

NServiceBus Commercial License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY. BY CHECKING THE BOX "I AGREE", MAKING A PURCHASE OR INSTALLING OR USING ALL OR ANY PORTION OF THE NSERVICEBUS SOFTWARE (DEFINED BELOW), YOU, ON YOUR OWN BEHALF AS AN INDIVIDUAL, AND ON BEHALF OF YOUR EMPLOYER OR ANOTHER ENTITY WHICH HAS NOT YET DONE SO (COLLECTIVELY "YOU" OR "CUSTOMER"), ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS SET FORTH BELOW ("AGREEMENT") WITH NSERVICEBUS LTD. (DOING BUSINESS AS PARTICULAR SOFTWARE) ("NSB"). IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT PURCHASE THIS SOFTWARE. YOU WILL NOT BE GIVEN ACCESS TO THE SOFTWARE UNLESS YOU ACCEPT THE TERMS OF THIS AGREEMENT. IF YOU WISH TO USE THE SOFTWARE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT. THE LICENSES GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL. IF YOU HAVE ENTERED INTO A SEPARATE WRITTEN LICENSE AGREEMENT WITH NSB FOR USE OF THE SOFTWARE, THE TERMS AND CONDITIONS OF SUCH OTHER AGREEMENT SHALL PREVAIL OVER ANY CONFLICTING TERMS OR CONDITIONS IN THIS AGREEMENT.

YOU HEREBY WAIVE ANY APPLICABLE RIGHTS TO REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS, TO THE EXTENT NOT PROHIBITED UNDER APPLICABLE LAW.

The parties hereby agree as follows:

1. Definitions.

- 1.1. "**Additional Restrictions**" means use restrictions of each respective Software as specified in the Order Form.
- 1.2. "**Automated Builds**" means an act of scripting or automating a wide variety of tasks that software developers do in their day-to-day activities. The build is "automated" to the extent that these steps are repeatable and require no direct human intervention, and can be performed at any time with no information other than what is stored in the source code control repository. This may include compiling computer source code into binary code, packaging into compressed formats and/or deployment to production systems.
- 1.3. "**Automated Tests**" means the use of special software (separate from the software being tested) to control the execution of tests and the comparison of actual outcomes with predicted outcomes. Test automation can automate some repetitive but necessary tasks in a formalized testing process already in place, or add additional testing that would be difficult to perform manually.
- 1.4. "**Business Day** – a day of the week between Monday and Friday, commencing at 08:00 GMT and ending at 17:00 GMT.
- 1.5. "**Customer Application**" means pre-existing software, hardware, systems or other applications owned or licensed by the Customer (and not including any integrated Software).
- 1.6. "**Derivative Works**" shall mean any software or work of authorship, whether in Source or Object form, that is based on or derived from the Software. For the purposes of this Agreement, Derivative Works shall not include works that merely link to the Software.
- 1.7. "**Developer**" means a human user of the Software that writes code in a programming language for the purpose of creating an Integrated Product on behalf of the Customer.
- 1.8. "**Distributable Integrations**" means an Integrated Product that has been created or developed by Customer for Production Use in connection with a product or project as set forth in the Order Form.

- 1.9. "**Documentation**" shall mean the standard written materials provided by NSB at <http://docs.particular.net> that describe the Software. Documentation does not include any written materials provided by third party licensors in connection with Third-Party Software.
- 1.10. "**Edition**" means Startup, Standard, Advanced, Enterprise and/or Ultimate as set forth in the respective Order Form. Each Edition shall include list of Software, License Type, support and payment terms as specified in Exhibit A attached hereto.
- 1.11. "**End Users**" means those human users of the Software that access or use a Distributable Integration pursuant to a license or subscription agreement entered into with Customer; employees or contractors of Customer that access or use the Integrated Product for purposes other than Customer's internal development and testing.
- 1.12. "**Integrated Product**" means the product resulting from integrating a copy of the Software or a Derivative Work with a Customer Application, by or on behalf of Customer. The Integrated Product must add meaningful value or functionality to the Software or Derivative Work.
- 1.13. "**License Effective Date**" means the date NSB receives payment of fees for the respective License according to Section 6.
- 1.14. "**License Type**" shall mean either perpetual license or subscription license (on monthly or yearly basis) as set forth in the Order Form.
- 1.15. "**New Release**" means a new generally-available release of the Software that typically includes significant new features, functionality and/or enhancements. This is typically indicated by a number to the left of the decimal point, such that, for example, Version 4.0 is a New Release from Version 3.3.
- 1.16. "**New Version**" means a generally available minor functional and technical upgrade of the Software; for example purposes only, this may include some minor new features and/or bug fixes. This is typically indicated by a number to the right of the decimal point, such that, for example, Version 3.3 is a New Version of Version 3.2.
- 1.17. "**Node**" means a single installation of an operating system (including those used by Developers Testers, and in Production Use) running on a machine (virtual or physical) on which the Software runs.
- 1.18. "**Object Form**" shall mean computer software in the form not readily perceivable by humans and suitable for machine execution without the intervening steps of interpretation or compilation.
- 1.19. "**Order Form**" means the online order form, available at www.particular.net.
- 1.20. "**Production Use**" shall mean distribution of the Software or its Derivative Works by Customer in such a way as to make it accessible to a third party or any End User of Customer. Production Use shall not include use of the software by Customer's employees or Contractors (defined below) that are using the Software solely for Customer's internal development and testing purposes.
- 1.21. "**Services**" means the professional services, if any, to be provided by NSB to Customer as described in the Order Form.
- 1.22. "**Software**" shall mean the NSB software program(s) set forth in the Order Form, attached hereto, including associated Documentation. To the extent that Customer is entitled to receive Upgrade Protection under this Agreement, then the term Software shall include all bug fixes, patches, New Versions and New Releases provided in connection thereto. Except as otherwise specified herein, the term Software does not include Third-Party Software.
- 1.23. "**Source Form**" shall mean computer software in human readable source code form that is not suitable for machine execution without the intervening steps of interpretation or compilation.
- 1.24. "**Taxes**" shall mean any form of taxation, levy, duty, customs fee, or charge of whatever nature and by whatever authority imposed (including without limitation sales, use, excise or value added taxes and withholding taxes and any fine, penalty, surcharge or interest).
- 1.25. "**Term**" shall mean either the Subscription License Term or Perpetual License Term, as applicable.

- 1.26. **"Tester"** means a human user of the Software that accesses or uses the Integrated Product in Object Form for the purpose of evaluating its fitness for use for the Customer but not for Production Use.
- 1.27. **"Third-Party Software"** shall mean software that NSB licenses from third parties and distributes or makes available as a part of, or together with, the Software.
- 1.28. **"Upgrade Protection"** shall mean the Customer is entitled to receive bug fixes, patches, New Versions and New Releases of the Software, all as they are made available for general release by NSB.

2. License.

2.1. Grant of License. During the respective Term subject to compliance with the terms of this Agreement, including without limitation payment of License Fees (defined below), NSB grants Customer a non-exclusive, non-transferable, non-sublicensable (except as permitted herein) license to do the following (the "**License**"):

- (i) For up to the number of Nodes as set forth in the Order Form for which licenses were purchased by Customer use (in Source Form or Object Form) the Software, and create Derivative Works thereof, to create, develop and test Integrated Products by integrating the Software, or Derivative Works, with the Customer Applications, but solely in connection with Customer's product or project as set forth in the Order Form; For clarity, (a) if there are multiple virtual machines running on a single physical machine, each virtual machine will be counted as a Node while the physical machine will not be counted; (b) inactive Nodes like those used for disaster recovery or the passive Nodes in an active/passive cluster will not be counted as an additional license per Node ; and (c) if 2 (two) or more Nodes are only ever used by a single human user, then those Nodes will only be counted as a single Node for licensing purposes. If a Node is used for the purpose of Automated Builds or Automated Tests ,and is not otherwise used by Developers, Testers, or for Production Use, Customer will not be required to purchase a separate license for such Node.
- (ii) directly and indirectly market, distribute, and sub-license copies of the Software (in Object Form only) to End Users but solely as included within Distributable Integrations; and
- (iii) use the Software, for up to the number of Nodes set forth in the Order Form for which Licenses were purchased by Customer, to support and maintain distributed copies of the Distributable Integrations.

2.2. Restrictions. Customer must not, and shall not permit any third party to, directly or indirectly: (i) use the Software, except as permitted under this Agreement; (ii) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to the Software for any purpose including timesharing or service bureau purposes, except as permitted by Section 2.1(ii) herein; (iii) remove or alter any copyright, trademark or proprietary notice in the Software; (iv) transfer, use or export the Software in violation of any laws or regulations of any government or governmental agency; (v) reverse engineer, decompile or modify any encrypted or encoded portion of the Software without prior written authorization from NSB; or (vi) use any portion of the Software or its Derivative Works to create a competitive service, product or technology with that of NSB. The foregoing License is also subject to any Additional Restrictions, if any, set forth in Order Form, which for the avoidance of doubt is in addition to, and without derogating from, any other use restrictions set forth herein. In addition, the scope of the License granted hereunder depends on the License Type and the type of Edition that Customer acquired under the applicable Order Form.

2.3. Derivative Works. All Derivative Works of the Software that Customer may create, or which a Contractor (defined below) may create on behalf of Customer, shall be owned by (and assigned to, if necessary) NSB, and NSB shall license the same to Customer under the same terms and conditions set forth herein for the License.

2.4. Third-Party Software. Customer acknowledges that portions of the Software include Third-Party Software (including open source software) that may be subject to the terms and conditions imposed by the licensors of the Third-Party Software ("**Third-Party Terms**"). In order to comply with the Third Party Terms a

list of the Third Party-Software and related Third-Party Terms is available at <http://particular.net/ThirdPartyLicenses>. Customer agrees (i) that its use of the Third-Party Software is subject to and governed by the Third-Party Terms; (ii) to comply with all Third-Party Terms; and (iii) that this Section 2.4 and Sections 9.2 (Warranty and Warranty Disclaimer) and 10 (Limitation of Liability) of this Agreement also apply to and govern Customer's use of the Third-Party Software. To the extent of any conflict between any Third-Party Terms and the terms of this Agreement, the Third-Party Terms shall prevail in connection with the related Third-Party Software. Notwithstanding anything to the contrary in this Agreement, NSB makes no warranty or indemnity with respect to any Third-Party Software.

3. **Customer End Users.** Customer agrees (i) to be solely responsible and liable to its End Users for their use of any Customer Application or Distributable Integration; and (ii) that, to the maximum extent permitted by applicable law, NSB will have no warranty or other obligation to End Users with respect to the Distributable Integration, and any support therefor, as well as claims, losses, liability, damages, costs or expenses in connection thereto shall be Customer's sole responsibility.

4. **Third Party Contractors.** To the extent that Customer engages a third party service provider ("**Contractor**") to provide any services in connection with this Agreement on its behalf, Customer shall (i) inform Contractor of the number of permitted Nodes and of Customer's License obligations and restrictions under this Agreement and cause Contractor to be bound by corresponding obligations and restrictions at least as restrictive as those set forth herein; and (ii) remain liable for any breach of said obligations or restrictions by Contractor.

5. **Ownership.**

5.1. **NSB.** Except for the explicit License rights expressly provided herein, NSB and its licensors have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Software and all Derivative Works (which Customer hereby agrees to assign to NSB without any additional compensation), including (without limitation) all copies and modifications of the foregoing.

5.2. **Customer.** Customer retains all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secrets and other intellectual property rights) in the Customer Application, Integrated Products and Distributable Integrations (but in all cases excluding any Software or Derivative Work integrated therein).

6. **Payment.**

6.1. **Fees.** Customer shall pay NSB the following fees (collectively "**Fees**"):

(i) **License Fee.** The total license fee or subscription fee (as applicable to the License Type) for the License is set forth in the Order Form ("**License Fee**"). If Customer wishes to increase the number of Nodes, it may do so by purchasing more licenses.

(ii) **Services Fee.** The total fee for any Services to be performed by NSB hereunder is set forth in the Order Form ("**Services Fee**").

(iii) **Additional Services.** Other Services requested by Customer shall be provided subject to the parties' written execution of a purchase order detailing the scope and fees payable in respect of such Services.

(iv) **Expenses.** In addition to the fees set forth above, Customer shall reimburse NSB for out-of-pocket expenses (including travel, accommodation and living expenses) actually incurred by NSB in connection with its performance of Services, provided prior written approval is obtained from Customer ("**Expenses**").

(v) NSB may, in its sole discretion, increase the Fees set forth in the Order Form up to ten percent (10%) each year, upon the provision of thirty (30) days' written notice thereof to Customer.

6.2. **Currency.** All Fees are stated, and must be paid, in United States Dollars.

6.3. Additional Software and Services. Unless otherwise agreed by the parties in writing, during the Term, new or additional licenses to software (including any New Releases, not covered by Upgrade Protection, to the Software), and Services, may be licensed, purchased or renewed by contacting NSB at NSB's standard then-current rates.

6.4. Invoices. NSB will e- invoice Customer for the Fees upon completing the Order Form and upon the submission of any future purchase order. Any and all payments made by Customer pursuant to this Agreement are non-refundable. Overdue payments will bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law.

6.5. Taxes. All Fees are exclusive of any Taxes, which shall be the sole responsibility of Customer. All payments and amounts due hereunder shall be paid without deduction, set-off, or counter claim and free and clear of any restrictions or conditions and without deduction for any Taxes, excluding taxes based on NSB's net income. If Customer is required under any applicable law or regulation to withhold or deduct any portion of the payments due to NSB, then the sum payable to NSB will be increased by the amount necessary so that NSB receives an amount equal to the sum it would have received had Customer not made any withholding or deduction.

7. **Term and Termination.**

7.1. Term. The duration of each License shall be subject to the License Type specified in the Order Form in connection with the Edition purchased by the Customer.

7.1.1. Term of a License which is subject to Perpetual License. If the Order Form specifies that a License to use Software is a perpetual license, such License shall become effective on the License Effective Date; and shall continue in effect until terminated as provided herein ("**Perpetual License Term**").

7.1.2. Term of a License which is subject to Subscription License. If the Order Form specifies that a License to use Software is a subscription license, such License shall become effective on the on the License Effective Date. The initial term of each subscription license shall be either monthly or annually, as specified in the Order Form from the License Effective Date ("**Subscription Initial Term**"). Following the Subscription Initial Term, the term of each subscription license shall automatically be renewed for successive one month or twelve (12) month terms, as applicable (each a "**Subscription Renewal Term**"), unless Customer or NSB provides 10 days written notice prior to the end of the Subscriptions Initial Term or any Subscription Renewal Term of its intent not to renew (the Subscription Initial Term and all Subscription Renewal Terms shall collectively be referred to as the "**Subscription License Term**"). If Customer shall continue to use the Software licensed under subscription license past any renewal date, Customer shall be deemed to have renewed the term of the license for the following term at the rates applicable for said new term.

7.2. Termination. Notwithstanding Section 7.1, this Agreement may be terminated by either party on written notice if the other party:

- (i) materially breaches the terms of this Agreement, and such breach is not cured or remedied within thirty (30) days after written notice of the breach is given to the breaching party; provided, however, that no cure period will be required for a breach of Sections 2 or 12 (Confidentiality) hereof.
- (ii) shall become insolvent, cease doing business as a going concern, make an assignment for the benefit of its creditors, or admit in writing its inability to pay debts, or if proceedings are instituted by or against it in bankruptcy, under the insolvency laws, or for receivership or dissolution, provided such proceedings are not dismissed within thirty (30) days of their commencement.

7.3. Consequences of Termination. If this Agreement is terminated:

The License under this Agreement will revert to NSB and Customer will cease all use of the Software. Within ten (10) business days of termination, Customer will destroy or deliver to NSB all copies of the

Software or any portion thereof in Customer's possession or control, and an officer of Customer will certify to NSB such destruction or delivery. Sections 2.2, 2.3, 2.4, 3 to 7 (inclusive), 9, 10, 12, and 14 to 25 (inclusive) shall survive such termination. Solely with regard to Licenses which are subject to perpetual license, Section 2.1 (iii) shall survive termination and Customer may continue to support and maintain distributed copies of the Distributable Integrations in connection with its End Users.

8. **New Versions and New Releases.**

8.1. Upgrade Protection. The Upgrade Protection for each License shall be subject to the License Type and specified in the Order Form in connection with the Edition purchased by the Customer.

8.1.1. Upgrade Protection for License which is subject to Perpetual License. Subject to Customer's compliance with this Agreement including without limitation payment of License Fees, for a period of one (1) year from the Effective Date, NSB shall provide Customer with Upgrade Protection for the Software licensed hereunder for no additional charge.

8.1.2. Upgrade Protection for License which is subject to Subscription License. Subject to Customer's compliance with this Agreement including without limitation payment of License Fees, NSB shall provide Customer with Upgrade Protection for the Software licensed hereunder for no additional charge.

8.2. Support and Upgrades. Except from the support specified in Exhibit A with regard to the respective Edition that Customer has purchased, NSB is not required under this Agreement to provide any additional Software support or maintenance services to Customer. Such additional services, if available, must be purchased separately under a separate support agreement ("**Support Agreement**"). If, pursuant to a separate Support Agreement or otherwise, NSB provides Customer with a New Version, New Release, error correction, update, or some other modification to the Software (each, an "**Upgrade**"), it shall be deemed part of the Software, and subject to the terms of this Agreement, unless the Upgrade is expressly provided subject to a separate license agreement.

8.3. General. Notwithstanding Sections 8.1 (Upgrade Protection) and 8.2 (Support and Upgrades) herein, NSB reserves the right at any time not to release, or to discontinue release of, any Software and to alter features, specifications, functions, licensing terms or other characteristics of any future releases of the Software.

9. **Warranty and Warranty Disclaimer.**

9.1. Warranty. NSB warrants that the Software will substantially conform to the specifications set forth in the Documentation for a period of ninety (90) days from the License Effective Date. The foregoing warranty shall not apply in the event that the Software is used other than in accordance with the Documentation or as permitted in this Agreement, or if the Software is modified by any party other than NSB.

9.2. Warranty Disclaimer. EXCEPT AS EXPRESSLY STATED HEREIN, THE SOFTWARE (AND ANY THIRD-PARTY SOFTWARE AND DERIVATIVE WORKS) AND ALL SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS; HOWEVER, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THE TOTAL CUMULATIVE LIABILITY OF NSB FOR ANY AND ALL DAMAGES OR LIABILITY ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE,

SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO NSB UNDER THIS AGREEMENT WITHIN ONE (1) YEAR PRECEDING THE DATE UPON WHICH THE CLAIM FOR SUCH LIABILITY IS BROUGHT.

11. **Indemnification.**

11.1. **Defense.** If, on the License Effective Date, Customer enters into a separate Support Agreement with NSB pursuant to which it purchases a Platinum or Gold support package, then, provided such support package is still in effect, NSB will defend Customer against a third party claim that Customer's use of the Software (excluding Third-Party Software) infringes its copyright ("**Infringement Claim**"), and will hold Customer harmless and pay any amounts (including reasonable attorney's fees) finally awarded to that third party by a competent court or arbitration panel or paid in settlement to that third party in connection with the Infringement Claim, provided that Customer must (i) promptly notify NSB in writing of the Infringement Claim; (ii) reasonably cooperate with NSB (at NSB's cost) in connection with the defense and settlement of the Infringement Claim; (iii) not make any admission of liability or fault without NSB's' prior written approval in connection with the Infringement Claim; and (iv) allow NSB to have sole control of the defense, including all related settlement negotiations, of the Infringement Claim.

11.2. **Injunctive Relief.** If an injunction is sought or obtained against Customer's use of the Software, or if NSB believes a claim of intellectual property infringement is reasonably foreseeable, NSB may, at its sole option and expense: (i) procure for Customer the right to continue using the affected Software; (ii) replace or modify the infringing Software so that it becomes non-infringing while giving equivalent performance; or, if NSB determines, at its sole discretion, that either (i) or (ii) is not commercially feasible, (iii) notwithstanding any other term herein, terminate this Agreement and the License (in which event Customer agrees to immediately refrain from all use of the Software) and to solely to the extent that the License Type that Customer has purchased is a perpetual license, NSB shall refund the License Fee paid for such perpetual license less a charge based upon depreciation of the Software on a four year, straight-line basis.

11.3. **Disclaimer of Liability.** NSB shall have no defense or indemnity obligation under Section 11.1 herein (i) unless Customer is up-to-date with payment of the License Fee and the support fees then due; or (ii) to the extent the Infringement Claim is based upon (a) use of the Software other than in accordance with the Documentation or as permitted in this Agreement; (b) a modification of the Software by anyone other than NSB; (c) use of any version or release of the Software other than the then-current version or release of the Software, unless the infringing portion is also in the then-current version or release; or (d) use, operation, or combination of the Software with non-NSB programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination. This Section 11 states the entire liability of NSB, and Customer's sole and exclusive remedy, with respect to any Infringement Claim and NSB shall have no additional liability hereunder or otherwise with respect to any alleged or proven infringement.

11.4. **NSB Claim.** Customer will defend NSB against a third party claim (i) that a Distributable Integration (but not to the extent it relates to any unaltered Software therein), or any portion of a Derivative Work authored by Customer, infringes its copyright; or (ii) in connection with a third party's use of a Distributable Integration, to the extent such claim does not relate to any Software (each a "**NSB Claim**"), and will hold NSB harmless and pay any amounts (including reasonable attorney's fees) finally awarded to that third party by a competent court or arbitration panel or paid in settlement to that third party in connection with the NSB Claim, provided that NSB must promptly (a) notify Customer in writing of the NSB Claim; (b) reasonably cooperate with Customer (at Customer's cost); (c) not make any admission of liability or fault without Customer's prior written approval; and (d) and allow Customer to control the defense, including all related settlement negotiations, of the NSB Claim.

12. **Confidentiality.**

12.1. Each party ("**Recipient**") may have access to certain non-public and/or proprietary information of the other party ("**Discloser**"), including (without limitation) confidential trade secrets and other information related to the products, software, pricing, product roadmaps, technology, data, know-how, inventions, or business of the other party, whether written or oral, and any such other information that, regardless of the manner in which it is furnished and given the totality of the circumstances, a reasonable person or entity

should have reason to believe is proprietary, confidential, or competitively sensitive ("**Confidential Information**").

12.2. The Recipient shall (i) keep confidential, not disclose or otherwise make available to any third party, and not use for purposes beyond the scope of this Agreement, any Confidential Information of the Discloser, without the prior written consent of the Discloser; and (ii) use at least the same degree of care that it uses to protect its own confidential information (but in no event less than reasonable care), implement appropriate measures to ensure the security, integrity, and confidentiality of the Discloser's Confidential Information, and protect it from unauthorized access or use. Notwithstanding the foregoing, the Recipient may disclose Discloser's Confidential Information to its employees and agents that need to know such information solely to permit Recipient to exercise its rights and obligations hereunder, but only if each such employee and/or agent is aware of Recipient's confidentiality obligations hereunder, is bound by confidentiality obligations at least as restrictive as the terms of this Agreement, and provided that Recipient shall be liable to Discloser for any breach of said confidentiality obligations by an employee or agent.

12.3. The Recipient's confidentiality obligations with respect to the Discloser's Confidential Information shall continue NSB for a period of two (2) years after the termination of this Agreement (but in any event, for not less than five (5) years from the Effective Date).

12.4. The confidentiality obligations under this Section 12 shall not apply to any Confidential Information that: (a) is or becomes generally available to the public other than as a result of a breach of this Agreement by the Recipient or its representatives, (ii) is or has been independently acquired or developed by the Recipient without violating any of the Recipient's obligations under this Agreement, (iii) was within the Recipient's possession prior to it being furnished to the Recipient by the Discloser, or (iv) is received from a source other than the Discloser; provided that, in the case of (iv) above, the source of such information was not known by the Recipient to be bound by a confidentiality obligation to the Discloser or any other party with respect to such information. If the Recipient is requested or required by any legal or investigative process to disclose any Confidential Information of the Discloser, the Recipient shall (to the extent legally permitted) provide the Discloser with prompt notice of each such request, as well as reasonably requested information and assistance (at Discloser's cost), so that the Discloser may seek to prevent the disclosure of its Confidential Information. If disclosure is required and a protective order is not obtained, the Recipient may disclose that portion of the Confidential Material that its legal counsel advises it is compelled to disclose.

12.5. Upon termination of this Agreement, or upon the other party's request, each party undertakes to return to the other party, or destroy, any Confidential Information belonging to the other party.

13. **Publicity.** Each party agrees that it will not use the name of the other party or its affiliates in any publicity or advertising (other than to refer to the other as a customer, as applicable) and will not publicize or disclose to any third party the terms of this Agreement without the prior written consent of the other party. Without limiting the foregoing, Customer agrees to permit NSB to publish Customer's name and logo on NSB's website and state that it is a licensee of the Software, and the parties agree to use reasonable efforts to issue one or more mutually agreed press releases disclosing the relationship entered into hereby.

14. **Continuing Business.** Nothing in this Agreement shall preclude or limit NSB from providing to, or obtaining from, a third party any software, materials or services that are the same as or substantially similar to the software, materials or services offered to, or delivered by, Customer.

15. **Disputes, Governing Law and Jurisdiction.**

15.1. Dispute Resolution. If Customer is not satisfied with the Software, or any Services provided by NSB, Customer agrees to provide NSB with a written description of its grievance and to make a good faith effort to amicably resolve said grievance with NSB before commencing any legal proceedings. NSB also agrees to make a good faith effort to amicably resolve any grievance with Customer before commencing legal proceedings.

15.2. Governing Law / Jurisdiction. This Agreement is made in, and the validity, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of, the State of New York, NY, excluding its conflicts of laws principles and excluding the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of or relating to this Agreement shall

be submitted to the exclusive jurisdiction of the courts of competent jurisdiction located in the state of New York, NY, and each party irrevocably consents to such personal jurisdiction and waives all objections to such venue.

16. **Notices.** All notices hereunder must be in writing and in English, and will be deemed given: (i) when delivered by hand or five (5) days after being sent to the respective addresses indicated on the Order Form; (ii) if sent via email (to the email address specified below), upon an email reply confirmation of receipt by the receiving party which should be sent within 2 (two) business days' receipt of the originating email; or (iii) to the facsimile numbers set forth below, using a method that provides for positive confirmation of delivery; provided all of the above that any notice from Customer to NSB includes a copy sent to:

NServiceBus Limited, Attention: General Counsel, 20 Soroka Moshe St., Haifa, 3475932, Israel;
Fax number: +972-77-550-6561

E- mail: legal@particular.net

17. **Export Responsibilities.** Customer agrees to comply with, and be solely responsible and liable for, all applicable export control restrictions in connection with its use of the Software and any technical data that NSB may provide. In the event that Customer breaches this Section 18, NSB may terminate this Agreement for material breach.

18. **U. S. Government End Users.** If the Software, or any Derivative Work, is acquired by or on behalf of a unit or agency of the U.S. Government (the "**Government**"), the Government agrees that such the Software or Derivative Work is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with respect to such Software or Derivate Work is limited by the terms of this Agreement, pursuant to applicable FAR and/or DFARS and successor regulations.

19. **Hazardous Uses.** The Software, including Derivative Works, is not intended for use in connection with any application requiring fail-safe performance, such as the operation of nuclear power facilities, air traffic control or navigation systems, weapons control systems, life support systems, or any other system whose failure could lead to injury, death, environmental damage or mass destruction. Customer agrees that NSB will have no liability of any nature, and Customer is solely responsible, for any expense, loss, injury or damage incurred as a result of such use of the Software or a Derivative Work.

20. **Assignment.** This Agreement and any rights or obligations hereunder: (i) may not be transferred or assigned by Customer without the prior written consent of NSB which shall not be unreasonably withheld; but (ii) may be transferred or assigned by NSB. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit of each party and its respective assigns. Any prohibited assignment shall be null and void.

21. **Subcontracting.** NSB may subcontract services under this Agreement to third parties or affiliates without Customer's prior approval; provided, however, that (i) subcontractors must agree to keep any Customer Confidential Information confidential; and (ii) NSB remains responsible to Customer for the performance of its obligations hereunder. Customer acknowledges and agrees that to provide certain services, it may be necessary for Customer information, including Confidential Information, to be transferred between NSB, its affiliates, and/or subcontractors, which may be located worldwide.

22. **Independent Contractor.** Nothing contained herein shall be construed as creating any agency, employment relationship, partnership, principal-agent or other form of joint enterprise between the parties. Each party shall be solely responsible for payment of its personnel including applicable taxes, deductions, other payments and benefits.

23. **Non-solicitation.** Customer agrees not to solicit or hire any personnel of NSB with whom Customer has had contact in connection with this Agreement. Customer may hire an individual employed by NSB who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

24. **Force Majeure.** Except with respect to the payment of Fees owing under this Agreement, neither party will be liable for non-performance or delays caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, volcanic activity, government restrictions, terrorist acts or other causes beyond its reasonable control.

25. **General.**

25.1. Headings and Capitalized Terms. All headings contained in this Agreement are inserted for identification and convenience, and will not be deemed part of this Agreement for purposes of interpretation. Any capitalized terms not separately defined in the exhibits to this Agreement shall have the meaning ascribed to them herein.

25.2. Severability. If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.

25.3. Waiver. The delay or failure of either party to exercise any rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.

25.4. Complete Agreement. This Agreement, including all exhibits hereto, constitutes the exclusive terms and conditions with respect to the subject matter hereof, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Customer to place orders or otherwise effect transactions hereunder. This Agreement represents the final, complete and exclusive statement of the agreement between the parties with respect to subject matter hereof and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter hereof are merged therein.

25.5. Amendment. This Agreement may not be amended except by a written instrument signed by both parties.

Non-critical support:

- Advance Edition – Up to 1 (One) Incident per month, response guaranteed within 2 Business Days.
- Enterprise Edition – Up to 3 (Three) Incidents per month, response guaranteed by the end of the following Business Day.
- Ultimate Edition – Up to 10 (Ten) Incidents per month, response guaranteed by the end of the following Business Day.

Critical support -> Support for Critical Incidents

- Startup Edition – Not Included.
- Standard Edition – Not Included.
- Advance Edition – Not Included.
- Enterprise Edition – Not Included.
- Ultimate Edition – 24 hours a day, 7 days a week, unlimited number of Critical Incidents, response guaranteed within 5 hours.

- A. The response time shall be deemed to commence from the time that NSB receives a Support Incident from the Customer's Support Email Account (defined below) or from the time that all information about the incident has been received over the phone by NSB. Notwithstanding the foregoing, if NSB notifies Customer that it requires additional information to address the Incident, the response time shall be deemed to commence once NSB receives said information from Customer.
- B. Response Time does not include the time taken by NSB to resolve the Support Incident.
- C. Critical Incidents. A "Critical Incident" is defined as a Support Incident that concerns a situation where a system, network, server, or critical program is not functioning that severely affects Customer production or profitability. Customer must allocate appropriate resources to sustain a continuous effort 24 hours a day to resolve Critical Incidents and Customer's management must be notified. If Customer does not perform these actions, the incident will be reclassified as regular Support Incident. NSB will provide continuous effort to resolve Critical Incidents 24 hours a day and senior managers at NSB are notified.