

# CONVERSION SERVICE

## TERMS AND CONDITIONS

### SERVICES

This Service Agreement ("Agreement") applies to the purchase of all services (collectively, the "Services") ordered by YOU on the Order Form. NCD reserves the right to amend its Service offerings and add, delete, suspend or modify the terms and conditions of the Services, at any time and from time to time, and to determine whether and when any such changes apply to both existing or future customers.

### BILLING AND PAYMENT

YOU shall pay the fees and other charges for each Service as provided in the Order Form. NCD reserves the right to change rates by notifying YOU sixty (60) days in advance of the effective date of the change; provided that NCD shall not change any rates during the term of any Term Commitment. Service charges shall be invoiced in accordance with the terms and conditions set forth both herein and in the Service Order Form. All payments shall be made in U.S. currency. YOU will pay a late payment charge equal to 1.5% (or the highest amount permitted by law, whichever is lower) per month or portion thereof on the outstanding balance of any invoice remaining unpaid fifteen (15) days after the date upon which payment is due ("Due Date"). Accounts unpaid thirty (30) days after the Due Date may have service suspended or terminated. Such suspension or termination shall not relieve YOU or YOUR obligation to pay the monthly fee due. YOU agree to pay NCD its reasonable expenses, including attorney's fees and collection agency fees, incurred in enforcing its rights under this Agreement. YOU shall pay all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the Services and the sale of hardware, software or equipment to YOU.

### TERM

This Agreement shall be for a twelve (12) month term unless specified by YOU on the Order Form. This Agreement will be automatically renewed at the end of the initial term for the same term specified by YOU on the Order Form unless YOU provide sixty (60) days written notice to NCD of termination of this Agreement prior to the end of the then current term.

### CANCELLATION POLICY

In the event of early cancellation of this Agreement by YOU prior to the end of the term specified in the Order Form, NCD shall not refund to YOU any fees paid in advance of such cancellation and YOU will be required to pay any applicable cancellation fee specified in the Order Form. For security, all cancellation requests must be signed by the primary contact person on the account. Any cancellation request shall be effective upon receipt, unless another date is specified in such cancellation request. Any cancellation by NCD or YOU shall not relieve YOU of any obligations to pay fees accrued prior to such cancellation.

### WARRANTY

YOU acknowledge and agree that NCD exercises no control over, and accepts no responsibility for, the content of the information passing through NCD. **NCD MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT FOR THE SERVICES OR ANY EQUIPMENT NCD PROVIDES. NEITHER NCD, ITS EMPLOYEES, AFFILIATES, AGENTS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS OR THE LIKE, WARRANT THAT THE SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE; NOR DO ANY OF THEM MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION SERVICED OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE SERVICES. NCD IS NOT LIABLE FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM YOU OR STORED BY YOU OR ANY OF YOUR CUSTOMERS VIA THE SERVICE(S) PROVIDED BY NCD.**

### INDEMNIFICATION

YOU will indemnify, save harmless, and defend NCD and all employees, officers, directors and agents of NCD (collectively "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and expenses (including but not limited to reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to the use of the Services.

### LIMITATION OF LIABILITY

**IN NO EVENT SHALL NCD BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR USE, BY YOU OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR STRICT LIABILITY OR OTHER LEGAL THEORY, EVEN IF NCD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** In no event will NCD's liability for any damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) exceed the actual dollar amount paid by YOU for the Service which gave rise to such damages, losses and causes of actions during the 12-month period prior to the date the damage or loss occurred or the cause of action arose.

### FORCE MAJEURE

NCD shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services.

### GOVERNING LAW

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

### AMENDMENT OR WAIVER

Except as otherwise provided herein, this Agreement may not be amended except upon the written consent of YOU and NCD. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder shall not constitute a waiver of the act or condition itself.

**ASSIGNMENT AND SEVERABILITY**

This Agreement shall be binding upon and inure to the benefit of YOU, NCD and our respective successors, and assigns. YOU may not assign this Agreement without the prior written consent of NCD. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

**ENTIRE AGREEMENT**

This Agreement, and any other document or agreements specifically identified in this Agreement, supercedes all previous representations, understandings or agreements.

**ACCEPTANCE OF SERVICES**

ACCEPTANCE OF THIS AGREEMENT BY NCD MAY BE SUBJECT, IN NCD'S ABSOLUTE DISCRETION, TO SATISFACTORY COMPLETION OF A CREDIT CHECK. ACTIVATION OF SERVICE SHALL INDICATE NCD'S ACCEPTANCE OF THIS AGREEMENT. USE OF THE e-WIX NETWORK CONSTITUTES ACCEPTANCE OF THIS AGREEMENT. YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY AND RIGHT TO ENTER INTO THIS AGREEMENT AND THAT THERE ARE NO CONFLICTING CLAIMS RELATING TO THE RIGHTS GRANTED BY THIS AGREEMENT. YOU FURTHER REPRESENT AND WARRANT THAT YOU ARE AT LEAST 18 YEARS OF AGE.

**Customer ("YOU or YOUR"):**

\_\_\_\_\_

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Billing Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Installation Address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Billing Contact:** \_\_\_\_\_

**Technical Contact:** \_\_\_\_\_