

Cloud Services Terms and Conditions

These Cloud Services Terms and Conditions (the “Terms and Conditions”) are incorporated into and are a part of the Services Description entered into by and between Nautical Software Solutions (“NSS”) and the entity identified as the customer in the Services Description (“Customer”). NSS and Customer are each referred to as a “Party” and both as the “Parties”.

1. **Definitions.** The following definitions apply to these Terms and Conditions:
 - a. **“Acceptable Use Policy”** or **“AUP”** means the NSS Acceptable Use Policy that is applicable to use of the hardware and software provided by NSS hereunder as such policy is revised from time to time. Customers may access the policy at any time through the website of NSS at <https://nauticalsoftwaresolution.com/wp-content/uploads/2023/06/Acceptable-Use-Policy.pdf>.
 - b. **“Affiliate”** means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this
 - c. **“Business Day”** or **“Business Hours”** means Monday through Friday, 8:00 a.m. – 6:00 p.m. United States eastern time, excluding federal holidays.
 - d. **“Cloud Services”** means any recurring fee for use of the Cloud System or platform support services as specified in the Services Description.
 - e. **“Cloud System”** means a combination of hardware, software and networking elements that comprise an information technology system and which includes Hosted Virtual Desktops, virtual servers, storage, cross connect, firewall capacity, additional RAM or CPUs, dedicated bandwidth and application virtualization ordered by Customer through the Services Description. The Cloud System may consist of a dedicated system for the use of the Customer only, the right to use certain parts of a shared system that NSS maintains for many customers or a combination of some dedicated elements and some shared elements.
 - f. **“Confidential Information”** means all information disclosed by one Party to the other Party before or during the term of Services and which: (1) with respect to Customer is Customer Data (defined below), (2) with respect to NSS is (a) the pricing of any Service (defined below) offerings, (b) the terms and provisions set forth herein and in the Services Description, (c) any non-publicly available information about any NSS data center or data center vendor used by NSS (including non-graphic information observed by Customer while on a tour of any such data center) or (d) any non-publicly available information about any technology employed or used by NSS and (3) for both NSS and Customer is any information provided (a) in writing with a legend conspicuously marking the information as “PROPRIETARY OR CONFIDENTIAL INFORMATION” or (b) if the information is conveyed verbally, with (i) an assertion at the time of disclosure that the information is deemed confidential protected hereunder and (ii) a letter submitted to the designated representative of the recipient Party within ten (10) days after the date of verbal disclosure describing the information disclosed and stating that such information is Confidential Information protected hereunder.
 - g. **“Customer Data”** means any non-publicly available data transmitted to or from, or stored on, the Cloud System allocated for Customer’s use hereunder.
 - h. **“Customer Provided Software”** has the meaning specified below in **Section 10.B.**
 - i. **“Deployment Date”** is the date defined below in **Section 3.A.**

- j. **"Effective Date"** means the date that the Services Description is signed by both Parties.
- k. **"End User"** means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution.
- l. **"Hosted Virtual Desktop"** means a user interface in a virtualized environment and that is accessed through a unique login identifier (username and password). Hosted Virtual Desktops are provided by NSS on a concurrent basis which means that the number of Hosted Virtual Desktops specified in the Services Description is the number of user interfaces that can be accessed at the same time.
- m. **"Managed Service Solution"** means a managed IT service you provide to a third party that consists of the administration of and support for Microsoft Azure Services.
- n. **"Microsoft Azure Services"** is defined in the Online Services Terms.
- o. **"Nautical Software Solution Provided Software"** has the meaning specified below in **Section 10.A**.
- p. **"Non-Microsoft Product"** is defined in the Online Services Terms.
- q. **"Offer Details"** means the pricing and related terms applicable to a Subscription offer, as published in the Portal.
- r. **"Online Services"** means any of the Microsoft-hosted services to which you subscribe under this agreement.
- s. **"Portal"** or **"Web Portal"** is a specially designed website that brings information from diverse sources, like emails, online fora and search engines, together in a uniform way.
- t. **"Product"** means any Online Service (including any Software).
- u. **"Services Description"** is the document bearing such name as the title, which both Parties shall execute, and which is described in greater detail below in **Section 2**.
- v. **"Service Level Guaranty"** or **"Service Level Guaranties"** means a guaranty or guaranties identified as a "Service Level Guaranty" or "Service Level Guaranties" in **Section 3**.
- w. **"Services"** means Cloud Services and Supplemental Services, collectively.
- x. **"SLA"** means the commitments we make regarding delivery and/or performance of an Online Service.
- y. **"Software"** means Nautical Software Solution software we provide for installation on your device as part of your Subscription or to use with the Online Service to enable certain functionality.
- z. **"Statement of Work" (SOW)** means a document that provides a description of a given project's requirements. It defines the scope of work being provided, project deliverables, timelines, work location, and payment terms and conditions.
- aa. **"Subscription"** means an enrollment for Online Services for a defined Term as specified on the Portal. You may purchase multiple Subscriptions, which may be administered separately, and which will be governed by the terms of a separate Microsoft Online Subscription Agreement.
- bb. **"Supplemental Services"** means those Services that Customer purchases from NSS other than the Cloud Services including (1) any setup fee, (2) any database administration or "DBA" services and (3) any assistance or support for any third-party application that Customer operates on the Cloud System.
- cc. **"Stub Period"** means the period between the Deployment Date and the last day of the month in which the Deployment Date occurs as described further below in **Section 6**.

dd. **"Term"** means the duration of a Subscription (e.g., 30 days or 12 months).

2. **Services Description.** NSS will provide the Services that are specified in detail in the Services Description. In the event of any conflict or inconsistency between the provisions of these Terms and Conditions and the provisions of the Services Description, the provisions of the Services Description shall control. If NSS provides additional Services that are not described in the Services Description, then the Customer shall pay for such Services on a time and materials basis based upon NSS's then standard hourly rates.
3. **Deployment and Service Level Guaranties.**
 - a. **Deployment Guaranties.**
 1. NSS guaranties that it will deploy the Cloud Services described in the Service Description by the date stated in the Service Description or, if none is specified, then within thirty (30) Business Days after the Effective Date (the "Deployment Date"); provided, however, that if Customer does not provide all information that NSS needs in order to complete deployment by the date that would otherwise be the Deployment Date, then the Deployment Date shall be within fifteen (15) Business Days after the date that Customer provides all required information.
 2. Servers are deemed deployed as of the time that NSS generates an email message to Customer that includes the information needed to allow Customer to transfer information to and from the Cloud System for operational purposes.
 3. Customer's sole and exclusive remedy for NSS's failure to deploy the Cloud Services by the Deployment Date shall be a credit equal to the amount of the setup fee (if any) stated in the Service Description; provided, however, that no credit is due if the actions of Customer cause the delay.
 4. Customer may delay the deployment of a Cloud System by providing NSS with written notice of the same no later than fifteen (15) days following the Effective Date of these Terms and Conditions. The requested delay may not continue for more than two (2) months following the Effective Date of these Terms and Conditions. Customer acknowledges and agrees that NSS will incur a loss for the loss of planned revenue from the leasing of Cloud Systems for the use by its customers (including Customer) and that if Customer requests a delay in deployment NSS may charge Customer up to fifty percent (50%) of the monthly recurring fees for the Cloud System otherwise chargeable to Customer during the period of delay.
 - b. **Service Level Guaranties.**
 1. Microsoft guaranties that its Cloud System will be at least 99.9% availability of the backup and restore functionality of the Azure Backup service. Availability is calculated by a monthly billing cycle to the extent that (a) any Customer provided hardware or software fails or is defective and said failure or defect causes, in whole or in part, the downtime, (b) the Cloud Services are suspended (see **Section 4**) or (c) as specified below in these Terms and Conditions (including in this **Section 3.B** and **Section 20.B**). Availability shall be measured at the exit (outbound port) of the firewall at Microsoft's Azure data center. Customer's sole and exclusive remedy for any failure of the foregoing guaranty is that NSS will credit Customer's account for 5% of

the monthly Cloud Services fee for each hour of downtime, up to 100% of Customer's monthly fee for the affected Cloud System.

2. NSS guarantees functioning of the following dedicated, NSS -provided hardware: (a) servers, firewalls, and load balancers, (b) attached storage devices and (c) network attached storage devices. Customer's sole and exclusive remedy for any failure of the foregoing guaranty is that NSS will credit Customer's account for 5% of the monthly Cloud Services fee for each additional hour of downtime (after the initial five hours or one hour for repair or replacement, as applicable), up to 100% of the monthly Cloud Services fee for the affected hardware. A customer cannot receive duplicate credit for the same hour of downtime in both **Section 3.B(1)** and this **Section 3.B(2)**, and in the event of duplication the total of both credits will be reduced by the amount of any such duplication.
3. Downtime is measured (for purposes of this **Section 3.B**) from the time a trouble ticket is opened until availability of the Cloud System is restored, or the affected device is powered back on, as applicable.
4. The Customer is not entitled to credit if the Customer is in breach of these Terms and Conditions (including any payment obligation to NSS) at the time of the occurrence of the event giving rise to the credit until Customer has cured the breach. Customer is not entitled to credit if the event giving rise to the credit would not have occurred but for Customer's breach of these Terms and Conditions or misuse of the Cloud System. To receive a credit, Customer must contact its NSS account manager within ten (10) days after the occurrence of the event giving rise to the credit. The Service Level Guaranties are contingent on NSS having full logical access to Customer's configuration. No credit will be due if the credit would not have accrued but for Customer's restriction of NSS's logical access to Customer's configuration.
5. Notwithstanding anything in these Terms and Conditions to the contrary, the maximum total credit for failure to meet the Service Level Guaranties under these Terms and Conditions for any calendar month shall not exceed 100% of Customer's then current monthly recurring fee for the affected Cloud System. Credits that would be available but for this limitation will not be carried forward to future months.
6. The customer acknowledges and agrees that NSS may have to take one or more portions of the Cloud Services offline to conduct regular maintenance or major upgrades including the installation of any patches or other fixes. NSS may utilize the following maintenance windows for planned downtime and such downtime shall not be counted as downtime for purposes of the Service Level Guaranty notwithstanding any provision herein to the contrary:

Maintenance Windows

Regular Maintenance	Wednesday and Friday mornings from 2 a.m. to 4 a.m. EST. From Friday 10 pm to Monday 3 a.m. EST. NSS will provide Customer with
Major Upgrades	advance written notice to the extent possible (either by email or by any other electronic means).

- c. **Service Standard.** NSS will provide Services hereunder in a professional and workman-like manner consistent with reasonable industry standards. The customer's sole and exclusive remedy for any failure of the foregoing guaranty is for NSS to re-perform any portion of the Services that breaches the foregoing or, in the discretion of NSS, to issue a refund of any fees paid for the defective Services.
4. **Suspension of Services.** NSS may suspend or terminate Services without liability if:
 - (a) NSS reasonably believes that the Services are being used in violation of these Terms and Conditions, (b) Customer does not cooperate with NSS reasonable investigation of any suspected violation of these Terms and Conditions, (c) there is an attack on the Cloud System or the Cloud System is accessed or manipulated by a third party without Customer's consent, (d) NSS is required by law to suspend the Services, or (e) there is another event for which NSS reasonably believe that the suspension of Services is necessary to protect the Cloud System, any other property of NSS or any vendor of NSS or the other customers of NSS, including if NSS is faced with a credible claim that the Services or any software infringes upon the intellectual property rights of others. NSS will provide Customer advance notice of a suspension under this **Section 4** of at least twelve Business Hours unless NSS determines in its discretion that a suspension on shorter or contemporaneous notice is necessary to protect NSS or its other customers from imminent and significant operational or security risk.
5. **Obligations and Representations of Customer.** Customer must comply with the following during the term of these Terms and Conditions:
 - a. **Security Precautions, Account Information and AUP.** Customer must use reasonable security precautions (including encrypting any personal identification information) in connection with use of the Services provided hereunder and must cooperate with any investigation of NSS (or any third-party vendor or provider of NSS with respect to the Services hereunder) into service outages, security problems, contractual breaches or other problems that may affect compliance with these Terms and Conditions or the Services provided hereunder. Customer must maintain current account permissions, billing, and other account information up to date pursuant to the then defined procedures of NSS. Customer must comply with any laws applicable to use of the Services and with the then current Acceptable Use Policy of NSS, as published at <https://nauticalsoftwaresolution.com/wp-content/uploads/2023/06/Acceptable-Use-Policy.pdf>.
 - b. **Unauthorized Access.** NSS is not responsible to Customer or any third party for unauthorized access to Customer's data or the unauthorized use of the Services unless the unauthorized access or use results from NSS's failure to meet its security obligations. Customer is responsible for the use of the Services by any employee of Customer, any person Customer authorizes to use the Services, any person to whom Customer has given access to the Services, and any person who gains access to Customer's data or the Services because of Customer's failure to use reasonable security precautions, even if such use was not authorized by Customer.
 - c. **Privacy Policies and Applicable Data Security Laws.** Customer must comply with any laws applicable to privacy and data security and with the then current privacy policy of NSS, as published at https://nauticalsoftwaresolution.com/wp-content/uploads/2021/10/Website-Disclaimer-and-Privacy-Policy_De-Marco.pdf

- d. Customer further represents and warrants as follows:
1. Except if otherwise expressly provided for in the Services Description or in a written modification to the same, Customer will not transmit any “individually identifiable health information” (IIHI) as part of any Customer Data or otherwise to NSS; is relying upon the foregoing representation in determining that it is not a business associate as defined in 45 CFR Reg. 160.103. IIHI means information that is a subset of health information, including demographic information collected from an individual, as defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPPA”) and 45 CFR Reg. 160.103. If the Services Description specifically authorizes the transmission of IIHI or if it does not but Customer desires to transmit the same after entering into the Services Description, then NSS may impose additional requirements in order to comply with its requirements under HIPPA including entering into a business associate agreement with Customer and charging of an additional agreed upon fee to compensate NSS for any required procedures for handling IIHI or meeting any other obligations of HIPPA.
 2. Customer will not transmit any personal information as part of any Customer Data or otherwise about minors and is not (and will continue to not be) in violation of the Children’s Online Privacy Protection Act (“COPPA”).
 3. Except if otherwise expressly provided for in the Services Description or in a written modification to the same, Customer is not a financial institution or other entity subject to the privacy provisions of the Gramm-Leach-Bliley Act (“GLBA”) and will not transmit any personal information in violation of said act. If the Services Description specifically authorizes the transmission of information otherwise governed by the GLBA or if it does not but Customer desires to transmit the same after entering into the Services Description, then NSS may impose additional requirements in order to comply with its requirements under the GLBA including entering into any required additional agreements pursuant to the GLBA and charging of an additional agreed upon fee to compensate NSS for any required procedures for handling said information or meeting any other obligations of the GLBA.
- e. **Non-customary Configurations.** If Customer requests NSS to implement a configuration element (hardware or software) or service in a manner that is not customary at NSS, NSS may designate the element or service as “unsupported,” “non-standard,” “one-off” or with like term in the Service Description. NSS makes no representation or warranty whatsoever regarding any element or service so designated, notwithstanding any other provision herein to the contrary. Customer agrees that NSS shall not be liable to Customer for any loss or damage arising from the provision of the unsupported element or service. The Service Level Guaranties shall not apply to the unsupported element or service, or any other aspect of the Services that is adversely affected by the unsupported element or service.
- f. **Export.** Customer represents and warrants that it is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and that it is not otherwise a person to whom NSS is legally prohibited to provide the Services. Customer may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in

Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, nor may Customer provide administrative access to the Cloud System to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

- g. **No Third-Party Beneficiaries.** Customer acknowledges that there are no third-party beneficiaries to these Terms and Conditions and that only Customer has rights hereunder. Customer shall be responsible for the compliance of these Terms and Conditions by any representatives or others that use the Cloud System with the permission of Customer.
 - h. **No High Risk Use.** Customer may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Customer may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act.
6. **Term.** The initial term of the Services provided pursuant to the Services Description will be one year and the term will automatically renew for additional one-year terms unless within thirty (30) days before expiration of the Initial Term or the then current renewed term the Party that does not want to renew the term provides written notice to the other Party. The term may only be terminated prior to expiration of the then current term in accordance with the provisions set forth below in **Section 17**. If the term of Services expires or is otherwise terminated, the provision set forth below in **Section 17** shall govern.

7. Consideration.

- a. **Fees.** Customers shall pay NSS the rates specified in the Services Description for reoccurring or other fees specified in the Services Description. Any reoccurring fees are due starting on the Deployment Date except as provided for in **Section 3.A(4)**. Following the Deployment Date NSS will charge Customer the monthly recurring fee(s) (plus other usage fees as applicable) specified in the Services Description for the then current term, except as provided for below in **Section 7.B**. NSS will charge Customer for any requested Services that are not covered in the Services Description on a time and materials basis based upon its then standard hourly rates.
- b. **Fee Increases.** Initial pricing is locked in for the first three years. The customer acknowledges that NSS's ability to provide Services hereunder is in part based upon fees charged by its vendors and other third parties and that said fees may be increased from time to time. NSS may increase any monthly recurring fee to account for any increase charged to NSS by its vendors and the increase would be passed on to Customer at cost. After the third-year increases should not exceed 5% unless national indexes reflect a necessary increase adjustment.
- c. **Setup Fee, First Invoice and Deposit.** NSS shall charge on the first monthly invoice a setup fee in the amount specified in the Services Description plus the prorated monthly recurring charges for the Stub Period. NSS reserves the right to charge a deposit fee prior to the Deployment Date that will comprise of a setup fee and one monthly payment in advance.
- d. **Expenses.** The customer also shall reimburse NSS for all reasonable out-of-pocket authorized expenses incurred by NSS hereunder.

- e. **Taxes.** Unless otherwise specified, all fees are stated without any applicable excise, sales, use, value, added, or other tax imposed upon the production, sales and/or delivery of Services, software or hardware provided hereunder. Any such taxes, when applicable, will be charged when assessed or due as separate additional items on invoices, unless valid exemption certificates are in the possession of NSS before the date of service.

8. Invoicing, Payment, and Failure to Pay.

- a. **Invoicing.** NSS shall present an invoice to the Customer for monthly reoccurring fees at the beginning of each applicable month. Following the Deployment Date, monthly recurring fees will be billed monthly in advance on or around the first day of each calendar month. Non-recurring fees, such as bandwidth overages or other service charges and any authorized expenses, will be billed monthly in arrears. Customer must contest the amount of any invoice within ninety (90) days after the invoice date. Invoices that are not disputed within said period are conclusively deemed accurate.
- b. **Payment.** If special payment arrangements have been made the Fees are due within fifteen (15) days of the invoice date. If the Parties have arranged for payment by credit card or ACH, NSS may charge Customer's card or account on the first business day of the month. NSS may suspend all Services, and Services provided pursuant to any unrelated agreement, if payment of any invoiced amount is overdue, and Customer does not pay the overdue amount within ten (10) Business Days of NSS's written notice to Customer for the same. Customer agrees to pay a reasonable reinstatement fee if Services are reinstated after a suspension for non-payment.
- c. **Failure to Pay.** NSS may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). The customer is responsible for any fees or costs, including reasonable attorney's fees or collection agency costs, incurred to collect any amount not paid hereunder. Customer will be charged an insufficient funds fee for any returned check. Any amount owed hereunder must be paid in U.S. Dollars.

9. Non-Disclosure of Confidential Information.

- a. **Restrictions on Use.**
 - i. A Party disclosing information hereunder shall be referred to as the "Disclosing Party" and a Party receiving information hereunder shall be referred to as the "Recipient Party". A Recipient Party shall use reasonable efforts to safeguard the Disclosing Party's Confidential Information, and all documents or information derived therefrom. The Recipient Party further agrees that it shall not copy the Disclosing Party's Confidential Information which is in tangible or intangible form and shall not use the Disclosing Party's Confidential Information, or any information derived therefrom, for its own benefit or the benefit of others, except as authorized in writing by the Disclosing Party or except in furtherance of these Terms and Conditions.
 - ii. The provisions of this **Section 9.A** shall not apply to any information that (a) the Recipient Party shall have acquired from the Disclosing Party pursuant to a subsequent agreement between the parties hereto or (b) as to particular portions of the Confidential Information, if such

information (i) has become generally available to the public or (ii) was or becomes available to the Recipient Party on a non-confidential basis from a source other than the Disclosing Party.

- b. **Unauthorized or Compelled Disclosure.** If the Recipient Party becomes aware of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, the Recipient Party shall immediately advise the Disclosing Party in writing as to the same. If the Recipient Party becomes legally compelled to disclose any such information, the Recipient Party may disclose the same and shall provide (where possible) the Disclosing Party with prompt notice so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of these Terms and Conditions.
- c. **Obligations Survive these Terms and Conditions.** The obligations imposed hereunder shall survive termination of these Terms and Conditions.

10. Software.

- a. **Software Provided by NSS.** NSS may provide Customer with access to certain software which NSS develops and any additional licenses from third parties ("NSS Provided Software"). NSS may charge the Customer for the use of any NSS Provided Software as specified in the Services Description. Customer may not copy any NSS Provided Software for Customer's use unless expressly permitted in the Services Description. The customer may not remove, modify, or obscure any copyright, trademark or other proprietary rights notices that appear on any NSS Provided Software. Customer may not reverse engineer, decompile or disassemble any NSS Provided Software. In addition to the terms of these Terms and Conditions, Customer's use of any NSS Provided Software is governed by the terms and conditions set forth in any applicable license or use restrictions, including any limitation on the number of users.
- b. **Software Provided by Customer.**
 - i. Customer may decide with NSS for the installation of any software provided by Customer, including open-source software (collectively, "Customer Provided Software"). Customer represents and warrants to NSS that Customer has the legal right to use any Customer Provided Software in the manner used and on the Cloud System and that such use will not infringe upon the intellectual property rights of others.
 - ii. If NSS has agreed to install, patch, or otherwise manage any Customer Provided Software in reliance on Customer's license with a software vendor, then Customer represents and warrants that Customer has a written license agreement with the vendor that permits NSS to perform these activities. NSS does not agree to manage any Customer Provided Software except to the extent specified in the Services Description.
 - iii. Customer Provided Software may not be compatible with NSS standard process for deploying and repairing any Cloud System. In addition, to install Customer Provided Software NSS may require Customer to send the physical or electronic media provided to Customer by the software vendor, both for deployment and again in the event of a failure of the Cloud System. Customer agrees that NSS will not be in breach of any Service Level Guaranty or other obligation under these Terms and

Conditions that would not have occurred but for a delay resulting from our agreement to use Customer's licensed software.

- c. **Compliance with Software Licensing Requirements.** NSS may request specific written certification of Customer's compliance with this Section 10 from time to time. Customer agrees to provide NSS with evidence (within two Business Days after a request) of compliance with any licensing requirements as NSS may reasonably require prior to any scheduled Deployment Date and from time to time as necessary to update the status of any license. If Customer fails to provide the required evidence of licensing compliance NSS may, at its option, either (1) delay the Deployment Date for the Cloud System that was to include such software until the evidence is provided, (2) deploy the Cloud System in reliance on NSS's licensing agreement with the vendor, and charge Customer its standard fee for the use of the software until such time as the required evidence is provided, or (3) suspend or terminate the Services.

11. WARRANTIES/DISCLAIMERS. EXCEPT AS SET FORTH ABOVE IN **SECTION 3** WITH RESPECT TO DEPLOYMENT OR SERVICE LEVEL GUARANTIES OR DEFICIENT SERVICES, ACCELERA MAKES NO WARRANTIES, ORAL OR WRITTEN, EXPRESS, OR IMPLIED, WITH RESPECT TO ANY SERVICES SOLD OR PROVIDED HEREUNDER, ALL OF WHICH ARE PROVIDED "AS IS." IN ADDITION:

- a. NSS SPECIFICALLY DISCLAIMS AND DOES NOT PROMISE THAT THE FUNCTIONS CONTAINED IN THE NSS PRODUCT(S) (WHICH INCLUDE THE CLOUD SYSTEM) OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE NSS PRODUCT(S) WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER DATA, PRIVACY, CONFIDENTIAL INFORMATION AND PROPERTY.
- b. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF WORKMANLIKE QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED.
- c. NSS DOES NOT PROMISE TO BACKUP ANY DATA UNLESS CUSTOMER HAS PURCHASED BACKUP SERVICES. IF BACKUP SERVICES ARE PURCHASED, THEN (1) NSS DOES NOT PROMISE TO RETAIN ANY BACKUP DATA FOR LONGER THAN THE AGREED DATA RETENTION PERIOD AND, IF NONE IS SPECIFIED IN THE SERVICES DESCRIPTION, THEN FOR A PERIOD OF TWO MONTHS AND (2) CUSTOMER RELEASES NSS FROM ANY LIABILITY FOR LOSS OF DATA TO THE EXTENT THAT THE DATA HAS CHANGED SINCE THE LAST TIME NSS WAS REQUIRED TO PERFORM A BACKUP.
- d. NSS DOES NOT WARRANT THE HARDWARE OR SOFTWARE OF ANY THIRD-PARTY MANUFACTURER OR LICENSOR WHICH MAY BE USED OR INSTALLED ON ANY CLOUD SYSTEM AND CUSTOMER AGREES TO LOOK ONLY TO SUCH THIRD PARTIES FOR ANY WARRANTY CLAIM RELATING THERETO.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NSS OR ANY NSS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN

ANY WAY INCREASE THE SCOPE OF NSS's LIABILITY. THE ABOVE EXCLUSIONS SHALL NOT APPLY TO THE EXTENT A JURISDICTION DOES NOT ALLOW FOR APPLICATION OF THE SAME. CUSTOMER'S EXCLUSIVE REMEDY AND NSS's ENTIRE LIABILITY UNDER THESE TERMS AND CONDITIONS IS AS SET FORTH BELOW IN **SECTION 12**.

12. LIMITATIONS OF LIABILITY.

- a. **RESTRICTION ON TYPE OF LIABILITY.** NSS WILL NOT UNDER ANY CIRCUMSTANCE, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF OR DAMAGE TO ANY ASSOCIATED EQUIPMENT OR DATA, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMER'S CUSTOMERS, ARISING OUT OF THE USE OF OR INABILITY TO USE NSS PRODUCTS OR SERVICES, EVEN IF NSS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. **MAXIMUM LIABILITY.** NSS's LIABILITY FOR ANY BREACH OF ANY WARRANTY SHALL BE AS SPECIFIED IN **SECTION 3**. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NSS's LIABILITY ON ANY CLAIM OF ANY KIND WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OR DAMAGE TO PROPERTY INCLUDING DATA ARISING OUT OF, RESULTING FROM, OR CONCERNING ANY ASPECTS OF THESE TERMS AND CONDITIONS OR FROM THE SERVICES FURNISHED HEREUNDER SHALL NOT EXCEED TWO TIMES THE MONTHLY RECURRING FEE OR TWO TIMES ANY OTHER APPLICABLE FEE, FOR THE SERVICE THAT IS THE SUBJECT OF THE CLAIM, AND NO CLAIM MAY BE BROUGHT AGAINST NSS MORE THAN ONE YEAR AFTER ANY CAUSE OF ACTION ACCRUES.
- c. **Indemnification for Acts of Customer.** Customer agrees to indemnify and hold harmless NSS and any of its agents or vendors from any and all claims, losses, liabilities, damages, expenses and costs (including attorneys' fees and court costs) arising out of or in connection with any breach of any obligation of Customer hereunder including, but not limited to, the failure of Customer to comply with any Acceptance Use Policy, failure of Customer to obtain any required or comply with any software licenses or usage restrictions or failure to follow any applicable privacy/data security policy or other applicable laws.

13. No Restrictions on Parties. Each of the parties hereto represents and warrants to the other that it has full right, power, and authority to enter these Terms and Conditions and that it is not subject to any consulting agreement or similar arrangement which would restrict its ability to enter into these Terms and Conditions or perform the Services required to be performed hereunder.

14. Ownership of Property, Access to Data Center and NSS Personnel.

- a. **Ownership of Property.** Each Party retains all rights, title, and interest in and to its respective trade secrets, inventions, copyrights and other intellectual property. Any intellectual property developed by NSS during the performance of

the Services shall belong to NSS unless NSS has agreed with Customer in advance in writing that it shall have an interest in the intellectual property. The customer does not acquire any ownership interest in or right to possess the Cloud System, and Customer has no right of physical access to the Cloud System. NSS does not acquire any ownership interest in or right to the Customer Data.

- b. **Access to Data Center.** The Azure infrastructure used to provide the Services will be in a controlled access data center. The data center will be staffed 24/7/365 and will be monitored by Microsoft Security.
- c. **NSS Personnel.** NSS will perform pre-employment background screening of its employees who have access to Customers' accounts. NSS will restrict the use of administrative access codes for customer accounts to its employees and other agents who need the access codes for the purpose of providing the services. NSS personnel who use access codes shall be required to log on using an assigned username and password. NSS will immediately report to the Customer any unauthorized access or release of Customer Data of which NSS becomes aware. Upon request, NSS will promptly provide to Customer all information and documentation that NSS has available to it in connection with any such event.
- d. **Non-Solicitation of Employees or Consultants.** Customer acknowledges that NSS provides a valuable service by identifying and assigning employees or consultants for the provision of Services to Customer hereunder. Customer further acknowledges that Customer would receive substantial additional value, and NSS would be deprived of the benefits of its work force, if Customer directly hires NSS's employees or consultants after they have been introduced to Customer by NSS. Therefore, during the term of NSS providing Services hereunder and for a period of two (2) years thereafter, Customer shall not, directly or indirectly, or through the use of others, retain the services of any employee or consultant of NSS who provided services to Customer hereunder (or any such worker who resigned from NSS within the six month period leading up to the date of any solicitation by Customer), except through NSS. Both parties recognize the difficulty and uncertainty of demonstrating the amount of damages that would result in the event of a breach of this provision, therefore, both parties agree that an equitable measure of such damage is thirty percent (30%) times the greater of (a) the most recent monthly gross billing of such person by NSS to a client times twelve (12), or (b) the most recent monthly rate of salary or other compensation paid to such person times twelve (12). Therefore, in the event of a breach of this provision, in addition to the remedies provided for elsewhere in these Terms and Conditions, Customer shall pay to NSS as liquidated damages and not as a penalty the amount resulting from thirty percent (30%) times the greater of (a) or (b) hereinabove. The foregoing restriction shall not apply with respect to any former NSS employee or consultant that NSS terminated.

15. Termination.

- a. **Termination.** The term of Services may be terminated at any time (1) by an aggrieved Party, effective immediately upon written notice by the aggrieved Party if the breaching Party commits a material breach of any of the terms of these Terms and Conditions (including the failure of Customer to timely pay

NSS for Deliverables rendered hereunder which is specifically deemed a material breach) and such breach remains uncured for ten (10) Business Days after written notice of such breach has been furnished to the breaching Party or (2) by any Party, immediately upon the other Party's insolvency, filing of a petition in bankruptcy, making an assignment for the benefit of creditors, becoming subject to any proceeding under bankruptcy or insolvency law, or winding up or liquidation, voluntarily or otherwise. Notwithstanding any provision to the contrary, NSS may terminate the term of Services prior to expiration of the then current term upon providing thirty (30) days' notice to Customer, if NSS's infrastructure has changed adversely affecting NSS's ability to provide Cloud Services or in the event of any successor in interest by way of merger or consolidation, or the sale of all or substantially all of its assets.

- b. **Early Termination by Customer.** In the event that Customer terminates the term of Services for any reason other than as set forth above in **Section 17.A** prior to expiration of the then current term, Customer agrees to pay as an equitable measure of the damages NSS will incur for the loss of planned revenue from the leasing of Cloud Systems (1) 100% of the monthly recurring fees NSS would have received with respect to any charges for the Cloud System for the remainder of the then current term had Customer not terminated or, if shorter, six months, beginning from the effective date of termination and (2) 75% of the monthly fees NSS would have received after the period described in (1) and through expiration of the then current term with respect to Cloud Services but not Supplemental Services.
- c. **Survival of Terms and Turnover of Customer Data.** In the event of termination, the provisions set forth above in **Sections 7.E-13, Sections 16, 17.C** and **Sections 19-20** shall survive. NSS shall provide reasonable assistance to Customer enabling it to retrieve any Customer Data within thirty (30) days after expiration of the Cloud Services term hereunder and if Customer has paid in full at said time any amount owed hereunder.

16. Assignability. Neither Party may assign or transfer any rights or delegate any obligations hereunder and pursuant to a Services Description, in whole or in part, whether voluntarily, or by operation of law, without the prior written consent of the other Party; provided, however, that each Party shall have the right to assign these Terms and Conditions to any successor in interest by way of merger, consolidation, or sale of all or substantially all of its assets. These Terms and Conditions shall be binding upon and shall inure to the benefit of the successors and permitted assigns of each Party.

17. Disputes. The customer expressly agrees that these Terms and Conditions shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. These Terms and Conditions shall be interpreted and governed by the laws of the United States and the State of Georgia. Any dispute arising out of these Terms and Conditions, except with respect to **Sections 9** and **16** above, shall be settled by final and binding arbitration conducted in Cherokee County, Georgia by one neutral arbitrator knowledgeable in the subject matter covered by these Terms and Conditions, in accordance with this Section and the then current Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The successful Party in the arbitration shall be awarded by the arbitrator that Party's costs and expenses, including attorneys' fees and administrative fees of the AAA. An award may be confirmed, and judgment

entered in any court having competent jurisdiction. Except as otherwise provided for herein, any litigation initiated under such act or otherwise shall be conducted in a court of competent jurisdiction located in Northern Georgia.

18. Miscellaneous Provisions.

- a. **Notices.** Any notice or other communication required to be given or made under these Terms and Conditions shall be in writing and shall be given to the other Party at the address listed in Services Description. No communication or notice shall be effective if the Party to receive such communication or notice has notified the sender of a change in and a replacement address in accordance with the foregoing procedures for sending notices unless such communication or notice is sent to the replacement address in accordance with the foregoing procedures. Notices and communications shall be considered given or made: where sent by hand or courier, upon receipt unless delivery is refused in which case on the date of refusal; where sent by U.S. Mail, first class postage pre-paid, on the third working day following the date of posting; or where given by facsimile or electronic mail (subject to confirmation being sent by first class postage pre-paid and to retention by the sending Party of confirmation of successful transmission), four hours after the time of successful transmission.
- b. **Force Majeure.** Neither Party will be in violation of these Terms and Conditions if the failure to perform the obligation is due to an event beyond such Party's control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.
- c. **Severability.** If any provision of these Terms and Conditions is held invalid, all other provisions of these Terms and Conditions shall remain in effect; PROVIDED, HOWEVER, that the invalid provision may be modified by the parties, an arbitrator, or a court of law, as needed to make such provision valid.
- d. **Promotional Use.** Customer agrees that NSS may publicly disclose that NSS is providing Services to Customer. NSS may also use Customer's name and logo to identify Customer as NSS's customer in promotional materials, including press releases and on its website. NSS will not use Customer's name or logo in a manner that suggests an endorsement or affiliation.
- e. **Entire Agreement, Amendments and No Waiver.**
 - i. These Terms and Conditions and the Services Description constitute the entire agreement between the parties concerning the subject matter hereof, superseding all prior and contemporaneous negotiations and discussions. No waiver, amendment, or modification of any provision of these Terms and Conditions shall be effective unless in writing and signed by both parties.
 - ii. Notwithstanding the foregoing, NSS may make changes to these Terms and Conditions from time to time. Said modifications shall be binding on Customer unless Customer objects to the same on the grounds that any such modification adversely affects the rights of Customer in a material manner hereunder and if Customer notifies NSS within thirty (30) days after the date NSS publishes new and revised Terms and Conditions on its website

at <https://nauticalsoftwaresolution.com/wp-content/uploads/2023/06/Closed-Services-Terms-and-Conditions.docx.pdf>. If Customer notifies NSS of any such objection, then the Parties shall negotiate in good faith a resolution of the same and if the Parties fail to agree on a resolution within thirty (30) days, then Customer may elect to terminate the Services effective within a period of fifteen (15) days thereafter without payment of the fee otherwise required pursuant to **Section 17.B** and notwithstanding any other provision herein to the contrary.

- iii. The failure of any Party to insist in any one (1) or more instances on strict performance of any of the terms and conditions of these Terms and Conditions, or the failure to exercise any right or privilege contained in these Terms and Conditions, or the waiver of any breach of the terms and conditions of these Terms and Conditions, shall not be considered as thereafter waiving any such terms, conditions, rights or privileges and the same shall continue and remain in full force and effect as if no waiver has occurred.