

## NCR SILVER MERCHANT AGREEMENT

**Last Updated February 10, 2021**

This Agreement between you and NCR Corporation or one of its designated affiliates (“NCR”) governs your use of the NCR Silver<sup>®</sup> Software as a Service suite of applications (“Service”), the related hardware (“Hardware”) and the user application software and updates (“Software”) that NCR provides you in connection with the Service (together, “Products”) you purchase from NCR or from an authorized NCR reseller (“Reseller”). Payment processing services are not covered by this Merchant Agreement. The additional terms stated in the attached Exhibits and at the [NCR Silver web site](#) (“Web Site”) and the back office account administration portal NCR provides to you as part of the Service (“NCR Silver Account Portal”), are incorporated by reference. If you purchase Products through a Reseller, then the pricing, invoicing and credit terms between you and the Reseller will apply to your financial obligations to the Reseller for the Products. NCR may make updates and changes to this Agreement or any of the additional terms referenced above at any time. Such changes will be effective 30 days after notice is provided to you (including by email). You may elect not to accept an update or change by canceling your subscription to the Service within such thirty day period, subject to the terms of this Agreement.

### 1. The Service

1.1 Subject to your compliance with this Agreement and your timely meeting of the financial terms, including payment of the applicable subscription fees and charges stated on the Web Site or those you agreed to in writing with NCR or with a Reseller, NCR authorizes you to access the Service for your internal use on your own behalf and not for the benefit of any third party. This access right is non-exclusive and non-transferable and will end when this Agreement expires, is terminated or cancelled. NCR may cancel this Agreement and the Service in accordance with the terms set forth in this Agreement even if you purchase Products through a Reseller.

1.2 NCR will use commercially reasonable efforts to make the Service available to you 24 hours per day via Internet access, other than for interruptions due to service maintenance and upgrades, system failure, system backup and recovery, and for causes beyond NCR’s control. In order to maintain reasonable production data storage requirements and to ensure proper performance of the Service, NCR may implement, in its sole discretion, limited data archival policies and procedures including periodic data purging of the hardware, software, or other systems NCR uses to provide the Service.

1.3 Hardware. NCR may offer you the option to purchase or subscribe to Hardware.

1.3.1 Subscribed Hardware. Title to subscribed Hardware shall at all times remain with NCR and if NCR requires a label or other indicator of NCR’s interest to be placed on the Hardware then you will so apply the label or not remove any such label already affixed to the Hardware. Upon termination of the Service for any reason, you will immediately return to NCR of all NCR property affected by such termination (including, but not limited to, the subscribed Hardware, the NCR Software, Documentation, and all proprietary information of NCR, together with all copies thereof). If any NCR property is not returned to NCR in good condition and working order after the termination of this Agreement, NCR reserves the right to charge you the then current purchase or license list price charged by NCR for such unreturned items. Prior to returning the NCR property, You shall be solely responsible for backing-up all of Your data and information on the NCR property and deleting such data and information from the NCR property as necessary. It is your responsibility to remove any proprietary, confidential or other sensitive data stored on the subscribed Hardware prior to returning it to NCR. NCR is not responsible for the use or misuse of data stored on subscribed Hardware that has been return. Upon termination of this Agreement and receipt of

returned NCR property, NCR, in its sole and absolute discretion, may purge all such data and information. In any collection action, You agree to be liable to NCR for NCR's costs of collection, including expenses and reasonable attorneys' fees.

1.3.2 Hardware Purchased from NCR. Title and risk of loss to Hardware purchased from NCR shall pass to You upon placement with a carrier for shipment by NCR. Certain Hardware may be eligible for financing under NCR's Extended Payment Program detailed below.

1.4 The Software is licensed to you subject to any terms and conditions presented when you downloaded it from a source authorized by NCR, as well as those contained in this Agreement. If there is a conflict, this Agreement will control. You are licensed to use the Software only with the Service, and your license will end when your subscription to the Service ends. The Software is copyrighted and licensed, not sold, and is NCR's confidential and unpublished information. You will retain any copyright notices and proprietary legends on all copies of the Software and the media on which it is delivered. Any attempt to transfer the Software is void and will automatically cause your license to end.

1.5 You are licensed to possess and use only the object code form of the Software. Except as this Agreement expressly permits, you may not (a) use, copy, modify, publish, or display the Software; or (b) disclose, rent, loan, or transfer it to any other party. You may make one archival copy of the Software for backup purposes only. You may not reverse engineer the Software or derive a source code equivalent of it other than as authorized by statute. You are not licensed to use the Software in conjunction with software or hardware other than that authorized by NCR, and NCR does not warrant that the Service will be compatible with any hardware not provided by NCR. Use of any hardware not provided by NCR that have been modified contrary to the manufacturer's specifications or guidelines, including modifications that disable hardware or software controls (e.g., "jailbreaking"), is expressly prohibited, and your use of such hardware not provided by NCR will entitle NCR to terminate this Agreement and your access to the Service immediately, without further obligation to you. Your license will automatically end if you fail to comply with any part of this Agreement. When your license ends, you will immediately stop using the Software and will destroy all copies unless NCR directs otherwise.

1.6 NCR or a Reseller may invite you to participate in a NCR managed controlled deployment program of new versions, features or functions NCR is testing in connection with the Products or other products prior to their general market availability ("Beta Products"). If you participate in a controlled deployment program, NCR or a Reseller will make the Beta Products available to you for a limited period of time for testing and evaluation purposes. Your participation in a controlled deployment program is voluntary, and while NCR may not charge you any fees to participate, you will be required to provide reasonable feedback concerning your use of the Beta Products, including errors, deficiencies, problems or recommendations to modify. All feedback you provide to NCR or the Reseller will be deemed Ideas (as defined below). Beta Products are provided "as is" and without a warranty of any kind; NCR may suspend, limit, or cancel any controlled deployment program for any reason at any time without notice, and NCR will not be liable to you for damages of any kind related to your access or use of the Beta Products. The Service and the Software provided as part of the Beta Products will not be considered generally released or covered under the warranty described in Section 5 until you commence paying for a subscription to the Service with NCR or a Reseller. You acknowledge that any sales and inventory or other data that resides within the Service may not be accessible to you after the limited beta period ends.

1.7 NCR or a Reseller may invite you to or you may choose to submit comments or ideas about the Products, including without limitation about how to improve the them or our other products ("Ideas"). By submitting any Idea, you acknowledge that your disclosure is gratuitous, unsolicited, and without restriction; that it will not place NCR under any fiduciary or other obligation; and that NCR is free to use the Idea without any additional compensation to you, or to disclose the Idea on a non-confidential basis or

otherwise to anyone. You further acknowledge that, by acceptance of your submission, NCR does not waive any rights to use similar or related ideas previously known to NCR, or developed by its employees, or obtained from sources other than you.

## 2.0 Fees and Charges

Unless indicated otherwise agreed by the parties in writing, charges, and details concerning the available plans and the features of each plan for the Product are stated on the [NCR Silver™ Web Site](#) or the NCR Silver back office account administration portal (the “Web Site”). If you select an annual or multi-year plan, rates for the plan will remain fixed during the plan term; otherwise, rates and fees are subject to change at any time with 30 days’ written notice to the email address on file. All fees and charges are due and payable in US dollars unless otherwise stated on the Web Site. Fees and charges do not include, and you will be charged for, applicable shipping, sales, use and like taxes. You agree to pay all recurring fees and charges for the Service whether or not you actually make use of the Service during the applicable plan term.

If pricing for Product is conditioned upon Your, one of Your affiliates, or your franchisor’s obligation or commitment to purchase or maintain a minimum quantity of Products or other Products or services from NCR or an NCR affiliate (“ Promotional Pricing”), and You, Your affiliate, or your franchisor does not or ceases to meet the criteria to receive the Promotional Pricing, then NCR may adjust pricing herein to NCR’s then-current market rates effective retroactively from such date the Customer ceased to meet the criteria, at NCR’s sole discretion, without notice to Customer.

## 3.0 Billing and Payment Terms

3.1 You acknowledge and agree that NCR will charge all applicable fees and charges due to the payment card or other form of non-invoice payment method that you provided to NCR (i) at the beginning of each billing cycle for all recurring fees for the Service; (ii) at the end of the billing cycle for all transaction fees incurred during the billing cycle, (iii) upon order placement and prior to shipment of any Hardware purchased outright or subject to the terms of an Extended Payment Program (as defined below) when applicable, and (iv) upon order placement for any additional services that are not included as part of the recurring fees for the Service.

3.2 You agree to maintain current, valid payment and contact information (including telephone number and email address) on file. You certify to NCR that you are authorized to provide the payment card or other form of non-invoice payment method to NCR and that you will not dispute the payment with your credit card company or your financial services provider as long as the transaction corresponds to these terms. You acknowledge that your payment authorization will remain in effect until it is canceled by you in writing. If the payment information you provide is incorrect or incomplete, or NCR is unable to process your payment due to your error or omission, NCR will attempt to contact you and inform you of the problem. You acknowledge that your failure to provide accurate and complete payment information may result in the temporary suspension or cancellation of your subscription to the Service and NCR’s inability to process your order for Hardware or additional services.

3.3 NCR may charge late fees on unpaid, undisputed amounts. Late fees will be the lesser of 1.5% per month of the unpaid amount, or any applicable limit imposed by law. In the event that your account becomes delinquent, you agree to pay all collection costs incurred by NCR, including reasonable attorney’s fees and expenses.

## 4.0 Extended Payment Program for Eligible Hardware

4.1 For certain items of Hardware NCR may offer you the option to pay the total amount due to NCR over a period of time in monthly amounts charged either separate from the Service, or as part of a bundled Hardware and Service purchase price with an eligible plan term for the Service (an “Extended Payment Program”). If you elect to purchase a plan which includes Hardware as part of an Extended Payment Program, you may be subject to a credit check qualification and authorization, as well as applicable finance fees. You acknowledge that NCR reserves the right to include and charge additional fees such as applicable finance, shipping, sales, use and like taxes as part of the initial monthly amount due under an Extended Payment Program, which may be higher than the remaining monthly amounts due, otherwise these fees will be prorated over the remaining monthly amounts due to NCR. You acknowledge that NCR will not ship any Hardware to you until you meet required credit qualifications, accept the billing terms outlined in this document, and NCR receives the initial installment amount.

4.2 NCR may provide you with notice of other available third party financing or leasing options for Hardware purchases on the Web Site or through other communications from NCR. You acknowledge that any Extended Payment Program offered by NCR is independent of any financing or leasing arrangements third party providers may offer, so the monthly amounts due to a third party provider for a Hardware purchase may not be the same as those under an Extended Payment Program offered by NCR.

4.3 You are responsible for paying all monthly amounts due to NCR for Hardware you purchased under an Extended Payment Program and you must promptly inform NCR if there is any change in your payment card or other form of non-invoice payment method on file with NCR. If NCR is unable to process any monthly payment all outstanding monthly amounts due to NCR will become immediately due and payable and may result in the temporary suspension or cancellation of your subscription to the Service, and you may no longer be eligible for future Extended Payment Program offers from NCR.

#### 5.0 Term; Cancellation and Termination

5.1 Unless indicated otherwise on your quote, the initial term of this Agreement is 36 months from the date you submit your order for the Service (the “Initial Term”). Following the Initial Term, this Agreement shall automatically renew for consecutive monthly periods until cancelled or terminated as permitted hereunder (the Initial Term and all subsequent renewal terms being collectively referred to herein as the “Term”). If you add a Product, Service, or other supplement to the Service that includes a minimum term that extends beyond the Initial Term (including but not limited to the Extended Payment Program for Eligible Hardware), then the term for the Service will automatically extend and be co-terminus with the extended term.

5.2 You may cancel the Service at any time by calling the NCR Silver Customer Care team at 1-877-270-3475. If you cancel the Service or NCR terminates the Service or the NCR Silver Merchant Agreement for cause at any time, you agree to pay all fees and charges due through the applicable date of termination or the date your plan term is scheduled to expire, whichever date is later. If such cancellation or termination occurs during the Initial Term you will be immediately charged or required to pay NCR for all months remaining in your Initial Term. However, if such cancellation or termination occurs after your Initial Term has ended, you will not incur any future monthly charges. If the Service is cancelled or terminated before the end of a billing cycle you will not be entitled to a refund for the unused portion of your subscription.

5.3 NCR may disable, suspend or terminate your access to the Service immediately without notice (i) if you use the Services for any purpose other than as expressly permitted in this Agreement, (ii) if you violate any applicable international, federal, state or local law, regulation or ordinance in connection with your use of the Service, (iii) if your use of the Service adversely affects other users of the Service, or (iv) if you fail to timely meet the financial terms, including payment of applicable fees and charges properly due to NCR. Following any payment default for the Service or any Hardware you purchased under an

Extended Payment Program or subscribed to, you may request a reactivation of the Service once the payment default has been resolved or settled through NCR or NCR's authorized agent, however NCR reserves the right to refuse such reactivation at NCR's discretion.

5.4 Regardless of the method of termination, you agree to pay all fees and charges due through the applicable date of termination or the date your plan term is scheduled to expire, whichever date is later. You are responsible for exporting all of your data from the Service, including sales and inventory data, prior to any cancellation or termination of the NCR Silver Merchant Agreement or the Service. NCR will not be responsible for retaining or providing you with any of your data after cancellation or termination.

## 6.0 Hardware Return and Refund Policy

You may contact the NCR Silver Customer Care team at 1-877-270-3475 to request return of Hardware you purchased from NCR for use with the Service at any time within 30 days of the order date. If NCR determines that you are eligible to return such Hardware to NCR, NCR will provide a return materials authorization (RMA) to you via email. NCR will refund you the purchase price you paid NCR for the returned Hardware (less applicable handling charges NCR may charge you for the return) provided that NCR receives the Hardware (including all Hardware items if the Hardware was purchased as part of bundle) freight prepaid by you in new, like new or unused condition, in its original packaging, within 15 days of the date the RMA was emailed to you. Any installment payments you made to NCR under an Extended Payment Program for returned Hardware that NCR fully processes under an RMA are non-refundable and will be forfeited by you, and remaining installment payments for that Hardware will no longer be due to NCR. You will be responsible for all remaining installment payments due under an Extended Payment Program if NCR determines that any returned Hardware it receives from you is not in new, like new or unused condition, or does not otherwise comply with all of the requirements for return as stated above.

Except as otherwise stated in these terms, NCR is under no obligation to refund any amounts you previously paid to NCR for the Service or the Hardware.

## 7. NCR Responsibilities

7.1 Your subscription fee includes remote support via telephone, email, or live text or chat for the Service on the terms stated at the Web Site or the NCR Silver Account Portal (***you acknowledge that third party message and data rates may apply***). If you purchased a maintenance plan for the Hardware from NCR, maintenance for the Hardware will be provided by NCR on the terms stated at the Web Site or the NCR Silver Account Portal for the duration of the applicable Hardware maintenance period provided that you are current on your maintenance payment obligations.

7.2 NCR will use commercially reasonable efforts to provide you with 7 days advance notice of any scheduled downtime that may impact your ability to use or access the Service and will notify you as soon as reasonably possible of any significant disabling of the Service for security reasons.

## 8. Your Responsibilities

8.1 You are responsible for installing and configuring, and using the Service, Software, and Hardware, including account set up and configuration settings (unless NCR provides remote support for any of the foregoing as part of your subscription to the Service), compliance with applicable laws and regulations, and establishing any payment processing or other services certified by NCR for use with the Service (including through NCR's wholly owned affiliates. You will provide NCR access to your network, system, data, and relevant information as reasonably required to perform the Service. You acknowledge that NCR personnel may require, and you will provide, the ability to access and correct transaction or input data while the

Service is being provided to you. NCR is not responsible for any damage caused by errors or omissions in any information, instructions, data or scripts you or a third party provides on your behalf in connection with the Service, or any actions NCR takes at your direction.

8.2 To use the Service, you must maintain Internet access at your own expense. NCR IS NOT RESPONSIBLE FOR AND DOES NOT WARRANT THE PERFORMANCE OF ANY INTERNET SERVICE OR OTHER PROVIDER OR ITS SERVICES, AND YOU AGREE THAT NCR HAS NO LIABILITY TO YOU FOR SUCH PERFORMANCE OR SERVICES.

8.3 Title to hardware, software, systems, documentation, and other intellectual property NCR uses to provide the Service will remain with NCR or its licensors, unless otherwise agreed in writing. You will take reasonable actions to protect NCR's intellectual property rights. You will use all reasonable efforts to prevent any unauthorized access to, or use of, the Service, the Software, or their documentation and you will promptly notify NCR if any such unauthorized access or use occurs.

## 9. Data and System Security

### 9.1 Definitions:

9.1.1 "Personal Data" means information or data relating to an identified or identifiable natural person that is subject to protection under applicable Data Protection Law; where a natural person includes your personnel that access and use the Service or the Software or customers you transact business with using the Service ("Users").

9.1.2. "Your Data" means information or data (which may include Personal Data) that you input and transfer to NCR for processing and that is collected, stored or maintained in the course of providing the Service or the Software. Your Data expressly excludes any information or data that does not connect or associate you or any Users to or with such information or data.

9.1.3 "Data Protection Laws" means all laws and regulations that govern the access, use, disclosure, or protection of Personal Data to which a party is subject with respect to the Service or the Software.

9.1.4 "Data Subject" means the User to whom the Personal Data refers.

9.2 NCR has implemented physical, technical, and organizational measures designed to secure Personal Data from unauthorized access, use, alteration, or disclosure. NCR will: (a) maintain an appropriate level of physical security controls over its data center including, but not limited to, appropriate alarm systems, fire suppression, and access controls (including off-hour controls); (b) periodically test its systems for security breach vulnerabilities; (c) use commercially reasonable efforts to protect its systems from unauthorized access, including the use of firewall and data encryption technologies as applicable; and (d) maintain safety and physical security procedures with respect to its access and maintenance of Personal Data which are materially consistent with general industry practice. Notwithstanding the foregoing, you acknowledge that NCR cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Personal Data for improper purposes. NCR may disclose Personal Data to the extent compelled by process of law, provided that you are given advance written notice (unless providing such notice is prohibited by law or regulation).

9.3 Your Data will remain your property. Except as otherwise provided in this Agreement, NCR will not disclose Your Data to any third party without your consent, but you acknowledge that Your Data and your Confidential Information may be subject to regulation and examination by auditors and regulatory agencies, and NCR may disclose it to them upon their request. NCR may retain, disclose, and use

Transaction Data which it creates in the course of the Service and which may be based upon Your Data. “Transaction Data” is anonymized or aggregated data which has had all personally identifiable information removed.

9.4 You acknowledge that Personal Data may be transferred or stored outside of the European Economic Area or the country where the User is located in order for NCR to provide the Service and Software, and to perform its other obligations under this Agreement. You are responsible for all Your Data, including its legality, reliability, integrity, accuracy, and quality and your compliance with all applicable laws and regulations, including Data Protection Laws or other legal duties applicable to your possession, transmission, processing, or use of Your Data, and you will implement appropriate measures to ensure compliance. Such compliance includes but is not limited to you: (a) ensuring that the relevant Data Subjects have been informed of, and have given their consent to, the transfer, processing and use of their Personal Information; (b) providing appropriate notifications and communications to the relevant Data Subjects; (c) and managing any complaints or access requests from Data Subjects. NCR will take steps designed to ensure that the Your Data it collects is used for its intended purpose(s).

9.5 You acknowledge that it is your responsibility to secure and protect your network and information under the PCI Data Security Standard (“PCI-DSS”) and that you are responsible for your own PCI-DSS compliance. You will: (a) maintain an environment for your payment card processing activities which is compliant with the PCI-DSS or its successors; (b) not use the Service other than in compliance with the PCI-DSS; (c) promptly implement Service and Software updates provided by NCR; (d) not use any remote access application to access the Service except as authorized in writing by NCR; (e) securely delete previously stored information or data; and (f) employ recommended security measures on customer hardware not provided by NCR and wireless, mobile data or other systems or networks you use in connection with the Service, including use of available encryption and password protection. You are strongly advised to engage the services of a Qualified Security Assessor approved by the PCI Security Standards Council (a “QSA”) to ensure that no payment card track data is present on your systems or network; determine your level of PCI-DSS compliance; assist you with your compliance obligations; and mitigate any issues that may arise.

9.6 You acknowledge that NCR does not control the transfer of data over telecommunications facilities, and that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by third parties. NCR will not be responsible for any delays, delivery failures, or any other loss, damage or corruption resulting from such transfer. NCR does not warrant that third party Internet sites will be accessible without interruption, will meet your requirements or expectations or those of any third party, or will be free from errors, defects, design flaws, or omissions. In the event of any loss, damage or corruption to any Your Data, NCR will use commercially reasonable efforts to restore the lost, damaged or corrupted Your Data from the latest back-up of such Your Data maintained by NCR in accordance with the archiving procedure.

9.7 You acknowledge that it is your responsibility to maintain the security of your own systems, servers, and communications links, and to provide secure access to those systems and information, and for all data backup and recovery, including retention of any data, records or information required by law or regulation. You will follow NCR’s password security guidelines, and you will guard passwords against misuse. NCR may direct you to change the password to one that is more secure.

9.8 You will not use, nor will you permit any third party to use, the Service to upload, post, or otherwise transmit any data that: (a) is deceptive, misleading, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically, or otherwise objectionable; (b) is harmful to minors in any way; (c) you do not have a right to transmit under any law or under contractual or fiduciary relationships; (d) infringes any patent, trademark, trade

secret, copyright, or other proprietary rights of any party; (e) constitutes unsolicited or unauthorized advertising or promotional materials, including but not limited to junk mail, spam, chain letters, and pyramid schemes; (f) is designed to access or monitor any material or information on any NCR system using any manual process or robot, spider, scraper, or other automated means; (g) violates Data Protection Laws or other laws; or (h) contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, impose an unreasonable or disproportionately large load on, or limit the functionality of any computer hardware or software, or telecommunications equipment. You will defend and hold NCR harmless from any claim or loss resulting from your failure to comply with this section.

9.9 With respect to any NCR computer system, network, or service, you agree not to: (a) impersonate any person or entity; (b) forge headers or otherwise manipulate identifiers in order to disguise the origin of any data; (c) develop or deploy restricted access pages or hidden pages or images (*i.e.*, those not linked from another accessible page); (d) interfere with or disrupt NCR websites, servers, systems, or networks; (e) violate any applicable law or regulation; (f) stalk or otherwise harass another; (g) use, or attempt to use, any system or account without the owner's permission; or (h) interfere with, defeat, or circumvent any security function. You will defend and hold NCR harmless from any claim or loss resulting from your failure to comply with this section.

## 10. Warranties

10.1 NCR warrants that the Service and Software will be materially as described in their published user documentation. Provided that you have timely paid all subscription and other fees due, NCR will promptly at its expense correct any Service or Software that fails to materially conform to this warranty. If NCR is unable reasonably to do so, as your sole remedy you may terminate the Service by giving written notice to NCR within 30 days after the nonconformance, and NCR will cease delivering the Service within 30 days after receiving your written notice. You will pay NCR for all Service actually provided through the termination date. Hardware is warranted against defects in manufacture for 30 days from the date of purchase, and NCR will replace or refund the purchase price of nonconforming Hardware. Warranty claims must be submitted by you or a Reseller on your behalf in accordance with the terms stated at the Web Site or the NCR Silver Account Portal. THESE ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY NCR. THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO OTHER WARRANTIES OR WARRANTY REMEDIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED. NCR does not warrant that a Product will yield any particular business or financial results; that data, reports, or analysis will be accurate in all respects; that a Product will be free from all bugs and errors; or that a Product will operate without interruption.

10.2 You warrant that: (a) you are at least 18 years of age; (b) you are eligible to register and use the Service and have the right, power, and ability to enter into and perform under this Agreement; (c) the name you identify when you register is your real name or the business name under which you sell goods and services; (d) any sales transaction you submit will represent a bona fide sale by you, will accurately describe the goods or services sold and delivered to a purchaser, and will be properly reported for tax (including sales and ad valorem tax) purposes; and (e) you will fulfill all your obligations to each customer for which you submit a transaction and will resolve any dispute or complaint directly with the customer.

## 11. Infringement Claims

11.1 NCR will, at its expense, defend you against any IP Claim. NCR will also pay the damages, costs, and attorneys' fees that are awarded against you in a final, non-appealable court judgment for the IP Claim, or required to be paid by you or on your behalf in a settlement of the IP Claim that NCR has agreed to in writing. As used in this Section 6, an "IP Claim" means a suit brought against you by a third party to the extent the suit alleges that your use of a purchased Product infringes a patent or copyright of the third party.



11.2 NCR's obligations set forth in Section 6.1 are subject to you: (a) providing prompt written notice that the IP Claim has been threatened or brought, whichever is sooner (the "Claim Notice"); (b) providing NCR sole control of the defense and any appeal or settlement (at NCR's discretion) of the IP Claim (collectively, "Defense or Settlement"); (c) cooperating with respect to the Defense or Settlement; (d) providing NCR with requested documentation and information relevant to the IP Claim or the Defense or Settlement; and (e) complying with all court orders. If your delay in providing the Claim Notice causes detriment to NCR with respect to the defense or resolution of the IP Claim, the obligations set forth in Section 6.1 will not apply to the IP Claim. Notwithstanding any other provision of this Agreement, NCR is not responsible for any fees (including attorneys' fees), expenses, costs, judgments, or awards that are incurred prior to its receipt of the Claim Notice from you. NCR will have the sole right to select counsel. You may, at your sole expense, engage additional counsel of your choosing for purposes of conferring with NCR's counsel.

11.3 The obligations set forth in Section 6.1 will not apply to an IP Claim if the alleged infringement is based on, caused by, or results from (a) NCR's compliance with any of your designs, specifications, or instructions; (b) modification of the Product other than by NCR; (c) any product or service not provided by NCR to you; or (d) combination or use of the Product with any product or service not provided by NCR to you.

11.4 If an intellectual property infringement allegation is brought or threatened against a purchased Product, or NCR believes that such an allegation may be brought or threatened, NCR may obtain a license for the Product; modify the Product; or replace the Product with a product having substantially the same functionality. If NCR in its discretion determines that none of the foregoing is available on a reasonable basis, upon NCR's written notice to you: (a) NCR may cease delivering the affected Products and refund any amount that you have pre-paid for any such Products not yet delivered; and (b) you will promptly return all of the affected Software or Hardware to NCR, and NCR will refund the price you paid NCR for that Software or Hardware, less depreciation on a 5 year straight-line basis.

11.5 THIS SECTION 6 SETS FORTH NCR'S ENTIRE OBLIGATIONS AND YOUR EXCLUSIVE REMEDIES WITH RESPECT TO ANY IP CLAIM OR ANY INTELLECTUAL PROPERTY INFRINGEMENT.

## 12. Mutual Liability Limitations

12.1 NEITHER PARTY WILL BE LIABLE TO THE OTHER, WHETHER IN AN ACTION IN CONTRACT, TORT, PRODUCT LIABILITY, STRICT LIABILITY, STATUTE, LAW, EQUITY, OR OTHERWISE ARISING UNDER OR RELATED TO THIS AGREEMENT: FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES; FOR LOSS OF PROFITS OR REVENUE (OTHER THAN IN AN ACTION BY NCR TO RECOVER AMOUNTS OWED); OR FOR LOSS OF REPUTATION, GOODWILL, TIME, OPPORTUNITY, DATA OR ACCESS TO DATA. As used in this Section 7, a "party" includes a party to this Agreement and its affiliates, employees, agents, contractors, and suppliers when acting in that capacity with respect to the Products, and any persons or entities claiming by or through a party to this Agreement.

12.2 NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY AMOUNT GREATER THAN THE CUMULATIVE PURCHASE PRICE, FEES, AND CHARGES PAID FOR THE HARDWARE AT ISSUE; OR IN THE CASE OF THE SERVICE OR THE SOFTWARE, ANY AMOUNT GREATER THAN THE TOTAL FEES CHARGED BY NCR DURING THE PRECEDING 12 MONTHS FOR THE SERVICE OR THE SOFTWARE GIVING RISE TO THE LIABILITY.

12.3 Sections 7.1 and 7.2 will not limit a party's liability for bodily injury, including death, to the extent caused by its negligence or willful misconduct; or a party's liability for violating the other party's intellectual property rights; or a party's obligation to defend, hold harmless, or indemnify the other party

as set forth in this Agreement or any Exhibit; or its liability for damages which cannot be excluded under applicable law or regulation.

12.4 EACH CLAUSE AND PHRASE OF THIS SECTION 7 IS SEPARATE FROM EACH OTHER CLAUSE AND PHRASE, AND FROM THE REMEDY LIMITATIONS AND EXCLUSIONS ELSEWHERE IN THIS AGREEMENT, AND WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF A REMEDY, ANY TERMINATION OF THIS AGREEMENT, OR SEVERABILITY OF ANY CLAUSE OR PHRASE IN THIS AGREEMENT.

### 13. Third Party Products

13.1 Third party products provided to you by NCR for use with your subscription to the Service are subject to any terms provided by their supplier. UNLESS NCR SPECIFICALLY AGREES OTHERWISE IN WRITING, YOU ACKNOWLEDGE AND AGREE THAT SUCH THIRD PARTY PRODUCTS ARE PROVIDED “AS-IS” WITHOUT A WARRANTY FROM NCR. ACCORDINGLY, NCR EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY NATURE WITH RESPECT TO ANY SUCH 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 NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS.

13.2 Third party products and services may be advertised or made available to you for purchase directly from their supplier through the Web Site or by email or other electronic communications, including notifications made through the Service or the NCR Silver Account Portal. Any representations or warranties that may be provided in connection with any such third party products or services are provided solely by their supplier. NCR will not be responsible for any of your dealings or interactions with any of those third party suppliers.

### 14. Confidentiality

14.1 “Confidential Information” is proprietary information disclosed by one party to the other related to the disclosing party, this Agreement, or the Products. In addition, business plans, pricing information, software in human-readable form, and any other information that, by its nature or on its face, reasonably should be understood by the receiving party to be confidential will be considered Confidential Information whether or not it is so marked. Otherwise, Confidential Information disclosed in documents or other tangible form must be clearly marked as confidential at the time of disclosure, and Confidential Information disclosed in oral or other intangible form must be identified as confidential at the time of disclosure.

14.2 Confidential Information does not include information that is or becomes available without restriction through no wrongful action or inaction.

14.3 All Confidential Information remains the disclosing party’s property. Upon the disclosing party’s request, all Confidential Information (other than materials that have been licensed to the recipient and with respect to which the recipient is in full compliance with its obligations) will be destroyed or returned to the disclosing party, less a single archival copy which may be used only to address disputes related to that Confidential Information.

14.4 Each party will use reasonable efforts to prevent the disclosure of the other’s Confidential Information to third parties and its employees who do not have a need to know, but may disclose Confidential Information to the extent compelled by process of law, provided that the disclosing party is given advance written notice (unless providing such notice is prohibited by law). Confidentiality obligations under this Agreement with respect to business plans, pricing information and software in human-readable form will continue indefinitely. Otherwise, confidentiality obligations under this Agreement will end 3 years after the date of disclosure. Protection of Personal Data is set forth in Section 9.

14.5 Either party may disclose Confidential Information to its accountants, lawyers, and other professional advisors; and to its affiliates, consultants, and contractors who have a need to know it to further permitted use of the Service; provided that each agrees in writing to confidentiality obligations consistent with this Agreement, including its intellectual property and confidentiality provisions. The disclosing party is an intended third party beneficiary of any such agreement and will have the right to directly enforce it.

#### 15. Marketing, Public Statements

You agree that NCR may reference your execution of this Agreement and your status as a user of the Products and may use your logos in product literature, advertisements, articles, press releases, marketing literature, presentations, social media and the like. You agree you will not make disparaging remarks about NCR, NCR Silver, or any of its employees, officers, or agents.

#### 16. Governing Law; Disputes

16.1 The laws of the State of New York, U.S.A. govern this Agreement, and the relationships created by it, except for its laws regarding conflicts of law and arbitrability; the Federal Arbitration Act governs all issues of arbitrability. Neither party may bring a claim more than 2 years after the underlying cause of action first accrues.

16.2 Each party agrees to give the other prompt written notice of any claim, controversy, or dispute arising under or related to this Agreement, and both parties agree to engage in good faith discussions to resolve the matter. If that fails to resolve the matter promptly, upon the election of either party, the parties will participate in a non-binding mediation before a mutually-agreed mediator. Any controversy, claim or dispute which is not resolved through the procedures set forth above within 60 days following the initial notice (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 this Agreement. 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 on the merits by applying the applicable law to undisputed facts and documents. The arbitration will be held in Atlanta, Georgia, U.S.A.. This Section 11.2, 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, or collection of sums owed to NCR under this Agreement. A party may at any time seek from a court of competent jurisdiction 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 authority to award direct damages inconsistent with the limitations and exclusions set forth in this Agreement. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

#### 17. General Terms

17.1 Except for your obligation to make payments when due, neither party will be liable for failing to fulfill its obligations due to acts of God or government, civil commotion, military authority, war, riots, terrorism, strikes, fire, attacks on or through the Internet, or other causes beyond its reasonable control.

17.2 Except as permitted by this Section 12.2, neither party may assign this Agreement or its rights or obligations under it without the express consent of the other party. NCR may use affiliates, contractors or suppliers to act on its behalf (but doing so will not alter NCR's obligations to you, and those parties will be

bound to the same confidentiality obligations as NCR), and may assign this Agreement to an affiliate, or to an assignee or transferee upon NCR's entry into a merger, consolidation or sale of assets transaction. In this Agreement, references to "NCR" include its employees, contractors, and agents.

17.3 The parties are independent contractors to one another. Employees of one will not be deemed to be or act as employees or representatives of the other. A party will not be responsible for compensating; providing insurance or benefits; making unemployment, Social Security, or Medicare contributions; or withholding taxes or other withholdings against earnings of the other's employees or contractors. Except as expressly stated otherwise, no third party will be a beneficiary of this Agreement.

17.4 If any provision of this Agreement is held to be illegal, invalid, or unenforceable in whole or in part, it will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions will remain in full force and effect. Terms intended by the parties to survive termination of this Agreement will survive termination. Failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

#### EXHIBITS TO THE NCR SILVER MERCHANT AGREEMENT

***The following additional terms apply to the iOS version of the Software available for download in the App Store<sup>SM</sup>, such terms control in the event of a conflict with the terms of the Agreement:***

1. **Acknowledgement:** The parties acknowledge that the Agreement is concluded between them, and not with Apple Inc. ("Apple"), and NCR, not Apple, is solely responsible for the Software and the content thereof.
2. **Scope of License:** You are only permitted to use the Software on supported Apple mobile or hardware devices that you own or control as permitted by the Usage Rules set forth in the App Store Terms of Service.
3. **Maintenance and Support:** NCR is solely responsible for providing any maintenance and support services with respect to the Software as specified in the Agreement, or as required under applicable law. The parties acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Software.
4. **Warranty:** NCR is solely responsible for any product warranties with respect to the Software in accordance with the terms of the Agreement. In the event of any failure of the Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Software to you (if you paid any for the Software); and that, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty with respect to the Software is NCR's sole responsibility in accordance with the terms of the Agreement.
5. **Product Claims:** The parties acknowledge that NCR, not Apple, is responsible for addressing any claims you or any third party relating to the Software or your possession and/or use of the Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
6. **Intellectual Property Rights:** The parties acknowledge that, in the event of any third party claim that the Software or your possession and use of the Software infringes that third party's intellectual property rights, NCR, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim in accordance with the terms of the Infringement

Claims section of the Agreement.

7. Legal Compliance: You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

8. Developer Name and Address: NCR Corporation is the developer of the Software. Please direct any end-user questions, complaints or claims with respect to the Software to the NCR Silver Customer Care Team by mail at 864 Spring Street NW, Atlanta, Georgia 30308; by telephone at 1-877-270-3475; or by email to [customer care@ncrsilver.com](mailto:customer care@ncrsilver.com).

9. Third Party Beneficiary: The parties acknowledge and agree that with respect to the Software, Apple, and Apple’s subsidiaries, are third party beneficiaries of the Agreement, and that, upon your acceptance of the terms and conditions of the Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement against you as a third party beneficiary thereof.

***The following additional terms apply to the EMV PSP Service (as defined below), such terms control in the event of a conflict with the terms of the Agreement:***

1. Definitions

Any capitalized terms set forth herein but not defined below will have the meaning set forth in the Agreement.

“Bank Charges” means the charges levied by the Merchant Acquiring Bank for Transactions and Refunds.

“Bank System” means the banking system operated by any approved bank, financial institution or other body.

“Card” means credit, debit, smart or other charge or pre-paid cards branded as follows: Visa, Mastercard, American Express, Visa Debit, Solo, Maestro (subject to the Codes of Practice).

“Codes of Practice” means all codes of practice, rules of procedure, guidelines, directions, scheme rules and other requirements issued by the Bank System and specified from time to time as being applicable to the EMV PSP Service and your use of those.

“CVV, CVV2, CVC2 or PVV” means the security digits encoded on the Card, printed on the Card signature strip or appearing elsewhere on the Card.

“EMV PSP Service” means the Card payment gateway services, which may be powered by one or more third party suppliers, you access and use to route Card based payments you accept from a Service User to submit for authorization and settlement to the Merchant Acquiring Bank.

“Intellectual Property” means all copyright, design rights, database rights, trademarks, trade names, Confidential Information, service marks, domain name rights, patents, know-how and all other intellectual property rights, whether registered, registerable or not and both present and future.

“Merchant Account” means the merchant account facility agreed between you and the Merchant Acquiring Bank.

“Merchant Acquiring Bank” means the bank with which you hold a Merchant Account which you must maintain to accept Card based payments.

“Offering” means the products or services you offer to the Service User from the Terminal for which a Card payment is made using the EMV PSP Service.

“Public System” means the telecommunications system run by a public telecommunications operator or internet service provider which may be accessed by GSM Data, ISDN, IP, Mobitex (i.e. the Radio Packet Data Network), analogue line or other transmission type.

“Refund” means a Transaction amount that you refund to the Service User.

“Service User” means your customer, i.e. the purchaser of the Offering.

“Terminal” means the EMV-enabled machine, terminal or other hardware device you obtain from NCR as an item of Hardware to use in connection with the Service to make the Offering to the Service User and to access the EMV PSP Service.

“Track 2 Information” means the information held on the Card, typically on the computer chip or the magnetic stripe.

“Transaction” means each individual Card payment authorization and/or settlement processed by the EMV PSP Service in connection with the Service.

## 2. Duration

Unless earlier terminated as provided for herein or the Agreement, the terms of this Exhibit will continue in force while the EMV PSP Service is provided from any Terminal in connection with the Service.

## 3. Your Obligations

You will:

(i) at all times throughout the duration of the terms of this Exhibit ensure that all publicity, signage, and/or promotional material you issue, or have issued on your behalf, in respect of or in connection with the EMV PSP Service complies in all respects with the Codes of Practice and includes information which will enable the Service User to ascertain prior to use the charge which is payable for the purchase of the Offering. You will not in any publicity or other promotional activity state or imply any approval by NCR or its third party suppliers of the Offering in any way without the prior written approval of a duly authorized officer of NCR or its third party suppliers, as applicable;

(ii) ensure that before you make the Offering available to the Service User all such rights, authorizations, licenses, exemptions, consents and permissions have been obtained or granted and all such requirements of law or of any other competent authority or public body have been complied with as are necessary or prudent in connection with the Offering. You will at all times throughout the duration of the terms of this Exhibit maintain in full force and effect all such rights, authorizations, licenses, consents and permissions and comply with all such requirements;

(iii) provide to NCR such assistance and/or information as NCR or its third party supplier may from time to time reasonably demand in order to comply with all or any requirements and conditions at any time and from time to time imposed by applicable law or regulation with respect to the EMV PSP Service;

(iv) undertake not to disconnect or interfere with the operation of the Terminals or the EMV PSP Service and will use your best efforts to prevent such disconnection or interference by a third party except where explicitly agreed in writing between NCR and you;

(v) report to NCR any abuse or threatened abuse or loss of the EMV PSP Service or any factors affecting the performance of the EMV PSP Service as soon as practicable after you become aware of such abuse, loss or performance factors;

(vi) not use the EMV PSP Service in any manner whatsoever which constitutes a violation of any applicable law or regulation or which may cause NCR or its third party supplier to be subject to any investigation, prosecution or legal action. NCR reserves the right to terminate this Exhibit or the Agreement with immediate effect in the event that you breach this subsection (vi);

(vii) except where otherwise agreed between the parties in writing, be responsible for the installation of the EMV PSP Service, which without limiting the foregoing, will include you setting up a Merchant Account with an approved Merchant Acquiring Bank, the linking of all Terminals to the Public System and the provision, installation and maintenance of a suitable method for delivering the Card information to the EMV PSP Service and thereafter the maintenance of all links and any costs associated with the foregoing; and acknowledge that NCR and its third party suppliers do not have access to your Merchant Account and that it is therefore your responsibility to reconcile the payments and debits being made into your Merchant Account with the Transactions and/or Refunds processed by the EMV PSP Service in connection with the Service. In the event that you identify a discrepancy you must notify NCR as soon as reasonably practical. NCR and its third party suppliers will have no liability for discrepancies which have occurred more than 14 days prior to the date any such problem is notified to them.

#### 4. EMV PSP Service Deferred Authorization Disclosures and Acknowledgment

Subject to the Merchant Acquiring Bank allowing deferred authorizations, the EMV PSP Service is configured to accept Cards when communication with the Merchant Acquiring Bank is unavailable (“Deferred Authorization” mode). In such instances a predefined Transaction limit you establish in your sole discretion can be configured so that charges above this limit are automatically rejected and charges below this limit are automatically accepted without approval of the Merchant Acquiring Bank. Due to the increased liability and risk exposure to you when operating in “Deferred Authorization” mode, you acknowledge and agree that your use of “Deferred Authorization” mode is subject to the following terms:

(i) You acknowledge that NCR will enable “Deferred Authorization” mode only in emergencies or when online communication with the Merchant Acquiring Bank is not economically practical or is otherwise not feasible.

(ii) You understand that if the “Deferred Authorization” mode is enabled, Cards will be accepted even though the EMV PSP Service, the Service or related back office application is unable to communicate with the Merchant Acquiring Bank without immediate approval from the Merchant Acquiring Bank.

(iii) You understand that if either the EMV PSP Service, the Service or related back office application is lost, destroyed or reset before or while being brought online to the Merchant Acquiring Bank, Cards you accept from a Service User in connection with the Service but not authorized through the EMV PSP Service may be lost, and, as a result, you may lose the revenue associated with any such Card transactions.

(iv) You understand that once the EMV PSP Service, the Service or related back office application are brought online, some Card charges accepted but not approved may be declined or not approved by the Merchant Acquiring Bank, and as a result, the revenue associated with the rejected Card charges may be

lost.

(iv) You understand that operating in Deferred Authorization mode may increase the risk or severity of potential breaches which may increase your potential liability.

(vi) You accept any and all liability for operating in Deferred Authorization mode, and Card transactions accepted by the EMV PSP Service, the Service or related back office application while they are offline to the Merchant Acquiring Bank, and agree to hold NCR and its third party suppliers harmless from any such liabilities that may result.

#### 5. Payment Card Industry Data Security Standards (PCI DSS)

You will: (i) not store any element of the Transaction, other than temporarily to process the Transaction with the EMV PSP Service; this explicitly includes (but is not limited to) any Card numbers, CVV, CVV2, CVC2 or PVV information and any Track 2 Information derived from the chip or magnetic strip; (ii) encrypt or obscure the Card numbers either by masking all digits except the first 6 and last 4 numbers; using the last 4 digits only or by applying a secure one way hashing algorithm such as SHA-1; and (iii) not log any element of the Transaction for any purpose at all, including debugging or auditing and will not hold any other record of the Transaction electronically or on paper.

#### 6. NCR's Obligations

NCR will have the right from time to time to improve or alter the EMV PSP Service or the Terminal as it deems appropriate provided such changes do not materially change the nature of the EMV PSP Service. NCR will use all reasonable efforts to inform you prior to such changes being made.

#### 7. Financial Provisions

7.1 You are responsible for: (i) the setup of the Merchant Account with the Merchant Acquiring Bank and the bank's processor; and (ii) any and all set up and Bank Charges and other charges associated with the Merchant Account.

7.2 NCR cannot guarantee that the chosen Merchant Acquiring Bank can accept Transactions via the EMV PSP Service. NCR reserves the right to charge you an additional development fee to cover costs in the event that the Merchant Acquiring Bank requires NCR or its third party suppliers to complete an accreditation procedure with respect to the EMV PSP Service or the Terminal.

#### 8. Proprietary Rights

8.1 The Intellectual Property in the EMV PSP Service and any supporting documentation will remain exclusively owned by NCR subject to the terms of the Agreement, however if the EMV PSP Service is powered by a third party supplier the Intellectual Property in the EMV PSP Service and any supporting documentation will remain exclusively owned by such third party supplier. Nothing in this Exhibit or the Agreement will give you any right, title or interest in the EMV PSP Service or any supporting documentation, except as expressly set out in this Exhibit.

8.2 Subject to your compliance with this Exhibit and the Agreement and your timely meeting of the financial terms, including payment of the applicable subscription fees and charges stated on the Web Site or the NCR Silver Account Portal, you are entitled to access and use the EMV PSP Service for the duration of this Exhibit only for the purpose set forth herein.



8.3 NCR or any third party supplier, as applicable, may display their logo and/or company name, respectively, on the Terminal.

## 9. Termination

9.1 Either party will have the right at any time to cease the EMV PSP Service from a Terminal by giving immediate written notification to the other party if: (i) the other party commits a breach of the terms of this Exhibit with regards to the specific Terminal except where the breach is capable of cure the EMV PSP Service may not be terminated unless the other party fails to remedy the breach within 30 days of receipt of a written notice to do so; or (ii) any licenses or any other permissions, agreement or authorization necessary for the operation of the EMV PSP Service or the Offering are revoked or terminated.

9.2 NCR will be entitled at any time and with immediate effect to suspend access to the EMV PSP Service from a Terminal, in all cases without liability in the event that the Terminal proves untenable due to fraud, vandalism or any circumstances that adversely affect NCR's or its third party supplier's ability to provide the EMV PSP Service.

## 10. Limitation of Liability

10.1 Neither party will be liable to the other in respect of any breach of the terms of this Exhibit caused by revocation or alteration of any license, permission or authorization governing the operation of the EMV PSP Service, the Public System or the Bank System from time to time.

10.2 All risks in respect of authorization and/or settlement of Transactions and Refunds by the Bank System lie with you and/or the relevant financial institution and NCR and its third party suppliers will have absolutely no liability in respect thereof you except where a Transaction or Refund fails due to NCR's or its third party supplier's negligent act or omission in which case NCR's and its third party supplier's sole liability will be to reprocess the Transaction or Refund.

10.3 Should either party be in breach of the terms of this Exhibit as a result of the termination or amendment of any third party agreement or specification or by revocation or alteration of any permission or authorization governing the operation of the EMV PSP Service, the Public System or the Bank System then neither party will be liable to the other but both parties will instead use commercially reasonable efforts to resolve the breach.

10.4 You acknowledge and agree that NCR and its third party suppliers will have no liability in contract or in tort for: (i) the supply to the Service User of the Offering, invoices, receipts or any other information the Service User may require to use or otherwise take the benefit of the Offering; (ii) the timeliness, standard, quality and/or suitability of the Offering; or (iii) in respect of any charge, cancellation or dispute relating to the Offering.

10.5 You will fully indemnify NCR and its third party suppliers against any and all expenses, losses or damages resulting from claims or demands brought by the Service User against NCR and its third party suppliers in respect of the Offering. NCR or its third party suppliers, as applicable, will as soon as reasonably possible give notice to you of any such action proceeding, claim or demand and will not settle or compromise any claim made by a Service User against NCR or its third party suppliers without your prior written consent which will not be unreasonably withheld or delayed.

***The following additional terms apply to the Network and Security Services (as defined below), such terms control in the event of a conflict with the terms of the Agreement:***

## NETWORK AND SECURITY SERVICES

Unless otherwise specified in this Agreement or in a separate writing signed by both You and NCR, You acknowledges and agree that NCR's Network and Security Services only applies to Your POS System Network, and that services for any other networks other than Your POS System Network are outside the scope of this Network and Security Services Section. As used herein, the term "Node" means a compatible Windows-based system and the term "POS System Network" means the point-of-sale software and hardware provided under this Agreement to process cardholder data.

### 1. NCR's Responsibilities.

1.1. If the Network and Security Services option known as "Site Shield" (or its successor product) is selected by You as part of the Network and Security Services that may be designated on an order, NCR will provide You with a hardware firewall and any additional hardware components which may be new or like new (including any third party malware protection software on such hardware). NCR will provide ongoing configuration and management services for the hardware aimed at securing the POS System Network by detecting and preventing unauthorized access from outside the POS System Network. NCR will be responsible for periodic and routine updates of the hardware, including security patches in accordance with the manufacturer's recommendations. Hardware maintenance services will be provided with respect to any malfunctioning hardware that is not otherwise due to Your abuse, neglect or improper operation and/or storage as determined in NCR's sole discretion. Such hardware maintenance services will be provided in accordance with NCR's standard policies and procedures which will be communicated to You from time to time. NCR reserves the right to replace any NCR provided hardware and/or malware protection software running on the hardware with a similar functioning hardware and/or malware protection software at any time for any reason at no additional cost to You.

1.2. If the Network and Security Services option known as "Secure Access" (or its successor product) is selected by You as part of the Network and Security Services as may be designated on applicable order, NCR will provide You with remote access tools and a method for providing Your authorized third parties reasonable access to a designated Node within the POS System Network. If You elect to use the Secure Access SMS-based authentication feature, You will be required to provide NCR with a valid mobile phone number that NCR will use to provide an authentication code via text message to You that will allow You to access a designated Node within the POS System Network. You acknowledge that message and data rates may apply, such charges include those from Your mobile carrier or communication services provider.

1.3. If the Network and Security Services option known as "Threat Defender" (or its successor product) is selected by You as part of the Network and Security Services as may be designated on an applicable order, NCR will provide You with application white listing and black listing and other related services which may include NCR's use of various third party applications or NCR proprietary services aimed at securing the POS System Network. This solution will be installed on every Node within the POS System Network that You select. With Your approval, NCR will maintain a list of Your authorized software which is permitted to run on each Node. Any changes to this allowed software list must be requested by Your authorized representative.

1.4. Subscriptions to all 3 of the Network and Security Services, i.e. Site Shield, Secure Access and Threat Defender (or Site Shield, Threat Defender and Aloha Command Center in lieu of Secure Access), include participation by You as a covered customer under the Data Breach Assistance Program (the "Program"), for which NCR does not separately charge You. The Program assists with certain costs that may be incurred by You in the event of a data breach covered by the Program, which is subject to the additional terms and conditions (the "Additional Program Terms") accessible at the following weblink: <http://www.ncr.com/documents/HS-Breach-Assistance-Program.pdf> (password: hosted) or similar website identified by NCR. You should review the Additional Program Terms to ensure its understanding of them. Your participation in the Program is conditioned at all times on the continuation of the Program by NCR,

and because NCR does not separately charge for the Program, NCR reserves the right, upon notice to You, to discontinue or modify the Program at any time and for any reason (which reasons may include, without limitation, the continued ability of NCR to obtain or maintain any related insurance coverage on terms acceptable to NCR). However, if NCR elects to terminate the Program or make any modifications to the Program it will provide notice to You of such modifications, which notice may be given by any of the following means: (i) by the posting of a notice in a prominent manner on the main access screen for the Network and Security Services software used by You, (ii) by e-mail to the e-mail address that You have provided to NCR, (iii) by regular mail to the mailing address that You have provided to NCR, or (iv) by any other electronic or non-electronic means that NCR believes is reasonably likely to reach You. You shall also be required to (i) first submit to NCR valid and correct customer Identification Numbers (“MIDs”) for the locations then currently subscribing to all 3 of the Network and Security Services to be covered under the Program portal or other means designated by NCR from time to time, (ii) provide updates to NCR of any Your MIDs if they change for any reason by the same means as under sub item (i) and (iii) adhere to the Additional Program Terms. Proper submission of valid and correct MIDs and You being in good standing with fee payments to NCR and compliance with applicable terms and conditions for Network and Security Services shall be a condition to any coverage for You under the Program. You acknowledge and agree that continued coverage under the Program is only available to customers that have deployed the applicable components of the Network and Security Services in a manner that is consistent with the then-current product documentation. NCR reserves the right to withdraw coverage under the Program if You request a configuration that, in NCR’s discretion, places security of the environment at risk, or if You alter, change or tamper with NCR’s configuration of any of the applicable components of the Network and Security Services.

1.5. If the Network and Security Services option known as “Patch Management Service” (or its successor product) is selected by You as part of the Network and Security Services as may be designated on applicable order, NCR will provide You with managed security update services for each Node within the POS System Network that You select provided such Node is compatible with the Patch Management Service. Such managed security update services will include those services that are described in the then-current documentation for the Patch Management Service.

1.6. If the Network and Security Services option known as “Antivirus Service” (or its successor product) is selected by You as part of the Network and Security Services as may be designated on an applicable order, NCR will provide You with managed antivirus services to each Node within the POS System Network that You select provided such Node is compatible with the Antivirus Service. NCR is responsible for providing Your selected nodes with antivirus software and deploying virus signature updates when available.

1.7. Selection of a Network and Security Services bundle including a firewall owned by You and approved by NCR is subject to You first transferring ownership and title of such firewall to NCR at no cost to NCR along with any documentation required by NCR or the manufacturer of such firewall. In the event You cancel this service, You agrees to return such firewall to NCR at Your cost.

## 2. Your Responsibilities.

2.1 A properly configured hardware firewall is required for each of your locations using a persistent connection to the public internet or any private network where there is a potential for unauthorized access. This requirement is Your responsibility, except to the extent You subscribe to the Network and Security Services option known as “Site Shield” (or its successor product).

2.2 Unless you subscribe to the Network and Security Services option known as “Antivirus Service” (or its successor product), You will be required to have and maintain in place third party malware and anti-virus protection software, including periodic and routine updates in accordance with the manufacturer’s recommendations, and security for the Your POS System Network, which security includes unique, strong

passwords per user, physical security and access control policies. You acknowledge and agree that security and protection of all of your networks, including the POS System Network, and the data and applications on such networks, including protections against unauthorized access, is Your responsibility. You acknowledges that, to be effective, malware protection software, system passwords and other security software and hardware components require periodic and routine updates, which You must obtain or perform as applicable. You agree to not use or attempt to install remote access software on the POS System Network unless approved by NCR.

2.3 If the Network and Security Services option known as “Site Shield” (or its successor product) is selected by You as part of the Network and Security Services as may be designated on an applicable order, You agree to keep and use the hardware firewall only at the location designated for such firewall. You agree that the hardware firewall will not be removed from any such address unless You obtain NCR’s written permission in advance to relocate it. Title to the hardware firewall shall at all times remain with NCR and if NCR requires a label or other indicator of NCR’s interest to be placed on the firewall You will so apply the label or not remove any such label already affixed to the firewall. You are responsible for protecting the hardware firewall from damage, except for ordinary wear and tear, and from any other kind of loss while You have use of the hardware firewall. You are responsible for and accepts the risk of loss or damage to the hardware firewall while in use by You or in Your possession. You agree to keep the hardware firewall insured against all risks of loss in an amount at least equal to the replacement cost thereof during the term of this Agreement and will list NCR as loss payee and as an additional insured. Upon expiration or termination of this Agreement or NCR’s provision of the Network and Security Services, You shall return to NCR the hardware firewall in good, workable condition in accordance with NCR’s instructions for such return. If the hardware firewall is damaged or lost at any time during the term of this Agreement through no fault of NCR or is not returned to NCR following expiration or termination of this Agreement, You agree to pay to NCR \$1,200 for each damaged, lost or unreturned hardware firewall. At Your own cost and expense, You will keep the hardware firewall in good repair, condition and working order, ordinary wear and tear excepted. All replacement parts and repairs made or affixed to the hardware firewall will become part of the hardware firewall and title thereto shall vest in NCR. You will not make any permanent alterations to the hardware firewall.

3. Disclaimers. NCR disclaims any warranty, expressed or implied, that the POS System Network or your data will remain malware-free or free from unauthorized intrusions. In the event that any malware is detected in your POS System Network, additional services may be requested by NCR or a NCR authorized reseller to assist with the removal of malware or to address other suspected compromises at a cost to You.

## **NCR EVER CLOUD**

If NCR Ever Cloud (or its successor product) is selected by You as may be designated on an applicable order, NCR will provide You with the following Network and Security Services: Site Shield, the Patch Management Service and the Antivirus Service. However, coverage for the Patch Management Service and the Antivirus Service will only apply to a single Node located within the NCR Ever Cloud device (coverage for additional Nodes outside of the NCR Ever Cloud device can be purchased separately). Other services are provided as part of NCR Ever Cloud as described in NCR’s then-current product documentation and may include Secure Access, Threat Defender and other Network and Security Services. With respect to NCR’s provision of Site Shield as part of NCR Ever Cloud, since the NCR Ever Cloud device is provided

in lieu of a hardware firewall a separate hardware firewall will not be provided, however the terms in Section 1.1 above will apply to NCR's provision of the NCR Ever Cloud device. The terms in Schedule 1 attached to this Exhibit A will apply with respect to NCR's maintenance obligations for the NCR Ever Cloud device. You acknowledge and agree that the terms set forth in Sections 2 and 3 above shall apply to NCR's provision of NCR Ever Cloud and the terms in those Sections which pertain to a "hardware firewall" shall apply equally to the Ever Cloud device.

-- End of NCR Silver Merchant Agreement --

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