7 days a week, except for: (i) planned downtime during low traffic times; (ii) occasional temporary outages caused by unforeseen technological issues of Heartland technology or of that of a third-party technological dependency; or (iii) any unavailability caused by circumstances beyond Heartland's control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Heartland employees), Internet service provider failures or delays, or denial of service attacks; and (d) provide the MealViewer Software Services only in accordance with applicable laws and government regulations.

## **2.4. Proprietary Rights**

**2.4.1. Reservation of Rights in MealViewer Software Services.** Subject to the limited rights expressly granted hereunder, Heartland reserves all rights, title and interest in and to the MealViewer Software Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than usage rights for a limited time, as expressly set forth above.

**2.4.2. Government Use.** The MealViewer 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 FAR 52.227-19(c)(2) (or DFAR 252.227-202.32 (c)(1) if the transfer is to a defense-related agency) or subsequent citation. If Customer is an agency of the United States government or licensing the Software for operation on behalf of the United States government, the Software is licensed to School with rights no greater than those set forth in Federal Acquisition Regulation 52.227-19(c)(2) [or DFAR 252.227-7202.32 (c)(1) if School is a defense-related agency] or subsequent citation.

**2.4.3. Enhancements.** School, on behalf of itself and Users, hereby grants Heartland a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the MealViewer Software Services any enhancement requests, recommendations, suggestions, or other feedback provided by School or Users.

## **2.5. School Responsibilities**

**2.5.1.** School shall (i) be responsible for Users' compliance with this Agreement; (ii) be responsible for the accuracy, quality and legality of any User Data which School or Users input into MealViewer Software Services; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the MealViewer Software Services, and notify Heartland promptly of any such unauthorized access or use; (iv) use the MealViewer Services only in accordance with applicable laws and government regulations; (v) if the MealViewer Services are provided to minors or minors are the intended audience of the output of the MealViewer Services, assure that any federal, state, or local (including school) regulations, guidelines, or laws are followed with respect to use of the MealViewer Services with minors; and (vi) to cooperate with Heartland in connection with efforts to protect intellectual property and other legal rights in the MealViewer Services.

- 2.5.2. **Usage Limitations.** School's Subscription may be subject to limitations, including, but not limited to, (a) disk storage space and the number of locations, rooms, or screens in which the MealViewer Software may be used or displayed. Such limits may be embedded into the MealViewer Services, or may be communicated separately.

### 3. Hardware

- 3.1. **Ownership.** Upon purchasing hardware from Heartland, School will fully own the hardware, with all rights and responsibilities of ownership. Hardware is not provided under any lease, rent or buyback program. As owner of the hardware, School has full rights to dispose of the hardware as School sees fit, including the right to resell the hardware or to refit or reconfigure the hardware for any purpose.
- 3.2. **School Responsibilities.** Upon delivery of hardware, School will be responsible for the following: (i) physical maintenance and security of the purchased hardware; (ii) any hardware, cabling or systems that are not part of School's purchase but which will be part of School's signage ecosystem; (iii) providing any necessary code-compliant power outlets and network connectivity appropriately positioned at each installation site where hardware is intended to be used or installed; (iv) providing and maintaining connectivity of signage player hardware ("Media Player") to the Internet via the network on which the Media Player is installed; (v) ensuring that firewalls and/or web filters installed on the network do not impede the proper functioning of Media Player(s); (vi) any hardware or operating system related issues, failures, viruses, or vulnerabilities following the purchase, or breakages which are not covered by warranty; and (vii) facilitating any warranty service that becomes necessary, including returning any defective hardware.
- 3.3. **Testing; Third Party Hardware or Software.** School is responsible for testing each purchased Media Player on the network on which the Media Player will be used prior to installation, confirming connectivity to services designated by Heartland, and resolving any network issues prior to installation. If School installs any custom software or updates on the Media Player(s), or disables or blocks any pre-configured software on the Media Player(s), School is responsible for any ensuing issues or interference with the proper functioning of the Media Player(s) or any software, including MealViewer Software, thereon. School is responsibility for the quality, maintenance, troubleshooting and compatibility of any hardware or system that is provided by School that will be part of the digital signage system, including any displays provided by School or any third party that are not purchased from Seller. School is responsible for ensuring that if Heartland will be supporting the MealViewer Software on a Media Player, Heartland will have access to any remote management software or tools installed or configured on the Media Player. School may be responsible for return shipping in the event of any return or warranty request unless otherwise specified in the Warranty/Return documentation provided with a Heartland hardware purchase.
- 3.4. **Termination of MealViewer Software.** If School discontinues use of the MealViewer Services for any reason, or Heartland discontinues providing School with the MealViewer Services, Heartland shall not have any obligation to provide any ongoing support for any Media Player or any MealViewer Software installed on or accessed by the Media Player, and School shall not have the right to return or be refunded for the purchase of hardware outside of the standard limited return time window provided in section \_\_ of this Agreement.
- 3.5. **Limitations on Third Party Hardware.** Heartland agrees to support the MealViewer Software on Media Player(s) obtained from third parties when: (1) School has an active subscription to MealViewer Software Services; (2) the Media Player is under an active warranty term or, if a warranty term has expired, the Media Player has not undergone any hardware or system failure; and (3) School fulfills its responsibilities described in Sections 3.2 and 3.3 above. School understands and acknowledges that the operating system ("OS") used in conjunction with the Media Player is not Heartland software, and Heartland is not responsible for any OS issues, including OS vulnerability or virus, interference caused by OS updates or the lack of OS updates. Heartland is not responsible for any Media Player, hardware, or display units not sold by Heartland (i.e., those provided by School or obtained from a third party).
- 3.6. Seller does not have any right or responsibility for physical security, upkeep and/or maintenance of the hardware, the OS of Media Player(s), or for any software installed on the Media Player(s) other than: Seller's software during the term of an active subscription to Seller's software and warranty term of the Media Player. To the extent that MealViewer Software becomes incompatible with a Media Player or

ceases functioning on a Media Player following the warranty term of the media player, Seller shall not be responsible or required to support such Media Player or provide backwards compatibility with such media Player, nor to replace or refund such media player; notwithstanding that replacements may be purchased from Seller.

- 3.7. **Substitutions.** Heartland reserves the right to change its hardware or technical services offerings at any time, including the right to (i) discontinue offering any hardware or technical service, (ii) substitute hardware components for any order or warranty replacement, (iii) offer alternative hardware products, configurations and/or technical services, or (iv) substitute any ordered or warranted hardware component with another component providing substantially similar or better functionality and quality.

#### 4. **Payment and Term**

- 4.1. **License Fees.** The License Fees for the right to use the Software (the “License Fee(s)”) are based on the number of sites School purchases licenses for, and will be set forth in an Order Agreement. School will pay all fees that are specified in all Order Agreements. Except as otherwise specified herein or in a corresponding Order Agreement, (a) fees are based on the number of MealViewer Software Services Subscriptions purchased and not actual usage, (b) payment obligations are non-cancelable and fees paid are non-refundable, and (c) the number of User Subscriptions, text messages, or screen/location licenses purchased cannot be decreased during the relevant Subscription term. Except as provided in any Order Agreement, all License Fees are subject to change annually.

- 4.2. **Hardware Fees.** Hardware Fees are due upon receipt of invoice, and Heartland will not fulfill any hardware or technical services order prior to receiving payment for the order.

4.2.1. **Fulfillment of Orders.** Heartland does not manufacture the hardware it sells, and Heartland works with various manufacturers, suppliers, fulfillment partners, configuration specialists and other channel partners (collectively referred to as “Suppliers”) to provide compatible hardware that is pre-configured to run the MealViewer Software. Heartland does not maintain inventory of hardware components. Timing of fulfillment of all orders is subject to availability of all ordered hardware components from Suppliers as well as configuration and shipping time. Any expected shipping, delivery or installation date provided for purchased hardware is only an estimate and not a guarantee and Heartland is not responsible for any delay, nor any damages potentially caused by any delay.

4.2.2. **Pricing changes.** Due to significant pricing volatility in the hardware component market, quoted prices are subject to change without notice. Prices may also be affected by any substitution or offering change as described in Section 3.7. Unless specific contractual obligations are in place with respect to price, Seller reserves the right to update the price for any hardware at any time prior to providing Purchaser with an Invoice, and Invoice prices are only valid through the due date of the Invoice. If School has not paid the Invoice seven (7) days after the due date, Heartland may cancel the Invoice or may replace it with a new Invoice containing updated pricing.

4.2.3. **Shipping.** Shipment of all products shall be F.O.B Destination, unless otherwise indicated. School shall provide Heartland with shipping address(es) and/or delivery instructions. If no specific delivery instructions are given, Heartland will assume standard business hour delivery at the specified address(es). Heartland will select the most cost-effective shipping method to ensure on time delivery, with reasonable freight cost. Heartland is not liable for any additional freight charge for shipment due to the absence of shipping instructions from School. In the event of damage, delay, or loss due to the mishandling in transportation: School shall inspect all shipments upon receipt and if there is clear damage to the Hardware, shall refuse receipt of the item from the delivery agent. If there is clear damage to the Hardware but the delivery agent has left the premise, School will contact Heartland in order to contact the shipping provider for a return visit and inspection of the goods. If there is no clear damage at the time of receipt, but School finds the products to be D.O.A, School must report products as D.O.A. within twenty (20) days from the shipping date listed on the invoice, and return the products to Heartland pursuant to Section 7.8.

- 4.3. **Payment Procedures.** On or before the Effective Date and on an annual basis 60 days prior to any Renewal Support Term, Heartland will invoice School for all License Fees and Hardware Fees incurred by School pursuant to this Agreement. School shall pay all invoiced amounts in U.S. dollars within thirty

(30) days of the date of invoice. If School provides Heartland with credit card information, School authorizes Heartland to charge such credit card for the charges due under the applicable Order Agreement, and any renewal Subscriptions thereof. School is responsible for providing complete and accurate billing and contact information, and notifying Heartland of any changes to such information

- 4.4. **Late Charges.** Any invoiced amounts not paid when due will incur interest at 1.5% per month until paid in full. All fees specified herein: (i) are non-cancelable, non-refundable and non-contingent; (ii) are payable in U.S. dollars; and (iii) shall be sent to the attention of Heartland's Accounts Receivable Department.
- 4.5. **Taxes.** Excluding taxes based on Heartland's income, School is liable for all taxes, including but not limited to sales, use and ad valorem or property taxes relating to the Software, Hardware, Documentation, and/or Support Services whether or not Heartland invoices School for such taxes, duties or customs fees, regardless of whether School has provided Heartland with a valid tax exemption or direct pay certificate which exempts School from such taxes.
- 4.6. **Nonpayment.** In addition to all rights exercisable by Heartland, in the event of School's nonpayment when due of any amounts owed to Heartland, Heartland reserves the right to terminate this Agreement and/or withhold performance of any obligations, whether arising under this Agreement or otherwise, and/or change its credit terms.
- 4.7. **Purchase Orders.** If School's internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Heartland, School will timely issue such purchase order and inform Heartland of the number and amount thereof. School agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of School's obligations hereunder, including payment of amounts owed to Heartland.

## 5. Use of Data and Confidentiality

### 5.1. Use of Data.

- 5.1.1. **Data intended for publishing.** The MealViewer Software is primarily a platform for marketing and publishing information about School's meal program to students and other consumers. As such, School acknowledges that the food and menu information provided through MealViewer will be made electronically available to students and other consumers without access restrictions, and that students, consumers, third parties, and MealViewer will inherently be able to view, consume, archive, analyze, and share such data. School agrees to hold MealViewer harmless for any consequence of food and menu information being made publicly available.
- 5.1.2. **Protection of User Data.** Heartland's responsibility with respect to User Data includes protecting the integrity of such data, and maintaining the privacy and confidentiality of any User Data clearly marked in the software as "private" or "internal" or otherwise indicated and mutually understood as not being intended for publishing.
- 5.1.3. **User Feedback.** As part of the MealViewer Software Services that Heartland provides, Heartland may facilitate the collection of user feedback and information. School agrees not to enable or use any user feedback or information gathering functionality in the MealViewer Software to collect information from children unless School verifies that its use of such functionality complies with local, state (or provincial), and national laws. School is responsible for the content of the surveys, polls, and/or input prompts that School (or Users) create and/or conduct through MealViewer Software, including making sure Your use of information collecting functionality complies with local, state (or provincial), and national laws.

### 5.2. Confidentiality

- 5.2.1. **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, all software source code, any internal processes, and all personal information of any Users.

- 5.2.2. **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 5.2.3 and 5.2.4, 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. 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 Receiving Party's 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.
- 5.2.3. **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.
- 5.2.4. **Return and Retention of Confidential Information.** Upon termination of this Agreement, School shall promptly return or destroy all Confidential Information of Heartland in its possession. Upon termination of this Agreement, Heartland shall retain all School Data and other documents relative to this Agreement for the current fiscal year, plus seven (7) years after final payment for purposes of governmental audit.
- 5.2.5. **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 5.2. 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.

## 6. Software Limitations; Acknowledgment and Disclaimer.

- 6.1. **Limitations.** Some MealViewer Software Services may include features that may be used to identify and/or filter menu items based on particular criteria, including ingredients, allergens, particular nutritional information (e.g., carbohydrates or other nutrient data), or conformity to mandatory or voluntary dietary restrictions (collectively, "Allergen and Nutrition Calculators"). School agrees and acknowledges that Heartland does not identify any allergens, ingredients or nutritional information, and the accuracy of any such information in the system is School's sole responsibility. School agrees and acknowledges that the effectiveness of the Allergen and Nutrition Calculators in identifying the presence of ingredients, allergens, nutrients or conformity with diet restrictions is *limited* by the following: (a) whether each manufacturer of menu items sold within the district accurately and clearly provided food information and identified ALL the ingredients and allergens in the information they provided; and (b) whether that information was accurately and timely entered in ALL published menu items before being published to Users. School acknowledges that food information or ingredients may not be shown accurately in the Allergen and Nutrition Calculators for a number of reasons, including ingredient substitutions, alterations, changes in supplier, mislabeling by manufacturer, incorrect entry into the system, and failure to update School's database. It is School's responsibility to verify that all information is properly entered, and that nutritional, allergen, and special diet data is accurately reflected in the MealViewer system.

- 6.2. Nutritional Information Disclaimer.** Heartland disclaims any responsibility for the accuracy of nutritional, allergen, or ingredient information contained in the MealViewer software, whether such information was entered or uploaded by School, School's agent, an automated process, or Heartland on School's behalf. School agrees to be solely responsible for the accuracy of all nutritional, allergy, ingredient and dietary information entered into the MealViewer Software Services, as well as verifying the accuracy of such information. School agrees to review and assess the data provided by the Allergen and Nutrition Calculators, and to disable the Allergen and Nutrition Calculators if School believes the output, formatting, and/or user interface of the Allergen and Nutrition Calculators is inadequate. **The Allergen and Nutrition Calculators should NEVER be a substitute or replacement for competent medical advice, or Users' own proper due diligence. Heartland assumes no liability for any adverse reactions related to food prepared or served by School.**
- 6.3. Content Disclaimer.** The MealViewer Services may allow third party content to be accessed or displayed, including the internet, pictures, videos, music, graphics, sound, and other materials ("Content"). Customer is solely responsible for evaluating the Content accessed via the MealViewer Services. Heartland has no control over the Content that is accessed or displayed using the MealViewer Services. Content may be: (1) unsuitable for children/minors; (2) unreliable or inaccurate; or (3) offensive, indecent, or objectionable. Content from third parties may also harm the MealViewer Services. Content provided by vendors or third parties may be cancelled or terminated at any time without notice, and may not be refunded by that vendor or third party. Heartland is not responsible for any Content, or for any damage caused by any Content accessed through the MealViewer Services. If Heartland provides storage for Content, then such Content may be deleted without notice. Content stored on by Heartland may be deleted, modified, or damaged.

## **7. Limited Warranty and Disclaimers.**

- 7.1.** Heartland warrants that the MealViewer Software, as delivered to School, for the duration of this Agreement will perform substantially in accordance with the Documentation, provided that: (a) School remains a compliant, continuous subscriber to Support Services and has installed all maintenance Updates provided by Heartland, which would have cured the alleged nonconformity to perform in accordance with the Documentation; (b) School is using the MealViewer Software in accordance with the Documentation; (c) any error or defect detected is reproducible by Heartland; (d) the performance issue, error or defect does not relate exclusively to Third Party Software; and (e) School notifies Heartland of such nonconformance within the warranty period or within thirty days following expiration of the warranty period. Heartland warrants that it has title to, or the authority to grant a license to, the MealViewer Software, excluding Third Party Software, to School in accordance with the terms of this Agreement. As to Third Party Software, if any, Heartland warrants that it is licensed by the third party that has licensed the Third Party Software to Heartland, to sublicense such Third Party Software to School pursuant to the terms of this Agreement. School's sole and exclusive remedy for any breach of the foregoing warranties shall be the remedy set forth in Section 5 of this Agreement.
- 7.2.** For MealViewer Software that does not conform to the warranties contained in this Agreement, Heartland will, at its sole option, and provided School otherwise complies with the terms of this Agreement, repair or replace the nonconforming Software within a commercially reasonable period of time after receiving notice from School of such nonconformance.
- 7.3.** Heartland warrants that the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate action of the part of Heartland (none of which actions have been modified or rescinded, and all of which actions are in full force and effect), and that this Agreement constitutes a valid and binding obligation of Heartland enforceable in accordance with its terms. Heartland will pass through to School, to the fullest extent possible, the warranties from Heartland's licensors as they relate to Third Party Software, if any.
- 7.4.** Heartland DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR THAT THE SOFTWARE WILL RUN UNINTERRUPTED, OR THAT ALL SOFTWARE ERRORS CAN OR WILL BE CORRECTED.
- 7.5.** School warrants that the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate action of the part of School (none of which actions have been

modified or rescinded, and all of which actions are in full force and effect), and that this Agreement constitutes a valid and binding obligation of School enforceable in accordance with its terms.

- 7.6. School accepts sole responsibility for (i) School's system configuration, design and requirements, (ii) the selection of the MealViewer Software to achieve School's intended results, and (iii) modifications, changes or alterations to the MealViewer Software by anyone other than Heartland or its agents that is not an Update. School acknowledges that it has had an opportunity to review the Documentation, it understands the functionality of the MealViewer Software and its ability to work with School's systems and to support School's business, and that it has made its own evaluation in deciding to license the MealViewer Software.
- 7.7. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY ATTACHMENT HERETO), NEITHER PARTY MAKES ANY WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE MEALVIEWER SOFTWARE, DOCUMENTATION, OR ANY MEALVIEWER SOFTWARE SERVICES PROVIDED HEREUNDER INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND EACH PARTY EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES AND CONDITIONS.

#### 7.8. **Limited Hardware Warranty**

- 7.8.1. **Manufacturer's Warranty.** Purchased hardware comes with the standard manufacturer warranty terms ("**Manufacturer Warranty**") as well as a 30-day limited warranty from Heartland ("**Limited Warranty**"). For any Manufacturer Warranty or Limited Warranty claims, Heartland will process warranty claims for School, provide replacement hardware, and work directly with manufacturer to process the warranty claim, according to the terms and processes described in Section 7.8.5. Depending on the merchandise and the warranty provided, the warranty process may involve advance replacement, onsite repair, depot service, or replacement/repair upon return. For the Limited Warranty, Heartland warrants the Hardware to be free from defects in workmanship or material; under normal, proper usage or service conditions. Should Hardware prove to be defective by reason of improper workmanship or material under normal, proper usage or service conditions within the Limited Warranty period, Heartland will, at its sole discretion, repair or replace the Hardware without charge for parts or labor.
- 7.8.2. **Warranty Conditions.** All warranties are subject to the following conditions: (i) a warranty is void if the Hardware is damaged by any individual who is not an agent of Heartland through accident, improper installation, maintenance or misuse; or by lightning, fire, water, or other acts of nature, or by excessive or inadequate electrical power surges or other irregularities; (ii) a warranty is void if the Hardware is altered, repaired, or installed with additional options or parts by anyone other than Heartland; and (iii) the warranty shall not apply if a malfunction or failure of the Hardware is due to the particular circumstances of School's use of the Hardware, for example, installing Hardware on a network with network conditions or firewall restrictions.
- 7.8.3. **Limited Remedy.** Should the Hardware be defective, School's sole remedy will be repair or replacement as determined by Heartland. In no event will Heartland provide a refund, discount, or credit, or be liable for any loss of the use, revenue, anticipatory profit, and direct or indirect consequential damages arising out of or connected with the sale, use in operation, or the inability to use the Hardware. Except as otherwise noted in this section, Heartland makes no representations or warranties, whether express or implied, with respect to any products, including but not limited to, warranties, merchantability, or fitness for particular purpose and all such warranties are expressly disclaimed. Specifically, Seller makes no warranty that any piece of Hardware will be operable as a digital signage player following the earlier of the expiration of the warranty on such piece of Hardware or the termination of any specific software subscription to the MealViewer Software corresponding to such piece of Hardware.
- 7.8.4. **Warranty Process.** In the event of a Hardware issue on Hardware covered by either the Limited Warranty or the Manufacturer Warranty, School must contact Heartland to diagnose the problem and troubleshoot the issue. If Heartland confirms a warrantable problem, School will return the



Hardware pursuant to the Return Process section below. Heartland will arrange for repair or pickup of the Hardware or provide School with a shipping label or shipping information. If the Hardware is confirmed to be defective and is still under warranty, Heartland will repair or replace the Hardware at Heartland's expense. If the Hardware is not defective, Heartland will return the Hardware to School freight collect.

- 7.8.5. Return Process.** If School seeks to return, repair or replace products, including for warranty service, School will need to request a Return Merchandise Authorization ("RMA") number from Heartland. School may be required to provide the invoice number, model number, serial number, account number, site information, organization information, the detailed reason for the return, and other information as requested by Heartland prior to Heartland issuing an RMA. Heartland must receive returned Hardware within fifteen (15) days after issuance of an RMA number. Returned Hardware shipments must include all equipment, including parts, drives, manuals, cables, accessories, etc., all in the original packaging. Hardware should be returned to the return address provided by Heartland. Heartland will provide a return shipping label, or other shipping instructions. School must include the RMA number on the mailing label(s). If School fails to comply with these requirements, Heartland may refuse shipments and impose handling charges. Any missing parts, drives, manuals, cables, accessories, or other items not returned by School may result in Heartland rejecting the warranty claim.

## **8. Indemnification**

- 8.1. Heartland Indemnification for Infringement.** Heartland will indemnify, defend, and hold School harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against School alleging that the use of the MealViewer Software 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 MealViewer Software Services in violation of this Agreement or applicable law, (ii) use of the MealViewer Software Services after Heartland notifies School to discontinue use because of an infringement claim, or (iii) modifications to the MealViewer Software Services made other than by Heartland. If the MealViewer Software Services are held to infringe, Heartland will, at its own expense, in its sole discretion use reasonable commercial efforts either (a) to procure a license that will protect School against such claim without cost to School; (b) to replace the MealViewer Software Services with non-infringing services; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the School any prepaid unused fees paid to Heartland for the infringing MealViewer Software Services. The rights and remedies granted School under this Section 8.1 state Heartland's entire liability, and School'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. Heartland Indemnification for 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 Personal Identifiable Information or other 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 the School promptly, 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 the School and its employees from and against any and all claims, damages, or causes of action directly related to the unauthorized release.
- 8.3. Indemnification Procedure.** The indemnified party shall (i) promptly notify Heartland in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove Heartland's obligation except to the extent it is prejudiced thereby, and (ii) allow Heartland to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified party shall also provide Heartland with reasonable cooperation and assistance in defending such claim (at Heartland's cost).

## **9. Limitation of Liability.**

- 9.1. EXCEPT FOR CLAIMS: (I) ALLEGEDLY ARISING OUT OF INFRINGEMENT, OR MISUSE OF EITHER PARTY'S INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OR THEIR USE IN A MANNER WHICH IS INCONSISTENT WITH THE TERMS OF THIS AGREEMENT, OR (II) ALLEGEDLY ARISING OUT OF EITHER PARTY'S VIOLATION OF UNITED STATES OR OTHER LAWS APPLICABLE TO THE MEALVIEWER SOFTWARE OR DOCUMENTATION, INCLUDING U.S. DEPARTMENT OF COMMERCE EXPORT ADMINISTRATION REGULATIONS, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES RESULTING FROM LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2. EXCEPT FOR CLAIMS: (I) ALLEGEDLY ARISING OUT OF INFRINGEMENT, OR MISUSE OF EITHER PARTY'S INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OR THEIR USE IN A MANNER WHICH IS INCONSISTENT WITH THE TERMS OF THIS AGREEMENT, OR (II) ALLEGEDLY ARISING OUT OF EITHER PARTY'S VIOLATION OF UNITED STATES OR OTHER LAWS APPLICABLE TO THE MEALVIEWER SOFTWARE OR DOCUMENTATION, INCLUDING U.S. DEPARTMENT OF COMMERCE EXPORT ADMINISTRATION REGULATIONS, OR (III) NONPAYMENT OF AMOUNTS OWED TO EITHER PARTY, NEITHER PARTY'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THE RELATIONSHIP OF THE PARTIES, THIS AGREEMENT, ITS NEGOTIATION OR TERMINATION, OR THE PROVISION OR NON-PROVISION OF SOFTWARE, DOCUMENTATION OR SUPPORT SERVICES (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL EXCEED THE AMOUNT OF THE TOTAL LICENSE FEES PAID TO HEARTLAND BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING ANY SUCH CLAIM. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION. CUSTOMER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN, THE FEES CHARGED FOR THE MEALVIEWER SOFTWARE WOULD BE HIGHER.

## 10. Term and Termination

- 10.1. **Term of Agreement.** This Agreement commences on the Effective Date and for a period of one year ("Initial Term"). These terms and conditions will apply at any time School is using the MealViewer Software, including any Renewal Term.
- 10.2. **Renewal Term.** The Order Agreement, including this Agreement and corresponding Subscriptions will automatically renew for successive 12 month terms (each, a "Renewal Term"), unless either party provides notice of non-renewal to the other party at least 30 days before the beginning of the Renewal Term. Each Renewal Term will commence on the first day after the end of the Initial Term.
- 10.3. **Termination for Cause.** This Agreement may be terminated for cause under the following circumstances:
- 10.3.1. Either party may terminate this Agreement based on the other party's material breach of any provision herein. A party seeking to terminate under this section must provide written notice to the other party of the material breach, and allow the other party 30 days to cure the breach.
- 10.3.2. Either party may terminate for cause immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors;
- 10.3.3. Heartland may terminate this Agreement for cause immediately if School or Users violate Heartland's intellectual property rights;
- 10.4. **Effect of Termination.**
- 10.4.1. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement.
- 10.4.2. **Payment upon Termination.** Upon termination of this Agreement, School agrees to pay Heartland any unpaid fees covering the remainder of the term of all MealViewer Software subscriptions. In no

event shall any termination relieve School of its obligation to pay any fees incurred during the period prior to termination.

**10.4.3. Deletion and Return of User Data.** We may delete any User Data fourteen (14) days following termination or the expiration of the Agreement. User Data may not be available after termination.

## 11. Miscellaneous


- 11.1 Trademarks.** The MealViewer name, logo, button icons, child character, and all related logos, products and services are trademarks or registered trademarks of Heartland. All other trademarks that appear on the website that are not owned by Heartland, or its Affiliates, are the property of their respective owners.
- 11.2 Copyright.** All content, titles, graphics, logos, button icons, images and software on the MealViewer website are the copyrighted material of Heartland, or its licensors. The compilation of all content on the MealViewer website is the exclusive property of Heartland, and is protected by U.S. and international copyright laws.
- 11.3 Use of Name and Logo.** School grants Heartland a non-exclusive license during the term of this Agreement to list School's name and display School's logo in the School section of Heartland's website and as may otherwise be necessary to provide the Services as requested by School.
- 11.4 Governing Law.** This Agreement shall be construed and governed by the laws of the state in which the government or public educational entity is located without regard to legal principles related to conflict of laws.
- 11.5 Jurisdiction & Venue.** Any suit, action or proceeding (collectively "action") arising out of or relating to this Agreement shall be brought in the state or federal courts in the state in which the government or public educational entity is located. The Parties agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and further waive any claim that such action is brought in an improper or inconvenient forum.
- 11.6 Amendments.** Except as otherwise provided herein, no provision of this Agreement may be waived, amended or modified except in writing signed by an authorized representative of each Party.
- 11.7 Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties herein set forth.
- 11.8 No Waiver of Rights.** Any failure of either Party to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.
- 11.9 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. A facsimile or scanned version of an original signature transmitted to the other Party is effective as if the original was sent to the other Party.
- 11.10 Assignment.** This Agreement shall be binding upon and for the benefit of Heartland, School 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. Except for Heartland's use of subcontractors, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void.
- 11.11 Relationship of the Parties.** Heartland and School 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.

- 11.12 Section Headings; Interpretation.** All section headings contained herein are for descriptive purposes only, and the language of such section shall control. All references to the plural herein shall also mean the singular and the singular shall also mean the plural unless the context otherwise requires.
- 11.13 Force Majeure.** Other than with respect to any payment or confidentiality obligation, neither Party will be liable to the other Party for any delay, error, failure in performance or interruption of performance resulting from causes beyond its reasonable control, including, but not limited to, work stoppages, fires, civil disobedience, earthquakes, floods, acts of God and similar occurrences. If a force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and its expected duration and use its best efforts to mitigate its effects and perform hereunder.
- 11.14 Notices.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the Party set forth in the first sentence of this Agreement. Either Party may change its address by giving written notice of such change to the other Party.
- 11.15 No Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed to confer upon any third party any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

**IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized representative.**

**LINCOLNWOOD SCHOOL DISTRICT 74      Heartland Payment Systems, LLC.**

By: \_\_\_\_\_

By:  \_\_\_\_\_

Title: \_\_\_\_\_

Title: SVP & General Manager, School Solutions

Date: \_\_\_\_\_

Date: 9/19/24