



9030 Leslie Street • Unit 300 • Richmond Hill, Ontario • L4B 1G2

Tel: (905) 707-8884 • Fax: (905) 707-0886 • www.n-dimension.ca

Terms and Conditions

Last Updated: October 2006.

These Terms and Conditions apply to the N-Dimension Solutions Inc.™ (“N-Dimension”) provision of and the End User’s (“End User”) use of the products (“Products”) and/or services (“Services”) under the N-Dimension Service Agreement (“Agreement”). A current copy of the Terms and Conditions is available at www.n-dimension.ca.

ARTICLE 1: N-DIMENSION OBLIGATIONS

N-Dimension will provide the Products and Services to the End User in accordance with the applicable Agreement.

ARTICLE 2: END USER OBLIGATIONS

- 2.1 The End User will not resell the Products and Services unless the End User has an authorized Channel Partner Agreement with N-Dimension.
- 2.2 Under the subscription arrangement, the End User must return N-Dimension’s Products upon termination of the Service.
- 2.3 Under the subscription arrangement, an End User who has deliberately, or by virtue of lack of reasonable care, caused loss or damage to N-Dimension’s Products, will be charged the cost of replacement Products. In all cases under the subscription arrangement, the End User is liable for damage caused to N-Dimension’s Products at End User facilities.

ARTICLE 3: BILLING AND PAYMENTS

- 3.1 The End User will pay N-Dimension the charges for the Products and Services in accordance with the applicable Agreement. The charges will remain in effect during the initial term of the Agreement and for any renewal term unless N-Dimension provides written notice to the End User at least 60 days prior to the end of the initial term or renewal term (as applicable) that the charges will be amended with effect from the first day of the next renewal term.
- 3.2 The End User will pay all monthly recurring charges in advance and all other charges when due as shown on the applicable invoice. The End User will pay all applicable federal, provincial, or other taxes that apply to the Products and Services.
- 3.3 If the End User is late in making any payment or if the bank returns any payment, the End User will reimburse N-Dimension for any collection costs incurred. The End User will pay interest on any late payments at 2% per month.
- 3.4 The End User will review all invoices and inform N-Dimension in writing of any errors, omissions, or irregularities within 150 days of the invoice date, otherwise the End User will be considered to have accepted the accuracy and validity of the invoice.
- 3.5 The End User will be responsible for paying a previously unbilled or underbilled charge when it is correctly billed for a period of 150 days from the date it was incurred.

ARTICLE 4: LICENSES

N-Dimension grants the End User a personal, non-transferable, and non-exclusive license to use, in object code form, any software provided by N-Dimension under the Agreement, but only if: a) the End User uses the software solely in connection with Services and in accordance with the applicable written and electronic documentation; b) the End User does not allow the software to be reverse engineered to derive its source code; c) the End User does not allow the copy or download of the software except as permitted in the documentation; and d) the End User complies with any additional terms and conditions that are provided with related third-party software.

ARTICLE 5: TERM AND TERMINATION

- 5.1 Unless otherwise stated by N-Dimension the initial term begins on the date N-Dimension signs the Agreement.
- 5.2 There will be an automatic renewal term equal to the initial term unless either party provides the other with written notice of termination at least 30 days prior to the end of the initial term or renewal term as applicable.

5.3 Termination for Cause

- 5.3.1 N-Dimension can terminate the Agreement immediately if N-Dimension suspects that the End User is using the Products and Services for fraudulent or illegal purposes.
- 5.3.2 N-Dimension may terminate the Agreement immediately in the event that the End User presents an abnormal risk of loss (including without limitation, incurring a significant amount of billable charges for which the End User has not been credit approved) as determined solely at N-Dimension's discretion.
- 5.3.3 If either party breaches any material term or condition of the Agreement and the breach cannot be remedied within 30 days after receipt of written notice, the other party may terminate the Agreement for cause. Either party may terminate the Agreement immediately if: a) the other party breaches its obligations under Section 6 or Section 10; b) any proceeding under bankruptcy, creditor protection or similar law is commenced by or against the other party; or c) a receiver is appointed by the other party.

5.4 Termination Charges

- 5.4.1 If the End User terminates the Agreement without cause, or if N-Dimension terminates the Agreement with cause, the End User will pay N-Dimension an amount equal to 75% of the total of the remaining payments in the initial term or renewal term (as applicable).
- 5.4.2 Either party will provide the other with 30 days prior written notice of termination of any Service or of the Agreement.

ARTICLE 6: CONFIDENTIAL INFORMATION

- 6.1 Each party will keep confidential information for three years after disclosure of the other party's Confidential Information (except software which will be kept confidential for an indefinite period) using at least the same precaution each party uses to safeguard its own Confidential Information.
- 6.2 Each party will use the other party's Confidential Information only to fulfill its obligations under the Agreement.
- 6.3 Neither party will disclose the other party's Confidential Information except to employees, agents, contractors, and affiliates on a need-to-know basis.
- 6.4 Unless the End User consents in writing or disclosure is made pursuant to a legal requirement, all information held by N-Dimension other than the End User's name, address, listed telephone number, domain name or "IP" address, may not be disclosed to anyone other than a) a person who in N-Dimension's reasonable judgment is seeking the information as the End User's agent or b) an agent retained by N-Dimension in the collection of the End User's account.

ARTICLE 7: LIMITATION OF LIABILITY

- 7.1 For the purposes of all exclusive remedies and limitations of liability, "N-Dimension" includes N-Dimension Solutions Inc., its affiliates, employees, directors, officers, agents, representatives, subcontractors, service providers and suppliers and "End User" refers to the End User's employees, directors, officers, agents and representatives.
- 7.2 The entire liability that either party will have to the other, and the other's exclusive remedies for any claims arising in connection with any Products or Services or obligations under the Agreement shall be proven direct damages by the other party not to exceed per claim an amount equal to the amount payable by the End User for the affected Product or Service during the period in which the damage occurred. This does not limit the End User's responsibility for the payment of all properly due charges under the Agreement.
- 7.3 Except for the End User's Indemnity obligations (section 9) neither party will be liable to the other for any indirect, incidental, consequential, punitive, reliance or special damages, including without limitation, damages for lost profits, advantage, savings or revenues of any kind or increased cost of operations.
- 7.4 N-Dimension will not be liable for any damages arising out of or relating to i) End User; ii) service interruptions, errors, delays, or defects in transmission; iii) unauthorized access to or theft, alteration, loss or destruction of the End User's or third party's applications, content, data, programs, information, network, or systems; or iv) any act or omission by the End User, users or third parties.
- 7.5 Security assessments are an uncertain process, based upon past experiences, currently available information, and known threats. It should be understood that all information systems, which by their nature are dependent on people, are vulnerable to some degree. N-Dimension's security assessments are a preliminary assessment to highlight the common and major security situation of the End User. There can be no assurance that any exercise of this nature will identify all possible vulnerabilities or propose exhaustive and operationally viable recommendations to mitigate every exposure. In addition, the assessment is based on the technologies and known threats as of the date of the assessment. As technologies and risks change over time, the vulnerabilities associated with the operation of the End User operation, as well as the actions necessary to reduce the exposure to such vulnerabilities will also change.

- 7.6 The Limitations of Liability will apply a) regardless of the form of action, whether in contract, tort, including negligence, strict liability or otherwise; and b) whether or not damages were foreseeable. These Limitations of Liability shall survive failure of any exclusive remedies provided in the Agreement.
- 7.7 Neither party shall be liable for a force majeure event, except that the End User's obligation to pay for charges incurred for Products and Services received by the End User shall not be excused.

ARTICLE 8: WARRANTIES

- 8.1 **Hardware.** N-Dimension warrants that commencing from the date of shipment to the End User and continuing for a period equivalent to the Original Equipment Manufacturer's warranty, as specified on the original invoice to the End User, the Hardware will be free from defects in material and workmanship under normal use. The End User's sole and exclusive remedy and the entire liability of N-Dimension and its Original Equipment Manufacturers under this warranty will be, at N-Dimension's option, shipment of replacement Hardware within the warranty period and according to N-Dimension's Product Repair and Return Policy or a refund of the purchase price if the Hardware is returned to N-Dimension, freight and insurance prepaid. N-Dimension replacement parts used in Hardware replacement may be new or equivalent to new.
- 8.2 **Software.** N-Dimension warrants that, commencing from the date of shipment to the End User and continuing for a period of ninety (90) days, the Software will substantially conform to its published specifications. Except for the foregoing, the Software is provided AS IS. The End User's sole and exclusive remedy and the entire liability of N-Dimension and its suppliers under this warranty will be, at N-Dimension's option, repair, replacement, or refund of the Software if reported to N-Dimension. In no event does N-Dimension warrant that the Software is error free or that the End User will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, N-Dimension does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.
- 8.3 **Restrictions.** This warranty does not apply if the Hardware or Software: (a) has been altered, except by N-Dimension or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by N-Dimension, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is licensed for evaluation, testing, or demonstration purposes for which N-Dimension does not charge a purchase price or licence fee. N-Dimension reserves the right to modify its warranties at any time, in its sole discretion.
- 8.4 **Disclaimer of Warranty.** Unless otherwise expressly provided in the Agreement, N-Dimension makes no representations, warranties, conditions or guarantees as to quality, fitness for a particular purpose, or any other representations, warranties, conditions or guarantees regarding any service or product provided by N-Dimension to the End User.

ARTICLE 9: PRODUCT REPAIR AND RETURN POLICY

- 9.1 In the event of a hardware failure, the End User must contact N-Dimension to obtain a Return Material Authorization (RMA) number. This number is necessary to ensure proper tracking and handling of returned material at the factory. The End User must not return any hardware until a RMA is issued. N-Dimension reserves the right to refuse shipments that do not have a RMA. Refused shipments will be returned to the shipper via collect freight.

All hardware units that fail (in warranty, under a maintenance contract, out of warranty, or not under a maintenance contract) will be repaired or replaced at the discretion of N-Dimension. Hardware units repaired/replaced under this Product Repair and Return Policy receive a ninety (90) day hardware warranty or the remainder of the original hardware warranty or active maintenance contract, whichever is longer.

To obtain a RMA number, contact N-Dimension Support at +1.866.837.8884 or +1.905.707.8884 or by email Support@n-dimension.ca.

When requesting a RMA, please provide the following information:

- Product model number for the defective hardware
- Product serial number for the defective hardware
- System release number (if available)

- Description of failure and troubleshooting performed to isolate cause
- Customer ship-to address with Contact name and Contact telephone , fax, and e-mail

Send validated RMA returns to:

N-Dimension Solutions
9030 Leslie St., Unit 300
Richmond Hill, Ontario, Canada
L4B 1G2
Attn: Customer Support (RMA)

- 9.2 For up to thirty (30) days from the shipment date of a Product from N-Dimension's offices, N-Dimension will provide expedited replacement of Dead on Arrival (DOA) Equipment. A new unit will be shipped from N-Dimension's offices within two (2) business days of N-Dimension's receipt and validation of the End User's notification of an inoperative unit. Defective product must be returned within thirty (30) days of failure, or the End User pays the purchase price of the replacement part. DOA equipment must not be shipped back to the address above without appropriate instructions from an N-Dimension authorized representative.
- 9.3 For Products that are out of warranty or not currently under a maintenance contract, N-Dimension Support personnel will confirm the hardware failure and inform the End User that a Logistics Customer Service Representative (CSR) will contact them. The CSR will provide a quote to the End User for the repair or replacement of the hardware. The End User will be required to provide a Purchase Order for the repair or replacement costs associated with the hardware failure. Once the Purchase Order is received, via fax or email, the CSR will process the RMA and send instructions to the End User.

ARTICLE 10: INDEMNITY

The End User will indemnify and hold N-Dimension harmless against any and all claims relating to: a) End User's unlawful or improper use of the Products or Services; b) End User failure to comply with the terms and conditions of the Agreement; c) property damage, personal injury or death claims; and d) End User content.

ARTICLE 11: GENERAL

- 11.1 Neither party will make public statements about the Agreement without prior consent. Neither party will use the other's trade names, logos, or trademarks without the other party's consent.
- 11.2 Any change to the Agreement must be in writing and signed by the respective parties.
- 11.3 End User may not assign the Agreement without N-Dimension's prior written consent, which consent will not be unreasonably withheld or delayed.
- 11.4 If any portion of the Agreement is deemed to be invalid or unenforceable, the remaining provisions shall remain in effect.
- 11.5 Any legal action arising in connection with the Agreement must be brought within two years after the cause of action arises.
- 11.6 Notices to N-Dimension Solutions shall be directed to: 9030 Leslie Street, Unit 300, Richmond Hill, Ontario, L4B 1G2, Attention: President
- 11.7 The Agreement and these terms and conditions will be governed by and interpreted in accordance with the laws of the Province of Ontario.
- 11.8 The respective obligations of N-Dimension and the End User, which by their nature would continue beyond the termination or expiration of the Agreement, including but not limited to, obligations regarding confidentiality, publicity and trade-marks, and limitations of liability, will survive such termination or expiration.
- 11.9 The Agreement and these terms and conditions constitute the entire agreement between the parties.