

**HOP SERVICES AGREEMENT**

This HOP Services Agreement Number XXX (this “**Agreement**”) is entered into and made effective as of XX/XX/XX (the “**Effective Date**”), by and between Higher One Payments, Inc., a California corporation (“**HOP**”), and XXXXXXXXXXXX (“**Customer**”).

**1. Definitions.**

“**Customer Data**” means any electronic data, information or material provided or submitted to HOP through the Service by Customer, or by Users (as the term is defined below).

“**Government Rules**” means all applicable laws, regulations and rules promulgated by a state or the federal government, or any agency or department thereof.

“**License Term**” means the term during which HOP will provide the Service to Customer, as specified in this Agreement.

“**Order Form**” means collectively the contract and order documents representing the initial purchase of the Service (and any subsequent purchases agreed to between the parties in writing from time to time) that are made a part of Exhibit A to this Agreement from time to time and that specify, among other things, licenses ordered, the License Term and the fees therefore.

“**Service**” means the payment, billing, payment plan, refunding, cashing, storefront and banking services as specific and selected on the Order Form attached as Exhibit A.

“**Users**” means Customer’s employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identification and passwords by Customer (or by HOP at Customer’s request).

**2. Service.**

**2.1 Use of the Service.** HOP shall make the Service available to Customer on the terms set forth in DIR Contract No. DIR-SDD-1728, this Agreement and the Order Form attached as Exhibit A.

**2.2 Service Level Agreement.** Subject to Customer’s compliance with the terms of this Agreement and in consideration of Customer’s payment of the fees specified in the Order Form attached as Exhibit A, HOP will provide the services described in the Service Level Agreement attached as Exhibit B.

**2.3 Customer Use.** Customer and Customer’s Users may use the Service only to access Customer’s own data and to fulfill Customer’s internal information processing needs. Customer may not sublicense, resell, publish, transmit, broadcast or otherwise distribute all or any portion of the Service to any person or entity, except as expressly set forth herein, or use it to process the data of a third party.

**2.4 Customer Responsibilities.** Customer is responsible for all activities that occur under Customer’s User accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify HOP promptly of any such unauthorized use; (iii) be responsible for acquiring and maintaining the software, equipment and communications services necessary to connect to the Service and to download, print and otherwise process data delivered by the Service, and (iv) comply with all applicable local, state, federal, and foreign laws in using the Service.

**2.5 Confidentiality & Security.** HOP’s confidentiality and security policies are set out in the addendum attached as Exhibit C.

**3. Fees & Payment.**

**3.1 Annual Customer Fees.** Customer shall pay the fees specified in the Order Form attached as Exhibit A which are in compliance with

Appendix C of DIR Contract No. DIR-SDD-1728 and in any signed and approved additional Order Forms. All fees are quoted in U.S. Dollars. Fees for additional Services added in the middle of a billing period shall be prorated to the next billing period.

**3.2 Invoicing & Payment.** HOP shall invoice Customer for fees for the Service in accordance with the terms of Appendix A, Section 7B of DIR Contract No. DIR-SDD-1728.

**3.4 Taxes.** Taxes will be handled in accordance with Section 4F of DIR Contract No. DIR-SDD-1728.

**3.5 Billing & Contact Information.** Customer shall maintain complete, accurate and up-to-date Customer billing and contact information via the online Customer account section of the Service at all times.

**4. Proprietary Rights.**

**4.1 Reservation of Rights.** Customer acknowledges that in providing the Service, HOP utilizes (i) the CASHNet® and cashnet.com names, the CASHNet® and cashnet.com logos, the cashnet.com domain name, the product names associated with the Service and other trademarks; (ii) certain audio and visual information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively “HOP Technology”) and that the HOP Technology is covered by intellectual property rights owned or licensed by HOP (“HOP IP Rights”). Other than as expressly set forth in DIR Contract No. DIR-SDD-1728 and this Agreement, no license or other rights in the HOP IP Rights are granted to Customer and all such rights are hereby expressly reserved.

**4.2 License Grants.** HOP grants Customer and its Users a non-exclusive, non-transferable, non-sublicenseable right to access and use the Service for the purpose for which it is made available to Customer and otherwise in accordance with the terms of this Agreement.

**4.3 Restrictions.** Customer shall not (i) modify, copy or make derivative works based on the HOP Technology; (ii) disassemble, reverse engineer, or decompile any of the HOP Technology; or (iii) “frame” or “mirror” any of HOP’s content which forms part of the Service (other than on Customers’ own internal intranets). Customer shall have the limited right to create Internet links to or from the Service; however, HOP reserves the right, at its reasonable discretion, to terminate the use of any and all link(s) to and from its Service.

**4.4 Customer Data.** As between HOP and Customer, all Customer Data, whether posted by Customer or by third parties, remains the sole property of Customer. To the extent that Customer grants HOP access to Customer Data, Customer shall restrict HOP’s access to such Customer Data except as necessary for HOP to perform the Services. Customer Data shall be considered Confidential Information, subject to the terms of DIR Contract No. DIR-SDD-1728 and this Agreement. HOP may access Customer’s User accounts, including without limitation Customer Data, to respond to service or technical problems.

**5. Confidentiality.**

**5.1 Definition of Confidential Information.** To the extent allowable under the Texas Public Information Act, as used herein, “Confidential Information” means all information of a party (“Disclosing Party”) which the Disclosing Party designates in writing as being confidential when it discloses such information to the other party (“Receiving Party”), including without limitation the terms and conditions of this

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Agreement, Customer Data, the HOP Technology, the Service, business and marketing plans, technology and technical information, product designs, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Customer Data shall be deemed Confidential Information regardless of its written designation. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (iii) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party; or (iv) disclosure as required by applicable laws.

**5.2 Confidentiality.** To the extent allowable under the Texas Public Information Act, the Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except as may be required to be disclosed under Government Rules or to comply with legal processes.

**5.3 Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

## **6. Warranties & Disclaimers.**

**6.1 Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. HOP represents and warrants that the Service will perform substantially in accordance with the online HOP help documentation under normal use and circumstances.

**6.2 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, HOP MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. HOP HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **7. Indemnification.**

**7.1 Indemnification.** Indemnification will be handled in accordance to Appendix A, Section 9A of DIR Contract No. DIR-SDD-1728.

## **8. Limitation of Liability.**

**8.1 Limitation of Liability.** Limitation of Liability will be handled in accordance to Appendix A, Section 9K of DIR Contract No. DIR-SDD-1728.

**8.2 Limitation of Action.** Except for actions for non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than four (4) years after the cause of action has accrued.

## **9. Term & Termination.**

**9.1 Term of Agreement.** This Agreement commences on the Effective Date and continues until all Customer licenses granted in accordance with this Agreement have expired or been terminated.

**9.2 Term of Use.** Customer agrees that the License Term for each respective module listed in the Order Form attached hereto as Exhibit A or in any additional Order Form(s), shall commence on the earlier of (i) the first day of the month in which the module is deployed or (ii) 180 days from the Effective Date of this Agreement. For purposes of this paragraph, the dates of commencement for the License Term for each respective module shall be referred to as the "Commencement Date". Customer agrees to pay HOP the annual customer fee for each respective module by each anniversary of the Commencement Date during the Term of this Agreement. HOP will invoice Customer for the annual customer fee(s) no later than 60 days prior to the anniversary of the Commencement Date for each respective module. Customer licenses shall continue for the License Term specified in the relevant Order Form. Customer licenses may be renewed by the Licensor's issuance of thirty (30) days advanced written notice and Customer's concurrence prior to the then-effective expiration date for additional periods of one (1) year at the price indicated in Appendix C of DIR Contract No. DIR-SDD-1728, unless either party gives the other notice of termination at least 30 days prior to the end of the License Term or relevant renewal term (as the case may be).

**9.3 Termination for Cause.** Any termination will be handled in accordance with Appendix A, Section 10B of DIR Contract No. DIR-SDD-1728.

**9.4 Outstanding Fees.** Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to HOP prior to the effective date of termination.

**9.5 Return of Customer Data.** Upon written request by Customer within ninety (90) days of the effective date of termination, HOP shall make available to Customer a file of Customer Data. To the extent allowable under record retention laws and policies, after such ninety (90) day period, HOP shall have no obligation to maintain or provide any Customer Data.

**9.6 Surviving Provisions.** The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 3, 4 (excluding Sections 4.2 and 4.4), 5, 6, 7, 8, 9 and 10.

## **10. General Provisions**

**10.1 Notices.** All notices will be handled in accordance with Appendix A, Section 11 of DIR Contract No. DIR-SDD-1728.

**10.2 Waiver & Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**10.3 Severability.** If any provision of DIR Contract No. DIR-SDD-1728 and this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, the remainder of this Agreement shall not be impaired, and each provision shall continue in full force, and shall be enforceable to the fullest extent permitted by law and consistent with the present goals and intent of the parties.

**10.4 Assignment.** Assignments will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-SDD-1728.

**10.5 Governing Law.** This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of Texas, without regard to its conflict of law provisions. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

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**10.6 Force Majeure.** Force Majeure will be handled in accordance to Appendix A, Section 10C of DIR Contract No. DIR-SDD-1728.

**10.7 Entire Agreement & Construction.** DIR Contract No. DIR-SDD-1728 and this Agreement, Exhibits and Order Forms constitute the entire agreement between the parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. DIR Contract No. DIR-SDD-1728 and this Agreement may not be amended, except by an agreement in writing which is signed by authorized representatives of HOP and Customer.

**Acknowledged and Agreed:**

**Higher One Payments, Inc.**

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

Printed  
Name: Mark Volchek

Title: CFO

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

Address: 80 Swan Way #200  
Oakland, CA 94621

**[Customer Name]:**

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

Printed  
Name: \_\_\_\_\_

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

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

Address:

**EXHIBITS**

- Exhibit A: Order Form(s)
- Exhibit B: Service Level Agreement
- Exhibit C: Privacy and Security Statement
- Exhibit D: Mastercard Addendum

**HOP SERVICES AGREEMENT**

EXHIBIT A  
ORDER FORM **XXX-XX**

**Configuration and Pricing**

#	CASHNet Modules Licensed	Quantity	Annual Customer Fees	Banking & Transaction Fees			Setup and Professional Services		
				Credit Tx	Debit Tx	MPP per Enrollment	Standard Deployment	CEPP	Managed Deployment
1	CASHNet eBill								
2	CASHNet ePayment								
3	CASHNet MyPaymentPlan								
4	CASHNet eRefund								
5	CASHNet Cashiering								
6	CASHNet Departmental Deposits								
7	CASHNet eMarket Storefront								
8	CASHNet.com Administration								
9	Dynamic Billing								
10	Standard Interfaces/Gateways								
	<b>OPTIONS and EXTENSIONS</b>								
11	Credit Card Interfaces								
12	Real-time / Custom Interfaces								
13	Campus Card Interfaces								
14	ERP Connector								
15	Touchtone Payment Interface								
16	Prior Payment Research Archive								
17	Campus Portal / Single Sign-on								
<b>TOTAL</b>			<b>\$0.00</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<p><b>License Term (years):</b></p> <p><b>Annual Customer Fees Total: \$0.00</b></p> <p><b>Setup and Professional Services: \$0.00</b></p>									

The first year annual customer fee(s) shall be applied for the one-year period following the Commencement Date of the License Term for each respective module. Payments will be handled in accordance to Appendix A, Section 7C of DIR Contract No. DIR-SDD-1728.

#	Configuration Notes

APPENDIX D TO DIR CONTRACT NO. DIR-SDD-1728

Higher One Payments, Inc.

Issue Date: xx/xx/xx

**HOP SERVICES AGREEMENT**

EXHIBIT A

ORDER FORM **XXX-XX** (Cont.)

Event		Payment Due Date	Amount
1	Execution of HOP Services Agreement	30 days following the Effective Date of this Agreement	\$0.00
2	Setup and Technical Services	30 days following the completion of Setup and Technical Services	\$0.00
3	Completion of CEPP	Upon submission of CEPP Report to Customer	\$0.00
4			
5			
			<b>\$0.00</b>

Use of licenses ordered above shall be governed in all cases by DIR Contract DIR-SDD-1728. Prices shown do not include any taxes that may apply. Taxes will be handled in accordance with Section 4F of DIR Contract DIR-SDD-1728.

**Higher One Payments, Inc.**

**[Customer Name]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Mark Volchek Date: \_\_\_\_\_

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

**HOP SERVICES AGREEMENT**

## EXHIBIT B

## SERVICE LEVEL AGREEMENT

**Service Level Commitment.** HOP will use its best efforts to ensure 99.9% Availability (as defined below) of the Service. A failure by HOP to meet this commitment will entitle Customer to claim a Service Credit (as defined below). “**99.9% Availability**” means that the Service will be unavailable no more than 43 minutes (> .10%) in any calendar month, as determined by HOP (excluding any period of unavailability described in Exception section below). The Service shall be deemed to be unavailable when HOP’s automated monitoring system is unable to access the web or database servers of the Service (“**Unavailability**”).

**Exceptions.** HOP’s service level commitment does not cover any unavailability attributable to (1) Customer’s use of the Service otherwise than in accordance with the Documentation or with user guides from time to time made available to Customer; (2) any data entered into the Service by Customer; (3) any event beyond the reasonable control of HOP, including the malfunction or unavailability of any public Internet backbone or network or of any server or other equipment outside of HOP’s facility, or any failure of Customer’s equipment or local access service, or (4) Scheduled Maintenance pursuant to Scheduled Maintenance section below.

**Scheduled Maintenance.** “Scheduled Maintenance” shall mean any maintenance performed during a standard maintenance window as determined by HOP (a) of which Customer is notified 24 hours in advance or (b) the maintenance is performed without advance notice due to urgency of the maintenance in order to maintain the security and integrity of the system. Notice of Scheduled Maintenance will be provided to Customer’s nominated point of contact by a method elected by HOP (telephone, email, fax or pager.) HOP’s standard Scheduled Maintenance window is between the hours of 1AM and 4AM Central Time. Customer shall be provided 24 hours advance notice in the event a change is made to the standard Scheduled Maintenance window. The Service shall not be deemed unavailable during Scheduled Maintenance.

**Service Credit Remedy.** If HOP determines, in its reasonable judgment, that the Service did not attain 99.9% Availability during any calendar month, HOP will credit Customer’s account the pro-rated annual customer fee(s) for one day’s service. Customer is entitled to a further credit, equal to the pro-rated annual customer fee(s) for one day’s service, for each additional 43 minutes that the server is unavailable during any calendar month, provided that no credit shall exceed the pro-rated charges for one day’s service for any single day’s instance of Unavailability. All service credit requests must be in writing and emailed directly to HOP’s accounting department within ten (10) days from the date of the server unavailability. Credits cannot be applied to any charges other than the annual customer fee(s). Customers with multiple instances of Services will not receive more than one credit for any instance of unavailability. Eligibility for any credits is subject to Customer’s account being current and with no outstanding balances due. **THIS CREDIT SHALL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY SERVICE OUTAGE OR ANY FAILURE BY HOP TO MEET THE SERVICE LEVEL COMMITMENT.**

**HOP SERVICES AGREEMENT**EXHIBIT C  
PRIVACY AND SECURITY STATEMENT

The purposes of this Statement are (1) to provide Customer with the assurances required by the Gramm-Leach-Bliley Act (“GLBA”) and the Standards for Safeguarding Customer Information issued by the Federal Trade Commission (the “Safeguard Rule”); and (2) to provide Customer with assurances that HOP complies with the Payment Card Industry Data Security Standard, as developed by MasterCard International and Visa (“PCIDSS”). In this Exhibit, the term “Customer Information” means (i.) Customer Data, as defined herein, (ii.) “customer information” as defined in the Safeguard Rule (collectively, “Customer Information”), and (iii.) individual cardholder data which HOP obtains from Customer, or receives or creates on behalf of Customer. This Exhibit is made a part of the Higher One Payments Services Agreement (this “Agreement”), provided that in the event of any conflict between them this Exhibit shall take precedence.

1. Privacy of Customer Information. HOP shall not use or disclose Customer Information except:

- a. As contemplated by this Agreement;
- b. As required by law;
- c. For purposes of conducting its business functions necessary for the provision of services to Customer under this Agreement;
- d. To assist Customer officials and law enforcement agencies investigating credit card fraud and similar activities;
- e. As otherwise authorized by Customer in writing.

2. Security of Customer Information.

Throughout the term of this Agreement, HOP will implement and maintain appropriate safeguards, as that term is used in § 314.4(d) of the Safeguard Rule, for all Customer Information, and will comply with the PCIDSS.

3. Termination

Upon written request by Customer within ninety (90) days of the effective date of termination of this Agreement, HOP shall make available to Customer a file of Customer Data. After such ninety (90) day period, HOP shall have no obligation to maintain or provide any Customer Data, and may destroy Customer Data. If HOP maintains any Customer Data, it will extend the protections of this Exhibit to Customer Information for as long as maintains it.

4. Limitation

This Exhibit does not apply to customer information that HOP obtains directly from a customer through the CASHNet SmartPay or other banking services. Such information is not Customer Data. It is HOP data, which HOP holds as a financial institution subject to the Safeguard Rule and the PCIDSS.

APPENDIX D TO DIR CONTRACT NO. DIR-SDD-1728

Higher One Payments, Inc.

Issue Date: xx/xx/xx

**HOP SERVICES AGREEMENT**

EXHIBIT D

SMARTPAY MERCHANT PARTICIPATION AGREEMENT

This SmartPay Merchant Participation Agreement is in connection with the Higher One Payments, Inc. Services Agreement No. XXX (the "Agreement") entered into by and between Higher One Payments, Inc., a California corporation ("Vendor") and XXXXXXXXXXXX (the "Customer") dated XX/XX/XX. In the event of any conflict between this SmartPay Merchant Participation Agreement and the Agreement, this SmartPay Merchant Participation Agreement shall take precedence. The purpose of this SmartPay Merchant Participation Agreement is to comply with MasterCard International and VISA, USA requirements that Customer be a signatory to a merchant agreement for credit card processing ("SmartPay Merchant Participation Agreement") with Global Payments Direct, Inc. ("Global Direct") and Comerica Bank ("Member").

Customer, through its relationship with Vendor, agrees to comply with and be bound by the rules and regulations of Visa, MasterCard and any other card association or network organization related to cardholder and transaction information security, including without limitation, Payment Card Industry (PCI) Data Security Standards, Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program, which may be modified from time to time. Customer will not present for purchase any indebtedness that does not arise out of a transaction between a cardholder and Customer.

Customer may elect to accept credit cards or debit/prepaid cards or both. Global Direct and Member will fund the daily card transactions from Vendor's SMARTPAY system to the designated depository account which will include the Customer's name. Vendor will transfer fully settled funds to the Customer's pre-determined financial Institution on a regular basis.

As relating to this SmartPay Merchant Participation Agreement, Customer, either by itself or through a third party, shall adequately display the card issuer service marks supplied by Global Direct or Vendor and Customer shall cease to use or display such service marks upon termination of this SmartPay Merchant Participation Agreement.

Customer represents and warrants that no one other than Customer has any claim against such indebtedness except as authorized in writing by Member and Global Direct. Customer hereby assigns to Member and Global Direct all of its right, title, and interest in and to all funds payable by the applicable card association or network organization ("Interchange Fees") in connection with the transactions submitted hereunder and agrees that Member and Global Direct have the sole right to receive payment from the applicable card association or network organization in connection with such transactions.

If a cardholder disputes a transaction, if a transaction is charged back for any reason by the card issuing institution, or if Global Direct or Member has reason to believe a transaction is unauthorized or is otherwise unacceptable, the amount of such transaction may be charged back and debited from Customer.

Neither Member nor Global Direct shall be liable for failure to provide the Services if such failure is due to any cause or condition beyond such party's reasonable control. Such causes or conditions shall include, but shall not be limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, breakdowns, operational failures, electrical power failures, communication failures, unavoidable delays, the errors or failures of third party systems, or other similar causes beyond such party's control.

The liability of Global Direct and Member for any loss arising out of or relating in any way to this SmartPay Merchant Participation Agreement, the unavailability or malfunction of the Services, personal injury, or property damage, shall, in the aggregate, be limited to actual, direct, and general money damages in an amount not to exceed the greatest one (1) month's charge paid by Customer's agent hereunder (exclusive of interchange fees, assessments, and any other fees or costs that are imposed by a third party in connection with Vendor's payment processing) for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this SmartPay Merchant Participation Agreement. This shall be the extent of Global Direct's and Member's liability arising out of or relating in any way to this SmartPay Merchant Participation Agreement, including alleged acts of negligence, breach of contract, or otherwise and regardless of the form in which any legal or equitable action may be brought against Global Direct or Member, whether contract, tort, or otherwise, and the foregoing shall constitute Customer's exclusive remedy. Under no circumstances shall Global Direct or Member be liable for any lost profits, lost interest, or for special, consequential, punitive or exemplary damages arising out of or relating in any way to this SmartPay Merchant Participation Agreement, including but not limited to, damages arising out of placement of a Customer's name on any terminated merchant list for any reason, even if Global Direct or Member has been advised of the possibility of such damages. Under no circumstances shall Global Direct or Member be liable for any settlement amounts pertaining to Switched Transactions; Customer's recourse therefore shall be to the applicable card issuer. Notwithstanding anything to the contrary contained herein, Global Direct and Member shall be jointly and severally liable for any lost profits, lost interest or for special, consequential, punitive or exemplary damages arising out of or relating to the SmartPay Merchant Participation Agreement caused as the result of any gross negligence or fraud.

With the exception of gross negligence and willful misconduct, it is agreed that in no event will Global Direct or Member be liable for any claim, loss, billing error, damage, or expense arising out of or relating in any way to this Merchant Services Agreement which is not reported in writing to Global Direct by Merchant within 120 days of such failure to perform. Merchant expressly waives any such claim that is not brought within the time periods stated herein.

Nothing in this SmartPay Merchant Participation Agreement shall be construed to amend the rights or remedies Vendor and Customer have against each other under the Agreement.

**HOP SERVICES AGREEMENT**

**Acknowledged and Accepted:**

CUSTOMER

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

Printed Name: \_\_\_\_\_

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

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

Notice Address:

**For Office Use Only**

Customer Number: \_\_\_\_\_

DBA Name: \_\_\_\_\_

ABA Routing: \_\_\_\_\_

DDA Account: \_\_\_\_\_