

Touchpoint Software as a Service Agreement

This Touchpoint Software as a Service Agreement (this “**Agreement**”), effective as of April 1, 2019 (the “**Effective Date**”), is by and between Home Franchise Concepts, LLC, a California limited liability company with offices located at 19000 MacArthur Blvd, Suite 100, Irvine, CA 92612 (“**HFC**”) and each franchisee of HFC’s subsidiary franchisor entities (“**Franchisee**”). HFC and Franchisee may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

WHEREAS, HFC provides access to the Services to franchisees of its subsidiaries; and

WHEREAS, Franchisee desires to access the Services, and HFC desires to provide Franchisee access to the Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

(a) “**Aggregated Statistics**” means data and information related to Franchisee’s use of the Services that is used by HFC in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

(b) “**Authorized User**” means Franchisee’s employees, consultants, contractors, and agents who are authorized by Franchisee to access and use the Services under the rights granted to Franchisee pursuant to this Agreement.

(c) “**Franchise Agreement**” means the franchise agreement between Franchisee and the applicable HFC subsidiary franchisor.

(d) “**Franchisee Data**” means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Franchisee or an Authorized User through the Services. The Franchisee Data forms part of HFC’s IP.

(e) “**Documentation**” means HFC’s user manuals, handbooks, and guides relating to the Services provided by HFC to Franchisee either electronically or in hard copy form/end user documentation relating to the Services available on HFC’s digital asset management platform.

(f) “**HFC IP**” means the Services, the Documentation, the Franchisee Data and any and all intellectual property provided to Franchisee or any Authorized User in connection with the foregoing. For the avoidance of doubt, HFC IP includes Aggregated Statistics and any information, data, or other content derived from HFC’s monitoring of Franchisee’s access to or use of the Services.

(g) “**Services**” means the software-as-a-service offering described in **Exhibit A**.

(h) “**Third-Party Products**” means any third-party products described in **Exhibit A** provided with or incorporated into the Services.

2. Access and Use.

(a) Provision of Access. Subject to the terms and conditions of this Agreement, HFC hereby grants Franchisee a non-exclusive, non-transferable right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Franchisee's internal use. HFC shall provide to Franchisee the necessary passwords and network links or connections to allow Franchisee to access the Services.

(b) Documentation License. Subject to the terms and conditions contained in this Agreement, HFC hereby grants to Franchisee a non-exclusive, non-sublicenseable, non-transferable license to use the Documentation during the Term solely for Franchisee's internal business purposes in connection with its use of the Services.

(c) Use Restrictions. Franchisee shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Franchisee shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d) Reservation of Rights. HFC reserves all rights not expressly granted to Franchisee in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Franchisee or any third party any intellectual property rights or other right, title, or interest in or to the HFC IP.

(e) Suspension. Notwithstanding anything to the contrary in this Agreement, HFC may temporarily suspend Franchisee's and any Authorized End User's access to any portion or all of the Services if: (i) HFC reasonably determines that (A) there is a threat or attack on any of the HFC IP; (B) Franchisee's or any Authorized End User's use of the HFC IP disrupts or poses a security risk to the HFC IP or to any other franchisee or vendor of HFC; (C) Franchisee, or any Authorized End User, is using the HFC IP for fraudulent or illegal activities; (D) subject to applicable law, Franchisee has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (E) Franchisee is in breach of its franchise agreement with HFC's subsidiary franchisor; or (F) HFC's provision of the Services to Franchisee or any Authorized End User is prohibited by applicable law; or (ii) any vendor of HFC has suspended or terminated HFC's access to or use of any third-party services or products required to enable Franchisee to access the Services (any such suspension described in subclause (i), or (ii), a "**Service Suspension**"). HFC shall use commercially reasonable efforts to provide written notice of any Service Suspension to Franchisee and to provide updates regarding resumption of access to the Services following any Service Suspension. HFC shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. HFC will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Franchisee or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, HFC may monitor Franchisee's use of the Services and collect and compile Aggregated Statistics. As between HFC and Franchisee, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by HFC. Franchisee acknowledges that HFC may compile Aggregated Statistics based on Franchisee Data input into the Services. Franchisee agrees that HFC may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Franchisee or Franchisee's Confidential Information.

3. Franchisee Responsibilities.

(a) General. Franchisee is responsible and liable for all uses of the Services and Documentation resulting from access provided by Franchisee, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Franchisee is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Franchisee will be deemed a breach of this Agreement by Franchisee. Franchisee shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

(b) Third-Party Products. HFC may from time to time make Third-Party Products available to Franchisee. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions. The applicable Third Party Products are set forth in **Exhibit A**. If Franchisee does not agree to abide by the applicable terms for any such Third-Party Products, then Franchisee should not install or use such Third-Party Products.

4. Intellectual Property Ownership; Feedback.

(a) HFC IP. Franchisee acknowledges that, as between Franchisee and HFC, HFC owns all right, title, and interest, including all intellectual property rights, in and to the HFC IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products. With respect to Franchisee Data, HFC hereby grants to Franchisee a royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Franchisee Data and perform all acts with respect to the Franchisee Data as may be necessary for Franchisee to conduct its business operations during the term of the franchise agreement between Franchisee and HFC's subsidiary franchisor.

(b) Feedback. If Franchisee or any of its employees or contractors sends or transmits any communications or materials to HFC by mail, email, telephone, or otherwise, suggesting or recommending changes to the HFC IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), HFC is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Franchisee hereby assigns to HFC on Franchisee's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and HFC is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although HFC is not required to use any Feedback.

6. Warranty Disclaimer.

THE HFC IP IS PROVIDED “AS IS” AND HFC HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. HFC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. HFC MAKES NO WARRANTY OF ANY KIND THAT THE HFC IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET FRANCHISEE’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

7. Indemnification.

(a) HFC Indemnification.

(i) HFC shall indemnify, defend, and hold harmless Franchisee from and against any and all losses, damages, liabilities, costs (including reasonable attorneys’ fees) (“**Losses**”) incurred by Franchisee resulting from any third-party claim, suit, action, or proceeding (“**Third-Party Claim**”) that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party’s intellectual property rights, provided that Franchisee promptly notifies HFC in writing of the claim, cooperates with HFC, and allows HFC sole authority to control the defense and settlement of such claim.

(ii) If such a claim is made or appears possible, Franchisee agrees to permit HFC, at HFC’s sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Franchisee to continue use. If HFC determines that neither alternative is reasonably available, HFC may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Franchisee.

(iii) This Section 7(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by HFC or authorized by HFC in writing; (B) modifications to the Services not made by HFC; (C) Franchisee Data; or (D) Third-Party Products.

(b) Franchisee Indemnification. Franchisee shall indemnify, hold harmless, and, at HFC’s option, defend HFC from and against any Losses resulting from any Third-Party Claim that the Franchisee Data, or any use of the Franchisee Data in accordance with this Agreement, infringes or misappropriates such third party’s intellectual property rights and any Third-Party Claims based on Franchisee’s or any Authorized User’s (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment or technology not provided by HFC or authorized by HFC in writing; or (iv) modifications to the Services not made by HFC, provided that Franchisee may not settle any Third-Party Claim against HFC unless HFC consents to such settlement, and further provided that HFC will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 7 SETS FORTH FRANCHISEE'S SOLE REMEDIES AND HFC'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL HFC'S LIABILITY UNDER THIS SECTION 7 EXCEED \$1,000.

8. Limitations of Liability. IN NO EVENT WILL HFC BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER HFC WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL HFC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL TECHNOLOGY FEES PAID TO HFC'S FRANCHISOR AFFILIATE UNDER THE RESPECTIVE FRANCHISE AGREEMENT IN THE ONE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$1,500, WHICHEVER IS LESS.

9. Term and Termination.

(a) Term. The term of this Agreement begins Franchisee first utilizes the Services and automatically terminates upon the expiration or earlier termination of the Franchise Agreement between Franchisee and HFC's subsidiary franchisor.

(b) Effect of Termination. Upon termination of this Agreement, Franchisee shall immediately discontinue use of the HFC IP and Franchisee shall return all copies of the HFC IP.

(c) Survival. Any provision of this Agreement that, by its nature, is intended to survive the termination of this Agreement shall so survive.

10. Miscellaneous.

(a) Entire Agreement. This Agreement and the Franchise Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitute the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between this Agreement and the Franchise Agreement, this Agreement will prevail.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications

hereunder (each, a “**Notice**”) must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall HFC be liable to Franchisee, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond HFC’s reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the County of Orange, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(g) Assignment. Franchisee may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of HFC. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h) Equitable Relief. Franchisee acknowledges and agrees that a breach or threatened breach by of Section 2(c) would cause HFC irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, HFC will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(i) Acceptance. Franchisee accepts the terms of this Agreement by utilizing the Services.

EXHIBIT A

Capitalized terms used but not defined in this Exhibit A have the meaning given to those terms in the Agreement.

A. DESCRIPTION OF SERVICES:

- Touchpoint provides capabilities to help enable franchisees' sales and operations. Key modules include CRM for lead and customer management processes; Order Management for quote to cash processes; and Operations to support backoffice processes.

B. THIRD PARTY PRODUCTS:

- Avalara: Delivers sales and use tax calculation based on local tax rules, rates and jurisdictional boundaries. <http://help.avalara.com>
- Google Maps: Provides an add-on interactive map to help determine the location info for leads, customers, etc. <https://cloud.google.com/map-platforms/terms/>
- Zillow: Provides insight to each (consumers) leads real estate details. <https://www.zillow.com/howto/api/apiterms.htm>
- SmartyStreets: Provides predictive address auto-fill capability to quickly determine the complete address. <https://smartystreets.com/legal/terms-of-service>
- FedEx: Provides authoritative address validation service. https://images.fedex.com/us/developer/product/wsla_corp.pdf
- Twilio: Provides branded texting capability that will support interaction with the consumer during the purchase cycle. <https://www.twilio.com/legal/tos>

