

# Nautical Software Solution Software Maintenance Support and Licensing Agreement

## 1. PURPOSE.

To describe the yearly software support and licensing requirements of this agreement and the importance and reason for maintaining a current yearly agreement.

## 2. NSS SERVICES.

**2.1. Services Provided.** During the term of this Agreement, NSS or its designees will furnish Customer the support services needed to maintain the product set forth in relevant Support Plan Description incorporated herein by reference, as amended from time to time.

**2.2. Supported Programs.** NSS will provide support solely for the “Supported Program” listed in the Support Plan Description as referenced in this agreement. “Supported Programs” shall mean the then-current version and immediately preceding version of the listed software programs running the specified operating system software.

**2.2.1.** NSS reserves the right to restrict technical support for clients with current maintenance and support agreements. Clients who are past due on maintenance and support, and have lapses in their coverage, may not be eligible for technical support, at the discretion of NSS.

## 3. SERVICE LIMITATIONS.

**3.1. Exclusions.** The following services are outside the scope of this Agreement:

**3.1.1** Service for third party software, hardware or equipment not directly associated with the functionality and operation of NSS software products.

**3.1.2.** Service for any third-party software, hardware, or equipment.

**3.1.3.** Service which becomes necessary due to: (i) failure of computer hardware or equipment or programs not covered by this Agreement; (ii) natural disaster, negligence of Customer, operator error, improper use of hardware or software, hardware or software maintained in an improper environment or attempted or actual maintenance by unauthorized persons, **including outside IT contractors**, or (iii) reinstallation of new equipment by the Company that was not part of the original NSS installation.

**3.1.4.** New installation of equipment such as replacement computers and servers are subject to additional fees by NSS as this service is outside the scope of this support and licensing agreement.

**3.1.5.** Service for any Supported Program version that has reached its end-of-support period.

**3.2. Fees for Services Not Covered.** If NSS provides service that NSS later determines is caused by a factor enumerated in Paragraph 2.1 (“Exclusions”), Customer agrees to pay NSS’s then-current time and materials charges.

## 4. CUSTOMER RESPONSIBILITIES (Customer agrees to):

**4.1 Maintain the Supported Programs** on a standard computer platform in normal, unmodified operation conditions in accordance with NSS’s written specifications.

**4.2 Obsolescence Policy.** NSS Support is provided for the last two versions of the software.

**4.3 Provide reasonable cooperation to NSS** with respect to its support obligations hereunder, including providing necessary utilities, connections and workspace if required.

- 4.4 Request for support.** Customer will provide NSS's support personnel with the caller's name, company affiliation telephone number, E-mail address, product serial number(s), description of the problem and any additional information via the NSS SPR form as required by NSS.
- 4.5 Install Supported Program maintenance updates** when provided by NSS and where applicable, have installed the most current version of the Supported Program.
- 4.6 Be responsible for backing up its system,** performing routine system maintenance and keeping current with the latest anti-virus and Supported Program releases.
- 4.7 Be trained on the use of the Supported Program.** The NSS Customer Support department may not be used in lieu of obtaining system training or for training replacement personnel.
- 4.8 Maintain current support agreement.** No support will be provided under this Agreement unless Customer has fully paid its Support Fees and License Fee(s) where applicable or is otherwise in compliance with the payment terms of the NSS invoice for the license and support of the Supported Programs.
- 4.9 Customer agrees to contact NSS prior to allowing any work to be performed** to the computer system and/or network by any person, including outside IT contractors that could affect the performance of the NSS software. The Customer takes full responsibility for any work performed that affects the working operation of the NSS software product under this agreement. The Customer further acknowledges that it will pay for any service(s) that is required by NSS to remedy this problem at NSS's current support rate at the time of this problem is corrected.

## 5. FEES.

- 5.1. Fee Level.** NSS shall provide the support services for the annual fee (the "Maintenance/Support Fee") set forth in the NSS Maintenance Support Plan Description.
- 5.1.1** In the event the customer's yearly maintenance and support is past due, a credit card will be required to initiate service in NSS's support system. Any credit card fees will be reimbursed once the account is brought up to date.
- 5.2. Payment.** NSS will invoice Customer in advance for the Maintenance and Support Fees. Customer will pay all invoices issued under this Agreement upon receipt. Customer will pay all costs of collecting overdue amounts, including reasonable attorney's fees. All Support Fees are non-refundable.
- 5.3. Renewal and Reinstatement.** The Maintenance Software Support Agreement will automatically renew for successive renewal terms of the same length as the initial term and at the same Support Plan level stated in this agreement unless Customer or NSS notifies the other in writing at least sixty days prior to the expiration of the then term.
- 5.4. Taxes.** All charges hereunder do not include taxes of any kind and Customer agrees to pay any sales, gross receipts, value added, excise or similar taxes not based on NSS's net income. Customer's obligation to pay such taxes or to reimburse NSS for such taxes that are incurred during the duration of this Agreement shall survive the termination of this Agreement.

## 6. TERM AND TERMINATION.

- 6.1. Term.** This Agreement shall commence upon the date the initial copies of the Supported Programs are installed or the day following the expiration of the current support period, or from the date of the renewal invoice and shall extend for a period of 12 months. At NSS's option, NSS may set the term for a period greater or less than 12 months.
- 6.2. Termination.** Either party may terminate this Agreement if the other party does not cure any

material breach hereunder within 30 days of receipt of written notice of such breach by the other party. The expiration or termination of the License Agreement shall terminate this Agreement; Customer's obligation to pay accrued and unpaid fees and charges due at the time of termination shall survive any such termination. NSS may terminate this Agreement upon not less than 120 days advance notice that it is ceasing support of the Supported Programs.

**6.2.1** Customer acknowledges that in the event there is a licensing fee in affect with this agreement Customer will sign a registration form acknowledging the removal of the software from all computers and will confirm the NSS software product no longer is used. All Customer data will remain on the computer system and will not be affected by this termination of NSS software use.

## **7. RELOCATION/TRANSFER.**

NSS shall be under no obligation to furnish continued service under this Agreement if the Supported Programs are transferred to another site or operating system software without NSS's prior written consent. Any such transfer is subject to NSS's transfer policies and fees then in effect.

## **8. LIMITATION ON WARRANTY.**

NAUTICAL SOFTWARE SOLUTION EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED WITH REGARD TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING THE WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## **9. LIMITATION OF LIABILITY.**

Nautical Software Solution's aggregate cumulative liability under or in connection with this Agreement (whether arising from contract or otherwise) is limited to the Support Fees paid by Customer under this Agreement for the annual term in which the event-giving rise to such liability occurs. NAUTICAL SOFTWARE SOLUTION SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT.

## **10. GENERAL.**

**10.1. No Assignment.** NSS may subcontract all or a portion of its obligations under this Agreement. Customer's rights under the Agreement may not be assigned or transferred to any third party without NSS's prior written consent, such consent not to be unreasonably withheld.

**10.2. Excusable Delay.** NSS shall not be liable for delays due to acts of God, acts of Customer, acts of civil or military authorities, fires, strikes, floods, earthquakes, epidemics, and other natural disasters, war, riot, or other causes beyond NSS's reasonable control.

**10.3. Notices.** Except for requests for support services pursuant to the Support Plan Description, which may be given by telephone, all notices, reports, requests, approvals, and other communications required or permitted under this Agreement must be in writing and sent by overnight delivery service or first-class prepaid mail, return receipt requested, postage prepaid to the addresses given at the beginning of this Agreement or as changed by written

notice.

- 10.4. Governing Law.** THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED UNDER THE LAWS OF THE STATE OF GEORGIA EXCLUDING ITS CONFLICT OF LAWS RULES. IT SHALL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS, THE APPLICATION OF WHICH IS EXPRESSLY EXCLUDED.
- 10.5. Severability.** If any provision of this Agreement is held to be unenforceable, the parties shall substitute for the affected provision an enforceable provision, which approximates the intent and economic effect of the affected provision. The failure or delay by either party to enforce any term of this Agreement shall not be deemed a waiver of such term. If any, all or any portion of one or more of the terms and conditions of this Agreement shall be declared invalid by any court of law, such part of such term or terms shall be considered deleted from this Agreement, which the remaining portion shall be unaffected and shall remain in full force and effect.
- 10.6. Entire Agreement.** The parties acknowledge that this Agreement is the complete and exclusive statement of their agreement and that it supersedes any prior support agreements, oral or written, any different or additional terms of any purchase orders, order acknowledgments or invoices, and any other communications between Nautical Software Solution and Customer relating to the subject matter of this Agreement. No variation of the terms of this Agreement will be enforceable against either party unless such party gives its express consent in writing signed by an officer of such party.

## **11. SOFTWARE MAINTENANCE AND LICENSING.**

To ensure that all clients are using the latest version/revision of the NSS software, it is important that all licensing agreements, when applicable, as well as maintenance and support agreements are renewed on an annual basis. It is critical that all NSS clients maintain continuous yearly maintenance and support without a lapse in coverage to qualify for free product updates and discounts on future enhancement upgrades. When you pay your yearly fee, it verifies that you have the latest version of the program, and you are authorized to use the software for the year. Unless your maintenance and license is kept current, important improvements and/or updates may not have been added to your software program, resulting in the operation of an old outdated version. This could have an adverse effect when and if you require technical support. Clients who fall behind on updated enhancements will have to purchase all past updates to bring their software up to date. Maintenance and licensing income also helps to lower the initial cost of the software, making it more affordable to the end user as some of the cost is deferred into yearly licensing. Therefore, the yearly maintenance and licensing fees are an extension of the original purchase price and are considered mandatory fees. Some NSS clients are not charged a yearly Licensing fee as this fee has been incorporated into the initial purchase price. Software updates are included with the yearly maintenance software support renewal if this agreement is maintained uninterrupted and up to date. NSS reserves the right to support clients with current yearly agreements.

***PLEASE NOTE:*** Clients under licensing agreements are required to discontinue use of the software if they fail to pay the yearly licensing fee. Proof of discontinue of use may be required, at NSS's discretion.

The parties have caused this Agreement to be executed by their respective authorized representatives.

**Maintenance Support and Licensing Plan Description:** This Maintenance Support and Licensing Plan Description is entered into under and are incorporated by reference into the Nautical Software Solution Software Maintenance Support and Licensing Agreement. Customers maintaining current support and licensing agreement with NSS are entitled to system updates at no charge when made available by NSS. Customer will also receive a 25% discount on any upgrades and enhancements, when available.

**To obtain technical support from Nautical Software Solution** please send a detailed description of the problem to the following email address or leave a detailed message on the support message telephone service. These two methods are the only support methods approved by NSS:

<u>NSS Technical Support Hours</u>	<b>M-F 9 a.m. to 6 p.m. ET</b>
<u>Direct Support E-mail:</u>	<b>support@nauticalsoftwaresolution.com</b>
<u>Support Department Telephone:</u>	<b>404-551-3418 (support message service)</b>

**Clients without a current support agreement will require a credit card to establish a support case. Please do not leave support messages on any other NSS telephone line.**

**OFF HOURS, WEEKENDS AND HOLIDAY AND SUPPORT PROVIDED OUTSIDE THE PARAMETERS DEFINED IN THIS AGREEMENT**

For clients who are current on their yearly agreement, technical support provided after hours on weekends and holidays, as well as additional support time required above these limits, or outside the scope of this agreement, is not included and will be billed separately. Additional support not covered under this agreement and after hour support will be billed at \$125 per hour, and support provided on weekends and holidays will incur 1½ times our support rate. This support plan provides up to a maximum of 12 hours of support per year

**Response time is identified as follows:**

**Standard response time** is no greater than one business day 24 hours from submission of the case.

**Emergency “System Down” response time** is no greater than 4 business hours.