Terms and Conditions

1. **Definitions.** Capitalized terms not defined herein have the meanings set forth below.

1.1 Administrator. Any person so designated by Customer or Covisint in a notice to the other party.

1.2 Aggregated Data. Data collected, retained, stored or accumulated through use of the Covisint Hosted Service regarding no fewer than two (2) Customers, in a form from which no Customer, no Customer Content and no specific transaction can reasonably be identified or segregated.

1.3 Agreement. Collectively, the Services and Fees Schedule, these Terms and Conditions, a statement of work or other agreement entered into by Customer and Covisint for Covisint products and services.

1.4 Authorized User. Any person or automated process or system to whom/which Customer's Administrator issues a Password and User ID, from the time of such issuance until Administrator notifies Covisint that such Password and User ID are no longer valid.

1.5 Client-Side Software. Software intended to be operated on Customer computers to facilitate Customer's access to the Covisint Hosted Service and Services.

1.6 Covisint Confidential Information. (i) all content, data and information on the Covisint Hosted Service made available to Customer excluding: (A) the public portion of the Covisint website that is accessible without any Password and User ID; and (B) Customer Content; (ii) all information and related data regarding transactions on the Covisint Hosted Service other than transactions involving Customer; (iii) all technology (including software and documentation) made available by the Covisint Group for use by Customer in its activities on the Covisint Hosted Service; (iv) all business, technical, operational, financial or other information of Covisint, including, without limitation, training materials or process flows, user documentation, and the identity of Covisint Suppliers; (v) all Covisint Intellectual Property; (vi) Content of other Customers; (vii) all information and materials of suppliers or contractors of Covisint provided other than through the Covisint Hosted Service but pursuant to Services acquired by Customer; (viii) pricing information relating to the Services; (ix) all Passwords and User IDs, except those of Customer's Authorized Users; and (x) all information that meets any of the foregoing requirements and which was disclosed to Customer prior to the effective date hereof.

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1.8 Covisint Group. Covisint, its affiliates, subsidiaries, agents, Suppliers and their respective employees, contractors, directors, officers and shareholders.

1.9 Covisint Intellectual Property. (a) the registered and unregistered trademarks and service marks of Covisint; (b) all Covisint copyrights, trade secrets, patents and proprietary information; (c) software, hardware, technology, implementation tools, documentation, text, typefaces, graphics, logos, button icons, images, audio clips, designs, illustrations, configurations, displays, screens, concepts, and other materials and information appearing on, displayed in connection with, embodied in or contained within the Covisint Hosted Service, or as may be provided by the Covisint Group; (d) the Software and documentation; (e) except as otherwise provided in an Agreement, any improvements, modifications, enhancements or derivative works to, of or from the Customer Content created by or on behalf of Covisint; (f) Aggregated Data; (g) Covisint Confidential Information; and (h) any and all Customer feedback, evaluation results, reports of errors, problems or defects and suggestions related to the Covisint Hosted Service or the Services.

1.10 Confidential Information. In the case of Customer, Customer Confidential Information, and in the case of Covisint, Covisint Confidential Information, in each case except to the extent such information (i) is or becomes publicly known other than through a breach of the Agreement; (ii) is known to the recipient prior to disclosure; (iii) is after the date hereof lawfully obtained by the recipient from a third party that is not under any obligation of confidentiality to the discloser; or (iv) is independently developed by the recipient by personnel who did not have access to the corresponding Confidential Information. Confidential Information shall also include Protected Health Information.

1.11 Content. Any content or other material a Customer supplies, posts or otherwise makes available via or through the Covisint Hosted Service.

1.12 Covisint Hosted Service. The Covisint Hosted Service located at www.covisint.com or any successor location designated by Covisint, and all related Services, purchased by Customer pursuant to an Agreement.

1.13 Customer. Legal entity which has agreed to access the Covisint Hosted Service in accordance with the terms of an Agreement with Covisint.

1.14 Customer Confidential Information. (i) all Customer Content, Customer Transactional Data and all Authorized User Passwords and User IDs, and (ii) any Marked materials, documentation or other information provided to Covisint by Customer other than through the Covisint Hosted Service but pursuant to Services acquired by Customer.

1.15 Customer Intellectual Property. Customer Content, Customer Transactional Data and Customer Confidential Information.

1.16 Designated User. A person designated by Customer in a notice to Covisint as authorized to execute Agreements, any amendments to the contracts between Covisint and Customer and any new agreements. Until such further designation is made by Customer, Designated User means the individual who signed the Agreement on behalf of Customer. A Designated User also could include an officer of Customer's company or other person able to legally bind the company.

1.17 Force Majeure Event. As to either party, any event beyond such party's reasonable control.

1.18 Individually Identifiable Health Information. Any information, including demographic information collected from an individual, that (A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (B) relates to the past, present, or future payment for the provision of health care to an individual, and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

1.19   Intellectual Property. All intellectual property of any kind and includes without limitation, in the case of Covisint, Covisint IntellectualProperty, and in the case of Customer, Customer Intellectual Property.

1.20   Intellectual Property Rights. All patent rights (including applications, reissues, divisions, continuations and extensions thereof), copyrights, trademark rights, trade secret rights, and all other intellectual property or proprietary rights.

1.21   Losses. All claims, losses, expenses, damages, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys' Fees and court costs).

1.22   Marked. As to any information or materials, marked or otherwise identified as confidential or proprietary.

1.23   Objectionable. As to any information in any medium or format, including without limitation text, data, graphics, audio or video, content (or use of the content) that: (a) is defamatory, unlawful, or plagiarized; (b) a reasonable person would consider harassing, abusive, threatening, obscene, hate speech, or racially or ethnically offensive; (c) constitutes a breach of any person's privacy or publicity rights; (d) violates any statute, regulation or ordinance; or (e) promotes software or services that deliver unsolicited mail.

1.24   Password and User ID. A Customer or Authorized User's unique password and unique user identification.

1.25   Protected Health Information. Any information, whether oral or recorded in any form or medium that (A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university or health care clearinghouse; and (B) relates to the past, present, or future physical or mental health or condition of an individual , the provision of health care to an individual or the past, present, or future payment for the provision of health care to an individual. Protected Health Information also includes, but is not limited to, "Individually Identifiable Health Information".

1.26   Services. Any services provided by Covisint, whether directly or indirectly through Suppliers, relating to or in support of the Covisint Hosted Service, set forth in an Agreement between the parties.

1.27   Software. Any computer software and/or implementation tools made available by Covisint (including Third Party Software and Client-Side Software) as part of the Covisint Hosted Service or the Services.

1.28   Statement of Work. An agreement, entered into by the parties, which specifically describes the products and/or Services to be performed by Covisint, pursuant to an applicable Services and Fees Schedule.

1.29   Suppliers. Any suppliers, vendors, contractors, licensors or service providers to Covisint.

1.30   Third Party Software. Software provided by Suppliers, licensed by Covisint and made available to Customer through the Covisint Hosted Service or the Services.

1.31   Transactional Data. Any information or data comprising transactions on the Covisint Hosted Service, but excluding any Customer Content.

2.   Payment Terms and Conditions

2.1   Duty to Pay. Covisint shall be paid by Customer in accordance with the terms of a "Services and Fees Schedule" or other Agreement reflecting payment for Covisint products and/or Services that is mutually agreed by the parties ("Payment Terms"). All payment amounts set forth in the Payment Terms shall be referred to as "Fees".

2.2   Taxes & Assessments.   All amounts specified in the Payment Terms are exclusive of any applicable value added, use, sales, property, federal, state, local or other taxes, duties or assessments. Customer will pay or reimburse Covisint for all taxes and duties, however designated, which are levied or imposed by reason of the performance by Covisint under the Payment Terms, excluding, however, taxes based upon Covisint's net or gross income. Should Customer be required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to Covisint, then the sum payable to Covisint will be increased by the amount necessary to yield to Covisint an amount equal to the sum it would have received had no withholdings or deductions been made.

2.3   Invoice. Unless an alternative billing method is agreed by the parties and noted in the Payment Terms, Covisint shall invoice as follows: Customer shall be billed in advance, for one-time and annual Fees for the use of such products or services. For those products or services that are provided on a monthly or quarterly basis, Customer shall be billed monthly or quarterly, as applicable, at the end of the month or quarter that such products and Services were provided. For per-event and other products and Services, billing will occur upon delivery.

2.4   Payment. Unless otherwise agreed in writing by Customer and Covisint, payment of Fees is due upon Customer's receipt of each invoice. All payments will be made in the billed currency. If Customer fails to pay any Fees by the applicable due date, Covisint shall have the right to: (a) assess late charges in an amount equal to the lesser of 1.5% per month or the maximum allowable under applicable law and/or (b) suspend provision of products or Services to Customer. Any such suspension will not relieve Customer of its obligation to pay any amounts to Covisint. Customer will be responsible for any costs associated with Covisint's efforts to collect such Fees including, without limitation, reasonable attorneys' fees, court costs and collection agency fees.

2.5   Credit Review. Customer's execution of Payment Terms, including, but not limited to, a Services and Fees Schedule, signifies Customer's permission for Covisint's initial and continuing credit review and approval.

2.6   Disputed Invoices. If Customer disputes in good faith any portion of an invoice, Customer shall timely pay the non-disputed portion of the invoiced amount and provide Covisint, within thirty (30) days of payment, a written statement supporting Customer's position regarding such good faith dispute.

3. Confidentiality of Information.

3.1   Obligation. Covisint and Customer may each use Confidential Information of the other party only to perform its obligations or exercise its rights under the Agreement.   Covisint and Customer may not use or disclose Confidential Information of the other party for any other purpose without the other party's prior written permission, except as required by law, including any court or governmental order.   Covisint and Customer shall each take commercially reasonable precautions to safeguard the confidentiality of all Confidential Information of the other, including not less than those precautions taken by such party for the protection of its own confidential information. Covisint and Customer will each be responsible for any breaches of this Section 3 by its respective employees, contractors and agents.

3.2   Name Use. Neither party shall use the name, trade name, trademark or service mark of the other party or its parents, subsidiaries or affiliates without prior written consent of the other; provided that each party may identify Customer as a participant in the Covisint Hosted Service.

4.   Intellectual Property Rights. Each party retains all of its rights in and to its Intellectual Property. Covisint and the Covisint Group retain all right, title and interest in and to the Software and the Services. Covisint hereby grants to Customer a non-exclusive license to use the Software and access the Services in accordance with the terms of the Agreement. Covisint shall be permitted to adapt, display and use the Customer Content and the Customer Transactional Data solely as required to provide the Services and to create the Aggregated Data. If any Transactional Data includes Content supplied by Customer and Content supplied by any other Customer(s), each of Customer and such other Customer(s) shall own an equal, undivided interest in such Transactional Data, unless otherwise agreed between such Customers.

5.   Restrictions on Use. Customer agrees that it shall not, nor shall it authorize others to:

(a)   use the Software on any equipment other than the servers on which Covisint operates the Covisint Hosted Service; provided that Customer may operate Client-Side Software on any computer systems belonging to Customer in accordance with the terms of the Agreement;

(b)   reverse engineer, decompile or disassemble or otherwise attempt to discover the source code of the Software;

(c)   grant any rights in, transfer, time-share or otherwise assign to any third party any of the Services, the Software or any of Customer's rights in licenses thereto, or use any of the Services or the Software to operate a time sharing service, service bureau or perform services for third parties;

(d)   create any derivative works based on any of the Services, the Software or any other Confidential Information of Covisint or the Covisint Group; or

(e)   use the Services or the Software in any manner not expressly authorized by the Agreement or the documentation accompanying any such Software or Services.

6.   Disclaimers of Warranties.

6.1   Exclusive Warranties. The warranties specified in an applicable Statement of Work are the only representations or warranties made by Covisint and the Covisint Group. These warranties are exclusive and replace all other warranties, express, implied or statutory.

6.2   Risk. Unless a warranty is specifically provided in an applicable Statement of Work, Customer's use of or access to the Covisint Hosted Service, the Software, all Services and information provided by Covisint and the Covisint Group to Customer, including without limitation, all data, Content and Transactional Data accessible through the Covisint Hosted Service and the posting of and access to all of the foregoing is "as is", "as available" and with all faults and the entire risk as to satisfactory quality, performance and accuracy is with Customer. There is no warranty against interference with Customer's enjoyment of the Information or against infringement of intellectual property.

7.   Limitations of Liability.

7.1   Exclusion of Certain Damages. Except with respect to the indemnification obligations of the parties set forth in Section 8.1(a) and 8.2, neither party shall be liable for any consequential, incidental, indirect, or punitive damages (including, without limitation, loss of profits, loss of use, transaction losses, opportunity costs, interruption of business or costs of procuring substitute goods) resulting from, arising out of or in any way relating to the Covisint Hosted Service or the Services or disruption to or loss of quiet use thereof.

7.2   Limitation on Damages. Except with respect to the indemnification obligations of the parties set forth in Section 8.1(a) and 8.2, the total aggregate liability of Covisint for any and all causes of action arising out of or relating to the Covisint Hosted Service or the Agreement shall not exceed an amount equal to the total net Fees received by Covisint from or on behalf of Customer for the applicable Service to which such claim directly relates during the twelve (12) month period preceding the date when such claim first accrued.

7.3   Acknowledgement. The above exclusions and limitations shall apply regardless of (a) the form of claim or action; and (b) whether damages are foreseen or foreseeable, even if the charged party has been advised of the possibility of such damages. These exclusions and limitations are conditions for entering into the Agreement and are reflected in the Fees charged hereunder.

8.   Indemnification.

8.1   Intellectual Property Infringement**.**

(a)   Mutual Indemnification. Covisint and Customer shall defend, indemnify and hold the other party (including, with respect to indemnification of Covisint, the Covisint Group) harmless from and against any and all Losses asserted by a third party arising out of, in connection with, or based upon any claim that the Indemnitor's Intellectual Property (i) infringes or misappropriates the Intellectual Property Rights of any third party; or (ii) is Objectionable. Notwithstanding anything in an applicable Services and Fees Schedule or Statement of Work to the contrary, Covisint's aggregate liability for any losses under this Section 8.1 shall not exceed the greater of $1,000,000, or the total Fees, received by Covisint from or on behalf of Customer during the twelve (12) month period preceding the date when such Losses first accrued.

(b) _Limitations on Infringement Indemnity_. Covisint will not be obligated to indemnify Customer: (i) for any use of the Covisint Intellectual Property other than in accordance with the Agreement or documentation provided by Covisint; (ii) for any failure of Customer to use any corrections or modifications to the Covisint Intellectual Property provided by Covisint; (iii) for any use of the Covisint Intellectual Property in combination with any product, system or process not provided or approved by Covisint; (iv) for any modifications of the Covisint Intellectual Property (other than those by Covisint or its Suppliers) or any non-standard customization made on behalf of Customer; and (v) to the extent attributable to Customer's fault or wrongful act (such as actions taken that would prejudice defense).

(c) _Exclusive Remedy_. This indemnification obligation constitutes the parties' exclusive remedy and sole liability in respect of any intellectual property infringement liability associated with the Customer and Covisint Intellectual Property.

8.2 _Other Claims_. Each party ("Indemnitor") shall defend, indemnify and hold the other party (and in the case of Covisint as the other party, the Covisint Group) ("Indemnitee") harmless from and against any and all Losses asserted by a third party arising out of, in connection with or based upon: (i) the negligence or willful misconduct of Indemnitor or any of its employees or contractors; (ii) death or bodily injury resulting from the negligence of Indemnitor or its employees while acting in the course of their employment; (iii) any violation of applicable law by Indemnitor; and (iv) in the case of Customer as Indemnitor (A) any acts or omissions of Customer or its Authorized Users related to or arising out of the use of the Covisint Hosted Service, or (B) any dispute between Customer and any other Customer(s) in connection with the Covisint Hosted Service or any transaction conducted via the Covisint Hosted Service.

8.3 _Procedure_. Indemnitee shall (a) promptly provide notification of the claim and reasonable cooperation to the Indemnitor; (b) tender to the Indemnitor complete control of the defense, settlement and compromise of the claim; and (c) not make any admissions to any third party regarding the claim or settle any indemnified claim except as approved by the Indemnitor in writing. Nothing contained in this provision is, however, intended to require the Indemnitor to pay to the Indemnitee any amount other than (1) for the costs of Indemnitee's defense, if the Indemnitor elects not to defend; and (2) such amounts actually paid by the Indemnitee to the third party claimant, if the Indemnitor fails to pay the third party claimant directly for any settlement approved by the Indemnitee or any finally awarded judgment in favor of the third party claimant.   The Indemnitee shall have the right to approve any settlement that does not provide a full release to the Indemnitee without requiring the Indemnitee to take or omit to take any action (provided that the Indemnitee may be required to cease the activity that gave rise to the claim). The Indemnitee shall have the right to participate in its defense at its expense.

9. **Duration and Termination.**

9.1 _Termination and Renewal_. The duration of the Agreement, is as set forth on an applicable Services and Fee Schedule or Statement of Work entered into by the parties.

9.2 _For Cause_. Either party may terminate the Agreement based upon a material breach or violation of applicable law by the other party by giving notice of the breach and of the effective date of termination at least thirty (30) days prior to such effective date, unless the breaching party cures such material breach prior to such effective date.   Covisint may also terminate the Services under the Agreement on thirty (30) days prior written notice to Customer in the event that any applicable law prohibits the performance of such Services or makes the performance of such Services by Covisint or its Suppliers commercially unreasonable.

9.3 _Effect of Termination_. Upon any termination of the Agreement, all rights granted to Customer hereunder shall cease. Customer shall immediately discontinue use of the Covisint Hosted Service, and both Covisint and Customer shall have the right to pursue any remedies available to it at law or in equity.

9.4 _Survival_. All provisions that by their nature are intended to survive, including but not limited to disclaimers of warranties, confidentiality obligations and limitations of liability provisions, shall survive the termination of the Agreement.

10. **Assignment.** Neither party shall assign or otherwise transfer the Agreement, nor delegate or subcontract any of its rights or obligations hereunder, without the prior written consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned; provided that either party may assign the Agreement (i) to an entity controlling, controlled by or under common control with such party or (ii) in connection with the sale or other transfer of such party's business to a party who expressly accepts all of the obligations hereunder of the transferring party.

11. **Force Majeure**. Neither party shall have any liability to the other party for any failure or delay (other than in the case of payment obligations) due to any Force Majeure Event.

12. **Governing Law; Jurisdiction.** The Agreement shall be construed in accordance with the laws of the State of Michigan (excluding any conflicts of laws provisions). Any action brought under this Agreement shall be brought only in the federal and state courts having jurisdiction over the principal business office of the party against whom the initial action is brought.   Each party hereby consents to the personal jurisdiction of such courts.

13. **Time to Bring Claims.** Any action arising out of or relating to, the Agreement or the Covisint Hosted Service shall be brought within two (2) years of the date on which the party bringing the claim knew, or should reasonably have known, that such cause of action had arisen, or such claim shall be waived and forever barred.

14. **Third Party Beneficiaries**. Customer acknowledges that some Software may have additional and/or different license terms and Customer agrees to comply with such license terms as provided by Covisint at the time Customer enters into the Agreement. Customer also acknowledges and agrees that any restrictions or other provisions contained in the Agreement with respect to Software may be enforced directly by any Supplier to the extent applicable to such Supplier.   No Customer shall have any right to recover from any other Customer on the basis of a breach by such other Customer of an agreement with Covisint in connection with, or related to, the Covisint Hosted Service. The termination or any other contract action with respect to any other Customer by Covisint shall not create any liability hereunder to Customer.

15. **Entire Agreement**. The Services and Fees Schedule, inclusive of its attached and incorporated documents, including a Statement of Work, these Terms and Conditions and any incorporated terms shall constitute the complete and entire agreement between the parties and supersedes any prior or contemporaneous agreements between the parties with respect to its subject matter. Covisint shall not be bound by

any terms or conditions contained in any purchase order or other documentation issued by Customer. No sales employees, agents or representatives of Covisint or the Covisint Group are authorized to make any representation, warranty or covenant. Accordingly, such additional oral statements do not constitute representations or warranties of Covisint or the Covisint Group, should not be relied upon by Customer, and are not part of an Agreement.

16. **Notice**. Any "Notice" required to be given under the Agreement shall be made in a manner reasonably calculated to notify the other party's chief executive officer or any Designated User, including without limitation facsimile or email, with a confirmation copy dispatched in writing by courier service or certified mail, in each case to the address for a party listed on the Services and Fees Schedule or to such other address as may be specified through notice to the other party. Notice is effective upon actual receipt by the other party or three (3) days after the notice and any required confirmation copy have been dispatched, whichever is earlier.

17. **Incorporated Documents**. Customer agrees to maintain and comply with policies substantially similar to the following Covisint policies set forth at http://www.covisint.com/enable: Covisint Export Controls Policy [http://www.covisint.com/enable/export_control.shtml] and Privacy Policy [http://www.covisint.com/enable/privacy.shtml]. For the purposes of the Incorporated Documents specified in this Section 17 of these Terms and Conditions, the terms "Customer" and "Member" are interchangeable.