

NetFort Maintenance And Support Agreement

IMPORTANT PLEASE READ CAREFULLY BEFORE USING THE SOFTWARE.

THIS IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY) AND NETFORT WHICH SETS OUT THE TERMS AND CONDITIONS GOVERNING NETFORTS MAINTENANCE AND SUPPORT SERVICES. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS AS WELL AS WARRANTY AND LIABILITY LIMITATIONS. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT USE NETFORTS SOFTWARE OR SERVICES.

1. DEFINITIONS.

Documentation means the manuals, user guides, and other materials provided by Company to assist You in using the Products.

Fix(es) means a Workaround and/or additional or replacement lines of Software code provided by The Company to remedy a defect in the Materials that caused it to not operate substantially in accordance with its written specifications.

Materials means the Software and Documentation provided to You.

Maintenance means Services relating to any Updates that may become available by the Company during the Term of this Agreement.

Problem means hardware that does not operate in accordance with its written specifications; Software that does not operate substantially in accordance with its written specifications; or Documentation that is not correct.

Product means the proprietary computer software program identified above. Product is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related software materials, and 5) software use documents or keys, and documentation.

Response Time means the elapsed time from when The Company receives a request for assistance until the commencement of assistance.

Services or Maintenance & Technical Support Services means the maintenance and support to be provided pursuant to the terms of this Agreement repairing or replacing Product that does not operate in accordance with its written specifications.

Software means computer programs in machine-readable form granted to You under a separate software agreement by Company for use on designated CPU(s). Software does not include any version of Source Code and any operating system software installed on the CPU.

Source Code means a high level program in that is not machine-readable.

Start Date means the date of the first invoice sent to Customer which shall begin the Initial Term.

Support Period means the initial 12 months following the Start Date (the Initial Support Period). The Support Period shall also include any subsequent 12 month renewal periods in which you have paid for Services.

Special Services means any Services provided that are not part of the Maintenance & Technical Support Services in Section 3 as well as any Services provided in excess of the Monthly Allotment or total maximum allotment.

System Administrator means an employee or agent of You with sufficient training and experience to identify and isolate Problems and to provide sufficient information and assistance to Company to be able to reproduce such Problems. The System Administrator or his/her delegate shall be the single point of contact with Company when reporting Problems. Company may require You to appoint a new System Administrator if Company reasonably determines that the System Administrator does not possess the training or experience necessary to perform the required functions of the System Administrator or cannot communicate effectively with Company's support personnel.

Technical Support means access to forum, email or telephone based support personnel for the purpose of providing second line assistance to your System Administrator with the standard business use of the Product as well as any Fixes.

Updates means subsequent releases of Company Software which are generally made available for supported Software at no additional charge, other than media and handling charges, to correct design faults, discrepancies or defects (bugs) in the Product. Updates are generally designated by a change in the number appearing to the right of the initial decimal point in the Product's version number (i.e., 1.1 vs. 1.0).

Workaround means a temporary solution to a Problem.

2. TERM AND TERMINATION

The term of this Agreement shall commence on the Start Date of the initial term and end 12 months thereafter (the Initial Term). Thereafter, this Agreement shall automatically renew for succeeding 12 month annual term(s), hereinafter known as the renewal period(s) (collectively Term); unless either party provides written notice on or before 90 days preceding an anniversary of the Start Date of its intent not to renew for the next annual period. The amount of charges for any renewal period for Services shall be at Company's then current prices in effect at the time of such renewal. If a lapse in Services coverage occurs at any time, Company may invoice You a reactivation fee to inspect the Products prior to entering into a new agreement. In the event of the termination of the underlying End User Licence Agreement for the Product, it is the intent of the parties that this Agreement shall concurrently terminate. If You fail to pay any invoice in full within a period of 30 days after the same is due, Company may terminate this Agreement upon 5 business days' notice to You without any liability to You whatsoever. Except for Your failure to make payments, as

invoiced, either party may terminate this Agreement on notice if the other party has defaulted in the performance of its obligations under this Agreement, has breached any material provision of this Agreement, or becomes insolvent, invokes as a debtor any laws relating to the relief of debtors' or creditors' rights, or has such laws invoked against it as a debtor. Such termination shall be effective 30 days after notice, unless such default or breach has been cured or the terminating party is satisfied with other party's solvency within that time. Upon termination of the Agreement due to your breach, Company shall be entitled to accelerate all remaining payments for the Term and any prepaid fees shall not be refunded. The Company may terminate this Agreement if it undergoes a change of control. Such termination shall be effective 30 days after notice.

3. SOFTWARE MAINTENANCE & TECHNICAL SUPPORT

Company provides the following software maintenance and technical support and reserves the right to change or modify the Services at any time and from time to time upon 30 days written notice to you.

3.1 SOFTWARE MAINTENANCE

Whenever the Company makes Updates generally available to its users who have purchased Services, the Company will grant you a copy of the new release containing the Updates. Your use of all such Updates is subject to this Agreement and the terms of the applicable EULA previously entered into by You for the Materials.

3.2 TELEPHONE TECHNICAL SUPPORT

Provided you have elected telephone technical support and paid the applicable fees and subject to the level of support chosen, during its normal business hours of 9:00 a.m. to 5:00 p.m., Monday through Friday (except Company holidays), the Company will make a member of its technical support staff available to your System Administrator to assist you in the standard business use of the Product. Technical Support includes assistance relating to any Fixes and Workarounds as well as minor modifications to existing, standard reports.

You will receive 2 hours per month for Technical Support (Monthly Allotment) free of an additional charge. The Monthly Allotment is measured from the time assistance is provided in fifteen minute increments. You may carry forward unused hours of the Monthly Allotment to the next month. Any use of the Services over the total maximum allotment shall be considered a Special Service and any excess hours over the total maximum allotment may not be carried forward to the next month. Any overage of the Monthly Allotment is measured from the time assistance is provided in thirty minute increments. For purposes of clarity, the following is an illustration of the total maximum allotment of support hours: In Month 1 You have 2 hours of support and use 1 hour for a remainder of 1 hours for the month. For Month 2 You will have the Monthly Allotment plus the 1 hour carried forward from Month 1 for a total of 3 hours. In Month 2 you use a total of 10 hours; 3 of which will be free of an additional charge but the remaining 7 hours will be considered a Special Service and therefore charged the Special Service rate.

4. SPECIAL SERVICES

Any Special Services performed are billed on an hourly basis of the current published rate.

5. MAINTENANCE & TECHNICAL SUPPORT SERVICE EXCLUSIONS

Unless otherwise agreed to in writing by the Company, the Maintenance & Technical Support Services and the charges quoted by the Company for such Services do not cover or include the following:

- Support of a Product which has been modified or repaired other than by the Company;
- Performing Services connected with the relocation of a Product;
- Modification or replacement of a Product, repair of damage, or increase in service time caused by failure to continually provide a suitable operational environment with all facilities prescribed by the applicable documentation; including, but not limited to, the failure to provide or the failure of adequate electrical power, temperature or humidity control, or computing environment;
- Modification or replacement of a Product, repair of damage, or increase in service time caused by the use of the Product for other than the purposes for which it is authorized or not in accordance with the Materials operating guidelines;
- Modification or replacement of a Product, repair of damage, or increase in service time caused by:
 - accident
 - natural or man-made disaster which shall include but not be limited to fire, water, wind, and lightning
 - transportation
 - neglect or misuse
- Backing up or restoring programs and/or data;
- Keying, importing, converting or manipulation of data;
- On-site or formal classroom training on the operation and use of the Product or Software;
- Creation of any new non-standard, customer-defined reports; or
- Installation of the Product.

At Your request and in the Company's sole discretion, the Company may perform any of the foregoing services on a billable Special Service basis or as part of a separate professional services agreement. You agree that any Services rendered pursuant to Your request for Service which is determined by the Company to have been caused by a problem set forth above will be considered a Special Service.

6. OBLIGATIONS OF CUSTOMER

You shall provide access to your facilities and equipment in connection with the Company's performance of its obligations hereunder. No charge shall be made for such access and the Company will provide prior notification when such access is required;

You shall maintain a proper network connection near any CPU used with a Product being maintained by the Company hereunder and provide access to a voice grade local telephone;

You shall be responsible for obtaining any required third party hardware and/or software, including updates thereto;

Your System Administrator must be present when any on-site Service is provided. If applicable, You agree that if a representative is not present when the Company's technician arrives on site that no Service will be performed and You will be charged at the Special Service rate then in effect for such visit.

You may permit any device to access and use your authorized copy of the Product for the sole purpose of providing you with technical support and maintenance services. Prior to providing on-site or remote Maintenance & Technical Support, it is Your responsibility to properly backup all data.

You agree that the Company and its affiliates may collect and use technical information gathered as part of the Maintenance & Technical Support Services provided to you. The Company may use this information to ensure proper authorization of all copies of the Software as well as to improve the Company's products or provide customized services or technologies to you. Company will not disclose this information in a form that personally identifies you to any third parties.

7. SOFTWARE UPDATES, FIXES AND WORKAROUNDS

You agree that all Updates, Fixes or Workarounds furnished to You shall be deemed to be part of such Materials subject to the terms and conditions of the end user software agreement for the Materials.

8. INVOICES, TAXES AND PAYMENTS

Services fees and any Special Services charges, shall be payable within 30 days of the date of the Company's invoice. If You request Special Services, the charges for such services shall be invoiced as soon as practicable after the Special Services are provided.

If any authority imposes a duty, tax, levy or fee, excluding those based on the Company's net income, upon the Product, you agree to pay the amount specified.

Payments provided for in this Agreement shall, when overdue, be subject to a late payment charge calculated at a rate of one and one-half percent (1.5%) per month until paid; provided, however, that if the amount of such late payment charge exceeds the maximum permitted by law for such charge, such charge shall be reduced to such maximum amount.

9. WARRANTY

The Company warrants to You that Services hereunder will be performed in a professional manner and in accordance with good usage and accepted practices as established in the community in which such Services are performed. If such Services prove to be not so performed and if You notify the Company within a forty five (45) day period commencing on the date of completion of the Service, the Company will, at its sole discretion, either correct any defects and deficiencies for which it is responsible or render a full or prorated refund or credit based on the original charge for the Service. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOUR SOLE**

AND EXCLUSIVE REMEDY SHALL BE THE COMPANY'S OBLIGATION TO MAKE CORRECTIONS OR GIVE A FULL OR PRORATED CREDIT OR REFUND AS SET FORTH ABOVE.

10. LIMITATION OF LIABILITY

THE COMPANY SHALL IN NO EVENT BE LIABLE TO YOU OR ANY PERSON OR ENTITY USING ANY SERVICE SUPPLIED UNDER THIS AGREEMENT FOR ANY LOSS OF TIME, REVENUE, PROFITS, BUSINESS INTERRUPTION, INCONVENIENCE, LOSS OR DAMAGE OF DATA, LOSS OF USE OF ANY PRODUCT OR EQUIPMENT OR PROPERTY DAMAGE CAUSED BY ANY TECHNICIAN, PRODUCT OR EQUIPMENT OR THEIR FAILURE TO WORK, OR FOR ANY OTHER INDIRECT, SPECIAL, RELIANCE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, OR THE USE OR PERFORMANCE OF ANY PRODUCT OR PRODUCTS WHETHER IN AN ACTION FOR OR ARISING OUT OF ALLEGED BREACH OF WARRANTY, ALLEGED BREACH OF CONTRACT, DELAY, NEGLIGENCE (ACTIVE OR PASSIVE), STRICT TORT LIABILITY OR OTHERWISE. THE COMPANY'S ENTIRE LIABILITY FOR ANY CLAIM OR LOSS, DAMAGE, OR EXPENSE FROM ANY CAUSE WHATSOEVER, SHALL IN NO EVENT EXCEED 2,000. NO ACTION OR PROCEEDING AGAINST THE COMPANY MAY BE COMMENCED MORE THAN ONE YEAR AFTER THE SERVICES ARE COMPLETED EXCEPT FOR THE COMPANY CLAIMS RELATING TO COLLECTION OF FEES DUE AND PAYABLE BY YOU. THIS PARAGRAPH SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

11. NONWAIVER

No course of dealing, course of performance, or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right, or condition. No waiver of breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.

12. FORCE MAJEURE

Except with respect to Your obligation to make timely payments, neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labour disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation, facilities, acts or omissions of carriers or suppliers, or other causes beyond its control whether or not similar to the foregoing.

13. LAW. This Agreement is governed by the laws of Ireland without regard to any conflict of laws provisions. The parties hereto hereby consent to the exclusive jurisdiction of the courts of Ireland but nothing in this Agreement shall limit NetFort's right to seek injunctive or other equitable relief at any time from any court of competent jurisdiction to prevent or restrain (a) an infringement of its intellectual property rights and/or (b) any other breach (or attempted breach) of this Agreement.

14. ENTIRE AGREEMENT

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties, shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall not be contradicted, explained, or supplemented by any course of dealing between the Company or any of its affiliates and You or any of Your affiliates. The Company employees' statements and the Company advertisements or descriptions other than its published specifications do not constitute warranties or other contractual obligations, and shall not be relied upon by You as such. This Agreement shall not be modified or amended except by a writing signed by an authorized representative of both parties.

15. ASSIGNMENT

This Agreement may not be assigned by You without the prior written consent of the Company. The Company may assign this Agreement to any affiliate, subsidiary or successor to all or substantially all of its business relating to the Materials.

16. PARTIES BOUND

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, legatees, successors, and assignees.

17. NOTICES

Any notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered or transmitted to the intended recipient's address as either party may notify to the other from time to time. Any notice shall be deemed to have been given when received. Either party may change its notice address upon notice to the other party pursuant to this provision.

18. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, then the meaning of such paragraph or clause shall be construed so as to render it enforceable, to the extent feasible; and if no feasible interpretation would save such paragraph or clause, it shall be severed from this Agreement and the remainder shall remain in full force and effect. However, in the event such paragraph or clause is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement thereof. If the parties are unable to agree upon a replacement term within 30 days of the final ruling, either party may terminate this Agreement upon 10 days prior written notice.

19. RELEASE VOID

You shall not require releases or waivers of any personal rights from representatives of the Company in connection with visits to its premises and agrees that no such releases or waivers shall be pleaded by it in any action or proceeding.

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