

**STANDARD TERMS AND CONDITIONS APPLICABLE TO
NCR PAYROLL & HR SOLUTIONS
("TERMS AND CONDITIONS")**

These Terms and Conditions apply to the supply of any goods, software or services by NCR Payroll & HR Solutions, Inc. ("NCR"), unless otherwise agreed in writing by NCR. NCR and the company or individual named on the Order ("Customer") referencing these Terms and Conditions and the acceptance of any Order (including any online acceptance or acknowledgement prior to use or download) constitutes an unqualified acceptance of these Terms and Conditions such that these Terms and Conditions will apply to NCR's provision of the Hosted NCR Software, equipment (if applicable) and/or the related applications and services listed on the purchase order or on an online acknowledgement, subscription or acceptance for use or download for use ("Order") or otherwise provided by NCR in connection therewith. 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.

NOW THEREFORE, for and in consideration of the mutual premises, warranties and representations set forth in these Terms and Conditions and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1.0 **BACKGROUND.** NCR is the owner and/or provider of software, equipment and related services. These Terms and Conditions apply to Customer's access and use of the NCR proprietary software applications hosted by NCR ("Hosted NCR Software"), equipment, and related applications and services. Related additional terms and conditions ("Additional Terms and Conditions"), if any, as listed on Exhibit A, including any attachments thereto, may apply to certain Hosted NCR Software or the related applications and services. These Terms and Conditions include one or more attached exhibits and attachments thereto ("Exhibits") which are incorporated into these Terms and Conditions by this reference.

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

2.1. **Affiliate(s)** means any entity that directly or indirectly, through one or more intermediaries, controls or is controlled by 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.

2.2. **Data Center** means the physical facility where the System resides.

2.3. **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.

2.4. **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 other 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.

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

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

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

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

2.9. **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.

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

2.11. **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.

2.12. **Third Party Products** means the third party products and/or services which are purchased by Customer from NCR.

3.0 **HOSTED SOLUTIONS/THIRD PARTY PRODUCTS.**

3.1. **Access to Hosted NCR Software.** Subject to these Terms and Conditions and payment of the all fees and charges set forth on an applicable Order, website referencing these Terms and Conditions or otherwise owed to NCR hereunder (the "Fees"), NCR grants to Customer the non-exclusive and limited right and license to: (i) access and use the Hosted NCR Software via internet connection to the System for Customer's internal business requirements and performing administrative functions pertaining thereto; (ii) use the Documentation in

connection with such rights; and for no other purpose. Except as expressly set forth in these Terms and Conditions, all rights and licenses granted to Customer are nontransferable and nonassignable.

3.2. **Installation of NCR Utility/Utilities.** In order to facilitate Customer's access to and use of the Hosted NCR Software as permitted herein, NCR will 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.** Other than 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 with those Additional Terms and Conditions applicable for a particular selected NCR Hosted Software contained in Exhibit A, those 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, 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 agree 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 documents necessary to verify the identity of Customer or its employees pursuant to applicable federal and/or state statutes or regulations. Customer acknowledges that Customer is responsible for any delayed remittance of wages, taxes, garnishments, and additional fees incurred as a result of its failure to provide timely and accurate Customer Information. NCR is not required to obtain authorization from Customer to act on Customer Information. NCR may and will assume that all such Customer Information provided to NCR by Customer, its designee or another existing or former service provider is complete and accurate, and NCR is under no duty to question the completeness or accuracy of any Customer Information. NCR will not be responsible for errors that result from NCR's reliance on Customer Information or for any data entered by Customer. Customer will review all reports and documents provided or made available by NCR and inform NCR of any inaccuracies within three (3) business days of receipt or availability. In the event 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 consent and review from Customer. Customer will complete all 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 Scheduled Downtime.

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

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

3.9.5. NCR does not control the flow of data to or from the network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's 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, or 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 any actions taken by NCR at the request or direction of Customer; (iv) outages initiated by NCR at the request or direction of Customer for backup, maintenance or other purposes; and (v) any professional or supplemental services outside the scope of the services to be provided hereunder or under these Terms and Conditions, including but not limited to: (a) content management; (b) development or maintenance of Customer's intranet web site; (c) implementation, management and support of non-standard interfaces; (d) custom data conversion services; (e) system configuration services; (f) application data maintenance (such as, but not limited to, pricebook, vendor, site, and product information maintenance); (g) custom reporting requirements outside of those offered in the Hosted NCR Software; and (h) hosting of any functionality other than the then-current functionality within the Hosted NCR Software.

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

3.9.9. Customer agrees that NCR is not rendering legal, tax, accounting, or investment advice in connection with the Hosted NCR Software and related services provided under any Order or these Terms and Conditions, nor will NCR 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. NCR will not 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 information contained within such internet sites and the appearance of such hyperlinks does not constitute endorsement or sponsorship of, or affiliation with, the owners of such internet sites, nor the information, products, and trademarks contained therein.

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

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

3.9.13. Customer acknowledges and agrees that NCR will not be liable for any errors or delays in Hosted NCR Software, or for any actions taken in reliance thereon.

3.10. Third Party Products. With respect to any Third Party Products provided by NCR, Customer acknowledges and agrees that its right to use any such Third Party Products is 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 WARRANTY FROM NCR. 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 NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS.

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

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

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

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

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

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

5.0 FEES AND PAYMENT.

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

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

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

5.4. Customer irrevocably authorizes NCR to initiate an electronic funds transfer ("EFT") (including, without limitation, origination of 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 (collectively, the "Debits"). This EFT authorization will remain in full force and effect until NCR has collected payment on all Fees and amounts due or which may become due. In the event that any EFT is rejected for insufficient funds or any other reason at any time, Customer agrees to pay an additional \$75.00 administration fee.

5.5. The Customer shall establish and maintain at least one commercial checking account at a US depository financial institution acceptable to NCR. Customer shall maintain therein available funds in an amount sufficient to cover the Customer's Debits. Such account must include overdraft protection or a letter of credit acceptable to NCR. Customer shall immediately notify NCR if the overdraft protection or letter of credit is revoked, rendered invalid, or no longer has a balance that is sufficient to cover Customer's largest historic Debit. Customer shall also immediately notify NCR if any action is taken by any individual or entity to put a freeze upon, or to in any way limit free access to, the account. The designated bank account may not be changed or 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 timesharing, 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 comparative analysis intended for 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) knowingly copy the NCR Utilities or Hosted NCR Software or any software component provided therein; (i) decompile, reverse assemble, or otherwise reverse engineer or otherwise 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.

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 or the 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 threatened or brought, whichever is sooner (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, and/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 conferring 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 not 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 may (a) obtain a license for the Hosted NCR Software or the Hosting Services; (b) modify the Hosted NCR Software or the Hosting Services; or (c) 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, employees, 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 use of the Hosted NCR Software, the Hosting Services or other applications and services made available hereunder, (iii) claims or demand 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 for the Hosted NCR Software, provided that the Hosted NCR Software is used in accordance with the Documentation. If Customer 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. Customer agrees that its sole remedy for non-conformities in the Hosted NCR Software shall be repair or replacement of the Hosted NCR Software, with such replacement to be substantially equivalent in functionality to the item replaced as determined by NCR in its sole discretion. 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 ACCURACY, TIMELINESS, COMPLETENESS, OR ADEQUACY OF THE RESULTS OR ANALYSIS PROVIDED BY THE HOSTED NCR SOFTWARE, AND EXPRESSLY FURTHER DISCLAIMS LIABILITY FOR ERRORS AND OMISSIONS IN THE RESULTS AND ANALYSIS PROVIDED BY THE HOSTED NCR SOFTWARE. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, CUSTOMER ASSUMES ALL OF 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, WITHOUT LIMITATION, THE LIMITATIONS IN THIS SECTION 7.0 HEREIN, THE FEES AND CHARGES CHARGED BY NCR HEREUNDER FOR THE HOSTED NCR SOFTWARE AND SERVICES WOULD BE HIGHER.

7.2. 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 a 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 properly configured hardware firewalls, unique, strong passwords per user, physical security, 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, 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, charge backs and credit card fraud costs, and other losses as levied by credit card processors and others, 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 any claims hereunder against NCR for any such costs or losses to the extent arising from Customer's failure to have or maintain a secure 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 agree to promptly (i) notify NCR of such breach, (ii) provide NCR with copies of any forensic reports related to such breach, and (iii) 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 maintain its practices in accordance with applicable PCI DSS requirements.

9.0 PROFESSIONAL SERVICES. Customer may request, and NCR may provide, certain professional services to Customer during the term hereof for the purpose of specifying, designing, developing, and installing customized functions, reports, or features to the Hosted NCR Software to which the parties agree. At NCR's option, NCR may utilize subcontractors to perform any 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 upon 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.

10.0 NONDISCLOSURE AND CONFIDENTIALITY.

10.1. Each party may disclose to the other party certain Trade Secrets and Confidential Information of such party or its affiliates, suppliers, or customer. For purposes of these Terms and Conditions, "Trade Secrets" means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; "Confidential Information" means information, other than Trade Secrets, that is of value to its owner and is treated as confidential; "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 NCR claims that the NCR Utilities, Hosted NCR Software and Documentation are 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, the obligations in this Section 10.0 shall continue for so long as such information 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 5 years thereafter. The foregoing obligations 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 documents 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 other than by a breach 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 give 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, aggregate usage statistics that NCR derives from Customer's Locations via Customer's use of the Hosted NCR Software, 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.

11.0 LIMITATION OF LIABILITY.

11.1. IN NO EVENT SHALL NCR, ITS AFFILIATES OR ANY OF THEIR 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 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 NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD 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 EVER 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. INFORMATION TRANSMITTED AND RECEIVED THROUGH THE INTERNET CANNOT BE EXPECTED TO REMAIN CONFIDENTIAL, AND NCR DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY AND NON-CORRUPTION OF ANY INFORMATION SO TRANSMITTED, OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. NCR SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S CONNECTION TO OR USE OF THE INTERNET, AND NCR SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ITS REPRESENTATIVES OF ANY INTERNET CONNECTION IN VIOLATION OF ANY RULE, LAW OR REGULATION.

11.4. CUSTOMER COVENANTS AND AGREES NOT TO ASSERT A CLAIM OR INITIATE ANY LITIGATION OR AN ARBITRATION PROCEEDING AGAINST NCR OR ANY OF ITS AFFILIATES BASED UPON OR RELATED TO NCR'S OR THE HOSTED NCR SOFTWARE'S ROLE IN CLASSIFYING TRANSACTIONS FOR SUBMISSION TO THE CREDIT CARD ASSOCIATIONS AND ELECTRONIC PAYMENT NETWORKS, THE INTERCHANGE RATE ATTRIBUTABLE TO SUCH TRANSACTIONS OR ANY RESULTING FINE, FEE, LOST PROFIT OR OTHER LOSS.

11.5. WHILE CERTAIN HOSTED NCR SOFTWARE MAY PROVIDE ANALYSIS OF TRANSACTION RECORDS BASED ON TRANSACTION PATTERNS AND ACTIVITY THAT ARE CONSISTENT WITH INDICIA OF FRAUDULENT TRANSACTION SCHEMES THAT COMMONLY OCCUR IN COMMERCIAL PURCHASING OPERATIONS, THE PATTERNS AND ACTIVITIES REPORTED BY THE HOSTED NCR SOFTWARE MAY NOT NECESSARILY BE THE RESULT OF FRAUDULENT ACTIVITY AND THE USE OF THE HOSTED NCR SOFTWARE'S RESULTS AND ANALYSIS SHOULD BE DONE WITH CAUTION AND THE EXERCISE OF CAREFUL JUDGMENT.

12.0 CUSTOMER'S ADDITIONAL RESPONSIBILITIES. Unless otherwise specified in these Terms and Conditions or in a separate writing signed by both Customer and NCR, Customer shall be solely responsible for the following: (a) selection of the Hosted NCR Software to achieve Customer's intended results; (b) evaluation of NCR's products relating to Customer's specific business requirements and technical environment; (c) the results obtained from use and operation of the Hosted NCR Software and the System; (d) providing cabling and all cabling services in preparation for the installation of the NCR Utilities (if applicable); (e) providing and maintaining the appropriate operating environment for the NCR Utilities, including related security and access controls, and maintaining back-up and disaster recovery procedures, facilities and equipment (if applicable); (f) adherence to any applicable electronic processing standards or requirements related to Customer's operations; (g) all data entry and loading; (h) installing upgrades provided by NCR and securely deleting previously stored information or data (if applicable); (i) the content of all Customer information or data, the selection and implementation of controls on the access and use of such information or data, and the protection and back-up of the stored information or data; (j) the configuration of all required data parameters associated with use of the Hosted NCR Software and the System and its operating environment, including security-related parameters; (k) compliance with all applicable city, state, and federal laws, rules or regulations affecting or governing Customer information or data configuration parameters in the Hosted NCR Software; and (l) providing adequate training on the use and operation of the NCR Utilities, the Hosted NCR Software and the System to Customer's employees and maintaining adequate supervision of such employees.

13.0 TERM AND TERMINATION.

13.1. Unless earlier terminated as provided for in Section 13.2 of these Terms and Conditions or except as otherwise provided elsewhere in these Terms and Conditions or on an Order, these Terms and Conditions remain in effect for the duration of the term initially selected by Customer on an Order (the "Initial Term") and remain subject to automatic renewal for subsequent terms equivalent to the Renewal Term specified in the Order unless the Customer provides NCR 60 days' notice prior to the expiration of the then current term.

13.2. These Terms and Conditions may be terminated:

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

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

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

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

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

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 Hosted NCR Software, 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 advance of a hearing on the merits by applying the applicable 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 discrepancies, including but not limited to, invoice errors, shipment discrepancies and return variances, to NCR's attention in writing within 90 days from the date of the incident's occurrence (e.g. receipt of goods). Customer's failure to raise an administrative discrepancy with appropriate supporting documentation within this time period will result in the waiver of Customer's right to dispute the incident at a future date.

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

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

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

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

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

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

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

19.0 ASSIGNMENT. Except as otherwise set forth in these Terms and Conditions, these Terms and Conditions and all rights and obligations may not be assigned in whole or in part by either party without the prior written consent of the other, except the rights and obligations of NCR may be assigned to one or more of its Affiliate and may use subcontractors to fulfill its obligations. A transfer of more than 50% of the voting stock or other ownership interest of Customer 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. Notwithstanding the foregoing, NCR may assign to an Affiliate without notice and without prior written consent of Customer. 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.

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

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

22.0 MISCELLANEOUS.

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

22.2 Customer acknowledges that it has read, understands and agrees to be bound by these Terms and Conditions. Further Customer agrees that these Terms and Conditions, together with any Exhibits and other applicable NCR agreements referencing these Terms and Conditions and expressly made a part hereof that are duly signed by the parties will be the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of these Terms and Conditions, provided, however, that if the parties signed by hand a written agreement concerning Hosted NCR Software and the NCR Utility, the terms and conditions of the signed written agreement shall govern and these Terms and Conditions shall not apply.

[END OF TERMS AND CONDITIONS]

[EXHIBIT(S) TO FOLLOW]

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.