

**STANDARD TERMS AND CONDITIONS APPLICABLE TO QUOTES, PURCHASE ORDERS AND ONLINE SUBSCRIPTIONS FOR NCR  
SPECIALTY RETAIL HOSTED SOLUTIONS FOR SOFTWARE-AS-A-SERVICE PRODUCTS  
("TERMS AND CONDITIONS")**

These Terms and Conditions apply to the supply of any goods, software or services by NCR Corporation ("NCR"), unless otherwise agreed in writing by NCR. NCR and the company or individual named on the Order ("Customer" and formerly referred to in prior versions of these Terms and Conditions as "Licensee") 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"). 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. No employee, agent or contractor of NCR may vary or add to these Terms and Conditions without the prior written authority of an executive of NCR.

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 may apply to certain Hosted NCR Software or the related applications and services. These Terms and Conditions include one or more attached exhibits ("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 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 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 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 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 applicable fees and charges set forth on an applicable Order or website referencing these Terms and Conditions, NCR grants to Customer the non-exclusive and limited right and license to: (i) access and use the Hosted NCR Software via internet connection to the System for Customer's internal business requirements and performing administrative functions pertaining thereto; (ii) use the Documentation in connection with such rights; and for no other purpose. Except as expressly set forth in these Terms and Conditions, all rights and licenses granted to Customer are nontransferable and nonassignable.

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

3.3. **Additional Terms and Conditions.** 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. **Exclusions and Limitations.**

3.8.1. 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.

3.8.2. 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 3.8 shall not be considered Scheduled Downtime.

3.8.3. 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 3.8 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.

3.8.4. 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 3.8.

3.8.5. 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.

3.8.6. 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.

3.8.7. 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.

3.8.8. 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.

3.8.9. 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, services and trademarks contained therein.

3.8.10. 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.

3.8.11. 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.

3.8.12. 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.

3.9. 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; and

(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 one-time activation and monthly service fees indicated on the applicable Order or website referencing these Terms and Conditions. All payment obligations are non-cancelable and non-refundable. Unless otherwise specified on the applicable Order, website referencing these Terms and Conditions, or paid monthly pursuant to Section 5.2 of these Terms and Conditions, 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.** The fees, charges and expenses 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 5.0 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. NCR may increase the fees and charges specified herein at any time upon 60 days notice to Customer. Additionally, NCR reserves the right to change its credit terms at any time, effective on written notice to Customer and NCR reserves the right to withhold performance of any obligations arising 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 non-payment when due of any undisputed amounts owed to NCR.

### 5.2. Recurring Monthly Payments.

5.2.1. Subject to Section 5.1 of these Terms and Conditions, fees and charges for Hosted NCR Software are billed monthly to Customer's on-file payment method in accordance with the most current price schedule based upon the level of service and subscription term selected by Customer (as published on NCR's web site

for the applicable Hosted NCR Software listed on an Order form or the applicable website).

5.2.2. If for any reason NCR cannot charge valid monthly fees to Customer's on-file payment method, Customer will be assessed a late fee in addition to other remedies available to NCR including without limitation those set forth in Section 5.1 of these Terms and Conditions. In the event Customer's on-file payment method is no longer valid or inaccessible to NCR, NCR may invoice Customer for the monthly fees, and Customer agrees to pay all fees due upon receipt of invoice from NCR.

5.2.3. Monthly fees will be charged at the end of each billing cycle. Customer agrees to pay all fees, whether or not Customer actually makes use of Hosted NCR Software during the applicable billing cycle.

5.2.4. Except during the Initial Subscription Term (defined in Section 13 of these Terms and Conditions), rates are subject to change with 30 days notice.

5.2.5. Recurring monthly payments do not include any Professional Services (defined in Section 9.0 of these Terms and Conditions) including without limitation, optional services such as consulting, web site design, custom template design, custom development, implementation services or marketing services.

## 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 decompile, reverse assemble, or otherwise reverse engineer the NCR Utilities or 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 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; or (d) 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 reputability 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 agrees 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 a 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 of a statement of work with Customer. The terms hereof and the 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 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 OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR 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 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 subscription term initially selected by Customer on an Order (the "Initial Subscription Term") and remain subject to automatic renewal for subsequent terms equivalent to the Initial Subscription Term unless the Customer provides NCR 90 days notice prior to the expiration of the then current term as set forth in Section 13.2(b).

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 of Customer's receipt of notice specifying that such amounts have not been timely paid;
- 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 Customer submitting written notice to NCR; however a cancellation fee in accordance with the then published price schedule based upon the level of service and subscription term selected by Customer (as published on NCR's web site for the Hosted NCR Software or listed on an Order) will apply if Customer terminates prior to the expiration of the then current term. Such cancellation fee is calculated as a reasonable pre-estimate of the costs likely to be sustained by NCR if Customer terminates these Terms and Conditions prior to the expiration of the then current term and shall not be deemed to be a penalty. Notwithstanding anything to the contrary, NCR is under no obligation to refund Customer any fees previously paid if Customer terminates these Terms and Conditions; or

(c) 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

(d) 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. 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 cancellation 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.

13.4. 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 Hosting 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, and provided all obligations to NCR hereunder have been satisfied, NCR shall, upon written request, return to Customer a copy of the SQL server database containing Customer's data on a disk drive and any other Customer data then in NCR's possession in file formats and on media reasonably requested by Customer, except for any data that NCR is restricted from providing to Customer pursuant to any rule or regulation governing NCR's status as a service provider in connection with NCR's provision of Hosted NCR Software or Hosted Services, and shall purge all such data from the System and the archives.

13.5. 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, 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 enure 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

#### CPMobile

In addition to providing its own mobile device(s), prior to activation of CPMobile at any Customer location (i) Customer will be required to download a NCR Utility, including any updates thereto issued by NCR from time to time from a web-site designated by NCR and install such NCR Utility on each mobile device and (ii) if applicable to the level of service selected by Customer for CPMobile, Customer may be required to purchase a hardware accessory device authorized by NCR as compatible for use with the CPMobile service and CounterPoint SQL from an authorized NCR reseller for each mobile device. If installation cannot be performed by Customer for any reason Customer must work with Customer's authorized CounterPoint SQL reseller for installation of the NCR Utility (Customer's authorized reseller reserves the right to charge Customer for such installation at the reseller's then-current rates).

#### Social Media Management | Text | Email – “Digital Online Marketing Communications”

1. For each Communication (as defined in Section 3 for this Digital Online Marketing Communications section of this Exhibit A) sent, Customer acknowledges and agrees that NCR may add an identifying footer stating “Email Marketing by NCR”, “Powered by NCR” or a similar message.

2. NCR does not endorse the content of the Communications or any products or services offered for sale by Customer. Customer agrees that Customer will not use the Digital Online Marketing Communications service to engage in any illegal, unlawful, immoral, or unethical activities. Customer acknowledges and agrees that NCR does not endorse the content of the Communications or any products or services offered for sale therein and NCR specifically disclaims any responsibility for any threatening, libelous, obscene, harassing, or offensive material contained therein. Customer's obligations under this Section 2 for this Digital Online Marketing Communications of this Exhibit A shall survive termination of Terms and Conditions.

3. By enrolling in the specific Digital Online Marketing Communications product(s) reflected on an applicable Order, Customer acknowledges and agrees that NCR will be making available to Customer a software application that will allow Customer to send communications of various kinds to Customer's patrons and that these communications may take the form, of e-mails, text messages or other electronic messages (collectively, “Communications”). Communications may be routed through one or more wireless or other mobile carrier service, an internet service provider or other communications services provider. Customer acknowledges and agrees that Communications may not be encrypted and may include confidential information, so Customer should use appropriate care when determining the content of, and with the sending of, any Communications. Delivery and receipt of Communications may be delayed or impacted by one or more factors pertaining to technical or other issues with wireless and other mobile carrier(s), internet service providers, other communication services provider(s) or other third parties, or due to other reasons outside of NCR's control. NCR will not be liable for any losses or damages arising from any disclosure of any Communications to any third party or any non-delivery, delayed delivery, misdirected delivery or mishandling of, or inaccurate content in, any Communications sent via the Digital Online Marketing Communications service.

4. By enrolling in the selected Digital Online Marketing Communications service, Customer acknowledges and agrees that NCR will be sending Customer Communications through Customer's mobile carrier or other communication, and Customer's mobile carrier or communication services provider is acting as Customer's agent in this capacity. Customer agrees to provide and maintain a valid phone number, e-mail address or other delivery location to NCR that is functionally compatible with NCR's then-current delivery mechanism for receipt of Communications as documented on NCR's web sites. Customer acknowledges and agrees that data may not be encrypted and may include confidential information about Customer and its business, including transactional information. Delivery and receipt of data may be delayed or impacted by one or more factors pertaining to Customer's internet service provider(s), mobile carrier(s), communication services provider(s) or other third parties, or due to other reasons outside of NCR's control. NCR or its Affiliates will not be liable for any losses or damages arising from any delayed delivery and/or receipt of data via the Hosted NCR Software. Customer acknowledges and agrees that certain information and functionality available directly through Customer's database without the use of a mobile device may not be available via the Hosted NCR Software. Customer is responsible for any and all charges including, but not limited to, fees associated with data use, text, or email messaging imposed by Customer's mobile carrier or communication services provider. **Message and data rates may apply. Such charges include those from Customer's mobile carrier or communication services provider.**

5. If selected by Customer on an Order, NCR agrees to provide the following marketing support services for and on behalf of Customer: (i) assist Customer with the posting and monitoring of content on social media sites that are mutually agreed upon by NCR and Customer, and documented as such in writing (the “Social Media Sites”), (ii) assist Customer with the maintenance of messaging on the Social Media Sites and provide ongoing results of pre-determined metrics, and (iii) based on Customer's direction as to Communications content and designated recipients,

facilitate and manage the delivery through the applicable Digital Online Marketing Communications on behalf of Customer.

6. Customer agrees to allow NCR reasonable access to Customer's selected Digital Online Marketing Communications account and related information systems so NCR may, in addition to providing the Services hereunder, also provide Customer with support and monitor Customer's compliance with the terms of these Terms and Conditions. Customer shall disclose to NCR the applicable passwords to the Social Media Sites, allow NCR password protected access to Customer's accounts with the Social Media Sites and also authorizes NCR to exercise administrative rights for each of the Social Media Sites.

7. Customer understands and agrees that Customer is responsible for Customer's use of the selected Digital Online Marketing Communications product(s) as reflected on applicable Order. Such responsibility includes but is not limited to: (a) proper account set up, configuration settings, obtaining consents or opt-ins from patrons/end-users to participate in use of the service; (b) maintenance of valid phone numbers, e-mail addresses or other communications identifiers as are appropriate for the particular type of communications being sent by use of the selected Digital Online Marketing Communications product(s) reflected on an Order; (c) the content of the Communications being sent, including the products and services offered for sale by Customer; (d) and compliance with laws and regulations applicable to Customer's sending of Communications in various forms. Customer may only use images provided as part of the selected Digital Online Marketing Communications service only for the purpose of composing Communications for use with the service. Further, Customer's use of any third party or purchased e-mail list(s) is strictly prohibited in connection with Customer's use of such service.

8. NCR may disable or suspend Customer's access to the Digital Online Marketing Communications services or otherwise terminate these Terms and Conditions or NCR's provision of such services without notice if Customer violates any applicable federal, state or local law, regulation or ordinance (including without limitation, the Telephone Consumer Protection Act, the Federal Trade Commission Act, and the CAN-SPAM Act).

9. Specific Indemnities Related to the Digital Online Marketing Communications Services. Customer agrees to indemnify, defend and hold NCR and its affiliates harmless from and against any and all claims, losses, liability, cost and expenses, including reasonable attorneys' fees, arising from (i) Customer's use of the selected Digital Online Marketing Communications service, and (ii) Customer's violation of any applicable international, federal, state or local law, regulation or ordinance (including without limitation, the Telephone Consumer Protection Act, the Federal Trade Commission Act, and the CAN-SPAM Act), in connection with Customer's use of the Digital Online Marketing Communications service. This Section 9 for this Digital Online Marketing Communications section of this Exhibit A survives termination or expiration of the Terms and Conditions.

10. Customer represents and warrants that Customer and the holders and users of mobile communications devices that are designated by Customer to receive the selected Digital Online Marketing Communications\_messages in the form specified by Customer have agreed to receive such messages on such devices.

11. When required by the selected Digital Online Marketing Communications service, Customer agrees to:

- (a) Allow NCR to use its name, logos, trademarks and promotional material with the selected Digital Online Marketing Communications service;
- (b) Allow NCR to describe the Customer and its menu item(s) on the selected Digital Online Marketing Communications service; and
- (c) Provide and honor one or more offers described on an applicable order enabled as part of the selected Digital Online Marketing Communications service (“Offer(s)”).

12. Subject to these Additional Terms and Conditions as well as product specific pricing terms set forth in an Order, NCR will promote the same Offer that was the subject of a prior Offer if the party that agrees to these Terms and Conditions on behalf of Customer sends NCR an e-mail request that is confirmed via reply e-mail from NCR as being accepted as an additional promotion on the selected Digital Online Marketing Communications service(s).

13. NCR reserves the right from time to time to change any aspects of the selected Digital Online Marketing Communications service(s).

14. If included as part of a selected and applicable Digital Online Marketing Communications service, NCR may provide onsite marketing collateral, mobile application and website listing including access to the performance dashboard and the delivery of one tablet computer (a “Device”) at each Customer Location designated by Customer where Customer's patrons will use to enter their phone number for the purpose of “checking in” and registering their visit at the Customer Location. Customer will be responsible for installing each Device with instructions provided by NCR. Customer agrees to keep and use each Device only at the Customer Location designated for such Device, and will not remove such Device unless Customer obtains NCR's written permission in advance to relocate it. Title to each Device shall at all times remain with NCR and if NCR requires a label or other

indicator of NCR's interest to be placed on any Device Customer will so apply the label or not remove any such label already affixed to any Device. Customer is responsible for protecting each Device from damage, except for ordinary wear and tear, and from any other kind of loss while Customer has use of such Device. Customer is responsible for and accepts the risk of loss or damage to each Device while in use by Customer or in Customer's possession. Upon expiration or termination of the Terms and Conditions, Customer shall return to NCR all Devices in good, workable condition in accordance with NCR's instructions for such return. If any Device is damaged or lost at any time during the term of the Terms and Conditions through no fault of NCR, Customer agrees to pay to NCR a replacement fee based upon the date of such damage or loss as set forth on an Order. If any Device needs to be replaced by NCR for any reason, NCR reserves the right to replace such Device with a refurbished unit or a different model.

## E-Commerce Solutions

### 1. Website Development.

(a) NCR will develop one or more websites for Customer (the "Website(s)") which will be in the form of one or more web pages linked to NCR's principal internet site for one or more e-commerce applications offered by NCR. The Website(s) will be based on a choice of standard templates offered by NCR and agreed to by Customer. NCR and Customer will work together to determine the schedule for implementation and the content of the Website(s). If any custom feature and/or development work is required by Customer beyond the standard templates offered by NCR, NCR's provision of such work shall be considered out of scope and billable at NCR's then-current professional services rates in accordance with the terms of Section 9.0 of these Terms and Conditions. NCR is not in a position to provide any legal advice to Customer on the use or applicable terms of any template or sample website terms of conditions or privacy policies that NCR may make available to Customer as a convenience, and NCR disclaims any liability for Customer's use of any such templates or samples or the content thereof. Customer shall provide NCR with access to all content, including text, pictures, sound, graphics, video, fonts not freely available and other data, that will need to be used by NCR for incorporation into the Website(s). All content shall be made available to NCR in the following formats: (i) all text shall be provided in one of the following formats [ASCII, RTF, Word, PDF, or HTML] and (ii) all graphics shall be provided in one of the following formats [layered PSD, TIFF, GIF, JPEG, PNG or BMP format]. Customer understands and agrees that Customer is entirely responsible for the content of the Website(s), including the products and services offered for sale therein, the use of any Marks (as defined in this E-Commerce Solutions Section 2 below) or copyrightable materials on Customer's Website(s), and Customer's use of any content which may be provided by NCR in connection with NCR's provision of the web hosting services described below. Customer agrees that Customer will not use the Website(s) to engage in any illegal, unlawful, immoral, or unethical activities. Customer agrees to be entirely and solely responsible for the Website(s) and that under no circumstances will NCR be liable for any content or use thereof. Customer acknowledges and agrees that NCR does not endorse the content of the Website(s) or any products or services offered for sale therein, the use of any Marks or copyrightable materials on the Website(s), and NCR specifically disclaims any responsibility for any threatening, libelous, obscene, harassing, or offensive material contained therein. NCR reserves the right to decline initial service or terminate the web hosting services without notice if the products, services and/or presentation can be considered, in NCR's sole discretion, to be unlawful, illegal, threatening, libelous, obscene, harassing, or offensive, or NCR receives proper notice from any third party claiming that any content, materials or Marks used by Customer on the Website(s) violate or infringe the rights of any third party.

(b) Customer acknowledges and agrees that these Terms and Conditions for Search Engine Marketing Services (also known as Search Engine Optimization Services) and the terms of a separate statement of work between Customer and NCR, which includes a scope of work, change order process, fees, payment terms and other applicable terms, shall apply to NCR's provision of search engine marketing services, if such services are being provided by NCR (the "SEM Services"). NCR cannot control every aspect of the search engine marketing process. Customer acknowledges and agrees that factors inherent in Customer's web site, or with each search engine or directory where the web site may be registered, will affect the ranking results of the web site. NCR's objective is to obtain a certain number of top rankings in the most-used search engines and directories for Customer's web site. Although the goal of high rankings is usually to generate web site traffic and sales or other actions taken on Customer's web site, NCR cannot control the number of actual click-throughs or any actions taken by any visitor on your web site. Regarding search engine reputation management, with billions of pages on the internet, there is no guarantee that NCR will find every

mention of Customer. Rankings for search engines are controlled by hundreds of different factors directly and indirectly related to Customer's web site. Although NCR follows accepted search engine optimization practices, NCR is not liable for any loss of rankings or penalties you may incur from any search engine due to spamming, "black hat", artificial back links or any other search engine techniques. Accordingly, NCR makes no representation, warranty or guarantee with respect to any SEM Services it may provide to Customer.

2. Hosting Services for the Website(s). NCR shall provide the following web hosting services to Customer for the Website(s): domain name registration (in NCR's name/owned by NCR utilizing a shared SSL certificate), server maintenance, hardware, software and internet connection upgrades; website navigation and link testing; Customer technical support; specification of security levels provided by NCR; transaction software to process transactions on-line. Customer shall be responsible for all end user support for the Website(s). Customer agrees to use a unique domain (or subdomain) name for each store address and to purchase an SSL certificate for each store (according to the current price schedule as published on NCR's web site or such other website provided by NCR. Subject to these Terms and Conditions, Customer hereby grants to NCR a limited, non-exclusive, royalty-free, worldwide license to use Customer's trademarks, service marks, trade names, logos or other commercial or product designations (collectively, "Marks") for the purposes of performing its obligations hereunder. Title to and ownership of the Marks shall remain with the owner. NCR shall use the Marks in the form provided and in conformance with any trademark usage policies of the owner.

3. The following provision shall apply to the purchase of VeriSign SSL Certificates: By entering into these Terms and Conditions you hereby agree to the terms and conditions applicable to the SSL Certificate as specified by VeriSign and published at VeriSign's web site, currently located at <http://www.verisign.com/repository/agreements/serverClass3Org.html> (the "SSL Agreement"). Customer agrees to periodically review VeriSign's web site, including the current version of the SSL Agreement that is posted on such web site. By continuing to use the VeriSign Certificate after any revision to the SSL Agreement Customer agrees to abide by and be bound by any such revisions. Customer acknowledges that VeriSign is third party beneficiary to the terms of the SSL Agreement, including but not limited to Customer's obligation to indemnify, defend and hold harmless VeriSign, and its subsidiaries, directors, shareholders officers, agents, employees, successors and assigns, as set forth in the indemnification provision set forth in Section 15 of the SSL Agreement. Customer hereby consents to the disclosure of Customer's name, address and other Customer information as may be necessary for enrollment purposes.

4. Exclusions and Limitations. Customer and its designated card processing provider shall be responsible for the appropriate classification of transactions and rate of interchange attributable to such transactions at all times while Customer is using the selected e-Commerce Solutions product and in no event will NCR assume any responsibility or liability for any fines, fees, lost profits or other losses related to the foregoing.

5. Specific Indemnities Related to the Website(s). Customer indemnifies and holds 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 content of the Website(s), including the products and services offered for sale therein and any third party infringement claims with respect to any of the Marks, and (ii) the operation of Customer's business and the conduct of other Customer activities. Additionally, Customer indemnifies and holds 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 (including, without limitation, any of Customer's employees, contractors, service providers or credit card processor) arising out of Customer's use of the Hosted NCR Software, including any loss or fine related to downgrades or the incorrect classification of Customer's transactions for submission to the credit card associations or electronic payment networks.

6. Third Party License Restrictions. Certain e-commerce applications that are provided by NCR may include access to other NCR proprietary software applications that NCR may make available to Customer, its franchisees and/or their respective patrons from time to time (for purposes hereof such software applications shall be deemed part of the Hosted NCR Software) that are also subject to terms and conditions mandated by certain third parties, such as mobile device manufacturers and/or carriers, and in such event Customer shall be bound by such terms and conditions in addition to the terms hereof in order to use such other applications.

[END OF EXHIBIT A]