

MicroBilt User License Agreement

THIS USER LICENSE AGREEMENT (“Agreement”) is entered into as of the “Effective Date” (defined below) by and between MicroBilt Corporation, (“MicroBilt”) a Delaware corporation with its principal place of business at 1640 Airport Road, Suite 115, Kennesaw, GA 30144 and the party electronically accepting the within terms and conditions (“User”).

WHEREAS, MicroBilt developed, is the owner of and has the right to control and grant licenses to use, among other things, its proprietary ID Scanner equipment (“Equipment”), its proprietary software programs known as the Systems Integration Toolkit (“SDK”), its proprietary XML Interface Technology (“XML”), and its proprietary database information products and services website offering located at www.MicroBilt.com (“Website”), which provides the ability via the Internet through the Website and/or through SDK or XML, to securely access and interpret certain consumer credit and other information (“Credit Information”) from one or more of the national consumer credit reporting agencies, TransUnion, Experian, Equifax (“Credit Bureaus”) and/or other consumer or business data (“Data”) and/or industry information (“Industry Information” and together with Credit Information and Data, “Information”) from various Data or Information providers (together with the Credit Bureaus, “Repositories” and each a “Repository”) and User desires to utilize such in accordance with the terms and conditions herein and MicroBilt is willing to and does grant User a limited, nonexclusive, nontransferable license (“License”) to access and use MicroBilt’s products and services through the Internet and otherwise, in accordance with the terms and conditions herein.

NOW THEREFORE, in consideration of MicroBilt’s provision to User of the products and services specified in the application and fee schedule attached hereto as Exhibit A and incorporated herein by reference as if fully set forth, (“Fee Schedule”) and User’s payment of “Fees” (defined below) to MicroBilt therefore, of the mutual covenants and promises contained herein and of other good and valuable consideration, the extent and sufficiency of which is acknowledged between MicroBilt and User (each a “party” and together the “parties”), the parties hereto agree as follows:

A. User Agrees to:

1. Abide and as a third party sales agent / distributor, if applicable, cause its customers (“Customers”) to abide, as applicable, by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et. seq. (“FCRA”), as amended by the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”) and thereafter from time to time, the Americans with Disabilities Act (“ADA”) and other applicable equal opportunity laws, the Gramm-Leach-Bliley Act of 1999 (“GLBA”), the Driver Privacy Protection Act (“DPPA”), the laws of the applicable state issuing Motor Vehicle Records (“MVR”), the Equal Credit Opportunity Act (“ECOA”), the Truth In Lending Act (“TILA”) and all other applicable local, state and federal laws regarding Information, as well as the permissions and limitations of MicroBilt and the Repositories, when Information subject to such acts and laws is requested, accessed, used, stored and/or distributed.
2. As applicable, obtain all required Repository subcodes (“Subcodes”) and access Information both directly from and through MicroBilt or, with MicroBilt’s prior written consent, a MicroBilt designated and/or approved vendor.
3. Be aware per the FCRA, those who knowingly and willfully obtain Information on a consumer from a consumer reporting agency under false pretenses shall be fined under Title 18 or imprisoned not more than two years or both.
4. Be aware that some states (CA, CO, MN, VT, WA, etc.) have stricter consumer, ADA and DMV based statutes, compliance with which is the responsibility of User.
5. Be aware that access to certain Information is subject to restrictions of the Repositories, such that User shall not export such Information, related documentation or technical data, or any product incorporating such, outside of the fifty (50) states of the United States of America and its territories.
6. Be aware that some commercial Repository Data may contain consumer credit information, but that such shall nevertheless solely be used in connection with a present or prospective commercial (i.e., not for personal, family or household purposes) credit or financial transaction involving the business inquired upon or the individual on whom such Information is sought and only if such individual is the proprietor of an unincorporated business, is a general partner in a partnership, is a guarantor of the business’ obligation and has provided a copy of a written guaranty, or has given written instruction for the provision of such Information, and not used as a factor in establishing an individual’s eligibility for credit, insurance for personal, family or household purposes, or employment.
7. Recognize that Information is obtained and managed by fallible sources and that for the Fee charged, MicroBilt cannot guarantee or insure the accuracy, completeness, timeliness, depth or continuation of Information provided.
8. Assume responsibility for the final verification of the applicant's identity.
9. Acknowledge that MicroBilt employees are not allowed to render any opinions regarding Information contained in a consumer report. Hiring decisions or any other actions or decisions must be based on User policies and procedures.

B. MicroBilt Agrees to:

1. Comply with all applicable Repository rules and procedures, as well as local, state and federal laws and regulations, including but not limited to the FCRA, the UCC, business verification and public records in the preparation, transmission, storage and usage of Information and all types of reports.
2. When, if and as applicable, maintain compliance with the rules set forth by the Payment Card Industry (“PCI”) Data Security Standards (“DSS”) for the appropriate level using an Approved PCI Compliance Scanning Vendor (“ASV”).

3. Maintain copies of Information accessed by User along with transaction details, for a minimum of five (5) years. During an inquiry, the subject of the report has the right to learn that User ordered Information on such subject.
4. Re-verify at no cost when User requests by telephone or the consumer makes a request in writing. MicroBilt shall respond in writing and timely.
5. Follow reasonable quality assurance procedures and maintain confidentiality of Information acquisition and verification methods as set forth herein.
6. MicroBilt hereby certifies that it is a “consumer reporting agency” and a “reseller of consumer reporting services” as currently defined in the FCRA.

C. Terms and Conditions:

1. User shall and as applicable cause its Customers to: identify the end user (“End User”) of each consumer credit or other Information prior to requesting such; certify each specific “permissible purpose” as defined in the FCRA or “permitted use” under the GLBA for which the consumer credit or other Information is requested and certify that such will be used for no other purpose or use, (tendering this “permissible purpose” or “permitted use” in such form or manner as stipulated by MicroBilt upon request); secure consumer credit and other Information on individuals solely for its own internal one-time use in accordance with the permissions and restrictions promulgated by the Repositories, which may differ from one another, which may include credit, employment, insurance underwriting, collection, government licensing or written consumer consent or initiated transactions between itself and the consumer to whom Information refers and/or for such other “permissible purpose” related to a business transaction as is defined by the FCRA or “permitted use” under the GLBA and/or as permitted and restricted by the Repositories; notify MicroBilt immediately if the reason or need for the Information becomes different than originally claimed, for which a signed written addendum to this Agreement is required, provided that the new use consists of a “permissible purpose” as defined in the FCRA or a “permitted use” under the GLBA; and except as otherwise expressly permitted herein, agree it is the End User and will not resell, distribute, sublicense, compile or revise Information obtained through MicroBilt.
2. User acknowledges it has received and shall provide its Customers, as applicable, with the “Notice to Users of Consumer Reports: Obligations of Users Under the FCRA” as required by the FCRA, which can be viewed and printed at the Website.
3. User agrees that it will and as applicable cause its Customers to obtain in advance and retain on file appropriate application, release, consent and/or authorization forms (“Forms”) from any credit applicant, job applicant or other individual on whom Information in Repositories accessed through MicroBilt is sought; that it will disclose to such individual(s) as and when required by law that credit and/or other Information (including investigative credit report Information, if applicable) will be sought on such individual(s); and that it will provide consumer(s) with answers about their own credit report or when credit is denied, terminated or changed or when an application is declined, based in whole or in part on Information secured through Repositories availed by MicroBilt, resulting in “adverse action” as defined in FCRA, with MicroBilt’s name, address and toll free phone number (and not that of any MicroBilt vendor, partner or other customer); and both advise applicants and follow procedures itself, regarding Repository mandates on inquiries or complaints.
4. User agrees that it will retain Forms for five (5) years in all cases where credit is extended or an application approved and in any case where credit is declined or an application declined; and that it will make available such Forms to MicroBilt and/or Repositories upon reasonable notice for occasions where confirmation or audit is required, either by the Repositories or by MicroBilt.
5. User agrees to take all reasonable precautions to ensure that Information on individuals (including scores) will be disclosed internally only to those of its employees whose duties reasonably relate to the legitimate business purpose for which the Information was requested.
6. User shall and as applicable cause its Customers at no cost on a monthly or sooner basis to contribute current and updated consumer history, payment, credit, fraud and other transaction experience data on established and new accounts (“Contribution Data”) to MicroBilt in the form, format and manner prescribed by MicroBilt in accordance with MicroBilt’s then current data contribution policy, security procedures and data contribution specifications (as amended by MicroBilt from time to time upon reasonable prior written mail, fax, email or Website posting notice to User). Contribution Data shall be as complete and accurate as possible in accordance with then current industry standards and User shall adhere to all applicable local, state and federal laws regarding same. MicroBilt shall have no obligation or responsibility to return Contribution Data or the media containing same to User or act upon any instructions from User regarding the Contribution Data not expressly set forth hereunder or required by applicable law. At MicroBilt’s prior written request and within a reasonable amount of time, User shall promptly verify the accuracy of the Contribution Data provided to MicroBilt. User acknowledges it has received and shall provide its Customers, as applicable, with the “Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA” as required by the FCRA, which can be viewed and printed at the Website. User further acknowledges that the manner in which it collects, generates and reports Contribution Data, other than the mutually agreeable format for reporting Contribution Data to MicroBilt, is solely within the discretion of User. User warrants that it has the full legal right, permission and authority to provide

- Contribution Data under the terms of this Agreement and that neither User's processes for collecting, generating and reporting Contribution Data, nor MicroBilt's receipt and use of Contribution Data, will infringe any patent, copyright or trademark right of any third party. Where applicable, User agrees to report Contribution Data as "paid collection" transactions when they are paid, which information shall not be deleted prior to submission, unless required by law. At their option and expense, Contribution Data may be incorporated into the consumer reporting systems of MicroBilt and/or its subsidiaries. Once Contribution Data is incorporated into a party's credit reporting system, such will become their exclusive property. Nothing in the preceding sentence, however, will affect User's ownership rights in its customer account information from which the Contribution Data was derived. Contribution Data is intended to be added to a party's computer database for inclusion in consumer reports, accessible pursuant to the FCRA by both authorized subscribers and the consumers which are the subject of such Contribution Data, and therefore it is expressly understood by User that Contribution Data is not intended to be kept confidential in such regard. Once Contribution Data is submitted and incorporated into a party's credit reporting system, such may be used and disclosed for any purpose consistent with applicable federal, state and local laws, rules and regulations, including but not limited to those purposes set forth in the FCRA and in Section 502(e) of the GLBA and Reg. P promulgated pursuant thereto (16 CFR 313.15); provided, however, that best efforts will be employed not to release a list of consumers' names and addresses that specifically identifies individuals as User's customers, or identify User's customers on any third party's list, or release a list consisting primarily of User's customers. Nevertheless, mailing lists, customer lists, marketing lists or lists classified as to credit performance, locality or economic indicators using the information contained within a party's computer database, including without limitation, the Contribution Data submitted hereunder, may be provided or furnished to any authorized party which is under contract for a party's credit furnishing or reporting services, list extract, editing or other services; provided, however, that in no event shall any selection criteria used specifically seek a list of User's current or previous customers and further provided that the FCRA, GLBA and the implementing regulations issued thereunder shall be fully complied with.
7. User acknowledges that services hereunder cannot begin until User accepts, signs and submits this Agreement and requisite Fee, if any, to MicroBilt and successfully undergoes compliance, credentialing and a "Site Inspection" as set forth below, after which MicroBilt will designate and issue a confidential User ID and password.
 8. Without right of setoff, User agrees to pay MicroBilt directly for all applicable "Set-Up Fees," "License Fees," "Site Inspection" and/or "Training, Testing, Credentialing or Certification Fees," "Monthly Minimum Fees," "Monthly Service Fees," "Annual Fees," fees for "Transactions," "Bureau Products," "Repository Data," "Data," "Reports," "Information," "Products," "Searches," "Additional Data," "Additional Products," "Modules," "Equipment" and any other then current, amended or additional fees, plus taxes (collectively "Fees"), due for services rendered by MicroBilt to User and related to the products, services and associated prices identified in the attached Fee Schedule, as amended. User agrees and acknowledges that payment to MicroBilt of all Fees shall be made in one of the two following manners and by initial in the Fee Schedule, User agrees to such method and to provide all necessary information and documentation to facilitate prompt payment: (1) MicroBilt accepts payments via ACH (Automated Clearing House) and requires User's company bank name, address, phone number, account name, account #, ABA # and a voided copy of a company check; or (2) MicroBilt accepts payments via Visa, MasterCard, AMEX and Discover. During the first week subsequent to the end of each previous month, MicroBilt will post invoices for all Fees due and transaction detail supporting same, on a MicroBilt assigned website, which may be accessed privately and securely by User. Should User have a reasonable dispute with regard to an invoice, User must notify MicroBilt of such upon receipt and send all detail or documentation via email to support@MicroBilt.com or fax to 770-218-4512 Attn: Accounting Dept., or any such dispute shall be deemed waived. MicroBilt will respond to User's dispute within five (5) days after receipt. Invoices are due upon receipt and MicroBilt will either automatically charge User's Credit Card or ACH User's account, all undisputed amounts due. All Fees for services rendered during or otherwise owed for the length of the "Term" (defined below) of this Agreement shall be immediately due and payable upon termination of this Agreement for any reason.
 9. During the "Term" of this Agreement, User shall only be afforded access to current and available historical invoices and product / Customer transaction detail, Information and/or reports, provided User is not currently and has not been on two (2) or more prior occasions during the "Term" of this Agreement, whether or not notified or timely resolved, i) in breach of any term or condition of this Agreement or ii) delinquent or in default as to any payment due.
 10. MicroBilt may, upon reasonable prior written mail, fax, email or Website posting notice to User, add, remove, increase or decrease any Fee then in effect to reflect a change in any: cost to MicroBilt by a Repository or other vendor; local, state or federal cost or surcharge; or new or enhanced services, tools or compliance cost.
 11. User will hold its User ID, Password and Subcodes in strict confidence, and will report to MicroBilt immediately any loss, theft, disclosure or unauthorized use of same. Until MicroBilt is so notified and acknowledges de-activation of the User ID, Password and/or Subcodes, User shall be liable for any and all Fees, and for any and all effects and/or consequences of any misuse.
 12. By its electronic acceptance of this Agreement, User agrees that: Information secured will be for exclusive use in its credit, insurance, marketing or other business decisions; all Information will be held in strict confidence; use of Information for unfair or deceptive practices will be strictly prohibited; Information on current or prospective employees will only be secured by designated authorized representative(s); User employees will be forbidden to obtain any Information on themselves, associates or any others save in the performance of their official duties; Information to be used for valuation purposes will be used only to perform a guideline valuation and will not be construed as a replacement for a complete, comprehensive valuation conducted by a qualified professional; Information will not be disclosed to the subject of the Information, except that it may be disclosed if adverse action is taken; and subject(s) requesting a copy of their Information will be referred, upon need or legitimate inquiry, only to MicroBilt and not to the Repository identified on the Information, except as otherwise required by applicable local, state or federal law.
 13. User specifically acknowledges that MicroBilt considers the Equipment, SDK, XML, Website and all software, source code, object code, technology and documentation related thereto to include confidential information and trade secrets and to be proprietary to MicroBilt. Nothing in this Agreement shall be construed to convey to User any right, title or ownership interest in such or in the intellectual property rights relating to same. All rights, title and interest in such, whether or not in the nature of copyright, trade secret, trademark, service mark, trade name, patent or otherwise, vest solely in MicroBilt.
 14. The MicroBilt and/or Repository products, services, names and marks and those of their vendors ("Marks") identified under this Agreement and Fee Schedule or otherwise, are protected by applicable copyright laws, with all ownership rights retained by the applicable party and/or its vendor. Except as specifically authorized in this Agreement or with prior written consent of the applicable party, which, with regard to MicroBilt, shall not be unreasonably withheld or delayed, the direct or indirect reference, listing, marketing, press release, communication, publication, use, sale, duplication or distribution of any such Mark contrary to the terms and conditions herein, is strictly prohibited, for which violators may be prosecuted. User agrees not to infringe any copyright or other proprietary interest of MicroBilt, any Repository or their vendors. MicroBilt may at any time, after reasonable prior written notice to User via mail, fax, email or Website posting, restrict, remove, add to or modify any such Mark, which shall be promptly adhered to by User.
 15. Information and Marks obtained by User hereunder shall be held in strict confidence and except as otherwise set forth herein, are never to be reproduced, disclosed, revealed or made accessible in whole or in part to any others unless required by applicable law, valid subpoena or court order. User agrees to hold MicroBilt, the Repositories and their respective officers, employees, agents and vendors harmless from any expense, damage or liability, including any special, incidental, exemplary or consequential damages of any nature, arising from the publishing or disclosure of Information or Marks by User contrary to the conditions herein, whether such is disclosed by design or in error.
 16. User acknowledges, unless otherwise permitted by a Repository, MicroBilt or applicable law, that its business does not sell Information direct to consumers, and it is not a credit repair, process server, dance studio, spiritual, tattoo, health or book club, adult, dating or massage business.
 17. User agrees to place all devices used to obtain Information and all electronic and hard copy Information and applications with transaction detail, which shall be maintained and kept confidential for a minimum of five (5) years, in a secure location within its facility, so that unauthorized persons cannot access them, and to password protect and lock such devices and locations after normal business hours.
 18. This Agreement shall commence as of the date of User's electronic acceptance and submission thereof (the "Effective Date") and shall remain in effect for a minimum initial period of three (3) years (the "Initial Term") after which it shall automatically and continuously renew for additional minimum one (1) year periods, (the "Renewal Term(s)" and with the Initial Term, each a "Term") until terminated by either party on sixty (60) days written notice to the other, prior to the end of the then existing Term, or upon termination as otherwise set forth herein. Obligations for the payment of Fees for services rendered during or otherwise owed for the length of the Term of this Agreement, the continuation of confidentiality and maintenance of records, however, shall survive termination.
 19. User acknowledges, consents and agrees that MicroBilt does not guaranty the continuation and shall not be held liable to User and/or its Customers for the discontinuation of any one or more specific products or services offered hereunder as amended from time to time as set forth herein and that such shall not be a valid "Claim" (defined below), cause for breach or termination of this Agreement.
 20. EXCEPT AS SET FORTH IN THE FOLLOWING PARAGRAPH, NEITHER MICROBILT NOR THE REPOSITORIES MAKE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, WITH REGARD TO THE SERVICES, PRODUCTS OR INFORMATION PROVIDED UNDER THIS AGREEMENT, (SUCH INFORMATION IS PROVIDED BY THE REPOSITORIES "AS IS") INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, NEITHER MICROBILT NOR THE REPOSITORIES IN ANY WAY WARRANT OR ASSUME ANY LIABILITY FOR A "CLAIM" FOR BREACH REGARDING THE TIMELINESS, CURRENCY, CONTINUATION, VALIDITY, ACCURACY, ADEQUACY OR COMPLETENESS OF ANY INFORMATION ACCESSED. USER ACKNOWLEDGES THAT ENTERING INTO THIS AGREEMENT IS ITS BUSINESS DECISION, IS NOT BASED ON THE PROVISION OF ANY ONE OR MORE SPECIFIC PRODUCTS OR SERVICES AND THAT EVERY BUSINESS DECISION

- INVOLVES THE ASSUMPTION OF A RISK, WHICH NEITHER MICROBILT NOR THE REPOSITORIES DO OR WILL UNDERWRITE IN ANY MANNER.
21. MicroBilt represents, warrants and covenants that it: (i) shall perform its services hereunder in a competent and workman-like manner in accordance with the then current standards of the industry; (ii) has and will continue to maintain all necessary ownership rights, title, licenses, authorities and approvals necessary regarding the products and services provided hereunder, the Equipment, Website, SDK, XML and any software, source code, object code and documentation thereto (together the "MicroBilt Products"), free of all liens, claims, encumbrances and other restrictions except as referenced to the contrary herein; (iii) the MicroBilt Products do not and will not, to the best of MicroBilt's knowledge, after diligent investigation, infringe upon copyrights, trademarks, patents or any other proprietary rights of any third party; (iv) will permit access to the MicroBilt Products completely and accurately per the terms as set forth herein; (v) the MicroBilt Products shall be free from any defects in design, materials and workmanship, shall be free of any "worm," "virus," "lock out" or "self destruct" devices, as such terms are understood in the computer industry and shall perform in accordance with the terms herein; (vi) any documentation provided by MicroBilt hereunder will accurately describe the MicroBilt Products; (vii) the MicroBilt Products, MicroBilt and its officers, employees, agents and representatives shall comply with all applicable foreign, federal, state and local laws and regulations applicable and MicroBilt shall obtain and maintain in effect such permits, licenses and other forms of authorization required to comply with such laws and regulations; and (viii) will provide its best efforts to keep the MicroBilt Products validly registered and current in concert with any changing industry and market conditions so that such will continue to perform all intended functions throughout the Term of this Agreement.
22. NEITHER MICROBILT NOR THE REPOSITORIES SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING OUT OF THE USE OR INABILITY TO USE ANY SERVICE OR PRODUCT PROVIDED HEREUNDER OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF ANY REAL OR ANTICIPATED PROFITS, EVEN IF MICROBILT AND/OR A REPOSITORY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY LIABILITY OF MICROBILT AND/OR A REPOSITORY OF ANY NATURE HEREUNDER SHALL BE LIMITED TO A REFUND OF THE PAYMENTS MADE BY USER UNDER THIS AGREEMENT. A "CLAIM" INCLUDES ANY CLAIM, DEMAND, ACTION, PROCEEDING, LOSS, COST, EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES), DAMAGE, LIABILITY OR PENALTY. NO CLAIM MAY BE COMMENCED MORE THAN TWO (2) YEARS AFTER THE OCCURRENCE WHICH HAS GIVEN RISE TO SUCH.
23. Each party shall defend, indemnify and hold the other party harmless from Claims arising out of the indemnifying party's breach of any representation, warranty or other term contained herein. In connection with any Claim that is indemnifiable hereunder, the indemnified party shall: (a) give the indemnifying party, prompt written notice of the Claim for which indemnification is sought; (b) give the indemnifying party the opportunity to take over and/or settle any third party Claim through counsel of indemnifying party's choice, at its sole direction and expense; and (c) cooperate fully with the indemnifying party as to the Claim.
24. Except with regard to Contribution Data and submitted inquiry or other data, "Confidential Information" means all information furnished in any manner by one party to the other under this Agreement and all information derived therefrom, including, but not limited to, this Agreement and any exhibits, products, services and pricing, source code, object code, software, business, employee, vendor, customer and consumer information. The term "Confidential Information" does not include information, proven by documentation which: (i) becomes generally available to the public other than as a result of a disclosure by the information receiver; (ii) was available to the information receiver on a non-confidential basis prior to its disclosure by the information provider; (iii) becomes available to the information receiver on a non-confidential basis from a source other than the information provider, provided that such source is not known by the information receiver, after due inquiry, to be bound by any duty to the information provider or another entity, to keep such information confidential; or (iv) is independently developed by the information receiver, without use of the information provider's Confidential Information. Each party agrees that the Confidential Information disclosed to it by the other party shall not be disclosed to any third party and shall be used only for the purpose of this Agreement. Each party agrees to treat all Confidential Information of the other in the same manner in which it treats its own confidential and proprietary information, including prohibition of and sanction against the use of such by any third party, employee, agent or associate of a party so revealing and/or using such information for direct or indirect gain.
25. Either party may terminate this Agreement, should the other party breach any material term or condition herein, provided that the non-breaching party has given written notice of the breach to the breaching party and afforded the breaching party a thirty (30) day opportunity to cure and the breaching party failed to so cure. In whole or in part, MicroBilt may cease or suspend its provision of one or more products or services hereunder and/or terminate this Agreement, at any time, with or without notice, with no liability to User, if: (i) MicroBilt reasonably determines that the provision of services hereunder violates any credit reporting or other law; (ii) MicroBilt is required to do so by any Repository; (iii) MicroBilt or a Repository eliminates, modifies or restricts a product or service; (iv) User violates or upon reasonable belief is suspected of violating a consumer protection regulation, Repository guideline, the FCRA or any applicable local, state or federal law; (v) User exhibits rude, untruthful, illegal or immoral actions or omissions or there is a general breakdown in the relationship between the parties; or (vi) User fails to timely pay all undisputed amounts due, for which MicroBilt may immediately suspend services and/or User fails to resolve payment delinquencies within thirty (30) days of written notice, for which MicroBilt may terminate this Agreement and/or User's payments have been delinquent on two (2) or more occasions during the Term of this Agreement, whether or not notified or timely resolved, for which MicroBilt may immediately terminate this Agreement.
26. **General Provisions**
- a. **Notices.** Except as specifically maintained otherwise herein, any and all notices shall be given in writing and sent Registered or Certified mail, return receipt requested or via overnight courier or by hand delivery to the other party at the street address listed above or in the Fee Schedule or as modified by proper notice to a party. The date of receipt shall be the effective date of the notice.
- b. **Waivers.** A party's failure or delay to enforce or waiver of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that or any other provision of this Agreement.
- c. **Amendments.** Except as otherwise set forth herein, this Agreement may be modified or amended only by the written consent of both parties.
- d. **Headings.** All headings used in this Agreement are for the convenience of the parties and are for reference purpose only.
- e. **Injunctive Relief.** Each party shall have, in addition to any other relief at law or equity, the right to injunctive relief to redress a party's breach of this Agreement.
- f. **Severability.** Any term or condition of this Agreement deemed legally invalid or unenforceable, shall in no way affect any other remaining term or condition.
- g. **Assignment.** Except as otherwise expressly permitted herein, neither party may distribute, rent, sublicense, lease, sell or assign this Agreement or the services or products provided herein without the prior written consent of the other, provided that either party may assign this Agreement to any of its affiliated companies without consent or may assign this Agreement in the event of a sale by such party of all or substantially all its assets to an assignee or to an entity with or into which it is merged or consolidated, provided that the assignee assents in writing to all terms and conditions hereof and further provided that the scope, level, volume and nature of the services to be provided to or by the assignee are not materially changed.
- h. **Exclusivity.** This Agreement is not exclusive and either party may enter into similar agreements with others.
- i. **Independent Contractor.** MicroBilt shall be considered an independent contractor and not an employee of User. Except as otherwise expressly provided herein, neither party shall in any way represent itself as an agent, employee, joint-venturer or representative of the other party.
- j. **Third Party Beneficiaries.** This Agreement is intended for the benefit of, is binding upon and may be enforced solely by the parties hereto, their successors and permitted assigns and except as expressly provided herein otherwise regarding Repositories, no third party shall have any rights herein.
- k. **Restriction on Employment.** User may not solicit (other than via job fairs or advertisements to the general public) or hire any present or former MicroBilt employee, contractor or consultant without MicroBilt's prior written consent.
- l. **Non-Solicitation.** User may not solicit (other than via trade shows or marketing to the general public) or entice any existing or potential vendor or customer to terminate its existing or potential relationship with MicroBilt.
- m. **Advertising.** User agrees that MicroBilt, its vendors, partners and sponsors may engage in commercial advertisement of products and services to User and/or Customers from time to time, including sales promotions, additions, deletions, upgrades, updates, customer service, technical, legal and compliance notifications, via mail, fax, email, Website posting or phone.
- n. **Force Majeure.** Performance by MicroBilt may be subject to interruption and delay due to causes beyond its reasonable control such as acts of God, government, weather, fire, power or telecommunications failure, inability to obtain supplies or Information, breakdown of equipment or interruption in Repository services or communications. Neither party shall be liable to the other for any delay or failure to perform which results from causes outside its reasonable control.
- o. **Choice of Law and Venue.** THE PARTIES IRREVOCABLY AGREE THAT: i) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SOLE AND EXCLUSIVE LAW, PERSONAL JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS OF THE STATE OF NEW JERSEY, COUNTY OF MERCER, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES; ii) ANY ACTION RELATING TO THIS AGREEMENT SHALL BE FILED IN SUCH COURTS; AND iii) ANY CLAIM OR DEFENSE THAT A PARTY LACKS MINIMUM CONTACTS WITH THE FORUM OR THAT SUCH COURTS LACK PERSONAL JURISDICTION OR THAT VENUE IS IMPROPER OR INCONVENIENT, SHALL BE WAIVED.
- p. **Collection and Attorneys' Fees.** Without limiting MicroBilt's remedies for non-payment or late payment of invoices, User shall be liable to MicroBilt for any and all interest, late fees, costs of collection, court costs and reasonable attorneys' fees as to any collection effort regarding invoices for services rendered pursuant to this Agreement and remaining unpaid after the due date.
- q. **Taxes.** User shall pay all applicable federal, state and/or local sales, service, use or other taxes designated or imposed due to any action or transaction under this Agreement, other than taxes imposed on MicroBilt's net income.
- r. **Audits.** MicroBilt may track, review, compile, store and use any Contribution Data and submitted inquiry or other data and continuing for one (1) year after termination of this Agreement, after reasonable prior written notice to User via

- mail, fax, email or Website posting and at mutually convenient times during normal business hours, audit User's and/or its Customers' compliance with the terms of this Agreement and all applicable legal requirements and laws, including, but not limited to, the FCRA and the GLBA, per a MicroBilt, Repository, legal, government or court ordered rule, mandate, inquiry or request, via database queries, on-site visits, statistical, financial and/or document reviews and/or requests, which shall promptly and fully be responded to by User, at User's expense within a reasonable time after notification, to avoid the suspension of User's and/or its Customers' access to one or more products or services hereunder and/or termination of this Agreement.
- s. Continuation of Confidentiality. Notwithstanding anything herein to the contrary, the duty of confidentiality to which the parties hereto are bound, shall continue in full force and effect for three (3) years after any termination of this Agreement.
- t. Compliance Certification, Training, Testing, Credentialing & Site Inspection. As necessary, in accordance with FCRA, FACTA, GLBA, DPPA, MVR, ECOA, TILA and other local, state and federal laws, as well as Credit Bureau, Data Repository and MicroBilt policies, prior to accessing consumer Credit Information or other Data and on an annual basis and when changing business premises or ownership and as new MicroBilt products and services are offered or accessed from time to time and new laws, Credit Bureau, Data Repository and MicroBilt policies are established or amended, User and/or its Customers agree to undergo and pay for compliance certification, credentialing, employee FCRA training and testing, an on-site inspection at their business premises ("Site Inspection"), criminal, consumer credit and other background checks on User's and/or its Customers' business and their principal (owner or officer), performed by ComplyTraq, LLC, to determine and review credit, history, procedures, processes and need for accessing, using, storing and/or distributing Information, security practices and other protective measures in place, so as to ensure initial compliance with the terms hereof, as well as periodically for reassurance thereafter. As applicable, to ensure its Customers' compliance, User shall enter into a "ComplyTraq Compliance Services Agreement" directly with ComplyTraq. Further, MicroBilt may, at any time after reasonable prior written notice to User via mail, fax, email or Website posting, add to, delete or modify any MicroBilt, Repository or Credit Bureau contractual or legal compliance / security procedure, which shall be incorporated herein by reference and promptly and fully be adhered to by User and/or its Customers within a reasonable time after notification, to avoid the suspension of one or more products or services hereunder and/or termination of this Agreement.
- u. Entire Agreement. This Agreement with Recitals and Fee Schedule and/or other exhibits attached hereto, if any, incorporated herein by reference, constitutes the entire agreement between MicroBilt and User with regard to the subject matter contained herein and therein and supersedes all other existing or contemporaneous agreements, writings, communications or understandings between the parties concerning such subject matter, written or oral. There are no warranties, representations or agreements of the parties with respect to the subject matter of this Agreement and Fee Schedule, other than those herein and therein.
- v. Approval. MicroBilt and User certify that the terms on all pages have been read and that each party agrees to the terms of this Agreement and Fee Schedule as written on behalf of his / her business and represents that he / she is authorized to accept this Agreement on behalf of the party so indicated.
- w. Electronic Acceptance. By the parties' electronic submission hereof, which shall constitute legal, valid and binding marks, with the same force and effect as a physically signed original, MicroBilt and User agree, acknowledge and consent to the terms of this Agreement and Fee Schedule and to the electronic delivery and acceptance thereof and all exhibits, documents, notices, updates, addenda and amendments related thereto, as well as any other documents to be delivered by MicroBilt during the Term of this Agreement. The parties acknowledge that this Agreement may exist in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. User understands that it will need a valid e-mail address and access to the Internet, as well as the appropriate software and/or programs, including, but not limited to, Adobe Acrobat, in order to access this Agreement and Fee Schedule electronically. User also understands that it may update its information, obtain a full description of systems requirements, revoke this consent, or request one or more paper documents at any time by contacting MicroBilt in writing.