

Terms and Conditions

This Agreement is made by and between New Dawn Technologies hereinafter referred to as New Dawn, and the Customer.

1. Product and Delivery

The product is the Software, Products and Services herein collectively referred to as the “Product”, itemized in the Pricing Proposal and defined in the Statement of Work. These statements are attached hereto and are a part of this Agreement. All New Dawn Technologies product(s), add-on product(s), product(s) documentation, product(s) installation documentation (not including third party software purchased) will be provided upon the signing of this Agreement; however project Start Meeting will not occur until any agreed upon Contract Signing payments are received.

2. Sale and License

New Dawn hereby sells and licenses to Customer and Customer agrees to purchase and license from New Dawn for Customer’s purposes the Product. Customer is hereby licensed to use the New Dawn Software Modules identified in the New Dawn Quotation contingent upon the execution of New Dawn’s Computer Software License Agreement (“License Agreement”) to be provided with the software. This Agreement shall be voidable at New Dawn’s sole discretion and determination if the License Agreement is not subsequently executed. The license to use the Product purchased pursuant to this Agreement will not commence until Customer has executed and delivered the License Agreement to New Dawn.

3. Taxes

Customer is solely responsible for payment of any taxes resulting from Customer’s acceptance of this Agreement and Customer’s possession and use of the Product.

4. Warranty and Limitation of Liability

New Dawn warrants, for the benefit of the Customer only, that at the time of completion of delivery and installation of the Product, the Product shall conform in all material respects to the specifications supplied in writing by New Dawn. New Dawn’s sole obligation thereafter, and Customer’s exclusive remedy, for any defect or nonconformity in the Non-New Dawn Products shall be to cooperate with the Customer to provide it with the benefit, if any, of the warranty and support commitment of the third party manufacturers and suppliers of equipment and product. As Customer’s exclusive remedy for any defect in the New Dawn Software Modules, New Dawn shall, during the fifteen (15) month period following the signing of this agreement, provide reasonable efforts to correct and cure such nonconformity or defect. Said warranties extend only for the fifteen (15) month period following the signing of this agreement. Warranty, if any, on Custom Software shall be defined in a separate agreement. The services covered by First Year Support (and subsequent years support) shall be defined in New Dawn’s Software Support Agreement(s), which shall be executed hereafter. New Dawn shall not be liable to Customer for any loss of profits; any incidental, special, exemplary, or consequential damages; or any demands or claims of other parties for any amount exceeding the total of payments made to New Dawn under the Agreement, whether or not New Dawn is aware of or has been advised of any such claims or demands.

5. Default

Any of the following shall constitute an “Event of Default” under this Agreement.

- a. Customer's failure to pay to New Dawn any charge, costs, or other payment accruing hereunder within sixty days (60) of invoice, if such delinquency has not been corrected within ten (10) calendar days after New Dawn has given Customer written notice of such delinquency; notice of such failure; or
- b. Customer's failure to perform any obligation set forth in this Agreement or included Appendix(s), including any act of repudiation or wrongful rejection of the product. If such failure has not been corrected within sixty (60) days after New Dawn has given Customer written notification; or
- c. New Dawn's failure to perform any obligation set forth in this Agreement, if such failure has not been corrected within sixty (60) days after Customer has given New Dawn written notice of such failure.

6. Mutual Indemnification

Customer shall indemnify and hold New Dawn Technologies, harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by representations and warranties; or (iii) a claim arising from the breach by Customer or Users of this Agreement, provided in any such case that New Dawn Technologies (a) gives written notice of the claim promptly to Customer; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless Customer unconditionally releases New Dawn Technologies of all liability and such settlement does not affect New Dawn Technologies' business); (c) provides to Customer all available information and assistance; and (d) has not compromised or settled such claim.

New Dawn Technologies shall indemnify and hold Customer harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Product directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by New Dawn Technologies of its representations or warranties; or (iii) a claim arising from breach of this Agreement by New Dawn Technologies; provided that Customer (a) promptly give written notice of the claim to New Dawn Technologies; (b) give New Dawn Technologies sole control of the defense and settlement of the claim (provided that New Dawn Technologies may not settle or defend any claim unless it unconditionally releases Customer of all liability); (c) provide to New Dawn Technologies all available information and assistance; and (d) have not compromised or settled such claim. New Dawn Technologies shall have no indemnification obligation, and Customer shall indemnify New Dawn Technologies pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Product with any of Customer products, hosting service, and hardware or business process.

7. Effect of Default

Upon the occurrence of any Event of Default item either party may (1) halt all pending or planned activities on the project (2) terminate this Agreement and invoke all rights the party possesses upon termination and (3) if Customer remains liable for any monetary obligation created under this Agreement, accelerate and declare all obligations of Customer created under this Agreement to be immediately due and payable by Customer as a liquidated sum and proceed against Customer in any lawful way for satisfaction of such sum, or repossess so much of the Product as remains in Customer's possession. Customer acknowledges that the monetary obligations of the Customer to New Dawn under the Agreement constitute a commercial account. Customer shall pay, in addition to all other amounts owed to New Dawn, interest calculated at one and a half percent (1.5%) or the highest rate allowed by applicable law per month on all amounts that have not been

paid to New Dawn pursuant to the terms of this Agreement. Customer shall pay all costs of collection, including reasonable attorney's fees whether or not suit is instituted.

8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the state of installation.

9. Purchase Price and Payment Terms

Customer agrees to pay to New Dawn the total price according to the Payment Terms. The total price and payment terms are as follows: Customer agrees to pay all Invoices within thirty (30) days of invoice date.

10. Pricing and Rates

Customer agrees that pricing and rates provided are exclusively for this Agreement and not future agreements unless expressly stated.

11. Entire Agreement and Severability

This Agreement and included Appendix(s) constitutes the entire understanding between the parties hereto and may not be modified and/or amended unless any such modification or amendment is reduced to writing and signed by both Customer and New Dawn. Customer understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the parties. If any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable or contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

12. Confidential

Customer agrees that the pricing and terms of this Agreement is confidential in nature and will not be posted on Customer public website. New Dawn acknowledges that the information is obtainable via standard public record request.

13. Agreement Deviations

Any deviations from New Dawn's Terms and Conditions, Payment Terms, agreements or attached Appendix(s) may affect pricing of all products and services.