

# NServiceBus Commercial Support Agreement

This Commercial Support Agreement ("Agreement") is entered between NServiceBus Ltd. (doing business as Particular Software), located at 20 Soroka Moshe Street, Haifa 3475932, Israel ("NSB") and the customer (individual or entity) that has procured the Support and Maintenance (as defined below) on the date NSB receives payment of fees as set forth in section 6.1 (the "**Effective Date**").

READ THIS AGREEMENT CAREFULLY. BY PURCHASING SUPPORT AND MAINTENANCE, EACH CUSTOMER CONSENTS TO BE BOUND BY THE TERMS OF THIS SUPPORT AND MAINTENANCE AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT PURCHASE SUPPORT AND MAINTENANCE. IF YOU WISH TO PURCHASE SUPPORT AND MAINTENANCE 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. IF YOU HAVE ENTERED INTO A SEPARATE WRITTEN SUPPORT AND MAINTENANCE AGREEMENT WITH NSERVICEBUS LTD. (DOING BUSINESS AS PARTICULAR SOFTWARE), THE TERMS AND CONDITIONS OF SUCH OTHER AGREEMENT SHALL PREVAIL OVER ANY CONFLICTING TERMS OR CONDITIONS IN THIS AGREEMENT.

1. **Scope.** Subject to the terms and conditions of this Support Agreement, NSB agrees to provide Customer with the services set forth herein. By purchasing said services, Customer consents to be bound by the terms and conditions of this Support Agreement. Unless otherwise specified in the License Agreement, NSB has no obligation to provide Support Services or Professional Services other than as set forth herein. All capitalized terms not separately defined here have the same meaning as set forth in the License Agreement.
2. **Support Plan.**
  - 2.1. NSB offers Support Services under Gold or Platinum Plan (each a "**Plan**"), and Customer may choose to receive Support Services under any such Plan, subject to its payment of the applicable Support Services Fee (defined below). As of the Effective Date, Customer is electing to obtain Support Services under the one of the agreed Plans.
  - 2.2. Customer may change to a different Plan at any time during the Term (defined below) by notifying NSB in writing, subject to its payment of the additional applicable Support Services Fee, if any, for the new Plan.
  - 2.3. Customer acknowledges that the features of a Plan may be varied by NSB from time to time. The then-current Plan features, as displayed at <http://www.particular.net/support>, as of the date of each Renewal Term (defined below) will apply for that Renewal Term.
3. **Support Services.** Support Services consist of the following:
  - 3.1. Support Incidents.
    - 3.1.1. General. During the Term, Customer shall be entitled to submit to NSB a specified number of queries or support requests related to the Software (each a "**Support Incident**"), as set forth herein.
    - 3.1.2. Number of Support Incidents. Depending on the Plan selected, Customer is entitled to submit the following number of support incidents during the Initial Term and/or each Renewal Term ("**Quantity of Support Incidents**"):

	<b>Quantity of Support Incidents</b>
<b>Gold</b>	Unlimited Critical Incidents, 5 Non-Critical Incidents per Month
<b>Platinum</b>	Unlimited Critical Incidents, 10 Non-Critical Incidents per Month

3.1.3. Critical and Non-Critical Incidents. A “**Critical Incident**” is defined as a Support Incident suspected to be caused by a defect in the Software that causes the Customer’s system, network, server, or critical program to not function as intended, severely impacting Customer’s production or profitability. A “**Non-Critical Incident**” is defined as a Support Incident other than a Critical Incident. In the case of Critical Incidents, 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 a Non-Critical Support Incident.

NSB will provide continuous effort to resolve Critical Incidents **24 hours a day** and senior managers at NSB are notified.

Only Customers with a Gold or Platinum Plan can submit Critical Incidents to NSB unless otherwise specified on a separate licensing agreement.

3.1.4. Response Times. NSB shall use commercially reasonable efforts to respond to each validly submitted Support Incident in accordance with the following response times:

	<b>Response Time</b>
<b>Gold</b>	5 hours for Critical Incidents, 1 Business Day for Non-Critical Incidents
<b>Platinum</b>	1 hour for Critical Incidents, 1 Business Day for Non-Critical Incidents

For the purpose of this Support Agreement, Business Day shall mean a day of the week between Monday and Friday, commencing at 08:00 GMT and ending at 17:00 GMT.

- A. The response time shall be deemed to commence from the time that NSB receives a Support Incident request 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 Support Incident, the response time shall be deemed to commence once NSB receives said information from Customer.
- B. Service Credits. Subject to Section 3.1.4 (A) above, for each occurrence where NSB has not responded to Critical Incidents according to the response time set forth herein, NSB will give Customer, as NSB's exclusive liability and Customer's sole remedy for such failure, a credit in an amount equal to one month of Support Services Fees (as defined below) for Support Services determined by dividing the annual Support Services Fees for

Support Services by 12 for failure to respond to Critical Incidents (each a "**Service Credit**"). For clarity, respond to Critical Incidents means the time to respond to Customer's Support Incident request and not the time taken by NSB to resolve such Critical Incident.

To receive a Service Credit pursuant to Section 3.1.4 (B), Customer must submit a request to NSB by sending an e-mail message to support@particular.net within one month of the occurrence of the Service Credit event. If the Customer fails to do so, it will forfeit the right to receive the Service Credit.

If a Service Credit request is approved by NSB, then NSB will apply the Service Credit against future Support Services Fees to be paid by the Customer. If Support Services are not renewed for an additional term or if Support Agreement is terminated prior to the end of any term, NSB will give Customer a 50% refund of the Service Credit described above.

Notwithstanding the above, in no event shall the total Service Credit in each 12-month period commencing on the Effective Date exceed the annual Support Services Fees paid by Customer during such 12-month period.

C. Response Time does not include the time taken by NSB to resolve the Support Incident.

- 3.1.5. Technical Support Contact. Customer shall provide NSB with one email address that will be used by Customer for management of all support incidents ("**Customer's Support Email Account**"). NSB's receipt of an email from the Customer's Support Email Account will constitute the opening of one Support Incident by Customer, and the remaining Quantity of Support Incidents for Customer will be decreased by one (1).
- 3.1.6. Address and Support Incident Designation.
- 3.1.6.1. **Critical Incidents:** Customers with a Gold or Platinum Plan must submit critical incidents online at <http://www.particular.net/support> using the "Critical Incident"/"Request Emergency Support" form. As a back-up, critical incidents may also be submitted by email to: [critical@particular.net](mailto:critical@particular.net) or via phone to one of the following numbers: US: 1-888-998-4335, UK: 0-808-189-1399, Sydney local: (02) 8038-5077. Customer should specify the severity of the incident when reporting the incident via any media.
- 3.1.6.2. **Non-Critical Incidents:** Customers with a Gold or Platinum Plan can submit non-critical incidents online at <http://www.particular.net/support> using the "Non-Critical Incident"/"Request Support" form or via e-mail to [support@particular.net](mailto:support@particular.net). Customer should specify the severity of the incident when reporting the incident via any media.
- 3.1.7. Escalation. Depending on the severity of the issue, customer may be entitled to request that NSB respond to the Support Incident over the phone or via web conference: NSB will use commercially reasonable efforts to respond in accordance with Customer's desired method.
- 3.1.8. Expiration. To the extent that Customer does not utilize the total Quantity of Support Incidents during any year of the Initial Term or any Renewal Term, the

unused Quantity of Support Incidents will expire and be forfeited and shall not accrue or be carried over to a subsequent period of Support Services.

4. **Exclusions.**

4.1. General. Support Services do not include: (i) providing access to new software, programs, modules or features that NSB advertises or licenses separately from any Software; (ii) support or fixes for errors that result from the unauthorized or improper use of any Software or that result from the failure to implement any relevant improvements, modifications or New Versions made available by NSB; (iii) support or fixes for errors that result from, or are in connection with, any breach of the License Agreement; (iv) support or fixes for errors that do not materially affect the operation of the Software; (v) providing custom enhancements, features or modifications; (vi) providing assistance for any of Customer's applications or other third-party applications; (vii) providing direct assistance to any Customer end user; (viii) on-site support; or (ix) any hardware or related equipment. In any event, the provision of Support Services is subject to Customer's compliance with the License Agreement and this Support Agreement, including, without limitation, its payment in full of all applicable Fees.

4.2. Covered Software Versions. Customer acknowledges and agrees that NSB shall only provide Support Services for: (i) the then-current release of the Software; and (ii) the immediately previous release of the Software. NSB is not under any obligation to provide Support Services in connection with any Third-Party Software.

5. **Customer's Responsibilities and Undertakings.** Customer is responsible for and undertakes to:

- A. Provide and maintain all hardware, operating systems, and third-party software required to operate the Software in compliance with the terms set forth herein and in the License Agreement;
- B. Ensure that the Software is only operated by qualified, properly trained and experienced Customer staff and/or permitted agents;
- C. Provide and maintain phone lines, internet access, and any other such infrastructure required to communicate with NSB;
- D. Incorporate the latest generally available update or New Version of the Software no later than six (6) months after that update or New Version has been made generally available by NSB;
- E. Undertake reasonable efforts to solve problems related to any Software before contacting NSB;
- F. Provide NSB with all information, documentation and assistance as NSB might reasonably require in order to perform Support Services, including, without limitation, to provide NSB with the setup information, application knowledge, listing of any output, detailed steps required to enable NSB to replicate the problem, exact wording of error messages and any other data that NSB may reasonably request in order to reproduce operating conditions similar to those present when the error occurred;
- G. Act as the sole point-of-contact for Customer's end users and customers; and
- H. Possess a valid fully-paid license to Software for which Support Services is sought; Customer agrees that NSB shall not be required to provide Support Services for any Software that is not the subject of a valid fully-paid license.

6. **Fees.**

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

- A. Support Services Fee. The total fee for the Support Services is set forth in Exhibit A ("**Support Services Fee**") which will be provided after customer contacts sales@particular.net; and/or
  - B. Professional Services Fee. The total fee for any Professional Services is set forth in Exhibit A ("**Professional Services Fee**") which will be provided after customer contacts sales@particular.net.
  - C. 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 Support Services or Professional Services, provided prior approval to incur such expenses is obtained from Customer ("**Expenses**").
- 6.2. Payment Schedule.
- A. Support Services Fee. Support Services are purchased annually (or for such other period as the parties mutually agree in writing) by paying the applicable Support Services Fee. Payment of the Support Services Fee for the Initial Term is due and payable as per the schedule defined in Exhibit A which will be provided after customer contacts sales@particular.net; Section 5.1 – Payment Terms. The Support Services Fee for each successive Renewal Term during which Support Services are purchased by Customer shall be due and payable per the Payment Terms defined in Exhibit A which will be provided after customer contacts sales@particular.net. If Customer allows Support Services to lapse through non-payment of the Support Services Fee, Customer shall be required to pay all Fees that would have been due for the period of such lapse, prior to NSB resuming its provision of Support Services.
  - B. Professional Services Fee. All Professional Services Fees shall be paid prior to the provision of said Professional Services, unless otherwise mutually agreed by the parties in writing.
- 6.3. Invoices. Customer must make payment of all Fees hereunder within thirty (30) days of the date of invoice. Any and all payments made by Customer pursuant to this Support Agreement are non-refundable. Overdue payments may bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under applicable law.
- 6.4. Currency. All Fees are stated, and must be paid, in United States Dollars.
- 6.5. Price Increases. NSB may increase prices for Support Services from time to time upon notice to Customer, but never by more than 5% per year. Prices for Professional Services shall be at NSB's then current-rates.
- 6.6. Taxes. Payment of all Fees is net of any taxes, deductions, withholdings or setoff. If Customer is required under any applicable law or regulation, domestic or foreign, 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 made no withholding or deductions.
- 6.7. Additional Support Services. If Customer (i) licenses additional software from NSB; (ii) increases the scope of its Software license pursuant to the License Agreement; or (iii) purchases additional products (including, without limitation, any additional Utilized Cores), during the Term, Customer shall be required to pay additional Support Services Fees at the prices set forth in Exhibit A which will be provided after customer contacts

sales@particular.net; or, in the absence of such pricing, at NSB's then-current rates prior to receiving Support Services for any of the foregoing.

7. **Term.**

7.1. **Term.** This Support Agreement shall be effective upon the Effective Date and shall continue for a period of one (1) year (the "**Initial Term**"). Thereafter, this Support Agreement will be automatically renewed for successive one (1) year terms (each a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless NSB or Customer provides sixty (60) days written notice prior to the end of the Initial Term or any Renewal Term of its intent not to renew. Notwithstanding the foregoing, this Agreement may be terminated as specified in Section 8 herein.

7.2. **Payment of Support Services Fee.** Notwithstanding Section 7.1, NSB shall be under no obligation to provide Support Services for a Term until such time as it has received the corresponding Support Services Fee for that Term.

8. **Termination.** This Support Agreement will automatically terminate: (i) in the event that Customer's license to the Software is terminated in accordance with the terms and conditions of the License Agreement; or (ii) if Customer fails to pay the then-current Support Services Fee when due or otherwise breaches the terms of this Support Agreement. NSB has no obligation to provide Support Services following termination of this Support Agreement.

9. **Professional Services.** NSB shall provide Customer with the Professional Services described in Exhibit B, attached hereto, as well as any other additional Professional Services that Customer may request from time to time (subject to NSB's approval). The provision of any Professional Services is subject to Customer's payment of the related Professional Services Fees, as set forth in Exhibit A which will be provided after customer contacts sales@particular.net.

10. **Confidential Information.** The terms of the section entitled "Confidentiality" in the License Agreement shall apply to, and are hereby incorporated into, this Support Agreement.

11. **Limited Warranty.** NSB MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUPPORT SERVICES, PROFESSIONAL SERVICES OR SUBJECT MATTER OF THIS SUPPORT AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, OR ANY OTHER WARRANTY OF ANY KIND.

12. **Limited Liability.** NSB SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS SUPPORT AGREEMENT, OR FOR LOST PROFITS, DATA, CONVENIENCE, REVENUE OR BUSINESS, EVEN IF IT HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF NSB TO CUSTOMER FOR ANY AND ALL LIABILITY ARISING UNDER OR RELATED TO THIS SUPPORT AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID TO NSB BY THE CUSTOMER UNDER THIS SUPPORT AGREEMENT FOR THE SPECIFIC SUPPORT SERVICES OR PROFESSIONAL SERVICES THAT ARE THE SUBJECT OF THE CLAIM WITHIN THE TWELVE (12) MONTHS PRECEDING THE DATE UPON WHICH THE CLAIM FOR SUCH LIABILITY IS BROUGHT.

13. **Assignment.** Customer may not assign this Support Agreement without the prior written consent of NSB, provided that such consent shall not be required for assignment to a purchaser of all or substantially all of the assets or equity securities of Customer that undertakes in writing to be

bound by all the terms and conditions of this Support Agreement. Any prohibited assignment shall be null and void.

14. **General Provisions.** 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 Israel. 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 Tel Aviv-Yaffo, Israel, and each party irrevocably consents to such personal jurisdiction and waives all objections to such venue. Except for Customer's obligation to pay NSB, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any provision of this Support Agreement is held to be unenforceable, that provision will be removed and the remaining provisions will remain in full force. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. This Support Agreement (i) is the complete and exclusive statement of the agreement between NSB and Customer regarding the subject matter of this Support Agreement and supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this Support Agreement; (ii) shall inure only to the benefit of NSB, Customer, and their valid successors and assigns; (iii) shall not be modified except by a subsequently dated written amendment or exhibit signed by the duly authorized representatives of both parties; and (iv) may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument. The parties may exchange signature pages by facsimile and such signatures will be effective to bind the parties. The parties may also sign this Support Agreement using DocuSign ([www.docuSign.com](http://www.docuSign.com)) and such electronic signatures will be effective to bind the parties, and each party agrees that it shall not deny the legal validity of the foregoing.