STANDARD TERMS AND CONDITIONS APPLICABLE TO
NCR PAYROLL & HR SOLUTIONS
(“TERMS AND CONDITIONS”)  

Thank you for selecting NCR Payroll & HR Solutions, Inc. (“NCR”). These Terms and Conditions and the Order, along with any addenda or Exhibits, apply to your use of the Services. If there is any inconsistency between these Terms and Conditions and any other document issued by the Customer (i.e. when accepting an Order or in connection with any future dealings), these Terms and Conditions shall prevail in their entirety.

1.0 BACKGROUND. Customer desires to engage NCR and its Affiliates to provide certain Services to Customer as described in an Order. Customer and NCR agree that these Terms and Conditions apply to NCR’s provision of such Services.

2.0 DEFINITIONS. The following terms shall have the meanings described below:

2.1. Additional Terms and Conditions means any terms, as listed on Exhibit A, including any attachments thereto, that apply to certain Hosted NCR Software or the related applications and services.

2.2. Affiliate(s) means any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the entity in question, where the term “control” means the right to exercise, directly or indirectly, more than 50% of the voting interests of such entity.

2.3. Customer means the company or individual named in the Order.

2.4. Customer Equipment means the Customer-owned equipment, Customer-managed networks, and Customer-managed systems and systems interfaces, including associated software.

2.5. Data Center means the physical facility where the System resides.

2.6. Documentation means the following, as they apply to Customer’s configuration: operating, training and reference manuals relating to the use of the Hosted NCR Software and any enhancements, modifications or upgrades thereto, supplied by NCR to Customer pursuant to these Terms and Conditions.

2.7. Exhibits means one or more attached exhibits and attachments thereto which are incorporated into these Terms and Conditions by reference.

2.8. Extreme Service Interruption Event means an event outside the reasonable control of NCR or its subcontractors, licensors or agents that causes a System outage of significant enough nature to trigger NCR’s disaster recovery plan. Events of this type include, but are not limited to, acts of government agency, war, riot, civil unrest, work stoppages, strikes, flood, extreme weather, fire or other natural calamity or Force Majeure Event (as defined in Section 15.0 of these Terms and Conditions). If such an event occurs, NCR will use commercially reasonable efforts to restore service according to NCR’s disaster recovery plan.

2.9. Hosted NCR Software means software applications hosted by NCR and/or provided to Customer pursuant to an Order, which includes Third Party Products, as applicable.

2.10. Hosting Web Site means the internet web site identified by a unique uniform resource locator and operated by NCR in connection with the Hosting Services.

2.11. Order means any purchase order for Services, or an online acknowledgment, subscription or acceptance for use or download for use accepted by Customer.

2.12. Scheduled Downtime means any System downtime occurring within a planned System maintenance window as communicated to Customer. NCR will provide Customer with reasonable prior notice of any Scheduled Downtime via e-mail or NCR’s Hosting Web Site. NCR will seek to minimize the impact of Scheduled Downtime or any unscheduled downtime to the Customer’s business operations. Whenever feasible, NCR will limit Scheduled Downtime to no more than 3 hours in a calendar week.

2.13. Services means the Hosted NCR Software, equipment (if applicable) and/or related products, applications and services listed in the Order or otherwise provided by NCR or its Affiliates in connection therewith.

2.14. System means the infrastructure NCR uses to enable Customer to access and use the Hosted NCR Software via the internet.

2.15. System Availability Monitoring Mechanism means the methodology for measuring and monitoring occurrences of service interruptions, as defined through the use of properly functioning Hosting Web Site monitoring tools to access a system’s monitoring web page from all monitoring points.

2.16. System Downtime means any interruption of access to the Hosting Web Site as measured by the System Availability Monitoring Mechanism. System Downtime specifically excludes (i) any Scheduled Downtime; (ii) inability to access the System resulting from failure in the internet backbone or networks not directly managed by NCR or its subcontractors, licensors or agents; (iii) erroneous System monitoring, in which NCR establishes that the incorrect reporting of the inability to access the System was due to failure in the monitoring mechanism rather than a failure in the System; (iv) an Extreme Service Interruption Event; or (v) any System Downtime caused by Customer.

2.17. System Modification Management Process means the procedures by which upgrades and modifications are made to the System environment. NCR will maintain a System modification management process. This process will include: (i) procedures for notifying Customer of a pending change to the production environment and (ii) procedures for documenting the outcome of changes.

2.18. Third Party Products means the third party products and/or services which are provided to Customer by NCR.

3.0 HOSTED SOLUTIONS/THIRD PARTY PRODUCTS.

3.1. Access to Hosted NCR Software. Subject to these Terms and Conditions and payment of the all fees and charges set forth on an applicable Order, website referencing these Terms and Conditions or otherwise owed to NCR hereunder or otherwise (“Fees”), NCR grants to Customer the non-exclusive and limited right and license to: (i) access and use the Hosted NCR Software via internet connection to the System for Customer’s internal business requirements and performing administrative functions pertaining thereto; (ii) use the Documentation in connection with such rights; and for no other purpose. Except as expressly set forth in these Terms and Conditions, all rights and licenses granted to Customer are nontransferable and nonassignable.

3.2. Installation of NCR Utility/Utilities. In order to facilitate Customer’s access to and use of the Hosted NCR Software as permitted herein, NCR shall use commercially reasonable efforts to remotely install, via the internet, certain NCR proprietary application software, tools, or utilities (the “NCR Utilities”) on the Customer Equipment at each of the Customer locations as may be determined by the mutual agreement of the parties, (the “Customer Locations”). NCR Utilities may be used only in connection with the Hosted NCR Software as set forth in this Section 3.2.

3.3. Additional Terms and Conditions. In addition to the express limited rights granted in Section 3.1 and 3.2 of these Terms and Conditions, Additional Terms and Conditions applicable to a specific Hosted NCR Software, if any, are set forth in Exhibit A to these Terms and Conditions. In the event there is a conflict between these Terms and Conditions and the Additional Terms and Conditions applicable for a particular selected NCR Hosted Software contained in Exhibit A, the Additional Terms and Conditions contained in Exhibit A, as applicable for the particular selected Hosted NCR Software, shall prevail. Except as provided in Sections 3.1 and 3.2 of these Terms and Conditions (and related Exhibit A as applicable), no other rights are granted to Customer in respect of the applicable Hosted NCR Software and NCR Utilities.

3.4. Application Management of Hosted NCR Software. NCR shall establish and maintain NCR’s then-current generally released version of the Hosted NCR Software and the System so that they are available for access and use by Customer in accordance with these Terms and Conditions.

3.5. Hosting Services. NCR shall furnish facilities, equipment, computer programs and services, as specified from time to time by NCR, that NCR deems necessary for operation and maintenance of the System (collectively, the “Hosting Services”).

3.6. Use of Hosting Providers. Customer acknowledges and agrees that NCR may contract with one or more third parties to perform all or any portion of the Hosting Services provided herein. However, that NCR shall remain responsible for the performance of the Hosting Services consistent with these Terms and Conditions. For purposes hereof, any such third party shall be referred to as a “Hosting Provider”. Customer acknowledges and agrees that NCR may use its remote secure access product (or a successor product) in order to access Customer’s systems and agrees that NCR may load such product(s) and keep them updated on Customer’s system as needed. NCR may gather statistical information about Customer’s sites including, without limitation, hardware information, software versions and feature usage, and use such information for valid business purposes such as product analysis and billing information. Additionally, NCR and/or NCR subcontractors providing support services to Customer may access configuration and operational data in connection with providing such support services.

3.8. Provision of Information. Customer agrees to provide NCR with all requested information and documentation pertaining to Customer’s employees required for NCR to perform the services under the Order and these Terms and Conditions (“Customer Information”) in the time and manner specified by NCR. Customer acknowledges that NCR may be required to obtain documents necessary to verify the identity of Customer or its employees pursuant to applicable federal and/or state statutes or regulations. Customer acknowledges that Customer is responsible for any delayed remittance of wages, taxes, garnishments, and additional fees incurred as a result of its failure to provide timely and accurate Customer Information. NCR is not required to obtain authorization from Customer to act on Customer Information. NCR may and will assume that all such Customer Information provided to NCR by Customer, its designee or another existing or former service provider is complete and accurate, and NCR is under no duty to question the completeness or accuracy of any Customer Information. NCR will not be responsible for errors that result from NCR’s reliance on Customer Information or for any data entered by Customer. Customer will review all reports and documents provided or made available by NCR and inform NCR of any inaccuracies within three (3) business days of receipt or availability. In the event

NCR Payroll & HR Solutions, Inc.  NCR Confidential Information
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Customer is upgrading, migrating or converting from a prior technology system or payroll platform provided by NCR, NCR will utilize (as a point of reference or guide) any former configuration or historical information but cannot, and will not, assume such configuration or information is correct without testing and review by Customer. Customer will provide a written document requested by NCR in order to initiate and provide the Hosted NCR Software and related services.

3.9. Exclusions and Limitations.

3.9.1. NCR is not responsible for acts or omissions of Customer or its representatives that result in failure of or disruption to the System or access to the Hosted NCR Software.

3.9.2. Customer agrees that neither Customer nor its representatives shall attempt in any way to circumvent or otherwise interfere with any security precautions or measures of NCR relating to the Hosted NCR Software or the System. Any such attempts may, among other things, cause failure of, or disruption to, the System or the Hosted NCR Software. Any failure of or disruption to the System or the Hosted NCR Software resulting from a violation of this Section 3.9 shall not be considered Scheduled Downtime.

3.9.3. Customer will be responsible, and will indemnify NCR, for any damage or service interruptions caused by Customer or its representatives in violation of this Section 3.9 including, without limitation, any damage to any NCR equipment, or equipment managed for NCR by another third party in connection with the Hosting Services provided by NCR hereunder.

3.9.4. Customer agrees to compensate NCR, at its then-current professional services rates, for all remedial services or losses resulting from any violations of this Section 3.9.

3.9.5. NCR does not control the flow of data to or from the network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer’s connection to the internet (or portions thereof). Although NCR will use commercially reasonable efforts to take the action it deems appropriate to remedy and avoid such events, NCR cannot guarantee that such events will not occur. Accordingly, NCR disclaims any and all liability resulting from or related to such events to the extent such events are not directly caused by NCR or any of its subcontractors or agents.

3.9.6. NCR is not responsible for unauthorized access to the Hosted NCR Software through Customer maintained usernames and passwords provided such unauthorized access was not directly caused by NCR or any of its subcontractors or agents.

3.9.7. NCR’s performance obligations specifically exclude the following: (i) non-production or test web sites or systems, performance of public or private internet backbones or networks not directly managed by NCR; (ii) outages or issues caused by Customer’s negligence, by Customer’s failure to follow documented procedures for the use of the Hosted NCR Software; (iii) outages or issues caused by or resulting from Customer Equipment, or outages or issues occurring as a result of actions taken by NCR at the request or direction of Customer; (iv) outages initiated by NCR at the request or direction of Customer for backup, maintenance or other purposes; and (v) any professional or supplemental services outside the scope of the services to be provided hereunder or under these Terms and Conditions, including but not limited to: (a) content management, (b) development or maintenance of Customer’s intranet web site; (c) implementation, management and support of non-standard interfaces; (d) custom data conversion services; (e) system configuration services; (f) application data maintenance (such as, but not limited to, pricebook, vendor, site, and product information maintenance); (g) custom reporting requirements outside of those offered in the Hosted NCR Software; and (h) hosting of any functionality other than the then-current functionality within the Hosted NCR Software.

3.9.8. NCR is not responsible for Customer’s failure to adhere to and fully comply with the applicable application management and hosting policies and procedures that are notified to Customer.

3.9.9. Customer agrees that neither NCR nor any of its Affiliates are rendering legal, tax, accounting, or investment advice in connection with the Services provided under any Order or these Terms and Conditions, nor will NCR or its Affiliates be deemed a fiduciary of Customer, a Plan Administrator or a Plan Fiduciary (as such terms are defined in ERISA), or the employer or joint employer of Customer’s employees. Neither NCR nor its Affiliates will be responsible for Customer’s compliance with, nor will it provide legal or other financial advice to Customer, with respect to federal, state, or local statutes, regulations, or ordinances, including, but not limited to, the Fair Labor Standards Act or any state equivalent. Customer agrees to comply with any and all applicable federal, state, and local laws or ordinances.

3.9.10. The Hosting Web Site may contain hyperlinks to external internet sites, which are not under the control of NCR. NCR assumes no responsibility for the content or accuracy of any information contained within such internet sites. NCR’s inclusion of such hyperlinks does not constitute endorsement or sponsorship of, or affiliation with, the owners of such internet sites, nor the information, products, services and trademarks contained therein.

3.9.11. In order to maintain reasonable production data storage requirements and to ensure proper performance of the System, NCR may implement, in its sole discretion, limited data archival policies and procedures including periodic data purging of the System. Customer will be responsible for any and all retention of data, records or information required by law.

3.9.12. Any downtime of the System which results from circumstances reasonably believed by NCR to pose a significant threat to the normal operation of the Hosting Web Site, the System or the Hosted NCR Software, or access to or integrity of Customer data (e.g. hacker or virus attack) shall not count as System Downtime under these Terms and Conditions. In the event of such an interruption or shutdown, NCR will attempt to return the Hosting Services to normal operation as soon as reasonably practicable.

3.9.13. Customer acknowledges and agrees that neither NCR nor its Affiliates will be liable for any errors or delays in Hosted NCR Software, or for any actions taken in reliance thereon.

3.10. Third Party Products. With respect to any Third Party Products provided by NCR, Customer acknowledges and agrees that its right to use any such Third Party Products may be specified on the agreement provided by the appropriate supplier of such Third Party Products. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY AND ALL THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT A WAIVER OF ANY WARRANTY. ACCORDINGLY, NCR EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY NATURE WITH RESPECT TO ANY THIRD PARTY PRODUCTS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF ANY THIRD PARTY RIGHTS. WITHOUT LIMITING THE FOREGOING, NCR MAKES NO CLAIMS, PROMISES OR GUARANTEES ABOUT THE SECURITY, IMMUTABILITY, TIMELINESS, COMPLETENESS, ACCURACY, QUALITY, RELIABILITY, PERFORMANCE, RESULTS OR ANALYSIS PROVIDED BY THE THIRD PARTY PRODUCTS, AND EXPRESSLY FURTHER DISCLAIMS LIABILITY FOR ERRORS AND OMISSIONS IN THE RESULTS AND ANALYSIS PROVIDED BY THE THIRD PARTY PRODUCTS.

4. CUSTOMER OBLIGATIONS. To facilitate NCR’s provision of the Hosting Services hereunder and Customer’s access and use of the Hosted NCR Software hereunder, Customer agrees to undertake the following:

(i) Provide and maintain the Customer Equipment at each of the Customer Locations in accordance with the minimum standards established by NCR, which include a Windows-based PC includes a Windows operating system actively supported by Microsoft Corporation, a version of Microsoft Internet Explorer actively supported by Microsoft Corporation, and Customer Equipment maintained in good working order in accordance with the minimum standards recommended by the manufacturer;

(ii) Provide and maintain access to the internet at each of the Customer Locations through a competent internet service provider (ISP), maintaining telephone or other telecommunication services necessary to connect each of Customer’s Locations to Customer’s ISP;

(iii) Abide by the security procedures specified by NCR and perform reasonable and customary security practices to preclude attempts to circumvent any security procedures or utilize any unauthorized systems in an attempt to access the data of another Customer;

(iv) Make all reasonable efforts to assist NCR in identifying, isolating and replicating issues found in the System;

(v) Customer shall be solely responsible for the manner in which Customer and Customer’s users use the System and the Hosted NCR Software. Customer shall ensure that only authorized users have access to any user identifications or passwords for use in connection with the System and the Hosted NCR Software and that such authorized users shall not disclose such identifications or passwords to any other individual. Customer acknowledges and agrees that it is solely responsible for strictly maintaining the confidentiality and integrity of such identifications and passwords and Customer shall indemnify and hold harmless NCR from and against any liability, damages, or costs arising from Customer’s failure to comply with this obligation including, but not limited to, improper or unauthorized account access using Customer’s user identifications or passwords, provided such identifications or passwords were not improperly disseminated by NCR or any of its agents or representatives. Customer shall notify NCR immediately in writing if the security or integrity of an identification or password has been compromised.

5.0 FEES AND PAYMENT.

5.1. Customer shall pay NCR the Fees. All payment obligations are non-cancelable and non-refundable. Unless otherwise specified on the applicable Order or Section 5.4 below, invoices issued by NCR hereunder are due within 30 days after the invoice is issued by NCR. Payment which are not received within 30 days of the invoice date shall bear interest at the lesser of the maximum amount chargeable by law or 1½% per month commencing with the date payment was due.

5.2. The Fees payable by Customer hereunder are net amounts to be received by NCR, exclusive of all taxes, duties, customs fees and any similar charges or fees, including but not limited to sales, use, withholding, excise, value added, and ad valorem taxes, and are not subject to offset or reduction because of any costs, expenses, taxes, duties, customs fees, assessments or liabilities incurred by Customer or imposed on NCR in the performance of these Terms and Conditions or otherwise due as a result of these Terms and Conditions. If included, these are estimates only for budgeting purposes and Customer shall at all times be responsible for the payment of all such taxes, duties, customs fees and similar charges and fees, whether directly to the appropriate taxing authority, to NCR or by reimbursing NCR for payments it made on Customer's behalf. This Section 5.2 shall not apply to taxes based solely on NCR's income. If Customer is exempt from paying sales tax, Customer agrees to provide a valid resale, exemption or direct pay permit to NCR upon submission of these Terms and Conditions and in any event prior to placing the initial Order hereunder.

5.3. NCR may amend, revise, change, or supplement the Fees by giving Customer thirty (30) days' notice of any such amendment, revision, change, or supplementation. Additionally, NCR reserves the right to change Customer’s credit terms at any time, effective on written notice to Customer. NCR reserves the right to withhold performance of any of its obligations under these Terms and Conditions, including the right to suspend or terminate the Hosting Services, or any part thereof, and to disable Customer’s access to the Hosted NCR Software, in the event of Customer’s default on its payment obligations hereunder.

5.4. Customer irrevocably authorizes NCR to initiate an electronic funds transfer (“EFT”) (including, without limitation, origination of anACH debit or reverse wire payment order) from Customer’s designated bank account(s) for all liabilities, payroll tax, direct deposit, Fees and any amounts due to NCR pursuant to any Order and these Terms and Conditions.
6.3.1. NCR will, at its expense, defend Customer against any IP Claim. NCR will also pay the damages, costs, and attorneys’ fees that are awarded against Customer in a final, non-appealable court judgment for the IP Claim, or in any copy thereof, including all worldwide copyrights, trade secrets, patent rights and any other proprietary information and confidential information rights therein. In connection therewith, Customer agrees at all times hereafter to keep the NCR Utilities and the Hosted NCR Software free of all security interests, liens, encumbrances, mortgages and claims whatsoever, and Customer agrees that neither it nor anyone at its direction shall file a financing statement, mortgage, notice of lien, deed of trust, security agreement or any other instrument creating or giving notice of an encumbrance or charge against the NCR Utilities or the Hosted NCR Software.

6.3. Indemnification.

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10.0 NONDISCLOSURE AND CONFIDENTIALITY

10.1. Each party may disclose to the other party certain Trade Secrets and Confidential Information of such party or its Affiliates, suppliers, or customer. For purposes of these Terms and Conditions, “Trade Secrets” means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertained by, proper means from any third party lawfully in possession thereof and having no obligation to keep such information confidential; (b) is not information that is publicly known or lawfully in the possession of the Recipient without obligations to keep such information confidential; (c) is not the information communicated was already known to Recipient, without obligations to keep such information confidential at the time Recipient received such information from a third party; (d) the information communicated was received by Recipient in good faith from a third party otherwise than as expressly permitted in these Terms and Conditions; (e) the information communicated was independently developed by Recipient without reference to the information disclosed by Owner; (f) written information was received by Recipient in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (g) the information communicated was provided by a third party who has become known to the Recipient other than by breach of these Terms and Conditions; (h) the information established that the information was independently developed without reference to the Proprietary Information; (i) the recipient obtains the prior written approval of Owner to disclose the information; or (j) the information is required by law, regulation, judicial process or order of a governmental authority, provided the Recipient gives the Owner prompt written notice of such requirement so that Owner may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 10.0.

10.2. Customer acknowledges that the NCR Utilities, Hosted NCR Software and Documentation are NCR’s Proprietary Information, and Customer agrees to treat such information as Proprietary Information hereunder, whether such party is NCR or Customer; and “Recipient” refers to the party receiving any Proprietary Information hereunder, whether such party is NCR or Customer.

10.3. NCR may use and disclose transactional and system configuration information in the form of anonymous, aggregate usage statistics that NCR derives from Customer’s Locations or Operations, as expressly permitted in these Terms and Conditions, (ii) if Customer violates any applicable Order (the “Effective Date”). Unless earlier terminated as provided for in Section 13.2 of these Terms and Conditions or on an Order, these Terms and Conditions remain in effect for the duration of the term initial Order and/or any other applicable Order (the “Term”). The “Term” and any renewal or extension of the Term remain subject to automatic renewal for subsequent terms equivalent to the Renewal Term specified in the Order unless the Customer provides NCR 60 days’ notice prior to the expiration of the then current term. The “Start Date” is the date that the Customer processes its first payroll with NCR Software and the System to Customer’s employees and maintaining adequate supervision of such employees.

13.0 TERM AND TERMINATION

13.1. These Terms and Conditions are effective as of the date the Customer signs the applicable Order (the “Effective Date”). Unless earlier terminated as provided for in Section 13.2 of these Terms and Conditions or on an Order, these Terms and Conditions and Conditions remain in effect for the duration of the term initial Order and/or any other applicable Order (the “Term”). The “Term” and any renewal or extension of the Term remain subject to automatic renewal for subsequent terms equivalent to the Renewal Term specified in the Order unless the Customer provides NCR 60 days’ notice prior to the expiration of the then current term. The “Start Date” is the date that the Customer processes its first payroll with NCR Software and the System to Customer’s employees and maintaining adequate supervision of such employees.

13.2. These Terms and Conditions may be terminated:

(a) by NCR, (i) in the event that Customer fails to pay any amounts due to NCR, which failure is not cured within 10 days.
(ii) with 60 days’ notice to Customer; or
(iii) without notice should Customer fail to comply with any material term or condition of these Terms and Conditions.

(b) by either party, in the event that the other party fails to discharge any obligations or remedy any default under these Terms and Conditions for a period continuing more than 30 days after the aggrieved party shall have given the other party written notice specifying such failure or default and that such failure or default continues to exist as of the date upon which the aggrieved party gives such notice so terminating these Terms and Conditions; or

(c) by either party, in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium.

13.3. Except as expressly provided elsewhere in these Terms and Conditions or an Order, Customer shall pay NCR a liquidated damages amount calculated as described in Section 13.3 (the “Early Termination Fee”) in the following manner: in the event of the failure to cure any default under the then-current term (i) an Order and/or these Terms and Conditions; or (ii) any individual service in an Order that has a minimum commitment stated in such Order. The Early Termination Fee for termination of an Order and/or this Agreement prior to the expiration of the then-current term is an amount equal to the product of (a) the average monthly amount of Fees paid to NCR pursuant to all Orders over the six-month period immediately preceding the termination; multiplied by (b) the number of months remaining in the then-current term. The Early Termination Fee for the termination of an individual service in an Order that has a minimum commitment stated in the Order is an amount equal to the product of (a) the average monthly amount of Fees paid to NCR for the applicable service; multiplied by (b) the number of months remaining in the then-current commitment period. Customer and any Affiliates agree that the Early Termination Fee is not a penalty, but rather is a reasonable estimate of the damages caused by such early termination, which amount would otherwise be difficult to calculate with precision. The Early Termination Fee is in addition to, and not in lieu of, any other damages or sums to which NCR may be entitled unrelated to the early termination.

13.4. Customer acknowledges and understands that should it cease for any reason to pay any Fees due hereunder, Customer shall be deemed to have voluntarily terminated its right to receive the Hosting Services and its right to access and use the Services and these Terms and Conditions and Conditions shall be considered null and void and of no further force or effect, except for obligations of the parties that survive termination herein including, without limitation, Customer’s payment obligations. Regardless of the method of termination, Customer agrees to pay all Fees and charges due under these Terms and Conditions through the applicable date of termination, including without limitation any applicable Early Termination Fee. Notwithstanding the foregoing and in addition, NCR may disable or suspend Customer’s access to the Services or otherwise terminate these Terms and Conditions without notice (i) if Customer uses Services for any purpose other than as expressly permitted herein; (ii) if Customer is in default hereunder; (iii) if Customer fails to comply with any of the applicable national, federal, state or local law, regulation or ordinance in connection with its use of the
14.0 DISPUTE RESOLUTION

14.1 Each party agrees to give the other prompt written notice of any claim, controversy or dispute arising under or related to these Terms and Conditions, an order or any product or service, and both parties agree to engage in good faith discussions to resolve the matter. If that fails to resolve the matter promptly, either party may request the other to participate in mediation before a mutually agreed mediator. Any controversy, claim or dispute which is not resolved through the procedures set forth above within 60 days (or such longer period as the parties may agree) will be resolved by arbitration before a sole arbitrator who is an attorney, under the then-current Commercial Arbitration Rules of the American Arbitration Association. The duty and right to arbitrate will extend to any employee, officer, director, shareholder, agent, or Affiliate, of a party to the extent that right or duty arises through a party or is related to these Terms and Conditions, an order or any product or service. The decision and award of the arbitrator will be final and binding, and the award rendered may be entered in any court having jurisdiction. The arbitrator is directed to hear and decide potentially dispositive motions in advance of a hearing to the merits by applying the applicable law, law in unconstrued facts and documents. The arbitration will be held in Atlanta, Georgia. This Section 14.1 and the obligation to mediate and arbitrate will not apply to claims for misuse or infringement of a party’s intellectual property or Confidential Information. A party may at any time seek an injunction or other equitable relief in aid of arbitration. The arbitrator will not have authority to award punitive damages, non-compensatory damages, or any damages other than direct damages, nor have the authority to award direct damages inconsistent with the limitations and exclusions set forth in these Terms and Conditions.

14.2 Neither party may bring a claim more than 2 years after the underlying cause of action first accrues. In addition, Customer agrees to bring any administrative discrepancies, including but not limited to, invoice errors, shipment discrepancies and return variances, to NCR’s attention in writing within 90 days from the date of the incident’s occurrence (e.g. receipt of goods). Customer’s failure to raise an administrative discrepancy with appropriate supporting documentation within this time period will result in the waiver of Customer’s right to dispute the incident at a future date.

14.3 Each party will bear its own attorneys’ fees and other costs associated with the negotiation, mediation, and arbitration provided for by this Section 14.0, except that costs and expenses of arbitration other than attorneys’ fees will be paid as provided by the rules of the American Arbitration Association. If a court or other arbitral tribunal determines that the arbitration is necessary, the party who unsuccessfully opposes such proceedings will pay all associated costs, expenses, and attorneys’ fees that are reasonably incurred by the other party.

14.4 In order to facilitate the resolution of controversies or claims between the parties, the parties will keep them confidential, including details regarding negotiations, mediation, arbitration, and settlement terms.

14.5 Customer acknowledges that its breach of any term of these Terms and Conditions relating to the use or protection of NCR intellectual property will cause NCR or its licensors irreparable harm and agrees that in the event of such breach NCR will be entitled to immediate injunctive relief without the necessity of posting a bond, together with all other remedies available at law or in equity.

15.0 FORCE MAJEURE. Other than for non-payment of monies payable hereunder, neither party will be liable for any default or delay in the performance of its obligations hereunder: (i) if and to the extent that such default or delay arises out of causes beyond its reasonable control, including default or delays of the other party, acts of God, acts of war, acts of governmental authority, acts of public enemy, insurrection, earthquakes, fires, cable cuts, floods, terrorism, and riots (each, a “Force Majeure Event”) and (ii) provided such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternative sources, work-around plans or other means. Upon the occurrence of a Force Majeure Event, each party shall be excused from further performance or observance of the obligation(s) affected so long as such circumstances caused by the Force Majeure Event prevail and the parties use their reasonable efforts to promptly recommence performance or observance of said obligation(s). The party claiming excuse by Force Majeure so affected in its performance will immediately notify the other by telephone (to be confirmed in writing within 5 days of the inception of the Force Majeure Event) and describe at a reasonable level of detail the circumstances causing such delay.

16.0 RELATIONSHIP OF PARTIES. These Terms and Conditions shall not be construed to create any employment relationship, partnership, joint venture or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party.

17.0 MARKETING. Customer agrees that NCR may reference Customer’s execution of these Terms and Conditions and its status as a user of the Services in product literature, advertisements, articles, press releases, marketing literature, presentations and the like.

18.0 BINDING EFFECT. These shall be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by these Terms and Conditions.

19.0 ASSIGNMENT. Except as otherwise set forth in these Terms and Conditions, these Terms and Conditions and all rights and obligations may not be assigned in whole or in part by either party without the prior written consent of the other, except that NCR may assign these Terms and Conditions to one or more of its Affiliates and may use subcontractors to fulfill its obligations. A transfer that is not in compliance with this Section 19.0 shall be null and void.

20.0 GOVERNING LAW. New York law governs these Terms and Conditions, transactions occurring under it, and the relationships created by it, except for its laws regarding conflicts of law and arbitrability; the Federal Arbitration Act will govern all issues of arbitrability.

21.0 NON-SOLICITATION. Customer agrees not to approach or employ NCR personnel to work for Customer in any capacity for a period of at least 12 months after such personnel has left the employment of NCR, except with NCR’s express written consent.

22.0 MISCELLANEOUS

22.1 No delay or failure in exercising any right hereunder and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of these Terms and Conditions shall constitute a consent to any prior or subsequent breach. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of these Terms and Conditions shall be valid and enforceable to the fullest extent permitted by applicable law. All notices required to be given hereunder shall be given in writing delivered by any means which provides written evidence of the date received, addressed to the signatory at the address set forth above, or such other person and address as may be designated from time to time in writing. All notices shall be deemed given at the time receipt is evidenced. Customer agrees that NCR may revise these Terms and Conditions at any time during the term of these Terms and Conditions; provided that if NCR makes any revisions, NCR will provide notice to Customer of such revisions, which notice may be given by any of the following means: (i) by the posting of a notice on the web site for the Services, (ii) by the posting of a notice on Customer’s invoice or Order, (iii) by sending an e-mail to the e-mail address that NCR has on file for Customer’s primary contact, or (iv) by any other electronic or non-electronic means that NCR believes is reasonably likely to reach Customer. Unless Customer within 10 days after delivery of such notice by NCR provides written notice to NCR that Customer elects to terminate these Terms and Conditions, such provisions shall thereafter be effective under these Terms and Conditions, and continued use of the Services after delivery of such notice and the lapse of 10 days thereafter without Customer providing a written termination notice to NCR shall be deemed to be acceptance of such revisions and these Terms and Conditions as so revised. Both parties acknowledge that this is an arms-length transaction or relationship. There exists no implied or otherwise unstated covenants, rights or obligations by, or of against either party.

22.2 Customer acknowledges that it has read, understands and agrees to be bound by these Terms and Conditions. Further Customer agrees that these Terms and Conditions, together with any Exhibits and other applicable NCR agreements referencing these Terms and Conditions and expressly made a part hereof that are duly signed by the parties will be the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of these Terms and Conditions.

22.3 Customer acknowledges that certain Services may be provided by an Affiliate of NCR and, in such cases, such Affiliate will be deemed to be a third party beneficiary of NCR’s rights under the Terms and Conditions with full rights to enforce such rights against Customer with respect to such Services.
EXHIBIT A
ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO CERTAIN HOSTED NCR SOFTWARE

iSolved Terms
In connection with Customer’s use of any products or services provided by NCR’s licensor, iSolved North America, LLC (“iSolved”), the following shall apply:

a) Customer agrees to be bound by the Hosted Service Terms that Customer accepts when Customer enters the iSolved application the first time.

b) iSolved is a third party beneficiary of NCR’s rights under the Terms and Conditions with full rights to enforce such rights against Customer. NCR is not a representative or agent of iSolved, has no legal authority to act on behalf of or bind iSolved to any agreement and the Terms and Conditions do not create any legal or binding obligations between iSolved and Customer. Customer disclaims any and all warranties, liabilities or claims against iSolved and irrevocably releases iSolved from any and all liabilities for any and all damages, whether direct or indirect, incidental or consequential, arising from any iSolved products.

c) Customer grants iSolved revocable, non-exclusive, non-transferable, royalty-free limited license, with no right to sublease, to use Customer’s trademarks and service marks for appropriate purposes concerning Hosted NCR Software or network. iSolved may list Customer logos and information on its website.

Equifax – The Work Number Terms
In connection with Customer’s use of any products or services provided by NCR’s licensor, Equifax, the following shall apply:

a) Customer authorizes and directs NCR to furnish employment and income information about Customer’s employees (including but not limited to name, Social Security number, date of birth, dates of employment, position(s) held, and salary information) (“Payroll Information”) to Equifax Workplace Solutions (EWS) on Customer’s behalf for purposes of EWS providing employment and income verification services pertaining to Customer’s employees to assist (i) Customer, (ii) employees of Customer, and (iii) commercial, private, non-profit and governmental entities seeking to verify an employee’s employment and/or income (“Verifiers”). Customer agrees to provide Payroll Information to NCR on a regular basis for provision to EWS on Customer’s behalf. Customer shall provide current and accurate Payroll Information in a format and manner specified by NCR and Customer agrees to promptly correct and update such Payroll Information. Failure to correct incorrect or improperly formatted Payroll Information may result in additional fees. For a manual verification, EWS when requested by Verifiers, and as Customer’s sole agent, will require employment verifications via phone, fax, or automated request as agreed upon by the parties, and Customer will provide Payroll Information to EWS upon request through a provided web interface. Customer agrees that EWS may use Customer’s name and logo in routine communications that EWS undertakes to Verifiers, to inform Verifiers of participation by Customers in the Service in order to serve Customers more efficiently and to reduce calls to Customer from Verifiers.

b) Customer understands and agrees that such Payroll Information may be included in consumer reports furnished by EWS and that Customer is a “furnisher” of information for purposes of the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et. seq., its implementing regulations and similar state law requirements. Customer agrees comply with all requirements applicable to furnishers under such laws and regulations. Customer acknowledges receipt of the Consumer Financial Protection Bureau’s “Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA”. See Exhibit B.

c) Customer understands and agrees that such furnishing of Payroll Information to EWS shall continue for the duration of the Agreement, unless services are terminated by the NCR or by EWS or if Customer elects in writing to opt-out. If Customer wishes to opt-out of furnishing Payroll Information to EWS and receipt of the related verification services EWS provides, Customer may do so by notifying NCR in writing at EWSOptOut.Notice@ncr.com. Upon Customer’s written request, NCR shall request that EWS destroy or purge Customer’s data from EWS’s production database. Customer understands and agrees that notwithstanding anything in the Agreement to the contrary EWS shall have the right to retain copies of the data for audit purposes, dispute resolution, and to fulfill retention requirements. EWS also may retain such information on backup media until such media is re-used or destroyed.
NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C 1681s02. State law may impose additional requirements on furnishers. All furnishers of information to CRAs should become familiar with the applicable laws and may want to consult with their counsel to ensure that they are in compliance. The text of the FCRA is available at the website of the Consumer Financial Protection Bureau (CFPB): www.consumerfinance.gov/learnmore. A list of the sections of the FCRA cross-referenced to the U.S. Code is at the end of this document.

Section 623 imposes the following duties upon furnishers:

**Accuracy Guidelines**
The FCRA requires furnishers to comply with federal guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. Federal regulations and guidelines are available at www.consumerfinance.gov/learnmore. Section 623(e).

**General Prohibition on Reporting Inaccurate Information**
The FCRA prohibits information furnishers from providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a)(1)(A) and (a)(1)(C).

**Duty to Correct and Update Information**
If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must promptly provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a)(2).

**Duties After Notice of Dispute from Consumer**
If a consumer notifies a furnisher, at an address specified for the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to the CRAs. Section 623(a)(1)(B).

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a)(3).

Furnishers must comply with federal regulations that identify when an information furnisher must investigate a dispute made directly to the furnisher by a consumer. Under these regulations, furnishers, must complete an investigation within 30 days (or 45 days, if the consumer later provides relevant
additional information) unless the dispute is frivolous or irrelevant or comes from a “credit repair organization.” Section 623(a)(8). Federal regulations are available at www.consumerfinance.gov/learnmore. Section 623(a)(8).

**Duties After Notice of Dispute from Consumer Reporting Agency**

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

- Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by the consumer. Sections 623(b)(1)(A) and (b)(1)(B).
- Report the results to the CRA that referred the dispute, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that compile and maintain files on a nationwide basis. Section 623(b)(1)(C) and (b)(1)(D).
- Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provided relevant additional information to the CRA). Section 623(b)(2).
- Promptly modify or delete the information, or block its reporting. Section 623(b)(1)(E).

**Duty to Report Voluntary Closing of Credit Accounts**

If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnished information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account closed. Section 623(a)(4).

**Duty to Report Dates of Delinquencies**

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the year of the commencement of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer’s file. Section 623(a)(5).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date previously reported by the creditor. If the creditor did not report this date, they may comply with the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes the date when the account was placed for collection, charged to profit or loss, or subjected to any similar action. Section 623(a)(5).

**Duties of Financial Institutions When Reporting Negative Information**

Financial institutions that furnish information to “nationwide” consumer reporting agencies, as defined in Section 603(p), must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a)(7). The CFPB has prescribed model disclosures, 12 CFR Part 1022, App. B.

**Duties When Furnishing Medical Information**

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher’s agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports of this fact. Section 623(a)(9). This notice will enable CRAs to comply with their duties under Section 604(g) when reporting medical information.

**Duties When ID Theft Occurs**
All furnishers must have in place reasonable procedures to respond to notifications from CRAs that information furnished is the result of identity theft, and to prevent refurnishing the information in the future. A furnisher may not furnish information that a consumer has identified as resulting from identity theft unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623(a)(6). If a furnisher learns that it has furnished inaccurate information due to identity theft, it must notify each CRA of the correct information and must thereafter report only complete and accurate information. Section 623(a)(2). When any furnisher of information is notified pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher may not sell, transfer, or place for collection the debt except in certain limited circumstances. Section 615(f).

The CFPB’s website, www.consumerfinance.gov/learnmore, has more information about the FCRA, including publications for business and the full text of the FCRA

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.: