



Microsoft **Terms and Conditions**

Version 0.1 – 01/10/2021

Definitions

Unless otherwise specified, the Definitions used herein are as detailed elsewhere in the Contract.

Claim: means a third-party action, cause of action, suit, or judicial claim brought by a party other than Nasstar.

Online Services (OLS): means Microsoft-hosted services to which the Customer subscribes under the Contract. It does not include software and services provided under separate licence terms.

SKU: means the Stock Keeping Unit used as a unique identifying and tracking code by Microsoft.

Subscription: means right to use a Microsoft Product for a defined term.

Third Party Claim: means any third-party claims or allegations against Microsoft and/or Nasstar that arise out of or relate to any solution or services a Customer provides that are alleged to directly or indirectly infringe the third party's patent, copyright or trademark or make unlawful use of its trade secret.

Terms and Conditions

1. Changes

- 1.1 Nasstar may have to implement changes to the Contract due to changes imposed by Microsoft from time to time. Nasstar will provide the Customer no less than thirty (30) days' prior notice before such changes become effective; after such time such changes to the Contract will become effective without further action by the parties.
- 1.2 Nasstar may action any Microsoft update, or otherwise modify, an existing Microsoft Product to add new features or functionality at any time.
- 1.3 Nasstar will provide Customer with no less than thirty (30) days' prior notice before discontinuing a Microsoft Product or removing any existing features or functionality of a Microsoft Product (or SKU of a Microsoft Product) unless such discontinuance or removal relates to a currency fluctuation event.

2. Payment and delivery

- 2.1 Order fulfilment dates and times for Microsoft Products are estimates only. Nasstar may reject any purchase order, in whole or part, within ten (10) days from the receipt of Customer's order. Nasstar will notify the Customer if any order is rejected.
- 2.2 If either party identifies a discrepancy between any quantity, charges, fees or other amount they must report that discrepancy to the other party within ten (10) Business Days after the invoice issue date and must provide adequate and timely assistance to investigate and resolve the discrepancy. Nasstar reserves the right to correct non-material errors on invoices by sending a courtesy corrected invoice, provided that the due date reflected on the original invoice will remain applicable. If Nasstar issues an invoice with a material error, then Nasstar will issue a new invoice to the Customer, and the due date reflected by that subsequent invoice will apply. If Nasstar determines that the Customer has overpaid, Nasstar will give the Customer a credit. Any payment disputes will be treated separately from the Customer's obligation to pay invoices and other amounts when due.
- 2.3 The Customer acknowledges that the Charges are subject to any Microsoft Product fee changes. Nasstar will provide the Customer with no less than thirty (30) days' notice of such changes except for the prices for:
 - (a) Microsoft Azure Services which may change without notice, and
 - (b) any changes due to currency fluctuation events.

3. Audit and payment shortfall

- 3.1 During the term of the Contract and for a period of three (3) years thereafter, the Customer shall allow Nasstar or Microsoft (or Microsoft's duly authorised representatives), at reasonable times and on reasonable notice, to access and take copies of all relevant documentation in the Customer's possession or control and to access all Customer equipment as is reasonably required for the purpose of verifying that the use of the Software by the Customer and its users is in accordance with the terms of the Contract and to verify the Customer's compliance with the Contract generally. Any such verification shall occur not more than once during each twelve (12) month period, save where Nasstar has reasonable grounds for supposing that there has been breach or malfeasance on the Customer's part or in the case of a Government intervention.
- 3.2 If the Customer has failed to pay for the correct level of usage, or if there is any other payment shortfall, the Customer shall within thirty (30) days of notification from Nasstar:
 - (a) make good any payment shortfall;
 - (b) purchase any necessary additional licences;
 - (c) pay such sum(s) as Nasstar may be liable to pay to its licensors for such excess or incorrect usage (whether for the relevant number of users or otherwise), which will include in the case of



any Microsoft Product, one hundred and twenty five per cent (125%) of the unit price for such Microsoft Product for the period and volume of use or such other amount as Microsoft may from specify time to time as being payable in the case of excess or incorrect usage); and

- (d) reimburse Nasstar and its licensors (as appropriate) for the expenses incurred by them in conducting any review or audit where this uncovers any payment shortfall of five per cent (5%) or more.

- 3.3 If an audit reveals an underpayment Nasstar may suspend all pending orders, further shipments, or the Customer's access to Goods, Software, Services and/or Microsoft Products under the Contract.

4. WARRANTIES AND DISCLAIMERS

- 4.1 Nasstar does not provide the Microsoft Product with a warranty of any kind. In so far as it is possible, and provided that Nasstar is permitted to do so under its contracts with Microsoft, it will pass on the benefit of any warranties to the Customer which it receives from Microsoft in relation to any Microsoft Product supplied by Nasstar pursuant to the Contract.
- 4.2 Unless stated otherwise ALL MICROSOFT PRODUCTS ARE PROVIDED TO THE CUSTOMER "AS IS" AND TO THE MAXIMUM EXTENT PERMITTED BY LAW ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED.
- 4.3 Any Microsoft Product supplied by Nasstar will be subject to any terms or conditions, including any limitations on use, set out or referred to in the Contract, and in such documentation or media on which the Microsoft Product is supplied. The Customer shall, and shall ensure that its end users shall, comply with any such terms or conditions, including any 'click- wrap' licence, end user licence agreement or other licence terms under which the Microsoft Product is provided, including any use policies.
- 4.4 If requested, the Customer will defend Microsoft and/or Nasstar (including by paying external attorneys' fees and costs and expenses of defence) from, and will pay any resulting adverse final judgment or settlement (to which Microsoft and/or Nasstar consents) associated with, a Claim or Third Party Claim that arises out of or is connected with any default or breach or alleged default or breach of the Contract by the Customer or any other act or omission in relation to either the Contract.
- 4.5 **HIGH RISK USE WARNING.** UNLESS OTHERWISE EXPLICITLY STATED IN THE CONTRACT, THE MICROSOFT PRODUCTS ARE NOT DESIGNED OR INTENDED FOR HIGH RISK USE SCENARIOS WHERE FAILURE OR FAULT OF ANY KIND OF THE PRODUCT COULD REASONABLY BE SEEN TO LEAD TO DEATH OR SERIOUS BODILY INJURY, OR TO SEVERE DAMAGE TO TANGIBLE OR INTANGIBLE PROPERTY OR THE ENVIRONMENT.

5. LIMITS ON LIABILITY

For Microsoft Products provided free of charge and code that the Customer is authorized to redistribute to third parties without separate payment to Microsoft, Nasstar's liability is limited to direct damages finally awarded up to (four thousand pounds) £4,000.

6. Termination

- 6.1 Nasstar may terminate the Contract immediately upon written notice to the Customer due to:
 - (a) infringement, misappropriation or violation of Microsoft's Intellectual Property Rights by the Customer; or
 - (b) Microsoft terminating its contracts with Nasstar.
- 6.2 Furthermore, if required by Microsoft (due to no fault on Nasstar's part) Nasstar may terminate or modify the Contract. Such termination will not affect Nasstar's right to invoice the Customer for an order, or the Customer's obligation to pay Nasstar. If Nasstar terminates the Contract under this clause, the Customer will not have any claim against either Nasstar or Microsoft for damages or lost profits resulting from the termination. Nasstar will be entitled to invoice the Customer for the Goods, Software, Services and Microsoft Products that the Customer ordered before termination.

7. Disablement and cancellation of subscription offers

- 7.1 Nasstar (i) will not provide a refund in connection with the Customer's cancellation of a Subscription if such cancellation occurs outside of the stated return period, and (ii) reserves the right to invoice the Customer for any future scheduled billings for any Subscription cancelled in such a manner; cancellation terms may vary depending on the Microsoft Product. Upon cancellation, the Customer will have ninety (90) days to migrate any Customer Data to either a new Subscription with Nasstar, with Microsoft directly, or to some other service. Upon request, Nasstar and/or Microsoft may assist with migration of the Customer's Data for an additional charge.
- 7.2 If required by Microsoft, Nasstar may temporarily disable a Customer's Subscription for legal or regulatory reasons or as otherwise permitted under the Contract. Nasstar will notify the Customer of



such a disablement as soon as commercially reasonable. If Microsoft requires Nasstar to disable the Customer's Subscription, Nasstar will suspend billing to the Customer for the Customer's Subscription until the Subscription is re-enabled.

- 7.3 If a Subscription is cancelled by Microsoft before its term expires and during the Customer's billing cycle, (i) Microsoft will provide a prorated credit for the un-used pre-paid portion of the cancelled Subscription in the Customer's subsequent invoice, provided that such cancellation is not due to any violation of the terms of the Contract and (ii) Nasstar will not invoice the Customer for any future scheduled billings for that Subscription.

8. Fixed term OLS subscriptions

Fixed term OLS Subscriptions may automatically renew for twelve (12) months at the end of a subscription term. The Customer may opt out of automatic renewal by advising Nasstar accordingly at the commencement of the OLS Subscriptions. Pricing for a renewal term will be reviewed by Nasstar in accordance with Microsoft's pricing as of the commencement of the renewal term. Consumption Subscriptions do not expire unless cancelled.

