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 locataor 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, in advance, 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 Down Time 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 measurement of System Downtime 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 other terms and conditions (“Fees”), NCR grants to the 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 Section 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 Section 3.1 and Section 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 hereunder. 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 agrees to communicate only with NCR (and not such Hosting Provider) regarding the Hosting Services hereunder.

3.7. Access to Customer’s Systems. Customer agrees to allow NCR reasonable access to Customer’s computer system and the Hosted NCR Software in order to provide support services, monitor compliance with these Terms and Conditions, and change settings and/or install or remove applications to address data security risks. Customer further agrees to purchase, install and maintain NCR-approved high-speed internet access in order to provide NCR remote access to Customer’s computer system. Customer acknowledges and agrees that NCR may use its remote secure access product (or a successor product) in order to access Customer’s system 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 directives 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 documentation 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

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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 further testing and verification from NCR. Customer will furnish to NCR any documentation 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 Scheduling 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 by 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 connections 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 misuse or improper configuration of the Hosted NCR Software 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, payroll, 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. Customer acknowledges that such hyperlinks do not constitute endorsement or sponsorship of, or affiliation with, the owners of such internet sites, nor the information, products, services and trademarks contained therein.

3.10. 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 NCR WARRANTIES. 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 SYSTEM, SOFTWARE, ACCURACY, TIMELINESS, COMMERCIALITY, QUALITY, OR NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS. WITH RESPECT TO ANY 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:

4.1. 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;

4.2. 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;

4.3. 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;

4.4. Make all reasonable efforts to assist NCR in identifying, isolating and replicating issues found in the System;

4.5. 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 NCR harmless 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. 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 for any overdue invoices shall bear interest at the lesser of 1.5% per month or 1% 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, custom 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, custom fees, assessments or liabilities incurred by Customer or imposed on NCR in the performance of these Terms and Conditions or otherwise 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, custom 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 an ACH 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.
5. The Customer shall establish and maintain at least one commercial checking account at a depository financial institution, employ such bank or banks as NCR shall designate, and any information found in the NCR Confidential Information may not be changed or altered without thirty (30) days’ prior written notice to NCR and to put a freeze upon, or to in any way limit free access to, the account. The designated bank account must be the balance altered without thirty (30) days’ prior written notice to NCR and the execution of any forms required by NCR.

6.0 OWNERSHIP AND INDEMNIFICATION.

6.1. NCR reserves all rights not expressly granted herein. Except as otherwise explicitly agreed to in writing by NCR, no express or implied license or right of any kind is granted. The NCR Utilities and the Hosted NCR Software may not be used for commercial time-sharing, service, business or other rental or sharing arrangements. Further, Customer shall not: (a) resell, sublicense, lease, time-share or otherwise make the NCR Utilities or Hosted NCR Software available to any third party; (b) send or store infringing or unlawful material in the NCR Utilities or Hosted NCR Software; (c) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the NCR Utilities or Hosted NCR Software or the data contained therein; (d) modify, copy or create derivative works based on the NCR Utilities or Hosted NCR Software; (e) access the NCR Utilities or Hosted NCR Software for the purpose of building a competitive product or service or copying its features or user interface; (f) use the NCR Utilities or Hosted NCR Software, or permit them to be used, for purposes of product evaluation, benchmarking or other competitive analysis or publication without NCR’s consent; (g) permit access to the NCR Utilities or Hosted NCR Software by a third party direct competitor of NCR or its licensors; (h) copy the NCR Utilities or Hosted NCR Software or any software component contained in the NCR Utilities or Hosted NCR Software; (i) modify, copy or create derivative works based on the NCR Utilities or Hosted NCR Software; (j) attempt to obtain or perceive the source code from which any software component of the NCR Utilities or Hosted NCR Software is compiled or interpreted; or (j) send or store any malicious code into or through the Hosted NCR Software.

6.2. Customer acknowledges and agrees that, except for Customer’s license expressly described in these Terms and Conditions, Customer has no right, title and interest in the NCR Utilities and Hosted NCR Software, in any form, or in any copies 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 agreement or instrument creating or giving notice of an encumbrance or charge against the NCR Utilities or the Hosted NCR Software.

6.3. Indemnification.

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 required to be paid by Customer or on Customer’s behalf in a settlement of the IP Claim that NCR has agreed to in writing. As used in this Section, an “IP Claim” means a suit brought against Customer by a third party to the extent the suit alleges that Customer’s use of the Hosted NCR Software or the Hosting Services infringes a patent or copyright of the third party.

6.3.2. NCR’s obligations set forth in this Section are subject to Customer (a) providing NCR prompt written notice that the IP Claim has been or is threatened to be brought or prosecuted, whereby it is more likely than not that such infringement is (the “Claim Notice”); (b) providing NCR sole control of the defense, appeal, and/or settlement of the IP Claim; (c) cooperating with NCR with respect to the defense, appeal, and/or settlement of the IP Claim; (d) providing NCR with requested documentation and information, relevant to the IP Claim or its defense, appeal, or settlement; and (e) complying with all court orders. If Customer’s 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 this Section will not apply to the IP Claim. Notwithstanding any other provision of these Terms and Conditions, NCR is not responsible for any fees (including attorneys’ fees), expenses, costs, judgments, or awards that are incurred prior to NCR’s receipt of the Claim Notice from Customer. NCR will have the sole right to select counsel. Customer may, at Customer’s sole expense, engage additional counsel of Customer’s choosing for purposes of confronting with NCR’s counsel.

6.3.3. The obligations set forth in this Section will not apply to an IP Claim if the alleged infringement is based on, caused by, or results from (a) NCR’s compliance with Customer’s designs, specifications, or instructions; (b) modification of the Hosted NCR Software or the Hosting Services other than by NCR; (c) any product or service not provided by NCR to Customer; (d) use of the Hosted NCR Software in accordance with the applicable Documentation; or (e) combination or use of the Hosted NCR Software or the Hosting Services with any product or service not provided by NCR to Customer.

6.3.4. If an intellectual property infringement allegation is brought or threatened against the Hosted NCR Software or the Hosting Services, or NCR believes that such an allegation may be brought or threatened, NCR has the right to (a) if it has not already done so, modify the Hosted NCR Software or the Hosting Services; (b) replace the Hosted NCR Software or the Hosting Services 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 request to Customer, NCR may cease Customer’s access and use of the Hosted NCR Software, and NCR will refund Customer any amount that Customer prepaid NCR for the Hosted NCR Software or the Hosting Services not yet provided to Customer.

6.3.5. This Section 6.3 sets forth NCR’s entire obligations, and Customer’s exclusive remedies, with respect to intellectual property infringement, including any IP Claim.

6.4. In addition to the other indemnities set forth elsewhere in these Terms and Conditions (including Exhibits to these Terms and Conditions), Customer agrees to indemnify and hold NCR, its officers, directors, shareholders, agents and representatives harmless against any and all claims, losses, costs, fines, fees, liabilities or obligations made by third parties relating to (i) the operation of Customer’s business and the conduct of other Customer activities, (ii) Customer’s violation of the NCR Software, the Hosting Services other applications and services made available hereunder, (iii) claims or demands by third parties against NCR relating to these Terms and Conditions, (iv) Customer’s breach of these Terms and Conditions and (v) Customer’s violation of any applicable international, federal, state or local law, regulation or ordinance. In connection with Customer’s use of the Hosted NCR Software, the Hosting Services or other applications and services made available hereunder.

7.0 Limited Warranty.

7.1. NCR warrants to Customer that the Hosted NCR Software will conform to the Documentation, the Hosted NCR Software provided to Customer is used in accordance with the Documentation. If NCR believes that there is a defect in the Hosted NCR Software such that it does not conform to this limited warranty, NCR must be notified immediately, but not later than 90 days following the first use of the Hosted NCR Software by Customer. If NCR breaches the warranty in this Section 7.1, NCR will promptly re-perform the applicable Hosted NCR Software, and Customer agrees that this shall be its sole remedy for non-conformities in the Hosted NCR Software.

7.2. NCR does not warrant that the System will operate in conjunction with hardware or software that is neither provided by nor formally approved by NCR. Except to the extent expressly provided in this Section 7.1, Customer understands and agrees that Hosted NCR Software and the NCR Utility are provided AS-IS and THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES FROM NCR, WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED, REGARDING THE HOSTED NCR SOFTWARE, THE SYSTEM, THE HOSTING SERVICES OR OTHER SERVICES PROVIDED BY NCR HEREUNDER INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NCR MAKES NO CLAIMS, PROMISES OR GUARANTEES ABOUT THE NCR UTILITIES, THE HOSTED NCR SOFTWARE OR THE HOSTED NCR SOFTWARE. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, CUSTOMER ASSUMES ALL THE RISKS ASSOCIATED WITH CUSTOMER’S USE OF THE HOSTED NCR SOFTWARE OR DATABASES MADE AVAILABLE BY NCR IN CONNECTION WITH THE USE OF THE HOSTED NCR SOFTWARE. CUSTOMER FURTHER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE LIMITATIONS CONTAINED IN THESE TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, THE LIMITATIONS SET FORTH IN SECTION 7.0 HEREIN, THE FEES AND CHARGES CHARGED BY NCR HEREUNDER FOR THE HOSTED NCR SOFTWARE AND SERVICES WOULD BE HIGHER.

7.3. NCR DISCLAIMS ANY WARRANTY, EXPRESSED OR IMPLIED, THAT THE SYSTEM OR CUSTOMER’S DATA WILL REMAIN MALWARE-FREE. In the event that any malware is detected in the System, additional services may be requested by NCR or an NCR authorized reseller to assist with the removal of malware or to address other suspected compromises at a cost to Customer.

8.0 DATA SECURITY AND CYBERCRIME PREVENTION.

8.1 Customer is responsible to have and to maintain in place updated malware protection software and security for all of Customer’s systems, networks, and data, which security includes providing hardware firewall systems, system passwords and other security software and access control policies. Customer acknowledges that the security and protection of its network and the data and applications on that network, including protections against unauthorized access, the configuration of all required data parameters, including security-related parameters, is solely and entirely Customer’s responsibility. A properly configured firewall is required for each Customer Location using a persistent connection to the public internet or any private network where there is a potential for unauthorized access. Customer acknowledges that, to be effective, malware protection software, hardware firewalls, system passwords and other security software and hardware components require periodic and routine updates, which Customer must obtain or perform as applicable. Customer acknowledges that its failure to discharge its obligations to keep its systems secure may result in investigation fees, fines, penalties, remediation costs (which may include system component updates or replacements) and lost profits and lost reputation of Customer’s business, which costs may be so large that they may threaten the survival of Customer’s business. Customer waives all claims hereunder against NCR for any such costs or losses to the extent arising from the failure of NCR’s failure to maintain a system, or to the extent arising as a result of a failure or breach of its security for its systems or data, or as a result of any unauthorized access to Customer’s systems. In the event of a security breach of Customer’s systems, Customer agrees to promptly provide NCR with copies of any forensic reports related to such breach, and (ii) authorize any investigating entities to disclose all relevant information regarding their investigations, including investigations in progress, of such breach to NCR.

8.2 In the event that Customer provides cardholder data to NCR, NCR acknowledges responsibility for appropriate securing of such cardholder data. With respect to the services provided by NCR to Customer, NCR will use its prudent standards in accordance with applicable PCI DSS requirements.
services pursuant to these Terms and Conditions. All professional services shall be set forth in an Order, exhibit or statement of work, including the fees, payment terms, specifications, performance schedules and similar provisions. NCR will not undertake any professional services until it has agreed in writing with the terms in writing with Customer. The terms hereof and any Order, exhibit or statement of work shall govern NCR’s provision of such services. For purposes hereof, the term “work day” means an eight hour day. If more than eight hours of work are provided in one day, the daily rate will apply, and the time spent in excess of eight hours will be billed at an hourly rate. Unless the statement of work provides otherwise, Customer will pay all invoices within 30 days of NCR’s issuance.

10. 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 ascertainable by proper Means by, other persons who can obtain economic value from such information; (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; (c) the information communicated was publicly known at the time of Recipient’s receipt from Owner; and/or (d) is the subject of a confidentiality agreement or other contract to which Recipient is a party receiving any Proprietary Information hereunder, whether such party is NCR or Customer; and “Proprietary Information” means Trade Secrets and Confidential Information; “Owner” refers to the party disclosing 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.

10.2. Recipient agrees to hold the Proprietary Information disclosed by Owner in strictest confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information disclosed by Owner to any third party (other than NCR subcontractors performing any services hereunder), or utilize the Proprietary Information disclosed by Owner for any purpose whatsoever other than as expressly contemplated by these Terms and Conditions. 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 in accordance with the terms of these Terms and Conditions. With regard to the Trade Secrets and Confidential Information in this Section 10.0, any damages resulting from the violation of these Terms and Conditions constitutes a trade secret under applicable law. With regard to the Confidential Information, the obligations in this Section shall continue for the term of these Terms and Conditions and for a period of three (3) years thereafter. NCR shall not apply if and to the extent that: (a) the information communicated was already known to Recipient, without obligations to keep such information confidential, at the time of Recipient’s receipt from Owner, as evidenced by documentation in the possession of Recipient prepared or received prior to disclosure of such information; (b) the information communicated was received by Recipient in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (c) the information communicated was publicly known at the time of Recipient’s receipt from Owner or has become publicly known otherwise by a breach of the terms of these Terms and Conditions; (d) the Recipient establishes that the information was independently developed without reference to the Proprietary Information; (e) the Recipient obtains the prior written approval of Owner to disclose the information; or (f) the information is required to be disclosed 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.

10.3. NCR may use and disclose transactional and system configuration information in the form of anonymous, aggregated usage statistics that NCR derives from Customer’s Locations via Customer’s use of the Services, but only in forms that do not reveal the identity of Customer or its confidential information, except as required by law or as may be needed in connection with any legal proceedings.

11. LIMITATION OF LIABILITY

11.1. IN NO EVENT SHALL NCR, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INDEMNIFIABLES OR OTHER REPRESENTATIVES BE LIABLE TO CUSTOMER, OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR ANY CLAIMS FOR LOST PROFITS, LOST SAVINGS, LOST DATA, OR LOSS OF GOODWILL BY OR OF CUSTOMER, OR FOR ANY CLAIM OR DEMAND IN ANY WAY RELATING TO THESE TERMS AND CONDITIONS OR RESULTING FROM THE USE OF OR INABILITY TO USE THE HOSTED NCR SOFTWARE, NCR UTILITIES, SERVICES OR THE SYSTEM PROVIDED BY NCR OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES, INCLUDING, WITHOUT LIMITATION, THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF NCR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

11.2. IN NO EVENT WILL NCR’S OR ANY OF ITS AFFILIATES LIABILITY FOR ANY DAMAGES TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY OVER EXCEED THE AMOUNT OF FEES AND CHARGES PAID BY CUSTOMER TO NCR HEREUNDER DURING THE IMMEDIATELY PRIOR TWELVE-MONTH PERIOD FOR THE APPLICABLE PRODUCT OR SERVICE GIVING RISE TO SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

11.3. Customer understands and agrees that use of or connection to the internet is inherently insecure and that connection to the internet provides opportunity for unauthorized access by a third party to Customer’s or NCR’s computer systems (including, but not limited to, the Customer Equipment and/or the System), networks and any and all information stored therein. IN NO EVENT WILL NCR’S OR ANY OF ITS AFFILIATES’ LIABILITY FOR ANY DAMAGES TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY OVER EXCEED THE AMOUNT OF FEES AND CHARGES PAID BY CUSTOMER TO NCR HEREUNDER DURING THE IMMEDIATELY PRIOR TWELVE-MONTH PERIOD FOR THE APPLICABLE PRODUCT OR SERVICE GIVING RISE TO SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

11.4. Customer acknowledges and agrees that use of or connection to the internet is inherently insecure and that connection to the internet provides opportunity for unauthorized access by a third party to Customer’s or NCR’s computer systems (including, but not limited to, the Customer Equipment and/or the System), networks and any and all information stored therein. IN NO EVENT WILL NCR’S OR ANY OF ITS AFFILIATES’ LIABILITY FOR ANY DAMAGES TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY OVER EXCEED THE AMOUNT OF FEES AND CHARGES PAID BY CUSTOMER TO NCR HEREUNDER DURING THE IMMEDIATELY PRIOR TWELVE-MONTH PERIOD FOR THE APPLICABLE PRODUCT OR SERVICE GIVING RISE TO SUCH DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.
13.5. Upon termination or expiration of these Terms and Conditions for any reason, all rights and licenses granted by NCR hereunder to Customer in these Terms and Conditions shall immediately cease, NCR shall cease providing the services and will disable Customer’s access to the Hosting Web Site and the Services, and Customer shall immediately return to NCR the NCR Utilities, the Documentation, and all Proprietary Information of NCR, together with all copies thereof. Upon termination or expiration of these Terms and Conditions, Customer shall immediately pay to NCR all amounts due hereunder, including all outstanding invoices.

13.6. Upon termination or expiration of these Terms and Conditions, Sections 10.0 (Nondisclosure and Confidentiality), 11.0 (Limitation of Liability), 14.0 (Dispute Resolution), and 20.0 (Governing Law), along with the provisions of any other Sections of these Terms and Conditions and the Exhibits that expressly or by their nature contemplate surviving any termination or expiration of these Terms and Conditions, shall continue and survive in full force and effect.

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 capitation of a hearing and the merits by application of law to uncontested 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 proceedings, including but not limited to, receipt 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 report any claim, controversy, or dispute to NCR within this timeframe will be deemed to constitute a waiver of such right or duty. Customer agrees to bring any administrative proceedings, including but not limited to, receipt 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). A transfer of more than 50% of the voting stock or other ownership interest of a merger, consolidation, or sale of assets transaction and may use subcontractors to fulfill its obligations under these Terms and Conditions to one or more of its Affiliates or to an assignee or transferee upon NCR’s entry into a merger, consolidation, or sale of assets transaction and may use subcontractors to fulfill its obligations under these Terms and Conditions to one or more of its Affiliates or to an assignee or transferee. NCR shall be deemed an assignment for the purposes of this section. Any purported assignment in violation of this Section 19.0 shall be null and void. Additionally, NCR or its Affiliate may provide or invoice for the products and services set forth in an Order and governed by these Terms and Conditions.

18.0 BINDING EFFECT. 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.

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.

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 will request employment verification 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.
EXHIBIT B
NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA
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 founds 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.:

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