

## **NCC Web Order Service - Terms of Service Agreement**

This Web Order Services Terms of Service Agreement (hereinafter referred to as the "AGREEMENT") dated as of the date of acceptance by means of signing the NCC Web Order Service Form or using the SERVICE, is made by and among National Computer Corporation, Inc. under the laws of South Carolina (hereinafter referred to as "NCC") and the entity or person designated by the registration data provided in the Web Order Service Order Form (hereinafter referred to as "CUSTOMER") and applies to CUSTOMER'S use of SERVICES.

Please read this AGREEMENT carefully before using the SERVICES. By accessing or using the SERVICES, CUSTOMER agrees to be bound by the terms of this AGREEMENT. If CUSTOMER does not agree to the terms of this AGREEMENT, CUSTOMER shall not access, install and/or use SERVICE and, if presented with the option to "agree" or "disagree" to the terms, clicks "disagree".

### **1. General**

The terms and conditions in this AGREEMENT govern all use of the software and the SERVICES marketed by NCC, hereinafter referred to as the "SERVICE" or "SERVICES", including but not limited to the applications named "Web Order Service" and all related NCC software that is available now and in the future including any software, programs, documentation, tools and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases). The terms and conditions in this AGREEMENT apply to all SERVICES.

NCC reserves the right, in its sole discretion, to modify or replace any of the terms or conditions of this AGREEMENT at any time. CUSTOMER'S continued use of any of the SERVICES following the posting of any changes to this AGREEMENT constitutes CUSTOMER'S acceptance of those changes. CUSTOMER agrees to periodically inspect the site to stay informed about such changes. Certain services that become available may be subject to additional or different terms and conditions, and if those additional terms and conditions conflict with this AGREEMENT, those additional terms and conditions will prevail.

### **2. Representation**

By accessing any part of the SERVICES or by using the SERVICE in any way whatsoever, CUSTOMER recognizes being bound by the terms of this AGREEMENT. CUSTOMER warrants and guarantees that CUSTOMER is at least eighteen (18) years old and has read, understands and agrees to be bound by this AGREEMENT. If CUSTOMER is entering into this AGREEMENT on behalf of a company, CUSTOMER warrants and guarantees that CUSTOMER has the authority to bind that company to the terms of this AGREEMENT.

As a condition of using the SERVICES, CUSTOMER may be required to register with NCC and create a NCC account and select a password and user name ("Credentials"). CUSTOMER may not (i) select or use any Credentials of another person or company with the intent to impersonate that person or company; or (ii) use Credentials for which CUSTOMER does not have permission to use. NCC reserves the right to refuse registration of or cancel Credentials at its discretion. CUSTOMER is responsible for maintaining the confidentiality of the Credentials and other account information. CUSTOMER agrees that the information provided will be accurate, complete and up to date, and if NCC determines that the

information does not meet those standards, or if these requirements are violated, NCC may immediately terminate the AGREEMENT for breach and/or suspend the CUSTOMER's use of the SERVICES.

### **3. Ownership of the Service**

The SERVICES shall remain the entire and exclusive property of NCC. This AGREEMENT does not constitute a sales agreement, but a subscription license agreement that is personal, inalienable and non-exclusive granted to CUSTOMER. NCC reserves all rights not expressly granted to the CUSTOMER in this AGREEMENT. There are no implied rights of any kind. By accepting this AGREEMENT, CUSTOMER recognizes that the SERVICE, the intellectual property, the copyright and the trademarks are the exclusive and inalienable property of NCC or its suppliers, and that the trademarks, the name and intellectual property remain the property of NCC or its suppliers. The SERVICE is protected by copyright, trade secret and other intellectual property laws. NCC owns the title, copyright and worldwide Intellectual Property Rights (as defined below) in and to the SERVICES, all copies of the SERVICES, their software and the documentation. This AGREEMENT does not grant CUSTOMER any rights to NCC trademarks or service marks. For the purposes of this AGREEMENT, "Intellectual Property Rights" means all author's rights, patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

CUSTOMER may choose to, or NCC may invite CUSTOMER to, submit comments or ideas about the SERVICE, including without limitation about how to improve the SERVICE ("Ideas"). By submitting any Idea, CUSTOMER agrees that the disclosure is treated as gratuitous, unsolicited and without restriction and will not place NCC under any fiduciary or other obligation, and that NCC is free to use the Idea without any additional compensation to CUSTOMER, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. CUSTOMER further acknowledges that, by acceptance of CUSTOMER's submission, NCC does not waive any rights to use similar or related ideas previously known to NCC, or developed by its employees, or obtained from sources other than CUSTOMER.

### **4. Permitted Uses**

Subject to the terms and conditions of this AGREEMENT, including due and timely payment of applicable fees relating to the use of the SERVICES, NCC hereby grants to CUSTOMER a limited, non-exclusive, non-transferrable license, without the right to sublicense, to install and operate the SERVICE as well as its accompanying documentation on CUSTOMER'S computer(s) solely for the benefit of CUSTOMER's business purposes and not for any third party, until termination of this AGREEMENT.

### **5. Restrictions**

CUSTOMER shall not, nor permit anyone else to, directly or indirectly, (a) make copies of or further distribute the SERVICES, including copying onto any other medium, (b) distribute, rent, sublicense, lease, resell, or assign the SERVICES, (c) alter, modify or adapt the SERVICES, including but not limited to, translating, decompiling, disassembling, reverse engineering, attempting to discover the source code or underlying algorithms of all or any part of the SERVICES or creating derivative works, (d) export the SERVICES without the appropriate foreign government licenses and without NCC's prior written

approval, (e) resell, rent or otherwise provide access to the SERVICES to a third party or (f) take any action in an attempt to obtain any other NCC user's data, cause malfunction, crash, tamper with or otherwise impair SERVICE.

CUSTOMER's use of the SERVICES is subject to all applicable local, state, national and international laws and regulations. CUSTOMER will not use the SERVICES or any content for any purpose or in any manner that is unlawful (including, without limitation, in any manner which violates the export or trade controls of the EU or any other country) or prohibited by this AGREEMENT, or which infringes the rights of NCC or others.

## **6. Fees**

CUSTOMER agrees to pay the applicable fees as listed on the Web Order Service & Credit Card Authorization Form. CUSTOMER agrees to the billing policy, incorporated in Section 15 of the AGREEMENT, constituting an integral part of the AGREEMENT hereinafter referred to as the "Billing Policy". Failure to comply with or otherwise pay fees due is a material breach of this AGREEMENT.

## **7. Data**

CUSTOMER acknowledges and agrees to the terms of the NCC privacy policy constituting an integral part of the AGREEMENT and located on the NCC website (<https://www.nccusa.com/privacy-policy/>), hereinafter referred to as the "Privacy Policy". CUSTOMER hereby grants permission to NCC for NCC to use all data and information that CUSTOMER submits in the SERVICE for improving and maintaining the Site and the SERVICE as well as for analytical purposes by NCC and its partners in a manner where such data is aggregated with other user data and cannot be readily reverse engineered into personally identifiable information.

## **8. Term and Termination**

This AGREEMENT shall become effective upon submission of the NCC Web Order Service Form or upon first use of any of the SERVICES and shall continue on a month to month basis so long as the CUSTOMER continues to comply with the terms of the AGREEMENT. CUSTOMER may terminate this AGREEMENT with 30 days notice to NCC. NCC, in its sole discretion, has the right to suspend or terminate this AGREEMENT and your account and refuse any and all current or future use of the SERVICES for any reason at any time if CUSTOMER does not comply with this AGREEMENT. This AGREEMENT and CUSTOMER's right to use the Licensed Software and SERVICE automatically terminates if CUSTOMER fails to comply with any provision of this AGREEMENT.

In addition, NCC reserves the right and CUSTOMER acknowledges such right, for NCC to terminate SERVICE of CUSTOMER's account on 30 days notice in NCC's sole discretion.

Upon termination, NCC shall terminate the CUSTOMER's access to their NCC account, the account itself and the data residing therein, and CUSTOMER will lose access to all of the data, information and content related to CUSTOMER's use of the SERVICE or CUSTOMER's account or stored in, on or with the SERVICES or CUSTOMER's account subsequent to or in relation to CUSTOMER's use of the SERVICES or account, or any other information associated with CUSTOMER's account, and NCC may permanently delete CUSTOMER's data and information at that time.

Sections 3 (Ownership of the Service), 7 (Data), 11 (Limitation of Liability), 13 (Arbitration), and 14 (Governing Law) shall survive the termination of this AGREEMENT.

## **9. Statement of Service and Support Provided**

Some parts of the SERVICES may be unavailable to CUSTOMER, depending on SERVICES licensed. NCC is constantly working to improve the SERVICES and NCC can make changes to the SERVICES at any time (including discontinuing certain parts of the SERVICES). If CUSTOMER does not like the changes, the CUSTOMER agrees that the only remedy is to terminate the AGREEMENT. If NCC decides to permanently stop offering the SERVICES entirely, NCC will inform CUSTOMER 30 days in advance.

All technical support shall be handled through the CUSTOMER's Authorized NCC Reseller.

At any time NCC may invite CUSTOMER to try NCC services that are not generally available to other CUSTOMERS ("Non-GA Services"). CUSTOMER may accept or decline any such trial in its sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Non-GA Services are not considered SERVICE hereunder and are provided "as is" with no express or implied warranty. NCC may discontinue Non-GA Services at any time in NCC's sole discretion and may never make them generally available.

## **10. Third Party Services and Websites**

CUSTOMER may be offered services, products and promotions provided by third parties and not by NCC. If CUSTOMER decides to use these Third Party Services, CUSTOMER will be responsible for reviewing and understanding the terms and conditions associated with these services. CUSTOMER agrees that NCC is not responsible for the performance of these services. The SERVICE may contain links to third party websites as a convenience to CUSTOMER. CUSTOMER agrees that accessing any such website is at CUSTOMER's own risk, and that the site is not governed by the terms and conditions contained in this AGREEMENT. NCC expressly disclaims any liability for these websites. CUSTOMER will be responsible for obtaining and maintaining any required third party hardware and/or software, including updates thereto. NCC shall not be responsible for the negligent, grossly negligent, actions or inactions of any third party. Furthermore, and except for authorized NCC subcontractors, this limitation shall apply even to those third parties that may have been certified pursuant to an NCC certification program or recommended or referred to CUSTOMER by NCC.

## **11. Limitation of Liability**

CUSTOMER agrees that the SERVICES are provided "as is." Any use of the SERVICE is at CUSTOMER's sole and absolute risk. In no event will NCC and its processors, suppliers or its licensors (or their respective affiliates, agents, directors and employees) be liable for any direct, indirect, special, incidental, or consequential damages arising out of the use of or inability to use the SERVICES, errors in or loss of any data, even if NCC is advised of the possibility of such damages. Specifically, NCC is not responsible for any costs including, but not limited to, those incurred as a result of lost profits or revenue, loss of use of the software or SERVICES, loss of data, the costs of recovering data, any claims by third parties, or for other similar costs. NCC will in no case be liable for unlawful or improper use of the SERVICES, or for any

manipulation or modification of the SERVICES and their software. Without prejudice to the above, the liability of NCC will in any case be limited to the total amount of the subscription fees paid by CUSTOMER. NCC will in no case be liable for unlawful or improper use of the SERVICE, or for any manipulation or modification of the SERVICES and their software.

CUSTOMER acknowledges and agrees that sharing of its Credentials shall be at its sole and absolute risk and that NCC shall not be liable for any damage arising as a result of such sharing.

CUSTOMER will indemnify, hold harmless and upon NCC's request, defend NCC against any claims, liabilities and expenses (including court costs and reasonable attorney's fees) arising from the acts of omissions of CUSTOMER, CUSTOMER's employees or agents, including, without limitation, any provision of warranties or contractual rights to consumers or end users in excess of those set forth in this AGREEMENT. CUSTOMER is responsible for all of the CUSTOMER's activity in connection with the SERVICES. CUSTOMER shall indemnify and hold harmless NCC (and its affiliates), and each of its (and its affiliates) respective employees, contractors, directors, suppliers and representatives from all liabilities, losses, claims, and expenses, including reasonable attorneys' fees, that arise from (i) CUSTOMER's use or misuse of the SERVICES; (ii) CUSTOMER's access of or to any part of the SERVICES; (iii) any user data; or (iv) CUSTOMER's violation of this AGREEMENT or any additional terms CUSTOMER agrees to with NCC.

## **12. Warranty**

The SERVICES, the Site and any other NCC Software are provided without warranties of any kind, either express or implied, including, without limitation, implied warranties of title, merchantability, fitness for a particular purpose or non-infringement. NCC and its processors, suppliers or its licensors (or their respective affiliates, agents, directors and employees) do not make any warranty that (i) the SERVICES are free of viruses or other harmful components; (ii) the SERVICES will be error-free or uninterrupted (including, without limitation, interruptions that occur in the context of regularly scheduled maintenance); (iii) any information or advice obtained by CUSTOMER in connection with the SERVICES will be accurate or complete. NCC makes no warranty of any kind as to the suitability or adequacy of the SERVICES for a particular purpose or non-infringement.

Some countries do not allow the exclusion or limitation of implied warranties or limitation of liability for incidental or consequential damages, therefore; the foregoing limitations shall not apply to the extent that they are prohibited by CUSTOMER's local applicable law.

## **13. Arbitration Agreement**

**13.1 Agreement to Arbitrate.** Except where prohibited by Applicable Law and Rules, CUSTOMER agrees that any and all disputes or claims that have arisen or may arise between CUSTOMER and NCC, whether arising out of or relating to the AGREEMENT or in connection with your use of the SERVICES, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that CUSTOMER may assert individual claims in small claims court, if your claims qualify. CUSTOMER agrees that, by agreeing to the AGREEMENT, CUSTOMER and NCC are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. Notwithstanding the foregoing, this Arbitration Agreement shall not preclude either party from pursuing a court action for the sole purpose

of obtaining a temporary restraining order or preliminary injunction in circumstances in which such relief is appropriate, provided that any other relief shall be pursued through an arbitration proceeding pursuant to this Arbitration Agreement.

**13.2 Prohibition of Class and Representative Actions and Non-Individualized Relief.** Except where prohibited by Applicable Law and Rules, CUSTOMER and NCC agree that each may bring claims against the other only on an individual basis and not as plaintiff or class member in any purported class or representative action or proceeding. Unless both CUSTOMER and NCC agree otherwise, the arbitrator may not consolidate or join more than one person's or party's claims and may not otherwise preside over any form of a consolidated, representative, or class proceeding. Also, the arbitrator may award relief (including monetary, injunctive, and declaratory relief) only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's individual claim(s).

**13.3 Pre-Arbitration Duties.** NCC is always interested in resolving disputes amicably and efficiently, and most participant concerns can be resolved quickly and to the participant's satisfaction by contacting NCC Customer Care team at CustomerCareTeam@nccusa.com. If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to NCC should be sent to NCC at 122 Park Place Court, Greenville, SC 29607, Attn: General Counsel. The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If CUSTOMER and NCC do not resolve the claim within sixty (60) calendar days after the Notice is received, CUSTOMER or NCC may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made prior to arbitration by NCC or CUSTOMER shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which CUSTOMER or NCC is entitled.

**13.4 Arbitration Procedures.** Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures, including the AAA's Commercial Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. The arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the terms of this AGREEMENT and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons. Unless CUSTOMER and NCC agree otherwise, any arbitration hearings will take place in Greenville County, South Carolina. If your claim is for \$10,000 or less, NCC agrees that CUSTOMER may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing or by an in-person hearing as established by the AAA Rules. If a claim exceeds \$10,000, the right to an in-person hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

The parties agree that the arbitrator has no power or authority to make awards or issue orders of any kind except as expressly permitted by this AGREEMENT, and in no event does the arbitrator have the authority to make any award that provides for punitive or exemplary damages. The Arbitrator's decision

must follow the plain meaning of the relevant documents, and shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction.

**13.5 Costs of Arbitration.** Payment of all filing, administration, and arbitrator fees (collectively, the “Arbitration Fees”) will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. Any payment of attorneys’ fees will be governed by the AAA Rules.

**13.6 Confidentiality.** All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator will be strictly confidential for the benefit of all parties.

**13.7 Severability.** If a court or the arbitrator decides that any term or provision of this Arbitration Agreement other than Sub-Section 13.2 above is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court or the arbitrator decides that any of the provisions of Sub-Section 13.2 is invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void. The remainder of the terms in the AGREEMENT will continue to apply.

#### **14. Governing Law**

Any action, claim or dispute related to the AGREEMENT will be governed by the laws of the State of South Carolina, excluding its conflicts of law provisions and controlling U.S. federal law. Except as set forth in Section 13, the parties agree that the federal or state courts in the city of Greenville, South Carolina shall have exclusive jurisdiction to hear and determine any dispute between them. The Uniform Computer Information Transactions Act will not apply to the terms of the AGREEMENT. If any provision of the AGREEMENT is found to be invalid by any court having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of the AGREEMENT, which will remain in full force and effect. Failure of NCC to act on or enforce any provision of the AGREEMENT will not be construed as a waiver of that provision or any other provision herein. No waiver will be effective against NCC unless made in writing, and no such waiver will be construed as a waiver in any other or subsequent instance. Except as expressly agreed by NCC and CUSTOMER, the AGREEMENT constitutes the entire agreement between CUSTOMER and NCC with respect to the subject matter hereof, and supersedes all previous or contemporaneous agreements, whether written or oral, between CUSTOMER and NCC with respect to the subject matter. The section headings are provided merely for convenience and will not be given any legal import. The terms of this AGREEMENT will inure to the benefit of our successors and assigns. CUSTOMER may not assign the AGREEMENT without NCC prior written consent.

#### **15. Billing Policy**

This Billing Policy is an integral part of this AGREEMENT.

CUSTOMER agrees to pay the then current subscription rate for the SERVICES received from NCC in advance of the time period during which such SERVICES will be provided. CUSTOMER agrees to provide and maintain current billing and contact information. CUSTOMER further understands that until and unless NCC is notified of the CUSTOMER’s desire to cancel any or all SERVICES received, those SERVICES will be charged on a recurring basis.

Payments for monthly SERVICES will be charged to CUSTOMER on or about the first day of each month.

Payments for annual SERVICES will be charged to CUSTOMER on or about the first day of the new service period.

If account is past due for 10 business days, NCC will suspend the CUSTOMER's access to the SERVICE.

All fees are payable in US Dollars. All fees are exclusive of any and all taxes imposed by taxing authorities.

NCC reserves the rights to, at any time, modify or discontinue one or more parts of the SERVICE on reasonable notice, except where technical contingencies cause disruption without notice.

Prices of the SERVICES are subject to change at any time with 30 days notice.

NCC shall not be liable to the CUSTOMER or any third party for any modification, price change, suspension or discontinuance of the SERVICE.