



## NSi Software Maintenance Agreement

Agreement made and entered into, by and between Notable Solutions, Inc., of 9715 Key West Ave, Suite 200, Rockville, Maryland herein referred to as "NSi", and , in the state of, herein referred to as "You".

NSi hereby agree to adhere and deliver to You, the following:

### 1. TERMS AND DEFINITIONS

- A. **Maintained Software** means the registered copy of the NSi software Product licensed to You and designated by You on the Maintenance Registration Form. If the +-licensee of the Maintained Software is a corporation or other entity, the "You" as used in this Agreement refers to that corporation or entity.
- B. **Support Contact** means the person authorized by You and designated on the Maintenance Registration Form to communicate with NSi to request and receive the Maintenance Services. The Support Contact may be You, Your employee, or an agent or consultant of Your company or organization who provides services directly to You as the Licensee of the Maintained Software. The Support Contact should be knowledgeable about how the Maintained Software is being used and about the computer/operating system on which Maintained Software is executed.
- C. **Discrepancy** means a defect in the distribution media or material difference between the operation of the Maintained Software and the description of the operation of the Maintained Software as provided in current end-user documentation provided for the Maintained Software by NSi.
- D. **Correction** means replacement distribution media or corrective code or documentation which rectifies a Discrepancy as described above. NSi may, at its discretion, modify the end-user documentation to (i) remove inaccuracies in the documentation, or (ii) describes changes, modifications or improvements made to the Maintained Software. 'Correction' includes, but is not limited to, workarounds, support releases, update disks, immediate correction disks, component replacements and patches.
- E. **Priority Levels** - While on 30 Day free or extended support period, the Support Contact can report a Discrepancy to NSi Support team. The priority definitions are as defined below:
- **'Priority 1 Discrepancy'** means a Discrepancy in the Maintained Software which causes substantial downtime of the system, or which causes data corruption, or which otherwise renders the Maintained Software unusable. Discrepancies given this priority have no viable workaround or avoidance procedure.
  - **'Priority 2 Discrepancy'** means a significant Discrepancy in the Maintained Software which results in inconvenience to users of the Maintained Software, but for which a workaround or avoidance procedure is available.
  - **'Priority 3 Discrepancy'** means any Discrepancy that is not a Priority 1 Discrepancy or Priority 2 Discrepancy.



- **'Priority 4 Discrepancy'** means any Discrepancy related to documentation, future enhancement request, or documentation defects.

F. **Agreement** means these Terms and Conditions of NSi Software Maintenance

## **2. APPLICABILITY OF NSI SOFTWARE LICENSE AGREEMENT**

This Agreement and all software, documentation and media provided under it are subject to all the terms and conditions of the NSi End User Software License Agreement which exists between You and NSi, including the Disclaimer of Warranty and Limitation of Liability.

## **3. MAJOR UPGRADE RELEASE**

NSi intends, within a minimum of a year interval, to prepare a major upgrade release of the Maintained Software which will contain a new set of software and may contain replacements for all or some of the existing documentation set. The timing and actual release of any such major upgrade release is solely under the control of the NSi product management team. When a major upgrade is prepared, a notice of this major upgrade release will be sent to You under this Agreement and the release is available to You without additional charge.

## **4. MINOR UPGRADE RELEASE**

NSi intends from time to time may prepare a minor upgrade release of the Maintained Software which will contain a new set of software and may contain replacements for all or some of the existing documentation set. The timing and actual release of any such minor upgrade release is solely under control of NSi product management team. If a minor upgrade is prepared the release is available to You without additional charge.

## **5. FIXES TO REPORTED DISCREPANCIES**

In response to a confirmed Discrepancy in the Maintained Software, NSi shall use reasonable efforts to provide at its discretion a Correction in the form of a workaround, support release, update disk, immediate correction disk, electronic transfer equivalent, component replacement, patch, major upgrade release, minor upgrade release, or other suitable form, but NSi cannot guarantee to do so. When provided under this Agreement, such Correction will be provided without additional charge. NSi reserves the right to discontinue Maintenance Services without notice on a past workaround, support release, update disk or immediate correction disk, or electronic transfer equivalent, component replacement, patch or other form of Correction after a subsequent major upgrade release, support release, update disk or electronic transfer equivalent containing a Correction of the Discrepancy is available.

## **6. ACCESS TO SUPPORT CENTER**

You can access NSi Support via opening a support incident. All support incident charges apply based on Your current Software Maintenance and Support agreement with NSi. You can open a software incident from NSi software Product Support Staff via:



- Email - Via sending email to [Support@nsius.com](mailto:Support@nsius.com).
- Phone – Via calling NSi Support center.
- Web – Via NSi web site.

For details on incident types, priorities, charges, and availability please see NSi Support Services Definitions Document.

Opening a support incident report is required to get assistance and advice on NSi products or to receive Discrepancy reports from NSi Support Staff. Assignments of incident reports to technical staff are done at sole determination of NSi management.

The NSi web site '<http://www.nsiastore.com/language/en-us/support>' also provides You with a wide variety of information. In some cases the web site will be used as a delivery mechanism for some Corrections.

Based on reported support incident, our Product Support staff will, with Your assistance if necessary, investigate a suspected Discrepancy based on customary and normal support procedures.

#### **7. SOFTWARES NOT COVERED BY THIS AGREEMENT**

The following software is explicitly excluded from the Software Maintenance Agreement:

- A. Altered or modified Maintained Software
- B. Any combination of Maintained Software and other software not covered by this Agreement.
- C. Any “custom built” applications, application integration, integration script, workflow script, or customer built VB/Java script built by third-party or built under a separate Maintenance Agreement.
- D. A Release of Maintained Software for which Maintenance Services has been discontinued.
- E. Discrepancies caused by Your negligence or fault.
- F. Discrepancies resulting from hardware malfunction.
- G. Discrepancies that do not significantly impair or affect the operation of the Maintained Software.
- H. Maintained Software used on a computer or operating system other than that accepted by NSi on the product documentation.

#### **8. YOUR RESPONSIBILITIES**

You agree to report all suspected Discrepancies through Your Support Contact to the NSi software Product Support staff. Reports will include sufficient information for NSi to reproduce the suspected Discrepancy. Failure to provide this minimum sufficient information may cause delays in responding to the Discrepancy.



You agree to use reasonable efforts to assist NSi in its efforts to find Corrections to confirmed Discrepancies reported by You.

You agree to install and use the newest release or change disk for the Maintained Software sent to You by NSi within thirty (30) days of receipt.

You agree to provide NSi Software Product Support staff with full access to the Maintained Software included remote web access or other customary means of Discrepancy investigation.

In all contacts with NSi software Product Support, You agree to provide the product serial number given to You by NSi, along with Your name and the name and address of the company or individual contracted for the maintenance.

#### **9. PAYMENT**

The annual Maintenance Fee must be paid in advance. The Maintenance Fee is as determined in the NSi software Price List as of the Maintenance Expiration date.

#### **10. TERM AND TERMINATION**

This Agreement will be effective, and services provided hereunder, as of the earlier date of completion stipulated by NSi

- Acceptance of payment of the appropriate Maintenance Fee or initial product purchase with Maintenance;
- Registration of this Agreement on receipt of the Maintenance Registration Form You have submitted;
- Ascertaining proof of proper license for the Software designated on the Maintenance Registration Form.

The services provided hereunder would cease on midnight (12:00 AM) of the business day one year from the commencement of services under this Agreement. The Maintenance Period commences as determined by NSi as of the date of product purchase with maintenance, maintenance renewal or maintenance commencement, as appropriate.

NSi may change the Maintenance Fee without notice which fee shall become effective upon renewal of this Agreement.

This Agreement will remain in effect unless terminated upon fifteen (15) days written notice by either party by reason of any violation of the terms and conditions of this Agreement.

NSi may or may not notify You of the impending Maintenance Expiration Date. It is Your responsibility to exercise the option to renew maintenance prior to the Maintenance Expiration Date. To register for a further year of maintenance under this Agreement, simply pay the current maintenance fee prior to the Maintenance Expiration Date and You will continue to receive maintenance services.



If You allow your maintenance to expire:

1. You must purchase an upgrade to the current version of the product in order to register for a new maintenance period.  
OR

If You have previously received the current upgrade version, the start of the new maintenance period will be backdated to begin on the date that the previous maintenance period expired. You are responsible for the back date payment. You must then fill out a Maintenance Registration Form and return it to NSi at the address denoted in section 1.

You will then receive an invoice for the appropriate amount. Simply pay the invoice and Your maintenance will be renewed. If You do not have a Maintenance Registration Form, then call or email Your NSi sales person and one will be sent to You.

NSi reserves the right to withdraw maintenance services on any or all Maintained Software or other products, and to alter the prices, terms, and conditions of the Maintenance Program, in advance of any maintenance renewal. Any such withdrawal or alterations will amend the Maintenance Program between You and NSi as of Your next renewal date.

## 11. MISCELLANEOUS

You may not assign this Agreement to a third party without the prior written consent of NSi. This Agreement and the NSi software End User Software License Agreement shall be the only Agreements between NSi and You with respect to the Maintained Software. They cannot be modified except in writing and with the approval of both parties. These Agreements supersede all prior agreements, oral or written, relating to the Maintained Software. The laws of the state of Maryland shall govern the validity of these Agreements, the construction of their terms and the interpretation of the rights and duties of the parties.

## 12. LIMITATION OF LIABILITY

**EXCLUSION OF DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, UNLESS EXPRESSLY PROVIDED OTHERWISE UNDER THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF THE OTHER (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS) ARISING OUT OF ANY PERFORMANCE OF THIS AGREEMENT OR IN FURTHERANCE OF THE PROVISIONS OR OBJECTIVES OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**LIMITATION OF DAMAGES. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY, FROM ALL CAUSES OF ACTION AND THEORIES OF LIABILITY, EXCEED THE ACTUAL AMOUNT PAID BY You TO NSI UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE DATE THAT GAVE RISE TO SUCH LIABILITY.**



### 13. MICELLENEOUS

- A. **No Waiver** The waiver of any term, condition, or provision of this Agreement must be in writing and signed by an authorized representative of the waiving party. Any such waiver will not be construed as a waiver of any other term, condition, or provision except as provided in writing, nor as a waiver of any subsequent breach of the same term, condition, or provision.
- B. **Export Control** You will comply with all applicable United States laws and regulations which may govern the export of Program abroad, including the Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations issued by the Department of Commerce.
- C. **Definition of Days** All references in this Agreement to "days" will, unless otherwise specified herein, mean working days.
- D. **Headings** The Section headings used in this Agreement are for convenience of reference only. They will not limit or extend the meaning of any provision of this Agreement, and will not be relevant in interpreting any provision of this Agreement.
- E. **No Publication** Neither party may publicize or disclose the terms of this agreement to any third party, without the written consent of the other party.
- F. **Severability** If any provision in this Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability. The parties agree to negotiate in good faith a valid, enforceable substitute provision that most nearly affects the parties' original intent in entering into this Agreement or to provide an equitable adjustment in the event no such provision can be added. The other provisions of this Agreement will remain in full force and effect.
- G. **Entire Agreement** This Agreement comprises the entire understanding between the parties with respect to its subject matter and supersedes any previous communications, representations, or agreements, whether oral or written. For purposes of construction, this Agreement will be deemed to have been drafted by both parties. No modification of this Agreement will be binding on either party unless it is in writing and signed by an authorized representative of each party.
- H. **Governing Law** This Agreement will be governed in all respects by the laws of Virginia without reference to any choice of law's provisions. The parties agree that this Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods.



IN WITNESS WHEREOF, You hereto have executed this Agreement, as of the date set forth above, by the authorized representative set forth below.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Contract ID:**

**Expiration date:**