

e-WIX 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.

APPLICATION SERVICE PROVIDER POLICY

YOU shall at all times adhere to the NCD ASP Use Policy as amended from time to time by NCD. Notwithstanding anything to the contrary contained herein, NCD may immediately take corrective action, including disconnection or discontinuance of any and all Services, or terminate this Agreement in the event of notice of possible violation by YOU of the NCD ASP Policy. In the event NCD takes corrective action due to a violation of the NCD ASP Policy, NCD shall not refund to YOU any fees paid in advance of such corrective action.

CANCELLATION POLICY

In the event of early cancellation of this Agreement by YOU prior to the end of the term specified in the Agreement, 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 Agreement. 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.

EQUIPMENT

NCD is acting only as a reseller of any hardware, software and equipment, collectively the Equipment ("Equipment") offered under this Agreement that was manufactured by a third party. NCD shall not be responsible for any changes in Service(s) that cause Equipment to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. Any malfunction or manufacturer's defects of Equipment either sold or provided by NCD to YOU or purchased directly by YOU used in connection with the Service(s) will not be deemed a breach of NCD's obligations under this Agreement. Any rights or remedies YOU may have regarding the performance or compliance of Equipment are limited to those rights extended to YOU by the manufacturer of such Equipment. YOU are entitled to use any Equipment supplied by NCD only in connection with your permitted use of the Services. YOU shall use YOUR best efforts to protect and keep confidential all intellectual property provided by NCD to YOU through any Equipment and shall make no attempt to copy, alter, reverse-engineer or tamper with such intellectual property or to use it other than in connection with the Services. YOU shall not resell, transfer, export or re-export any Equipment, or any technical data derived therefrom, in violation of any applicable United States or foreign Law.

SECURITY SERVICES

You shall appoint and maintain a Security Manager and two (2) Security Technical Contacts as listed from time to time on the Security Contacts Schedule to this Agreement. You may change any designation by giving seven (7) days prior written notice to NCD.

You acknowledge that as part of the Security Service NCD may change the security configuration or disconnect YOU from the internet without notice upon the occurrence of security problems. You agree not to hold NCD liable for any such change or disconnection.

NCD may, in its sole discretion, take corrective action, including assessment of additional charges, disconnection or discontinuance of any and all Services, or termination of this Agreement, in the event YOU engage in or commit any of the following acts:

- Alter, modify or improperly use, including violations of NCD's ASP Policy, any portion of the hardware, software or equipment, including hardware, necessary for NCD to provide the Security Service
- Alter or modify YOUR access codes on the system without prior communication to NCD
- Initiate any other action which breaches the security of the e-WIX Network

In the event that NCD elects to take any corrective action, YOU shall not be entitled to a refund of any fees paid in advance prior to such corrective action. NCD shall not have any liability to YOU in the event YOU engage in or commit any of the foregoing acts nor shall NCD be liable to YOU for any corrective action taken.

WARRANTY

YOU acknowledge and agree that NCD exercises no control over, and accepts no responsibility for, the content of the information passing through NCD host computers, network hubs and points of presence (the "e-WIX Network") or the internet. **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, including any violation of the NCD ASP Policy.

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: _____