



National Stormwater Trust, Inc.

Master Terms Agreement

(Version 02282022)

1. Definitions

The following definitions apply throughout this agreement. All terms not defined below shall have the meanings as used in the commercial practices contemplated or otherwise as used in the laws of the state of Florida.

- a. **Agreement** collectively means the current version of this Master Terms Agreement and all orders and order addendums.
- b. **Applicable laws** mean federal, state, regional, and local laws and regulations that apply to performance of the services.
- c. **Capital upgrade project** means owner funded projects involving improvements to system infrastructure that are not system deficiency corrections.
- d. **Commencement date** means (i) for equipment and hardware and their related operating systems and integrated software, the date of delivery to you, and (ii) for programs, the effective date of the order.
- e. **Environmental condition** means air, surface water, stormwater, groundwater, soil, organic material, sediments, debris, or waste that contains, is mixed with, transports, or carries pollutants (defined as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or industrial, municipal, or agricultural waste), hazardous substances (defined as any hazardous, toxic, or harmful substances, wastes, matter, pollutants, or contaminants, or any other substances or materials that are included under or regulated by state or federal environmental laws), petroleum substances, or other contaminants and that resides or is carried on, in, through, or off of the facility, regardless of whether any of the above are manmade or occur naturally.
- f. **Environmental liability** means any liability from any claim, demand, action, suit, or proceeding for the injury, disease, or death of any person, property damage, damage to the environment, or damage to natural resources made, asserted, or prosecuted by or on behalf of any third party (whether based on negligent acts or omissions, statutory liability, or strict liability without fault or otherwise) arising or alleged to arise in the past or the future under any applicable law pertaining to the facility.
- g. **Equipment** means tangible items, other than hardware, such as control boxes, wiring, cable, sensors, control valves, solar systems, etc., that are installed or constructed at the facility and that are necessary for the system to operate. Certain equipment, such as sensors, may have integrated software and operating systems.
- h. **Facility** means a stormwater or wastewater treatment pond or structure, or other water body, and related real property and equipment to which the services and system pertain.
- i. **Force majeure event** means a foreign or domestic act of war, hostility, terrorism, riot, vandalism, or sabotage; computer, system, or program hack or ransomware attack; act of God; electrical, internet, or telecommunication outage, in each case that is not caused or reasonably foreseeable by the obligated party; government restrictions, including without limitation travel restrictions; cancelations of licenses, permits, or property rights; or other event outside the reasonable control of the obligated party.

- j. **Hardware** means integrated software or “firmware” and related tangible items, such as circuit or control boards, etc., that are essential to a functioning system.
- k. **Intellectual property** means the legally valid intellectual property rights of a party to this agreement or a related contracting entity in its pre-existing or independently developed designs, specifications, plans, or data.
- l. **Licensor** means a related contracting entity that provides programs or equipment as part of the services.
- m. **Materials** means tangible items, such as basic materials, supplies, goods, parts, etc., supplied by NST or related contracting entities, and used for construction or installation of the system.
- n. **NST** means National Stormwater Trust, Inc., a Maryland corporation, or any affiliated entities owned or managed by National Stormwater Trust, Inc. that you contract with in an order.
- o. **Or** means and includes “and.”
- p. **Order** means NST’s current order template document, negotiated and signed by both parties pursuant to this agreement, that details, among other things, the equipment, facility, hardware, materials, services, products, programs, and compensation to be provided. Order does not mean or include any form of purchase order that you may issue pertaining to this agreement.
- q. **Order Addendum** means a written addendum to an order signed by both parties in accordance with this agreement.
- r. **Parties** mean you and NST.
- s. **Points of demarcation**, if set forth in an order, mean the points on the system where ownership or responsibility for the system changes from NST to the owner of the facility or system.
- t. **Preexisting** means existing prior to services commencing.
- u. **Programs** mean the software owned or distributed by NST that you have ordered and any software updates provided by NST or its licensor to you.
- v. **Program documentation** means the equipment, hardware, or program user manuals, installation manuals, and warranties provided by NST to you.
- w. **Promptly** means to make payment or complete actions as specified by this agreement or an order or order addendum, or, if a time is not specified, then in an expeditious manner.
- x. **Related contracting entity** means a contractor or subcontractor of NST at any tier.
- y. **Renewal and replacement services** mean those services that are required to renew or replace system assets or structures that fail or that have reached the end of their useful life.
- z. **Service provider personnel** means all NST employees performing services.
- aa. **Services** mean planning, design, engineering, installation, oversight, renewal and replacement services, operation and maintenance services, system deficiency correction projects, transition services, capital upgrades, technical support, education, hosted/outsourcing, or any other assistance or work to be performed by NST or related contracting entities that are specified in an order or order addendum.
- bb. **System(s)** means the equipment, hardware, programs, infrastructure, and related appurtenances installed at the facility by NST or a related contracting entity or operated by NST or a related contracting entity up to any applicable points of demarcation identified in the order, less any exceptions identified in the order.
- cc. **System deficiency correction project** means system-owner funded projects that are necessary to bring the system into compliance with federal, state, or local laws or regulations or to improve the system to meet industry or other applicable standards.
- dd. **Transition services** means services supporting the transition of day-to-day responsibility for providing services at a facility from the owner to NST.



- ee. **Third party** means all individuals, entities, organizations, or governments, in any form whatsoever, that are not a named party in the order and/or not a related contracting entity.
- ff. **You, your, or customer** means the individual or entity that is identified in an order and that has entered into this agreement by executing the order for programs or services from NST.

2. Applicability; Consideration

This agreement covers all services performed by NST according to an order. IF YOU HAVE ENTERED INTO A SEPARATE AGREEMENT WITH NST TO (I) RENT OR LEASE FROM NST; (II) LEASE OR CONTRACT FOR PERSONNEL FROM NST; OR (III) PURCHASE STORMWATER TREATMENT CAPACITY FROM NST, THEN THOSE ELEMENTS OF YOUR RELATIONSHIP WITH NST ARE COVERED BY THOSE AGREEMENTS AND NOT THIS AGREEMENT. The parties agree that the mutual promises contained in this agreement and orders constitute good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

3. Orders and Order Addendums

- a. Orders. NST's obligations relating to, and compensation for, equipment, hardware, materials, programs, and the performance of services shall be set forth in this agreement and in one or more written NST orders negotiated by the parties (and if applicable under Section 3(b) below, order addendums). Either party may propose the terms for an order or order addendum. Upon execution by both parties (whether in counterparts or electronically), an order or order addendum shall be valid and enforceable and shall be incorporated in and governed by this agreement. All orders and order addendums shall be valid and enforceable regardless of whether they are physically attached to this agreement. An order or order addendum shall not constitute an amendment of this agreement unless specifically identified as such and executed by the parties.
- b. Order addendums.
 - i. Either party may, at any time, make a written proposal to the other party to negotiate good faith changes to any order or order addendum if the change is within the general scope of this agreement.
 - ii. All proposed changes shall be negotiated in good faith. If the parties agree to a change that causes an increase or decrease in the cost of, or the time required for, performance of any part of this agreement, the parties also must negotiate in good faith the terms and conditions for an equitable adjustment to the price or delivery schedule of the order and modify it accordingly as a part of the order addendum.
 - iii. NST shall have no duty to proceed with any change until and unless the parties have executed an order addendum; provided, however, that nothing shall be construed as prohibiting NST from, upon notice to you, reasonably responding to public health and safety emergencies affecting the system prior to the negotiation or execution of an order addendum.
- c. Differing site conditions.
 - i. NST shall, prior to entering into any order, review all Customer-provided photographs, as-built drawings, and other documentation of each facility to which the order pertains.
 - ii. NST shall, before commencing any construction services at a facility, inspect the facility and provide written notice to you of (1) known subsurface or latent physical conditions at the facility that differ materially from those indicated in the order or described or depicted in information made available to NST during the order negotiation process; and (2) readily apparent physical conditions at the facility that differ materially from those depicted in the information you provided.

- iii. You agree to promptly investigate any identified facility conditions pursuant to 3(c)(ii) above after receiving the notice from NST. If the conditions cause an increase in NST's cost of, or the time required for, performing any part of the services under an order, an equitable adjustment shall be made under this clause and the applicable order shall be modified in writing to reflect the adjustment; provided, however, that you shall have the right to terminate the applicable order if there are increased costs or delays as a result of such identified facility conditions unacceptable to you upon payment of any actual costs incurred by NST with respect to the applicable order (i.e., fabrication costs of specialty items fabricated specifically for the order, but not program design, implementation or integration fees).
- d. Compensation, costs, and expenses. You shall promptly pay the compensation as and when specified in the order.
 - i. Where services are provided on a time and materials basis:
 - (1) the hourly fees payable for the services plus the related costs and expenses shall be as specified in the order; and
 - (2) NST shall invoice monthly in arrears with detail regarding all costs, expenses, and other charges.
 - ii. Where services or other items are provided for a fixed price, the total amount shall be as specified in the order plus, if specified in the order, additional costs, expenses, and other charges, all of which shall be invoiced as specified in the order.
- e. Payment obligations and general invoicing procedures.
 - i. Once placed, your order is non-cancelable and the sums paid nonrefundable, except as provided in this agreement or the order.
 - ii. In entering into payment obligations under an order, you agree and acknowledge that you have not relied on the future availability of any equipment, hardware, or program updates.
 - iii. You understand that you may receive multiple invoices for the services or items contained in an order.
 - iv. Unless otherwise specified in the order:
 - (1) all payments due to NST are payable within 30 days of the date of the invoice;
 - (2) equipment and hardware are invoiced to you upon order placement by NST. Equipment and hardware typically are specialty or custom items;
 - (3) program design, implementation, and integration fees are invoiced upon order placement by NST. All other fees related to programs are invoiced as of the commencement date for the programs;
 - (4) service fees generally are invoiced according to the order; however, technical support fees are invoiced annually in advance, and operation & maintenance fees are invoiced monthly.
- f. Payment, taxes, shipping, and handling.

Unless otherwise specified in the order:

 - i. all government taxes and assessments pertaining to equipment, hardware, materials, programs, services, warranties, or anything else ordered from NST (other than income, franchise and similar taxes of NST) are your sole responsibility and liability regardless of when they are invoiced or demanded by a taxing authority. Tax exemptions must be properly documented to NST at the time of the order;
 - ii. all orders shall include costs of shipping, transportation, packing, crating and handling; however, if you request expedited delivery of any item, you agree to pay or reimburse NST for all reasonable shipping, transportation, packing, crating, and handling charges, taking into consideration the system status and the urgency of your need or request.



- g. Liens. All items sold to you shall be delivered free of liens and encumbrances.
- h. Conflicts. In the event of a conflict between the terms of an order or order addendum and this agreement, the terms of the order or order addendum shall govern.
- i. Records requests and subpoenas pertaining to orders. Orders do not contemplate or include NST fees or costs for complying with records requests or subpoenas made by or on behalf of you (or persons suing you) related to orders. NST agrees to timely respond to such records requests and subpoenas relative to orders in accordance with applicable law. You agree to promptly pay NST its time and materials charges pertaining to all such requests for information regarding your orders, regardless of whether an open order with you exists at the time of the request.

4. Services

- a. NST shall (whether itself or through its related contracting entities):
 - i. furnish and provide all supervision, labor, tools, and other resources necessary to perform the services in accordance with the orders and order addendums.
 - ii. employ skilled and experienced service provider personnel in providing the services, and any services assigned to and performed by related contracting entities shall be assigned only to related contracting entities that NST believes, at the time services are provided, are skilled and experienced at their trade. All services shall be performed in a manner that meets or exceeds industry standards for comparable work performed by reputable, experienced contractors in the local area of the facility.
 - iii. perform services in compliance with applicable laws, and its service provider personnel shall comply with your safety policies that are communicated in writing to the NST Project Manager identified in the applicable order.
 - iv. maintain a neat and orderly designated laydown area and work site, collect all NST trash daily, and remove all NST trash and surplus materials at the end of each portion of the work contemplated by an order or order addendum.
 - v. along with its service provider personnel and related contracting entities, comply with your security, access, identification, and badging requirements and regulations that are communicated in writing to the NST Project Manager identified in the applicable order.
 - vi. before the start date of the applicable services and during the order term, obtain and maintain all necessary and applicable licenses and regulatory consents for the services.
 - vii. employ individuals and related contracting entities in compliance with applicable laws.
 - viii. be responsible for timely compensating its related contracting entities and obtaining lien releases from them pursuant to Florida law at the time of each payment. If a facility is owned by a government, then NST, in its contracts, shall prohibit related contracting entities from filing notices of liens or liens against the facility. NST shall provide you with lien waivers covering all lienable work promptly after such work is complete (which shall include lien waivers from NST, if applicable). require related contracting entities to comply with confidentiality requirements if any are included in the order.
 - ix. maintain its records evidencing the services provided and payments to related contracting entities for two years after completion of the order and make those records available to you within a reasonable time after written request without cost to you.
 - x. maintain at all times during the term of an open order the types and amounts of insurance coverage specified in the certificate of insurance attached to the order. This subsection shall not be construed as waiving, restricting, or limiting in any manner the liability of either party for any obligations imposed under this agreement, including without limitation any provisions requiring a party to indemnify, defend, or hold harmless the other party under this agreement.



b. Customer shall:

- i. cooperate with NST fully and promptly regarding the services and orders.
- ii. provide and maintain continuous access to all facilities that the order pertains to for such period of time as NST is providing services to customer, subject to any restrictions or requirements in the order and any safety or access protocol communicated in writing to the NST Project Manager identified in the order.
- iii. respond promptly to any NST request to provide direction, information, approvals, authorizations, or decisions within customer's control that are reasonably necessary for NST to perform the services as ordered.
- iv. promptly provide information as NST may reasonably request to carry out the services and ensure that the information is complete and accurate to the best of your knowledge and belief.
- v. inform NST prior to the service start date of all known regulatory, structural, and operation and maintenance issues and deficiencies pertaining to the facilities, including without limitation known or suspected environmental conditions.
- vi. assume and be responsible for risk of loss and security of equipment and hardware on installation (if NST is installing such equipment or hardware, otherwise on delivery), and of materials, programs, and other items ordered once those items are delivered to you or to the facility, unless the order states otherwise.

c. General.

- i. NST shall not be in breach of this agreement or in any way liable or responsible to you or third parties for any costs, charges, or losses sustained or incurred by you if a prevention or delay in performance of the services is caused or initiated by (1) your act or omission, (2) the act or omission of your contractors (at any tier), agents, or authorized representatives, or (3) a force majeure event.
- ii. NST shall not be in breach of this agreement or in any way liable or responsible to you or third parties for preexisting environmental conditions unless NST negligently exacerbates the environmental condition and NST's negligent actions directly result in you incurring damages. NST shall not be in breach of this agreement or in any way liable or responsible to you or third parties for environmental conditions that occur in the future and are not caused or contributed to, directly or indirectly, by NST. NST shall promptly advise you of any environmental conditions it discovers, the effects of which are governed by Section 3(c)(iii) hereof.
- iii. Unless agreed to in an order or order addendum, NST shall not be legally or financially responsible for actions or omissions of you or third parties, including without limitation your contractors (at any tier) that may work at a facility from time to time.

5. Equipment, Hardware, and Materials

- a. Purchase and title. Equipment, hardware, and materials may be purchased from NST by an order. NST may invoice you for partial deliveries unless otherwise detailed in the order or order addendum. Title and risk of loss to equipment, hardware, and materials transfer to you as specified in 4(b)(vi); however, NST or its licensors retain all intellectual property rights to all systems except as expressly set forth herein.
- b. Delivery and acceptance. Deliveries to you will be at the location you specified in the order. You shall promptly notify the carrier of any damage after risk of loss shifts to you and complete the carrier's required paperwork regarding damage or rejection.
- c. Installation. You are responsible for installation (and the consequences of improper installation) of the equipment, hardware, and materials unless you purchase installation services from NST.

- d. Substitutions. NST may make substitutions and modifications that do not cause a material adverse effect in overall system performance.
- e. Intellectual property rights granted. Certain equipment and hardware contain operating systems and integrated software (collectively, the “OS”). Upon NST’s delivery of your order, you have the nonexclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the ordering document), limited right to use the OS solely for your internal business operations and subject to the terms of this agreement, the order, and the program documentation. You may allow your agents and contractors to use the OS solely for this purpose, and you are responsible for their compliance with this agreement in such use. Program documentation for the OS is delivered after installation of the equipment and hardware, or you may access the documentation online at <http://nationalstormwater.com/programdocumentation>. NST acknowledges that the sublicensed rights granted under this provision and applicable orders are intended to provide long-term operating systems for you, and that in the event that NST goes out of business or otherwise transfers or assigns the OS to another party, the foregoing rights of you to the OS shall not be impaired or restricted by NST, and that you shall have the right to fully continue to operate your system and the OS as contemplated in this agreement and all applicable orders.
- f. Ownership and restrictions. NST or its licensors retain all ownership and intellectual property rights to the OS. NST retains all ownership and intellectual property rights to anything developed or delivered under this agreement by NST. You may not:
 - i. remove or modify any OS markings or any notice of NST’s or its licensors’ intellectual property or proprietary rights;
 - ii. make the OS or materials resulting from the services available in any manner to any third party for use in the third party’s business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);
 - iii. cause or permit reverse engineering (unless required by law for interoperability), disassembly, or decompilation of the OS. The foregoing prohibition includes but is not limited to review of data structures or similar materials produced by the OS; or
 - iv. disclose results of any OS benchmark tests to any party other than your employees, engineers, consultants, agents or attorneys without NST’s prior written consent.
- g. Equipment and hardware warranties, disclaimers, and exclusive remedies.
 - i. Most equipment and hardware come with vendor-supplied warranties, all of which shall be provided to you by NST.
 - ii. After delivery and installation (if NST is installing), NST will promptly fill out and submit to the vendor (and provide you with copies of) any applicable vendor supplied warranty paperwork for such equipment and hardware.
 - iii. Unless you have engaged NST to operate and maintain the equipment and hardware, you will be responsible for maintaining the equipment and hardware in full compliance with the applicable warranty(ies).
 - iv. If NST installed the equipment or hardware and you purchased services from NST for the operation and maintenance of the equipment and hardware, then NST shall provide you with the following limited warranty for the equipment and hardware:
 - (1) **ALL AVAILABLE VENDOR SUPPLIED WARRANTIES SHALL BE PRIMARY FOR ALL CLAIMS, AND NST’S WARRANTY SHALL BE SECONDARY IN ALL RESPECTS.** NST provides a secondary limited warranty (“NST Equipment & Hardware Warranty”) for (a) the equipment and hardware, (b) operating systems and integrated software (including but not limited to, the OS), and (c) the operating system media and the integrated software media

(collectively, “media”). NST warrants that the equipment and hardware will be free from, and that using the operating system and integrated software will be free from, and will not cause in the equipment or hardware, material defects in materials and workmanship for one year from the date the equipment or hardware is delivered to you. NST warrants that the media will be free from material defects in materials and workmanship for a period of 1 year from the date the media is delivered to you. The NST Equipment & Hardware Warranty applies (i) to all equipment and hardware sold by NST to you, and (ii) only to OS and media that has been created by or for NST and sold by NST to you.

- (2) Replacement units for defective parts or components replaced under the NST Equipment & Hardware Warranty may be new or like new quality. The installation of replacement units does not extend the warranty of the hardware into which they are installed. Title in all defective parts or components covered by the warranty shall transfer back to NST upon removal. If you remove the defective parts or components covered by the warranty, you are responsible for promptly returning them to NST.
- (3) The NST Equipment & Hardware Warranty does not apply to normal wear of the equipment, hardware, or media. The NST Equipment & Hardware Warranty is extended only to the original purchaser or original lessee of the equipment or hardware and are voided if title to the equipment or hardware is transferred to a third party other than to the extent transferred by you to a governmental entity or district assuming responsibility for the operation of the stormwater system that the equipment, hardware and media becomes a part.
- (4) **NST DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE HARDWARE, OPERATING SYSTEM, INTEGRATED SOFTWARE, OR MEDIA.**
- (5) **FOR ANY BREACH OF THE WARRANTIES IN THIS SECTION, YOUR EXCLUSIVE REMEDY AND NST’S ENTIRE LIABILITY SHALL BE (I) THE REPAIR OR, AT NST’S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE PRODUCT, OR, (II) IF SUCH REPAIR OR REPLACEMENT IS NOT REASONABLY ACHIEVABLE, THE REFUND OF THE FEES YOU PAID NST FOR THE DEFECTIVE PRODUCT AND THE REFUND OF ANY UNUSED PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE DEFECTIVE PRODUCT. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY WARRANTIES OR CONDITION OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- (6) No warranty will apply to any equipment, hardware, operating system, integrated software, or media that has been:
 - a. modified, altered, or adapted without NST’s written consent (including modification or removal of the NST or a vendor’s serial number tag);
 - b. maltreated or used in a manner other than in accordance with the relevant documentation provided by NST to you;
 - c. repaired by any third party in a manner that fails to meet the standards set forth in the warranty and other documentation provided by NST to you;
 - d. installed by any party other than NST or an authorized NST certified installation partner;
 - e. used with equipment or software not covered by the NST Equipment & Hardware Warranty, to the extent that the problem is attributable to such use;
 - f. relocated, to the extent that the problem is attributable to such relocation;
 - g. purchased from any entity other than NST or an NST authorized distributor.

- h. Equipment and Hardware Technical Support. If ordered, NST Equipment and Hardware Technical Support is provided under the most current version of NST's Equipment and Hardware Support Policies. You agree to cooperate with NST and provide all access, resources, materials, personnel, information, and consents that NST may reasonably require in order to perform the support services. NST Equipment and Hardware Support Policies, incorporated in this agreement, are subject to change at NST's discretion; however, NST will not materially reduce the level of support services provided or invoke policies that materially and adversely affect the operation of the system during the period for which fees for NST Hardware and Systems Support have been paid.
- i. Equipment and hardware intellectual property rights claims and responses. If the hardware or equipment provider believes or it is determined that the equipment or hardware (or portion thereof) may have violated a third party's intellectual property rights, then NST or the vendor, or both, may choose to either replace or modify the equipment or hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality), obtain a right to allow for continued use or, if these alternatives are not commercially reasonable, remove the applicable hardware (or portion thereof) and refund the net book value.

6. Programs

- a. Intellectual property rights granted. Upon NST's delivery of your order, you have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the ordering document), limited right to use the programs you ordered solely for your internal business operations and subject to the terms of this agreement, the order, and the program documentation. You may allow your agents, engineers, consultants, and contractors to use the programs solely for this purpose, and you are responsible for their compliance with this agreement in such use.
- b. Ownership and restrictions. Subject to the terms hereof, NST or its licensors retain all ownership and intellectual property rights to the programs. NST retains all ownership and intellectual property rights to anything developed and delivered by NST under this agreement.

You may not:

- i. remove or modify any program markings or any notice of NST's or its licensors' intellectual property or proprietary rights;
 - ii. make the programs or materials produced by programs available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials produced by the program);
 - iii. cause or permit reverse engineering (unless required by law for interoperability), disassembly, or decompilation of the programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs); or
 - iv. disclose results of any program benchmark tests to anyone other than your employees, engineers, consultants, agents, or attorneys without NST's prior written consent.
- c. Warranties, disclaimers, and exclusive remedies.
 - i. NST warrants that a program licensed to you hereunder will operate in all material respects as described in the program documentation for one year after installation services related to the program are complete. You must notify NST of any program warranty claim within one year after that date. NST also warrants that warranty services will be provided in a professional

manner consistent with industry standards. You must notify NST in writing of any deficiencies in warranty services within 10 days from discovery of the deficient warranty services.

- ii. **NST DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT NST WILL BE ABLE TO CORRECT ALL PROGRAM ERRORS.**
 - iii. **FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND NST'S ENTIRE LIABILITY SHALL BE: (1) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE A BREACH OF THE WARRANTY. IF NST CANNOT SUBSTANTIALLY CORRECT THE BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES YOU PAID TO NST FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE PROGRAM LICENSE; OR (2) THE RE-PERFORMANCE OF THE DEFICIENT SERVICES. IF NST CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND RECOVER THE FEES YOU PAID TO NST FOR THEM.**
 - iv. **TO THE EXTENT NOT PROHIBITED BY LAW, THE WARRANTIES IN THIS SECTION ARE EXCLUSIVE, AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- d. Technical support.
- i. If you purchased and manage the programs yourself rather than contracting with NST to manage them for you, you may purchase technical support from NST for the programs. Technical support consists of annual technical support services you order from NST. If ordered, annual technical support is provided under NST's technical support policies in effect at the time the support services are provided. The technical support policies incorporated into this agreement are subject to change at NST's discretion; however, NST policy changes will not result in a material reduction in the level of support services provided for the supported programs during the period for which fees for technical support have been paid.
 - ii. Unless otherwise stated in the order, technical support begins on the effective date of the order.
- e. Intellectual property claims and indemnification.
- i. If a third party makes a claim against either you or NST that any information, design, specification, instruction, software, data, or material (collectively, "Information") infringes its intellectual property rights, the provider of the Information ("Provider"), at its sole cost and expense, will defend the recipient of the Information ("Recipient") against the claim and indemnify the Recipient from all damages, liabilities, costs, and expenses incurred if the Recipient does the following: (1) notifies the Provider of the claim promptly in writing not later than three business days after the Recipient receives notice of the claim (or sooner if required by applicable law); (2) gives the Provider sole control of the defense and any settlement negotiations; and (3) gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.
 - ii. If the Provider believes or it is determined that any of the Information may have violated a third party's intellectual property rights, the Provider may choose to either modify the Information to be non-infringing (while substantially preserving its utility or function) or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the Information and refund any fees the Recipient may have paid to the other party for it and any unused, prepaid technical support fees you have paid to NST for the license. If you are the Provider and the



return materially affects NST's ability to meet its obligations under the order, then NST may, at its option and upon 30 days prior written notice, terminate the order.

- iii. The Provider will not be required to indemnify the Recipient if the Recipient alters the Information, uses it outside the scope of use identified in the Provider's user documentation, or uses a version of the Information that has been superseded, but only if the infringement claim could have been avoided by using an unaltered version of the Information provided to the Recipient. The Provider will not be required to indemnify the Recipient if an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. NST will not indemnify you if an infringement claim is based upon the combination of any Information with any products or services not provided by NST. NST will not indemnify you for infringement if the program(s) as delivered to you and used in accordance with this agreement would not otherwise infringe any third-party intellectual property rights. NST will not indemnify you for any infringement claim that is based on: (1) a patent that you were aware of prior to the effective date of this agreement; or (2) your actions prior to the effective date of this agreement. This section provides the parties' exclusive remedy for any infringement claims or damages.

7. End of Agreement

If either of us breaches a material term of this agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate this agreement. If NST terminates this agreement as specified in the preceding sentence, you must pay within 30 days all amounts that have accrued prior to termination and all sums remaining unpaid for anything you ordered or services received under this agreement, plus related taxes and expenses. If NST ends the license as provided herein for a program under Section 6(e), you must pay within 30 days all amounts remaining unpaid for services related to the license, plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30-day period for so long as the breaching party continues reasonable efforts to cure the breach. Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment, use of the system components and others that, by their nature, are intended to survive.

8. Entire Agreement

You agree that this agreement and the information that is incorporated into this agreement by written reference, together with all orders and order addendums, are the complete agreement for anything ordered by you, and that this agreement supersedes all prior or contemporaneous agreements and representations, written or oral, pertaining to what you order. If any term of this agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and the term shall be replaced with a term consistent with the purpose and intent of this agreement. It is expressly agreed that the terms and conditions of this agreement and any order shall supersede the terms and conditions in any purchase order, proposal, or other non-NST document, and no terms or conditions included in any purchase order or other non-NST document shall apply to the items you order. The version of this agreement in effect at the time you sign an order shall govern the order.

9. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. NST'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER AND



NOT CAUSED BY NST'S NEGLIGENCE OR WILLFUL MISCONDUCT SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID NST UNDER THIS AGREEMENT. IF ANY DAMAGES RESULT FROM YOUR USE OF PROGRAMS, MATERIALS, HARDWARE, EQUIPMENT, OR SERVICES, NST'S LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID NST FOR THE PROGRAMS, MATERIALS, HARDWARE, EQUIPMENT, OR SERVICES GIVING RISE TO THE LIABILITY.

10. Notices

Any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier requiring a delivery signature or by United States certified mail, return receipt requested, to the Parties as follows:

If to NST:

Addressed to: NST, its General Counsel,
and its officer, member, or manager specified in
your most recent order
Address: as specified in your most recent order

If to Customer:

Addressed to: the customer and its
officer, member, or manager specified in
your most recent order
Address: as specified in your most recent order

Any notice given by overnight courier shall be effective as of the date of delivery, and any notice given by United States certified mail, return receipt requested, shall be effective as of the fifth business day following its official postmark date, regardless of whether it is signed for by the intended recipient.

11. Amendments

An order may be amended only in accordance with Section 3 above. This agreement may be amended only by a written document executed by duly authorized representatives of you and NST; however, the parties acknowledge and agree that this may be a long-term business relationship and, as such, NST may request certain revisions to this agreement to accommodate or comply with future permit, regulatory, risk management, force majeure, or landowner issues or requirements. If such requests are made by NST to you, you agree to promptly review and act upon the requests, and any approval by you of the requests shall not be unreasonably withheld.

12. Applicable Law, Venue, and WAIVER OF JURY TRIAL.

You and NST shall be contractually bound to this agreement, which shall be governed solely by the laws of the state of Florida. Venue for all disputes pertaining to this Agreement shall be in federal or state court in Leon County, Florida. **WAIVER OF JURY TRIAL: You and NST hereby agree that each knowingly, voluntarily, and intentionally waives the right to a trial by jury with respect to any litigation, claim, or cause of action based on or arising out of, under, or in connection with this agreement or any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether oral or written), or action of the other party.**

13. Successors and Assigns



This agreement shall inure to the benefit of and be binding upon the successors and assigns of you and NST. Except as expressly set forth in an order or order addendum, you shall not assign any interest hereunder without the prior written approval of NST and compliance with Section 11 above. You may not assign this agreement or give or transfer the services or systems or an interest in them to another individual or entity. If you grant a security interest in the services, systems, or any deliverables, the secured party has no right to use or transfer the services, systems, or deliverables.

14. No Third-Party Beneficiaries

This agreement does not confer any benefits to persons or entities who are not either parties or successors or permitted assigns of the parties.

15. Confidentiality and Public Records Laws

The terms of this agreement are confidential and may not be disclosed to third parties except: (a) to the parties' respective employees, owners, agents, consultants, engineers, attorneys, or accountants, or (b) as otherwise required by public records laws, court order, subpoena, or with the written permission of NST. You acknowledge that, due to NST's contractual relationships with various governments, information disclosed or communicated to NST may be subject to disclosure under applicable state or federal public records laws or regulations.

16. Other Terms

- a. Program audits. Upon 45 days' written notice, NST, its related contracting entities, or an intellectual property owner may audit your use of the programs, subject to your reasonable rules and regulations provided for safety and the protection of privilege and confidentiality. You agree to cooperate with the audit and provide reasonable assistance and access to information. Any audit shall not unreasonably interfere with your normal business operations. You agree to pay, within 30 days of written notification, any fees applicable to your use of the programs in excess of your purchased license rights. If you do not pay, NST can terminate your technical support, licenses, or this agreement.
- b. Third parties. You understand and agree that all third-parties retained by you are independent of NST and are not NST's agents. NST is not liable for nor bound by any acts of any third-parties unless they are a related contracting entity.
- c. Force Majeure. Neither of us shall be responsible for a failure or delay of performance if caused by a force majeure event. We both will use reasonable efforts to mitigate the effects of a force majeure event. If such an event continues for more than 120 days, either of us may cancel unperformed orders (or portions thereof) upon written notice. A cancellation under this section does not excuse either party's obligation to take reasonable steps to follow its normal emergency response procedures or your obligation to pay for equipment, materials, programs, or hardware ordered or delivered, or services provided.
- d. Segmentation. The purchase of (i) hardware or related hardware support, (ii) programs or related technical support, (iii) materials, (iv) equipment, or (v) services are all separate offers and separate from anything else you may order, receive, or have received from NST. You understand and agree that you may purchase anything from NST independently of any other product or service. Your obligation to pay for what you order is not contingent on the performance of any other service or delivery of any other item.

[END – MASTER TERMS AGREEMENT, VERSION 02282022]