

NCR Voyix Breach Assistance Program

Terms and Conditions

The following terms and conditions (collectively, the “Assistance Agreement”) set forth the agreement by NCR Voyix Corporation (the “Company”) to assist the merchant under the NCR Voyix Breach Assistance Program (the “Program”). The Company’s obligations to merchant under this Assistance Agreement do not constitute a policy of insurance or a contract of insurance. The Company may choose to obtain insurance to support the Company’s contractual obligations under this Assistance Agreement. Words and phrases that appear in boldface are defined as above or in Clause II or elsewhere in this Assistance Agreement. In the event of any conflict between this Assistance Agreement and the remainder of the written agreement between Company and merchant to which this Assistance Agreement is an exhibit or schedule, the terms of this Assistance Agreement shall control with respect to matters addressed in this Assistance Agreement.

I. SCOPE OF AGREEMENT FOR DATA SECURITY EVENT EXPENSES

We shall pay the merchant for all reasonable security event expenses resulting from any data security event first discovered by the merchant during the Assistance Agreement term and reported to us within the notice period.

II. DEFINITIONS

- A. **ADCR fines** means amounts contractually assessed against a merchant by a card association to cover partial collection of losses experienced by a bank card issuer as a result of a data security event, including the Account Data Compromise Recovery process and similar processes.
- B. **Bank card** means a financial transaction card, including a debit card, credit card or prepaid card, issued by a card association or a financial institution as a member of a card association.
- C. **Cardholder** means a natural person or entity to which a bank card has been issued.
- D. **Cardholder Information** means the data contained on a bank card, or otherwise provided to a merchant, that is required by the card association or the merchant in order to process, approve and/or settle a bank card transaction.
- E. **Card association** means each of Visa International, MasterCard Worldwide, Discover Financial Services, JCB, American Express and any similar credit or debit card association that is a participating organization of the PCI Security Standards Council.
- F. **Card association assessment** means a monetary assessment, fee, fine or penalty levied against a merchant or the merchant by a card association as the result of (i) a data security event or (ii) a security assessment conducted as the result of a data security event. The card association assessment shall not exceed the maximum monetary assessment, fee, fine or penalty permitted upon the occurrence of a data security event by the applicable rules or agreement in effect as of the inception date of the Assistance Agreement term for such card association. Card association assessment also means compliance case costs and ADCR fines. Card association assessment does

not include chargeback recovery, chargeback fines or chargeback expenses assessed directly against a merchant.

- G. **Card replacement expenses** means the costs that the merchant is required to pay by the card association to replace compromised bank cards as the result of (i) a data security event or (ii) a security assessment conducted as the result of a data security event.
- H. **Chargeback** means the procedure by which a bank card transaction is returned to a merchant which is then responsible for the amount of such transaction.
- I. **Compliance case costs** means costs and expenses incurred by a card issuer in monitoring and addressing bank card accounts which are reasonably believed to be compromised or at risk as a result of a data security event and for which reimbursement is requested pursuant to rules of a card association. Compliance case costs do not include chargeback amounts.
- J. **Data security event** means the actual or suspected unauthorized access to or use of cardholder information, arising out of a merchant's possession of or access to such cardholder information, which has been reported (a) to a card association by a merchant or (b) to the merchant by a card association. All security event expenses and post event services expenses resulting from the same, continuous, related or repeated event or which arise from the same, related or common nexus of facts, will be deemed to arise out of one data security event.
- K. **Forensic audit expenses** means the costs of a security assessment conducted by a qualified security assessor approved by a card association or the PCI Security Standards Council to determine the cause and extent of a data security event.
- L. **Merchant** means an entity that enters into a service agreement pursuant to which the Company extends its Assistance Agreement services to such entity.
- M. **MID** means a Merchant Identification Number, which is a unique number assigned to a location where a merchant accepts bank cards for payment.
- N. **Notice period** means the thirty (30) day period commencing immediately upon the discovery by the merchant of a data security event.
- O. **Pollutants** means, but are not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, asbestos, acids, alkalis, chemicals and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- P. **Post event services expenses** means reasonable fees and expenses incurred by the merchant with our prior written consent, for any service specifically approved by us in writing, including without limitation, identity theft education and assistance and credit file monitoring. Such services must be provided by or on behalf of the Company or a merchant within one (1) year following discovery of a data security event covered under this Assistance Agreement to a cardholder whose cardholder information is the subject of that data security event for the primary purpose of mitigating the effects of such data security event.

- Q. **Related data security events** means all data security events which arise out of or relate to the same, related or continuous events, acts, errors or omissions. All related data security events shall be considered to have been discovered at the time the first such data security event was discovered
- R. **Security event expenses** means card association assessments, forensic audit expenses, card replacement expenses and post event services expenses that the merchant is obligated to pay in connection with a data security event.
- S. **Service agreement** means an agreement pursuant to which the merchant participates in the Program.
- T. **We, us and our** mean the Company.

III. DUTIES IN THE EVENT OF A DATA SECURITY EVENT

- A. Before coverage will apply under this Assistance Agreement, the merchant shall notify us in writing as soon as practicable within the notice period of an actual or alleged data security event first discovered by the merchant during the Assistance Agreement term. Notice must include:
 - 1. The name of the merchant and all MIDs alleged to have been breached;
 - 2. A description of the data security event;
 - 3. The number of cardholders affected by the data security event; and
 - 4. A copy of all notices and correspondence from the merchant, the merchant, or a card association concerning the data security event.
- B. Under all circumstances, the merchant shall not admit any liability, assume any financial obligation, pay any money, or incur any expense in connection with any data security event without our prior written consent. If the merchant does, it will be at the merchant's own expense.
- C. The merchant shall take reasonable steps to prevent a data security event to the extent arising from the named insured's data security assistance products and services or for any other reason, and to mitigate the loss arising out of a data security event, including without limitation, following the procedures required by a card association or by the Company in the event of a data security event. In all events, merchant shall not take any action, or fail to take any action, without our prior written consent, which prejudices our rights under this Assistance Agreement.

IV. ADDITIONAL OBLIGATIONS

In addition to all other duties and obligations contained elsewhere in this Assistance Agreement:

- A. The merchant shall allow us or our insurers to examine and audit all of its records that relate to the matters covered by this Assistance Agreement. We or our insurers may conduct the audits during regular business hours during the term of the Assistance Agreement and within three (3) years after the term of the Assistance Agreement ends; and
- B. The merchant shall pay all amounts payable when due to the Company under this Assistance Agreement or any other written agreement to which the merchant and the Company are a party, including the agreement as to which this Assistance Agreement is a part. The merchant shall also be responsible for the giving and receiving of timely notices as required under this Assistance

Agreement, including, but not limited to, notice of a data security event and any claim arising out of such data security event.

V. EXCLUSIONS

This Assistance Agreement shall not apply to:

- A. any security event expenses arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, if committed by the merchant's:
 - 1. directors, officers, trustees, governors, management committee members, members of the management board or partners (or the equivalent positions), whether acting alone or in collusion with other persons; or
 - 2. employees (other than officers) if any of the merchant's elected or appointed officers possessed knowledge of any such:
 - a) dishonest, fraudulent, malicious, or criminal or malicious act, error or omission;
 - b) intentional or knowing violation of the law or the privacy policy of the merchant or this Assistance Agreement, or
 - c) gaining of any profit or advantage to which the merchant is not legally entitled; prior to or at the time (a), (b) or (c) above were committed;
- B. any data security event caused by or resulting, directly or indirectly, from an act, error or omission of the Company, including, without limitation, (i) the disclosure of any cardholder information by the Company its employees or any person or entity to whom the Company provides cardholder information, or (ii) any failure of the Company's operating environment security, computer system equipment or payment processing network; provided however, this exclusion does not apply to the actual or alleged failure of the Company to monitor the operations of, or the security procedures or computer systems used by, any merchant;
- C. any security event expenses arising out of or resulting from a claim, suit, action or proceeding against the merchant that is brought by or on behalf of any federal, state or local government agency;
- D. any data security event relating to a merchant which has experienced a prior data security event unless such merchant was later certified (or re-certified) as PCI compliant by a qualified security assessor;
- E. any data security event arising out of a merchant allowing any party (other than its employees or the Company) to hold or access cardholder information;

- F. any data security event involving: (i) a merchant categorized by any card association as “Level 1” or (ii) a merchant that processed more than six million (6,000,000) bank card transactions during the twelve month period prior to the Assistance Agreement term;
- G. any expenses, other than security event expenses, incurred by the merchant, arising out of or resulting, directly or indirectly, from a data security event, including without limitation, expenses incurred to bring a merchant into compliance with the PCI Data Security Standard or any similar security standard;
- H. any security event expenses arising out of or resulting, directly or indirectly, from physical injury, sickness, disease, disability, shock or mental anguish sustained by any person, including without limitation, required care, loss of services or death at any time resulting therefrom;
- I. any security event expenses arising out of or resulting, directly or indirectly, from any of the following:
 - 1. fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused;
 - 2. strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; or
 - 3. electrical or mechanical failures, including any electrical power interruption, surge, brownout or blackout; a failure of telephone lines, data transmission lines, satellites or other infrastructure comprising or supporting the Internet, unless such lines or infrastructure were under the Company’s operational control;
- J. any security event expenses arising out of or resulting, directly or indirectly, from the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of pollutants (including nuclear materials), or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, or in any way respond to or assess the effects of pollutants;
- K. any data security event that was not properly reported to us during the notice period;
- L. any data security event known or discovered before the effective date of the Assistance Agreement between Company and the merchant, or after the termination of such Assistance Agreement;
- M. any expenses incurred for, or as a result of, regularly scheduled, recurring or routine security assessments, regulatory examinations, inquiries or compliance activities;
- N. any (1) gaining of a profit or advantage to which the Company or merchant is not legally entitled; or (2) the merchant’s expenses or charges (other than security event expenses), including employee compensation and benefits, overhead, over-charges or cost over-runs;

- O. any data security event that first occurred prior to the date of this Assistance Agreement with merchant;
- P. any security event expenses arising out of or resulting, directly or indirectly, from the infringement of copyright, patent, trademark, trade secret or other intellectual property rights;
- Q. any security event expenses alleging, arising out of or resulting, directly or indirectly, from any discrimination against any person or entity on any basis, including but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, sex, sexual orientation or pregnancy;
- R. any fines or assessment levied against a merchant that are not the direct result of a data security event;
- S. any data security event arising out of any software not under license to the merchant; provided, however, this exclusion shall not apply to a data security event arising out of a virus, Trojan horse or other software used by a third party to obtain fraudulent access to data on a merchant's computer system or to collect data in transit to or from a merchant's computer system;
- T. any data security event arising out of a breach in a computer system in which multiple merchants, with no legal relationship to one another, share a common database, operating system or software applications on a single piece of equipment at a single location; or
- U. a merchant who is deemed ineligible by the Company for assistance with security event expenses because of a breach by such merchant of this Assistance Agreement or the merchant otherwise not meeting the conditions for such assistance (including, without limitation, the conditions set forth in Section VIII.K of this Assistance Agreement).

VI. LIMITS TO SCOPE OF PAYMENTS

- A. The following limits on payment amounts shall apply under this Assistance Agreement:

Related Data Security Event Limit:	\$ 500,000
Per Merchant Limit:	\$ 500,000
Per MID Limit:	\$ 100,000

- B. The most we shall pay for the total of all security event expenses and post event services expenses arising out of any related data security event first discovered by the merchant during the Assistance Agreement term and reported to us within the notice period is the Related Data Security Event Limit noted above, regardless of the number of merchants or MIDs involved with or impacted by such related data security event.
- C. The most we shall pay for the total of all security event expenses and post event services expenses arising out of or related to any merchant is the Per Merchant Limit noted above, regardless of the number of data security events first discovered by the merchant during the Assistance Agreement term and reported to us within the notice period.

- D. The most we shall pay for the total of all security event expenses and post event services expenses arising out of or related to any MID is the Per MID Limit noted above, regardless of the number of data security events first discovered by the merchant during the Assistance Agreement term and reported to us within the notice period.
- E. All security event expenses and post event service expenses resulting from the same, continuous, related or repeated data security events shall be subject to the terms, conditions, exclusions and above payment of this Assistance Agreement as in effect at the time the first such data security event is first discovered by the merchant.

VIII. OTHER PROVISIONS AFFECTING SCOPE OF ASSISTANCE

A. Coverage Territory

Subject to its terms, conditions and exclusions, this Assistance Agreement applies to a data security event occurring, and security event expenses incurred, anywhere in the world.

B. Legal Action Against Us

No person or organization has a right under this Assistance Agreement:

1. to join us as a party or otherwise bring us into a suit asking for damages from the merchant; or
2. to sue us on this Assistance Agreement unless all of its terms have been fully complied with by the merchant.

In any event we will not be liable for amounts that are not payable under the terms of this Assistance Agreement or that are in excess of the applicable limits on payments under Clause VI above.

C. Subrogation

In the event of any payment under this Assistance Agreement, we or any insurers of ours shall be subrogated to the extent of such payment, to all rights of recovery of the merchant arising out of a covered data security event. The merchant shall do whatever is necessary, including signing documents, to help us obtain any recovery we may seek. To the extent we make a payment under this Assistance Agreement and, prior or subsequent to such payment, the merchant receives any amount from any other person or entity in connection with or arising out of the data security event with respect to which we made such payment, the merchant shall immediately remit such amount to us up to the amount of our payment.

D. Payments Where Merchant Has Insurance Coverage

This Assistance Agreement shall only cover qualifying expenses hereunder to the extent such expenses are not otherwise covered by any policies of primary or secondary insurance maintained by merchant.

E. Assignment

This Assistance Agreement and any rights provided hereunder are not assignable by merchant without our written consent.

F. Cancellation and Termination; Changes

There shall be no coverage for any data security event first discovered by the merchant, or first notified to Company by the merchant, after the effective date and time of the expiration, cancellation, non-renewal or other termination of this Assistance Agreement.

The Company reserves the right, upon notice to merchant, to discontinue or modify the Assistance Agreement at any time and for any reason (which reasons may include, without limitation, the continued ability of the Company to obtain or maintain any related insurance coverage on terms acceptable to the Company). However, if the Company elects to terminate the Assistance Agreement or make any modifications to the Assistance Agreement it will provide notice to merchant of such modifications, which notice may be given by any of the following means: (i) by the posting of a notice in a prominent manner on the main access screen for the applicable software services provided by the Company that is used by merchant, (ii) by e-mail to the e-mail address that merchant has provided to the Company, (iii) by regular mail to the mailing address that merchant has provided to the Company, or (iv) by any other electronic or non-electronic means that the Company believes is reasonably likely to reach merchant. Any such modifications to the provisions of this Assistance Agreement shall be made only in written document issued by us and made a part of this Assistance Agreement.

G. Reimbursement

Payments made under this Assistance Agreement to or on behalf of the merchant shall be repaid to us by the merchant in the event and to the extent that the merchant shall not be entitled to such payment, whether due to a breach of this Assistance Agreement, because of insurance coverage available to merchant or otherwise.

H. Alternative Dispute Resolution

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this Assistance Agreement, whether arising before or after termination of this Assistance Agreement, including any determination of the amount of security event expenses and post event services expenses, must first be submitted to the non-binding mediation process as set forth in this clause.

The non-binding mediation will be administered by any mediation facility to which we and the merchant (and if our insurer is involved, such insurer) mutually agree, in which the merchant and we shall try in good faith to settle the dispute by mediation in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. The parties shall mutually agree on the selection of a mediator. The mediator shall have knowledge of the legal,

corporate management, or other issues relevant to the matters in dispute. The mediator shall also give due consideration to the general principles of the law of the state where the Company is incorporated in the construction or interpretation of the provisions of this Assistance Agreement. In the event that such non-binding mediation does not result in a settlement of the subject dispute or difference:

1. either party shall have the right to commence a judicial proceeding; or
2. either party shall have the right, with all other parties consent, to commence an arbitration proceeding with the AAA that will be submitted to an arbitration panel of three (3) arbitrators as follows: (a) the merchant shall select one (1) arbitrator; (b) we shall select one (1) arbitrator; and (c) said arbitrators shall mutually agree upon the selection of the third arbitrator. The arbitration shall be conducted in accordance with the AAA's then prevailing Commercial Arbitration Rules.

provided, however, that no such judicial or arbitration proceeding shall be commenced until at least ninety (90) days after the date the non-binding mediation shall be deemed concluded or terminated. Each party shall share equally the expenses of the non-binding mediation.

The non-binding mediation may be commenced in Atlanta, Georgia; provided that if any insurer of the Company's is involved with such mediation, then the location shall be a location (which may be in a different city than Atlanta, Georgia) as mutually agreed between such insurer and the Company.

I. Title of Paragraphs

The titles of the various clauses and paragraphs of this Assistance Agreement and endorsements, if any, attached to this Assistance Agreement, are inserted solely for convenience or reference and are not to be deemed in any way to limit or expand the provisions to which they relate, and are not part of this Assistance Agreement.

J. Organizational Changes

If during the Assistance Agreement term:

- (1) the merchant shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (2) any person or entity or group of persons or entities acting in concert shall acquire securities or voting rights which result in ownership or voting control by other entities or persons of more than fifty percent (50%) of the outstanding securities representing the rights to vote for the election of the merchant's directors;

(any of such events being a "transaction"), then this Assistance Agreement shall continue in full force and effect as to data security events occurring on or after the date of the Assistance Agreement between merchant and Company and prior to the effective time of the transaction; provided that such data security event is first discovered prior to the effective time of the transaction and otherwise reported to us during the notice period and in accordance with the terms and conditions

of this Assistance Agreement. There shall be no assistance afforded by any provision of this Assistance Agreement for any data security event that is first discovered, or that occurs, on or after the effective time of the transaction, unless (i) within thirty (30) days of such transaction we have been provided with full particulars of the transaction, the related entities and any other information requested by us, and (ii) the merchant or its successor, has agreed to any additional payment amounts and amendments to this Assistance Agreement required by us in connection with such transaction.

Post-transaction assistance as described above is also conditioned upon the merchant or its successor timely paying all amounts that may be required to be paid under this Assistance Agreement and all other written agreements then in effect between Company and merchant, including the agreement to which the Assistance Agreement is a part.

K. Other Limitations

The Company's obligation to cover any security event expenses and post event services expenses is also expressly conditioned on the merchant having provided at all times correct relevant information to the Company and cooperation to the Company in connection with matters related to this Assistance Agreement, and the merchant timely fulfilling its obligations under this Assistance Agreement, providing timely cooperation and not breaching its obligations hereunder. In addition, a merchant shall not be eligible for assistance with security event expenses by the Company for a period of twelve (12) months after the Company's performance of a security scan of the merchant's computer network if such security scan reveals the presence of any crimeware or malware on such network and such scan was performed prior to the merchant electing to participate in the Assistance Agreement services offered by the Company.

<End of NCR Voyix Breach Assistance Program Terms and Conditions>