

NASSTAR GENERAL TERMS

1. Introduction

- 1.1 These General Terms form part of each Contract, along with the other documents referred to in or incorporated into an Order Form or other Sales Document.
- 1.2 Definitions for terms used in each Contract and rules governing the way in which each Contract shall be interpreted are detailed in clause 29 (below).

2. Term

- 2.1 A Contract shall commence on the Effective Date and will continue until the end of the Initial Term, unless terminated earlier in accordance with its terms.
- 2.2 A Contract will automatically renew for a further period of twelve (12) months at the end of the Initial Term and at the end of each applicable Renewal Term, unless:
 - (a) either party gives the notice required to terminate the Contract before the end of the Initial Term or the then-current Renewal Term in accordance with clause 16; or
 - (b) the Contract or a Service supplied under it may not be automatically renewed at Law; or
 - (c) the Contract expressly provides that the Contract or a Service supplied under it shall not automatically renew or shall expire at the end of the stipulated Term.
- 2.3 The Term shall apply to all Services supplied under a Contract except those which are only temporary in nature (for example, implementation services or non-recurring service requests) and those which may not be automatically renewed at Law.

3. Services

- 3.1 Nasstar will perform each Service:
 - (a) with reasonable care and skill; and
 - (b) in accordance with the terms of the Contract.
- 3.2 Any timescales in a Contract for its commencement or performance are indicative only. Nasstar will use reasonable efforts to meet such timescales and will notify the Customer (where it is reasonably practicable to do so) where Nasstar is unable to meet such timescales.

4. Customer Obligations

The Customer shall perform the Customer Obligations. In particular, the Customer shall:

- (a) comply with all applicable Laws relating to its use or receipt of the Services or any Software, Equipment or other Deliverables;
- (b) promptly provide with reasonable care and skill such assistance, information and cooperation as Nasstar may reasonably request from time to time in order for Nasstar

to perform its obligations and ensure that all information provided to Nasstar is accurate, adequate and complete;

- (c) provide, in a timely manner, such Customer Input Material as is specified in a Contract and such other Customer Input Material as Nasstar may reasonably request for the performance of a Contract and ensure that it is accurate in all material respects;
- (d) bear all responsibility and liability regarding the content of the information or data transmitted on any communications network through its use of the Services;
- (e) use the Services and any Software, Equipment or other Deliverables only for its own internal business purposes and for no other purpose unless expressly provided otherwise in the Contract;
- (f) comply with the Acceptable Use Policy;
- (g) make and communicate any decisions required for Nasstar to perform its obligations;
- (h) comply with all reasonable instructions that Nasstar may give to the Customer from time to time;
- (i) perform its obligations in accordance with the timescales set out in the Contract or, if no timescales are specified, promptly and without undue delay; and
- (j) be responsible for access and use of the Service by all Users and for ensuring all Users comply with the Customer Obligations.

5. Charges and Payment

Charges and Expenses

5.1 The Customer shall pay Nasstar:

- (a) the Charges; and
- (b) the Expenses,

in accordance with this clause 5 and any other applicable payment terms or conditions set out in the Contract.

Value Added Tax

5.2 All sums payable by the Customer shall be exclusive of Value Added Tax. The Customer shall pay all Value Added Tax properly chargeable on those sums, provided that Nasstar has delivered a correct VAT invoice.

Invoicing frequency

5.3 Nasstar shall invoice the Customer at the frequencies or milestones specified in the Contract or, if no invoicing frequency is specified for any particular sums payable by the Customer, Nasstar may invoice:

- (a) one-off Charges on the Effective Date or such later date as Nasstar may determine in its sole discretion and in such increments or milestones as Nasstar may determine in its sole discretion;
- (b) recurring Charges monthly in advance or, in the case of recurring Charges that are payable by reference to the amount of usage, monthly in arrears; and
- (c) any other Charges at such reasonable intervals as Nasstar may determine.

Purchase orders

- 5.4 The Customer shall promptly provide Nasstar with any purchase orders or other administrative details that it requires in order for Nasstar to raise or for the Customer to pay invoices in accordance with this clause 5 ("**Purchase Order Details**"). The Customer shall remain liable to pay invoices raised by Nasstar in accordance with this clause 5 even if Nasstar does not have the correct Purchase Order Details. The Customer will notify Nasstar promptly and in any event within seven (7) days of receiving an invoice from Nasstar if the invoice omits necessary Purchase Order Details or contains incorrect or incomplete Purchase Order Details.

Payment terms

- 5.5 The Customer shall pay Nasstar in cleared funds no later than thirty (30) days after the date of the relevant invoice, unless different payment terms are specified in the Contract, in the same currency as denominated on the invoice. The Charges shall be paid by direct debit payment where Nasstar so requires or by such other electronic payment method as may be accepted by Nasstar from time to time.

Interest for late payment

- 5.6 If the Customer fails to pay any sums due under a Contract on or before the due date for payment, the Customer shall pay interest on the outstanding amount. Interest shall accrue at a daily rate from the due date until the date of actual payment in full (whether before or after judgment) at the rate of four percent (4%) per annum over the Bank of England Base Rate or, as Nasstar may elect, at the rate and on the basis specified under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall pay any interest so charged immediately on demand.

Set-off and withholding

- 5.7 The Customer shall pay Nasstar all sums under the Contract in full without any set-off, counterclaim or deduction. If the Customer is required by law to deduct or withhold an amount from any sum payable to Nasstar under the Contract (whether as a result of tax or otherwise), the Customer shall pay to Nasstar a sum that ensures that Nasstar receives and retains a net sum equal to the amount Nasstar would have received if no such deduction or withholding had been made or been required to be made. If Nasstar has liabilities to the Customer, Nasstar may elect to set-off any sums payable by Nasstar to the Customer against any sums payable by the Customer to Nasstar.

Acceleration of payment on termination

- 5.8 All sums payable by the Customer to Nasstar under the Contract shall become due immediately on its termination, despite any other provision of the Contract and without prejudice to

Nasstar's right to charge interest on late payment. Such sums shall include any sums that are payable as a result of termination but have not yet been invoiced by Nasstar, including those due under clause 17.

Invoice disputes

- 5.9 If the Customer disputes the whole or part of an invoice, the Customer shall notify Nasstar in writing by email to finance@nasstar.com (or by such other means as Nasstar may advise from time to time), before the due date for payment. The notice must state that the invoice is disputed and be accompanied by details of the invoice that is being disputed and the reasons for the dispute. If the disputed amount is less than five percent (5%) of an invoice, the Customer shall pay the invoice in full. If the disputed amount is five percent (5%) or more of an invoice, the Customer shall pay the undisputed amount. Nasstar and the Customer shall each use reasonable endeavours to resolve the dispute as soon as reasonably practicable. The Customer waives the right to dispute its liability to pay any invoice in respect of which it has not raised a dispute in accordance with this clause.

Right to vary the Charges

- 5.10 Nasstar shall be entitled to vary the Charges:
- (a) once in every twelve (12) month period during the Initial Term or Renewal Term in line with the percentage increase in the Retail Prices Index over the preceding twelve (12) month period, unless the Contract stipulates fixed prices; or
 - (b) after the expiry of the Initial Term or a Renewal Term, by such amount as Nasstar considers appropriate in its absolute discretion, provided that Nasstar gives such notice with sufficient time for the Customer to give the notice required to terminate the Contract before the commencement of the next Renewal Term;
 - (c) at any time where it is required to do so by Law, or is otherwise directed to do so by a Government Authority;
 - (d) at any time where there is an increase in the costs of supply (including foreign exchange fluctuation, increases in taxes and duties, increases in the cost of fuel, labour and materials, increased charges levied on Nasstar by its third party suppliers), by any amount which corresponds to such an increase in those costs, unless the Contract stipulates fixed prices; and
 - (e) at any time where there is a change in the scope or usage of the corresponding Services.

Where reasonably practicable, Nasstar will give to the Customer not less than thirty (30) days' notice of any such variation in Charges or such shorter notice period as may be stated in a Contract. The Customer acknowledges that international call rates fluctuate in line with changes to Nasstar's wholesale charges as notified by its partners from time to time and international call tariffs may be updated daily (available on the Website).

- 5.11 Nasstar may vary its standard hourly or daily rates for any Services from time to time unless the Contract stipulates fixed rates.

Payment Guarantee

- 5.12 Nasstar may from time to time limit the amount of credit which it advances to the Customer or require the Customer to pay a deposit, make payments on account, or provide a guarantee or some other form of security as security for payment of future Charges, or limit the amount of Services which can be self-provisioned by the Customer through the Customer portal.

Calculation of Charges

- 5.13 Where Charges are based on consumption, without prejudice to any quantities that may be specified on the Order Form, the Customer must pay for the volume of Services, Software or Equipment consumed or its minimum purchase commitment (whichever is greater).
- 5.14 Notwithstanding anything else stated in the Contract, in the event that Nasstar makes a Service available for the Customer's use or performs a Contract in part prior to making the full scope of the Service available or performing the Contract in full, then Nasstar shall invoice and the Customer shall pay a pro rata proportion of the Charges which will be calculated in relation to the part of the Service that is made available or the part of the Contract which is performed.

Additional Charges

- 5.15 Where any support or assistance is required by the Customer and is outside of the scope of a Contract, additional charges will be payable based on Nasstar's standard rates for such support or assistance at the relevant time, along with any Expenses incurred by Nasstar in providing such support or assistance. This may include any support provided by Nasstar to determine the origin or cause of a Service Failure for which Nasstar subsequently determines (acting reasonably) it was not responsible or support provided by Nasstar to resolve any fault attributable to the Customer or the Customer's other contractors or vendors (or as a result of a service provided by any of them).
- 5.16 If there is a delay in the Service Commencement Date due to the inability of Nasstar to obtain required information from the Customer or any other act or omission of the Customer, Nasstar shall be entitled to charge the Customer (acting reasonably) for:
- (a) any activities such as installation or set-up that Nasstar would have otherwise been entitled to invoice only on or after the Service Commencement Date;
 - (b) any activities such as installation or set-up; and
 - (c) the provision of Services that were due to commence on the Service Commencement Date, even if Nasstar has not been able to commence providing the Services,

in addition to any other rights that Nasstar may have to vary the Charges, recover additional Expenses or charge additional sums under clause 11.

6. Access to Customer Sites

- 6.1 The Customer will provide Nasstar and its Personnel access to the Customer Sites as reasonably required for Nasstar to perform the Contract. The Customer shall ensure that the Customer Sites are in a suitable condition for Nasstar to perform its obligations and exercise its rights and that they have appropriate security, power and other facilities as Nasstar would reasonably

expect for its Personnel to perform their responsibilities. Nasstar shall use reasonable endeavours to ensure that its Personnel observe the Customer Site Rules.

- 6.2 Where Nasstar requires access to a Customer Site to enable Nasstar to provide a Service (including to install, maintain, upgrade or remove Nasstar Equipment), the Customer shall (at its own expense) as appropriate:
- (a) carry out all necessary preparatory work required by Nasstar in sufficient time in order for Nasstar to fulfil its obligations under a Contract;
 - (b) obtain all necessary consents, including consents for any necessary alterations to buildings from the landlord;
 - (c) provide a suitable and safe working environment, including all necessary trunking, conduits and cable trays, in accordance with the relevant installation standards;
 - (d) provide any electricity and telecommunication connection points required by Nasstar, and comply with any other technical specifications agreed between Nasstar and the Customer;
 - (e) provide any openings in buildings required to connect Nasstar Equipment to appropriate telecommunications facilities;
 - (f) provide internal cabling between Nasstar Equipment to any Customer Equipment; and
 - (g) be responsible for carrying out any making good or decorator's work required after installation or removal,

except as otherwise stated in the Contract.

7. Equipment

Ownership

- 7.1 Nasstar (or its Affiliates or third-party suppliers) shall at all times retain full title to Nasstar Equipment. The Customer shall at all times retain full title to the Customer Equipment.

Nasstar Equipment

- 7.2 Risk in Nasstar Equipment shall pass to the Customer upon delivery to or installation at the Customer Site or any other premises nominated by the Customer for delivery. The Customer shall not move, add to, modify or in any way interfere with Nasstar Equipment, nor allow anyone else (other than someone authorised by Nasstar) to do so. The Customer shall be liable to Nasstar for any loss of or damage to Nasstar Equipment, except where the loss or damage is due to fair wear and tear or is caused by Nasstar or anyone acting on its behalf, and the Customer shall maintain adequate insurance in respect of Nasstar Equipment throughout the Term and until Nasstar regains possession of the Nasstar Equipment.
- 7.3 Following the effective date of termination of a Contract or a Service, the Customer shall promptly return all Nasstar Equipment. If the Customer fails to return the Nasstar Equipment or provide suitable evidence of its return (such as a proof of sending or a signed receipt from

Nasstar) within fourteen (14) days after the effective date of termination, then Nasstar may at its sole discretion:

- (a) enter the Customer Site or premises and take possession of it (and the Customer shall provide such access to Nasstar as is necessary for such purposes in accordance with clause 6) and charge the Customer for such removal or repossession at Nasstar's standard rates from time to time; or
- (b) charge the Customer for the Nasstar Equipment,

and until its return or repossession or purchase, the Customer shall be solely responsible for its safe keeping.

Customer Equipment

7.4 The Customer is responsible for the provision, installation, configuration, monitoring and maintenance of any Customer Equipment, save as otherwise expressly provided in a Contract.

7.5 The Customer shall ensure that Customer Equipment:

- (a) is connected and used in accordance with applicable Law and any instructions, safety and security procedures applicable to the use of that Customer Equipment;
- (b) is in good working order and does not cause harm to or otherwise interfere with Nasstar Equipment, the Nasstar Network or any Service;
- (c) is technically compatible and otherwise suitable for use with the Nasstar Equipment, the Nasstar Network or any Service and complies with applicable Law; and
- (d) is properly licensed and maintained and upgraded at all times and that any Customer Equipment for use with Nasstar's Managed Services is covered by a maintenance or support contract for the Term (and Nasstar shall not be required to perform any maintenance or support in relation to any hardware or software which is not supported by the relevant licensor or manufacturer).

7.6 If any Customer Equipment does not comply with clause 7.5:

- (a) the Customer shall upon notice from Nasstar, disconnect such Customer Equipment or permit Nasstar (subject to paying Nasstar for any charges incurred) to do the same; and
- (b) Nasstar's obligations in Clause 3.1 (including any failure to meet Service Levels) shall not apply to the extent of any non-conformance which is caused by any failure of any Customer Equipment to comply with this clause 7, and Nasstar shall not be in breach of contract or otherwise liable to the Customer for any loss of or damage (including to data, systems or programs) arising as a result of such failure.

7.6.2 Nasstar expressly excludes any commitment to the Customer regarding the interoperability between a Service and any Customer Equipment, unless otherwise stated in a Contract.

7.6.3 It is the Customer's responsibility to check with the relevant manufacturer or third party provider that any Customer Equipment or third party services will operate correctly when used with any Nasstar Services.

7.7 If any Customer Equipment is installed on Nasstar premises, such as a Nasstar data centre or Nasstar colocation space, and the Customer either does not remove the Customer Equipment within thirty (30) days' following the effective date of termination of a Contract or Service or requests for Nasstar to remove or dispose of such Customer Equipment, Nasstar shall be entitled to charge the Customer for cleaning, removal and disposal of such Customer Equipment at Nasstar's standard rates and will, on request, disclose the destruction certificate (if any) to the Customer.

8. Intellectual Property

Ownership

8.1 Except as stated in a Contract, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of Nasstar, its Affiliates or its licensors, including any Intellectual Property Rights subsisting in any Services, Software, Equipment or Deliverables or in any other materials used or supplied by Nasstar pursuant to a Contract, whether pre-existing or created or coming into existence during the performance of a Contract, but excluding any Intellectual Property Rights subsisting in the Customer Input Material. Except as expressly provided in a Contract, Nasstar shall not acquire any right, title or interest in the Customer Input Material.

8.2 Where either party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 8.1, it shall assign (including by way of a present assignment of future rights) in writing such Intellectual Property Rights as it has acquired to the other party on its request (whenever made) and execute all documents and do all further acts or things as the other party may require to perfect the assignment.

Licences

8.3 Nasstar grants the Customer a non-exclusive, non-transferable right and licence to use any Intellectual Property Rights subsisting in the Services or in any Software, Equipment or Deliverables (excluding any Third Party Software or firmware) supplied to the Customer pursuant to a Contract solely for the Customer's internal use in accordance with the Contract.

8.4 Where Nasstar supplies any Third Party Software or firmware, the Customer shall only have the right to use such Third Party Software or firmware in accordance with the licence terms set out or referred to in the Contract or in such documentation or media on which the Third Party Software or firmware is supplied. The Customer shall enter into and comply with any licence agreements with such third parties as Nasstar may reasonably require for the Customer to use the relevant Third Party Software or firmware.

8.5 The Customer grants Nasstar a non-exclusive, non-transferable, worldwide licence (including the right to sub-licence to its Affiliates and contractors) to use the Customer Input Material in order to perform a Contract.

8.6 The term of any licence granted pursuant to this clause 8 shall be co-terminus with the Services to which it relates, except as otherwise stated in a Contract.

- 8.7 If Nasstar or its licensors suspect that the Customer may have contravened any licence terms, Nasstar may inform each relevant licensor to such effect and the Customer shall co-operate with Nasstar and its licensors in full in investigating such activities.
- 8.8 Where Nasstar has a requirement to use or otherwise access any Third Party Software or other third party materials in order to perform a Contract (including any Third Party Software that the Customer uses for its own purposes that will integrate or interface with any Services that Nasstar supplies, but excluding any Third Party Software or firmware licensed to the Customer in accordance with clause 8.4), the Customer will obtain such a licence (or such other consent, authorisation, permission or right of use) from the relevant third party owner or licensor to permit such use or access (a "**Required Third Party Licence**") and the Customer shall bear any fees payable for such a licence, unless otherwise stated in the Contract.

Restrictions

- 8.9 The Customer shall not copy, redistribute, decompile, reverse engineer, decode or disassemble any Software, translate it into any computer language, modify, alter, adapt, correct or create any derivative works from it, circumvent or interfere with the operation of any electronic or digital protection measure whose function is to prevent its unlawful copying or use, or attempt to do any of these things, save to the extent expressly permitted by Law.
- 8.10 The Customer shall not use the Software or the Services for the benefit of any third party (including on a "service bureau" basis) or knowingly permit anyone else to do so, unless expressly permitted in a Contract.
- 8.11 The Customer shall not use Nasstar's name, trade names, trademarks or service marks or those of its licensors other than as Nasstar may expressly authorise in writing in advance and subject to any conditions which Nasstar or its licensors may impose, including adherence to their respective brand guidelines.

Infringement

- 8.12 If either party receives a claim of infringement of Intellectual Property Rights from a third party concerning (in the case of the Customer) the Services or any Software, Equipment or other Deliverables supplied by Nasstar (excluding any Third Party Software or firmware) or (in the case of Nasstar) the Customer Input Materials (an "**Infringement Claim**"), it shall notify the other party promptly in writing.
- 8.13 On receipt of notice of an Infringement Claim, that party (the "**Indemnifying Party**") will make reasonable efforts either to obtain for the other party (the "**Indemnified Party**") (at no cost) a right to use the infringing item in accordance with the Contract or to make such modifications to the infringing item as may be necessary to remove the alleged infringement. If the Indemnifying Party is unable to obtain or if it is impractical to obtain such a right or make such a modification (at no cost), it may terminate the Contract (in whole or in part in relation to the infringing item) immediately on written notice to the Indemnified Party.
- 8.14 Without limiting clause 8.13, the Indemnifying Party may in its own name and at its own cost undertake the conduct of any proceedings relating to an Infringement Claim, subject to any requirement for leave to be granted by the court or tribunal in which the Infringement Claim may be conducted and will indemnify the Indemnified Party from and against all damages awarded under any final judgment of a court of competent jurisdiction or agreed by the Indemnifying Party in final settlement of the Infringement Claim, provided that the Indemnified

Party: (i) makes no statement prejudicial to the Indemnifying Party or in respect of such Infringement Claim; (ii) provides all reasonable assistance in connection with the Infringement Claim, at the Indemnifying Party's cost; and (iii) allows the Indemnifying Party to have sole conduct and control of the defence of the Infringement Claim and/or any settlement or compromise of the Infringement Claim, if the Indemnifying Party exercises its option to undertake the conduct of the proceedings. The indemnity in this clause 8.14 shall be the Indemnified Party's sole and exclusive remedy with respect to any Infringement Claim and shall be subject to the limitations on liability in clauses 9.2 and 9.3.

8.15 To the extent that Nasstar is permitted to do so under its contracts with third parties, it will pass on the benefits of any warranties or indemnities to the Customer which it receives from third parties in relation to any claim of infringement of Intellectual Property Rights from a third party with respect to any Third Party Software or firmware supplied by Nasstar pursuant to a Contract. The Customer shall promptly notify Nasstar in writing if it receives or becomes aware of such a claim and shall promptly make such other notifications as may be required under the applicable licence terms.

8.16 The Customer acknowledges that to the fullest extent permitted by law, Nasstar's licensors (including Microsoft) and their suppliers shall have no liability, whether arising in contract, tort (including negligence and misrepresentation), breach of statutory duty or otherwise, in respect of any part or parts of the Services other than the Third Party Software supplied by them (the **"Non-Software Element of the Services"**), and they expressly disclaim any and all warranties (express or implied) in respect of the Non-Software Element of the Services. The Customer acknowledges that Nasstar's licensors (including Microsoft) and their suppliers will not provide any technical support in respect of the Non-Software Element of the Services.

9. Liability

9.1 Nothing in a Contract shall have the effect of limiting or excluding either party's liability for fraud or fraudulent misrepresentation, death or personal injury caused by negligence, or any other matter for which it would be illegal or void at Law for a party to limit or exclude its liability.

9.2 Subject to clause 9.1, Nasstar's total aggregate liability to the Customer in connection with a particular Contract in any Contract Year (whether arising under contract, tort including negligence, statute or otherwise including under any indemnity) shall not exceed the total Charges paid by the Customer to Nasstar pursuant to that Contract in that Contract Year. Any Service Credits or any other amounts credited, refunded, paid or reimbursed by Nasstar to the Customer shall be taken into account in calculating whether or not the financial limit in this clause 9.2 has been reached or exceeded.

9.3 Subject to clause 9.1, in the event that Nasstar supplies a separately identifiable Service under the same Contract as any other Services or any Software or Equipment, Nasstar's total liability to the Customer in any Contract Year in relation to that separately identifiable Service (whether arising under contract, tort including negligence, statute or otherwise including under any indemnity) shall be limited to the Charges paid by the Customer to Nasstar for that Service under that Contract in that Contract Year.

9.4 Subject to clause 9.1, in no circumstances whatsoever shall Nasstar be liable to the Customer (whether arising under contract, tort including negligence, statute or otherwise) for any loss of sales, turnover, revenue, profits or opportunity; loss of or interruption to business; loss of or

damage to reputation or goodwill; loss of anticipated savings; wasted expenditure; or wasted management or administrative time.

- 9.5 Subject to clause 9.1, in no circumstances whatsoever shall either party be liable (whether arising under contract, tort including negligence, statute or otherwise) for any indirect or consequential loss or damage or any special or exemplary loss or damage.

10. Force Majeure

- 10.1 Neither party shall be in breach of a Contract or otherwise liable to the other party for any failure to perform or delay in performing its obligations under a Contract to the extent that such failure or delay is due to a Force Majeure Event.

- 10.2 If a Force Majeure Event occurs, the party affected shall take reasonable steps to mitigate the impact of the Force Majeure Event.

- 10.3 If a Force Majeure Event continues for a period of more than sixty (60) days and continues to affect a party's ability to perform its obligations, either party shall be entitled to terminate a Contract and/or any affected part thereof by giving not less than ten (10) Business Days written notice to the other party.

- 10.4 This clause 10 shall not relieve the Customer from its obligation to pay any sums due under a Contract and its obligation to pay shall remain in full force and effect while a Force Majeure Event persists.

11. Relief Events

Nasstar shall not be in breach of contract or otherwise liable to the Customer for any failure to perform or delay in performing its obligations under a Contract to the extent that such failure or delay is due to any failure by the Customer to perform or any delay in the Customer performing any Customer Obligations or to comply with the terms of the Contract or any act or omission of the Customer, howsoever caused (a "**Relief Event**"). On the occurrence of a Relief Event, Nasstar shall be entitled to a reasonable extension of time in order to perform its obligations and (acting reasonably) to vary the Charges, recover any additional Expenses that it may incur in performing its obligations and charge the Customer such other sums to which it is entitled under the Contract (if any).

12. Confidentiality

- 12.1 Except to the extent set out in this clause 12 or where disclosure is expressly permitted elsewhere in a Contract, each party shall:

- (a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other party's Confidential Information to any other person without the other party's or the owner's prior written consent.

- 12.2 Clause 12.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure;

- (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of a Contract;
- (e) it is independently developed without access to the other party's Confidential Information;
- (f) disclosure is made to a party's legal counsel, independent auditors or other professional advisers who are subject to professional duties of confidence; or
- (g) the Confidential Information is personal data for which a party who would otherwise be subject to an obligation of confidence under this clause is a Controller.

12.3 Nasstar may disclose the Customer's Confidential Information to:

- (a) any of its Affiliates for the purposes of management and reporting or who have a need to know the Confidential Information in order to assist Nasstar in the performance of a Contract;
- (b) any employees, consultants, directors, officers, contractors or subcontractors who have a need to know the Confidential Information for the performance of a Contract;
- (c) any internet or domain name registry or registrar;
- (d) any bank or third-party providing finance to Nasstar;
- (e) any Government Authority; or
- (f) any other person to whom Nasstar may disclose Confidential Information or certain categories of Confidential Information as stated in a Contract.

Nasstar will use reasonable efforts to ensure that such third parties are subject to contractual or non-contractual obligations of confidence, except where it is impracticable for Nasstar to do so, including in the circumstances described in paragraph I above.

13. Information Security and Compliance

13.1 The Customer will be responsible for:

- (a) preventing unauthorised use of the Services;
- (b) maintaining the security of all systems, network elements and equipment within its (or its employees', agents' or contractors') control;
- (c) maintaining (and ensuring that each of its authorised users maintains) the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, network elements or equipment; and

- (d) ensuring that it maintains a database of its Users and terminates access immediately for anyone who is no longer a User.
- 13.2 The Customer will (or will procure that appropriately qualified third parties will) put in place and comply at all times with the security measures recommended by Nasstar from time to time, including those concerning fraud. Nasstar shall not be liable to the Customer for any losses, damages, fines, costs, expenses (including legal expenses) which arise as a result of the Customer's failure to do so.
- 13.3 The Customer shall take all reasonable steps (including testing with the latest commercially available virus detection software) to ensure that the Customer Equipment and any other software or hardware used with or to receive a Service is not infected by Viruses.
- 13.4 The Customer shall notify Nasstar immediately of any illegal, fraudulent or unauthorised use of the Services (or any Software, Equipment or Deliverables) of which it becomes aware. Nasstar will be entitled to suspend the provision of the Services (or any Software, Equipment or Deliverables) upon receipt of the Customer's notice. Nasstar will lift its suspension or recommence its provision of the Services (or any Software, Equipment or Deliverables) within a reasonable timescale after the customer demonstrates to Nasstar's reasonable satisfaction that appropriate technical, organisational, security or other measures have been put in place to prevent any further unauthorised use of the Services (or any Software, Equipment or Deliverables). The Customer will remain liable for the payment of the Charges for the Service (or any Software, Equipment or Deliverables) whilst it is suspended.
- 13.5 The Customer understands and accepts the performance by Nasstar of certain Services (or any Software, Equipment or Deliverables) may carry a risk to the Customer of loss or corruption of data. Nasstar's obligations in respect of data backup or retention in respect of a Service are set out in the applicable Contract. Subject to clause 9.1. Nasstar shall not be liable to the Customer (whether under contract, tort including negligence, statute or otherwise) for any loss of or damage to data, systems or programs, unless:
 - (a) the Customer has purchased a backup or retention Service from Nasstar which is intended to provide the Customer with a means of recovering data, systems or programs;
 - (b) Nasstar is breach of the Contract; and
 - (c) the Customer has complied fully with all Customer Obligations to enable Nasstar to backup and the Customer to recover such data, systems or programs.
- 13.6 Nasstar shall have the right to examine, from time to time, the use to which the Customer puts the Service and the nature of the data or information that the Customer is transmitting or receiving via the Service where such examination is necessary: (i) to protect/safeguard the integrity, operation and functionality of Nasstar's (and neighbouring) networks or the networks of any third parties used to provide the Service; or (ii) to comply with any Government Intervention; or (iii) to monitor the performance of the Services (or any Software, Equipment or Deliverables) including the Customer's usage; or (iv) to comply with Nasstar's contractual obligations to its third party suppliers and licensors. The Customer hereby consents to such examination and shall provide Nasstar information regarding such matters at Nasstar's reasonable request and without undue delay. Nasstar may disclose information about the Service, the nature of the data or information that the Customer is transmitting or

receiving via the Service and the Customer's details, passwords and decryption codes to any Government Authority or third-party supplier or licensor.

14. Changes

14.1 Nasstar may at its discretion:

- (a) change the technical specification or functionality of a Service or any Software for technical or operational reasons, provided that any such change to the technical specification or functionality does not materially decrease or impair performance of the Service or Software;
- (b) provide an alternative service or software or make changes to a Service or any Software (for whatever reason including in order to manage obsolescence), provided that any such change does not materially decrease or impair performance of the Service or Software; or
- (c) change the Services (or any Software, Equipment or Deliverables) in order to comply with any Government Intervention.

14.2 Where any change to the Services (or any Software, Equipment or Deliverables) is requested by the Customer, or there is any change in the scope of the Services or the approach to their delivery, Nasstar shall have no obligation to proceed with any such change unless and until the parties have agreed the necessary variations to the Contract in accordance with Nasstar's Change Control Procedure or the parties have entered into a new Contract with respect to such change, pending which the parties shall continue to perform the Contract in compliance with its terms. Nasstar may charge the Customer for the time it spends assessing a request for change from the Customer on a time and materials basis, unless otherwise stated in a Contract.

15. Suspension

15.1 Nasstar may suspend access to a Service (or any Software, Equipment or Deliverables), either in whole or in part:

- (a) if any circumstances occur which would give Nasstar a right to terminate the Service (or any Software, Equipment or Deliverables);
- (b) in an event of emergency and/or to safeguard the integrity and security of its network and/or maintain, repair or enhance the performance of its network;
- (c) for any breach or suspected breach of clause 4;
- (d) where it is required to do so by one of its third-party service providers or licensors;
- (e) where a third-party service provider or licensor suspends or interrupts the provision of the Services;
- (f) where the Customer fails to pay any sums payable under a Contract as and when they become due; or
- (g) where it is expressed to have the right to do so elsewhere in a Contract.

15.2 Nasstar will give the Customer at least two (2) days' notice of any suspension where it is reasonably practicable or appropriate for Nasstar to do so in the circumstances, unless otherwise stated in a Contract.

15.3 Nasstar is not obliged to suspend or give any notice of suspension before exercising its right to terminate a Service or Contract in whole or in part.

15.4 Nasstar shall not be liable to the Customer for any loss or damage resulting from any suspension made in accordance with this clause 15.

16. Termination Rights

16.1 Unless otherwise stated in a Contract, either party may terminate a Contract for convenience at any time by giving at least ninety (90) days' written notice to the other, such notice not to take effect prior to the expiry of the Initial Term or the then-current Renewal Term.

16.2 Either party may terminate a Contract immediately or on such other notice as it considers appropriate if:

- (a) the other party fails to pay any amount due under a Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party is in material breach of a Contract and the breach either cannot be remedied or is not remedied by the other party within thirty (30) days of receiving notice of the breach from the party not in breach.
- (c) the other party enters into administration, is subject to an administration order or proposes to enter into or enters into any voluntary arrangement with its creditors in the context of a potential liquidation, or suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply.

16.3 Nasstar may terminate a Contract:

- (a) in the event of a Government Intervention immediately on notice to the Customer or on such other notice period as it considers appropriate;
- (b) if any agreement between Nasstar and any of its licensors or third parties and which is required in order to deliver the Services (or any Software, Equipment or Deliverables) is terminated or expires;
- (c) to manage obsolescence or discontinuance of systems or Services or any services or systems used by Nasstar to provide any systems or Services;
- (d) in any other circumstances in which Nasstar has suspended a Service in accordance with the Contract and has not been able to reinstate it within ten (10) Business Days

following the initial suspension having exercised reasonable efforts to do so where appropriate; or

(e) where it is expressed to have the right to do so elsewhere in a Contract.

16.4 Where a party has the right to terminate a Contract, it shall also have the right to terminate a Contract in part in relation to a separately identifiable Service provided by Nasstar under the same Contract as other Services, Software or Equipment. Termination of a Contract in part will not affect the parties' rights and obligations with regard to any other part of the Contract that remains in force, provided that Nasstar shall have the right to vary the Charges or recover additional Expenses if its costs in providing the remaining Services increase or if it incurs additional costs to implement the partial termination of the Contract.

16.5 If the Customer has given notice to terminate a Contract or a separately identifiable Service provided by Nasstar under the Contract, and the Customer wishes to retract or delay such termination, the Customer may notify Nasstar and Nasstar will endeavour to continue performing the Contract or providing the separately identifiable Service and shall be entitled to charge the Customer for processing such request at its then current standard rates. Nasstar shall not be liable in the event that it cannot retract or delay termination and may at its discretion require the Customer to enter into a new Contract.

16.6 Without prejudice to Clause 16.3, Nasstar may issue an End-of-life Notice to the Customer at any time. Nasstar shall use its reasonable endeavours to issue an End-of-life Notice not less than [six (6)] months before the End-of-life Date where it is reasonably practicable to do so in the circumstances. Save to the extent of any End-of-life Obligations which Nasstar may agree to perform (as agreed in accordance with the Change Control Procedure), with effect from the End-of-life Date:

- (a) the End-of-life systems or Services, Software or Nasstar Equipment in question (the "**End-of-life Supplies**") will be declared out of use and the Customer shall cease all use of the same, including, at the written instruction and direction of Nasstar, removing or de-installing any relevant components from its systems;
- (b) any future obligations imposed on Nasstar under the Contract to provide, maintain or support the End-of-life Supplies shall cease, and all service levels, warranties and other obligations of Nasstar in respect thereof shall cease to apply; and
- (c) use of the relevant End-of-life Supplies by the Customer after the End-of-life Date shall be entirely at the Customer's risk and the Customer shall indemnify and hold harmless Nasstar from and against all claims, expenses, losses, damages and costs made against or incurred by Nasstar arising out of the Customer's continued use of the relevant End-of-life Supplies beyond the End-of-life Date.

17. Consequences of Termination

17.1 Termination or expiry of a Contract or Service shall not affect any accrued rights or liabilities of either party nor shall it affect any other provision of a Contract which is expressly or by implication intended to come into or continue in force on or after termination or expiry of a Contract or Service, including clauses 5, 9, 10, 11, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28.

- 17.2 If a Contract or a Service is terminated by Nasstar under clause 16.2 or by the Customer for any reason other than for Nasstar's material breach, with effect before the end of the Initial Term or Renewal Term, the Customer shall be liable to pay to Nasstar all remaining Charges which would have been due to Nasstar under the Contract or for the Service until the end of the Initial Term or Renewal Term or such other termination fees or cancellation charges as may be specified in the Contract.
- 17.3 If a Contract or a Service is properly terminated by the Customer under clause 16.2, Nasstar agrees to credit or repay the Customer within a reasonable period the appropriate proportion of any Charges or Expenses paid in advance for the period after the cessation of the Contract or Service.
- 17.4 Following notice of termination of a Contract or Service by either party (except where Nasstar has terminated the Contract or Service in any of the circumstances set out in clause 16.2 or 16.3), Nasstar shall, subject to the payment of any applicable Charges and Expenses, continue to provide the Services until the date of termination.

18. Notices

- 18.1 Notices given under a Contract shall be in writing, in the English language and sent:
- (a) by first class post to Nasstar's or the Customer's address shown on the Order Form for the Contract or such other address as that party has notified to the other party for the purposes of notices under the Contract; or
 - (b) by email to the address of the Customer shown on the Order Form or Nasstar's account manager as shown on the Order Form or otherwise notified to the Customer.
- 18.2 No notice to Nasstar of any dispute or of any termination of a Contract (in whole or in part) shall be effective unless the notice is sent in accordance with clause 18.1 with a copy sent:
- (a) by first class post for the attention of the Legal Department, Nasstar, 19-25 Nuffield Road, Poole, Dorset, England, BH17 0RU, or
 - (b) by email to legal@nasstar.com
- 18.3 Notices given under a Contract are deemed to be given by the sender and received by the addressee:
- (a) if sent by first class post, three (3) Business Days from and including the date of postage; and
 - (b) if sent by email, on the same Business Day as received according to the recipient's email system if received within normal business hours or, if received outside normal business hours, on the next Business Day.

19. Assignment and Subcontracting

- 19.1 Nasstar may assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) the benefit of a Contract or any part thereof to an Affiliate without the consent of the Customer.

19.2 Each party may subcontract or otherwise delegate the performance of any of its obligations (including, in the case of Nasstar, the provision of an individual Service, or the Services collectively) under a Contract without the consent of the other party, except as otherwise expressly provided in a Contract. A party who subcontracts or otherwise delegates the performance of its obligations shall remain liable for their proper performance.

19.3 The Customer may not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) the benefit of a Contract or any part thereof without the prior written agreement of Nasstar.

20. Governing Law and Jurisdiction

Each Contract and any non-contractual obligations arising in connection with it shall be governed by and construed in accordance with the laws of England and Wales. Except as otherwise expressly provided in a Contract, the parties shall submit to the exclusive jurisdiction of the Courts of England and Wales.

21. Entire agreement

21.1 Each Contract constitutes the entire agreement and understanding between the parties relating to its subject matter and supersedes any other agreement or understanding (written or oral) between the Parties relating to the same subject matter.

21.2 All warranties, terms, conditions, undertakings, representations and obligations implied by statute, common law, trade usage, course of dealing or otherwise are excluded to the fullest extent permitted by law. In particular, Nasstar does not guarantee that the Services or anything else supplied under a Contract (including any Software, Equipment or Deliverables) will be uninterrupted or error-free and Nasstar makes no other representation or warranty, whether express or implied, and excludes any such representations or warranties to the fullest extent permitted by law, including implied warranties of merchantability and fitness for a particular purpose or warranties that anything supplied by Nasstar under a Contract will meet the Customer's requirements or work in combination with any third party software, hardware or services, unless otherwise stated in a Contract.

21.3 Neither party shall rely on, nor shall have any remedy in respect of, any promise, assurance, agreement, statement, warranty, undertaking or representation made (whether innocently or negligently) by any other party or any other person, except as expressly set out in a Contract and in respect of which its sole remedy shall be for breach of contract. Any such promise, assurance, agreement, statement, warranty, undertaking or representation, including any advertising or description contained in any catalogue or brochure, is hereby excluded and withdrawn.

21.4 Nothing in this clause shall exclude the liability of either Party for fraud or fraudulent misrepresentation.

21.5 Nothing in these General Terms or any Contract is intended to create a partnership or the relationship of principal and agent or employer and employee between the parties.

22. Variation of a Contract

- 22.1 Save as expressly permitted by this Contract, no variation of a Contract shall be effective unless it is in writing, it is signed by or on behalf of each of the parties to a Contract and it references the relevant provisions of the Contract that have been varied.
- 22.2 Nasstar may vary a Contract without the Customer's consent if it is required to do so by Law on such notice as required by Law or, if no notice period is required by Law, on no less than thirty (30) days' notice.
- 22.3 For the avoidance of doubt, Nasstar shall be entitled to vary the Policy Documents (acting reasonably) at any time without the consent of the Customer. Nasstar will use reasonable endeavours to give the Customer as much notice as is reasonably possible of such changes.

23. Waiver

The rights and remedies of the parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

24. Severance and Unenforceable Provisions

If any provision or part of a Contract is illegal, unlawful, void or unenforceable due to any Law, it shall be deemed to be deleted and the remaining provisions of a Contract shall continue in full force and effect.

25. Rights of Third Parties

- 25.1 Any Nasstar Affiliate may enforce the terms of a Contract and any other third party who is expressly conferred a benefit and a right to enforce such benefit under a Contract may enforce the relevant terms of the Contract subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 25.2 Where Third Party Software is provided, the relevant third-party licensor(s) shall have the benefit of any provisions of the Contract which confer a right or benefit on them and they may, with Nasstar's written consent in each case, enforce in their own right any such provisions in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 25.3 Nasstar and the Customer may vary or rescind a Contract without the consent of any third party.
- 25.4 Subject to clauses 25.1 and 25.2, a person who is not a party to a Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of a Contract.

26. Non-Solicitation

- 26.1 The Customer shall not, without the prior written consent of Nasstar, at any time from the date of a Contract to the expiry of twelve (12) months after the date of termination of a Contract, solicit or entice away from Nasstar or employ or attempt to employ any person who is, or has

been, engaged as an employee, consultant or subcontractor of Nasstar in the performance of a Contract. For the purposes of this clause 26.1, "solicit or entice away" means to approach an individual (whether directly or through a third party) with a view to employing, engaging, or procuring the employment or engagement of that individual as an employee, director, officer, independent contractor or consultant other than by way of bona fide general advertising.

- 26.2 Any consent given by Nasstar in accordance with clause 26.1 shall be subject to the Customer paying to Nasstar a sum equivalent to twenty percent(20%) of the current annual remuneration of Nasstar's employee, consultant or subcontractor or, if higher, twenty percent (20%) of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

27. TUPE

- 27.1 It is the parties' intention that neither the commencement nor the termination of any of the Services will give rise to a relevant transfer under TUPE.

- 27.2 The Customer shall fully indemnify and hold harmless Nasstar from and against all employment claims incurred, suffered or paid by Nasstar in relation to any employment rights or contract of employment (or termination thereof) of any employee or former employee of the Customer or and any person that provides services which any of the Services replace that is claimed or deemed to have effect as between Nasstar and that individual (**Transferred Employee**) under TUPE.

- 27.3 The indemnity in clause 27.2 shall only apply provided Nasstar dismisses the Transferred Employee within ten (10) Business Days of it becoming aware of the transfer or alleged transfer (the Customer having been notified in advance of the termination).

- 27.4 Where Nasstar and the Customer believe that the commencement or the termination of any of the Services will give rise to a relevant transfer under TUPE, the terms of Nasstar's Transfer of Employees Terms Schedule shall apply in lieu of clauses 27.1 to 27.3 above.

28. Use of the Services

- 28.1 Nasstar does not supply Services to any consumers or individuals who use the Services for personal, domestic or household use and the Customer warrants that it is not a Small Business Customer. The Customer undertakes to notify Nasstar immediately if it becomes a Small Business Customer, whereupon Nasstar shall be entitled to terminate the Contract immediately on written notice to the Customer.

- 28.2 The Customer shall indemnify and hold harmless Nasstar from and against all claims, expenses, losses, damages and costs made against or incurred by Nasstar arising out of the Customer's breach of the warranty in clause 28.1 or its failure to notify Nasstar if it becomes a Small Business Customer in accordance with that clause, including as may arise a result of Nasstar's failure to comply with any Law applicable to Small Business Customers in connection with the provision of Regulated Services.

29. Definitions and Interpretation

- 29.1 In a Contract, unless the context otherwise requires, these terms will be given the following meanings:

"Acceptable Use Policy": Nasstar's policy which contains restrictions on the ways in which Services (or any Software, Equipment or Deliverables) may be used by the Customer and its Users, the current version of which is available on the Website or upon request from salesupport@nasstar.com;

"Affiliate": in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

"Business Day": a day not being a Saturday, Sunday, bank or public holiday on which trading banks are generally open for business in the City of London;

"Charges": the fees payable for Services (or any Software, Equipment or Deliverables) as detailed in a Contract;

"Communications Provider": has the meaning given to it in section 405 of the Communications Act 2003 (as amended from time to time);

"Confidential Information": a Contract and all materials, data and other documents which are disclosed by one party to the other in fulfilling the provisions and intent of a Contract or which are otherwise provided to the other in the contemplation of or the performance of the Contract;

"Configuration": a change to the standard elements of a Service;

"Contract": a contract for the provision of Services, Software, Equipment or other Deliverables, comprising such documents that are referred to in or incorporated into an Order Form or a SoW or other Sales Document for such Services, Software, Equipment or Deliverables;

"Contract Year": each successive twelve (12) month period commencing on the Effective Date or, if later, the Service Commencement Date, and on each anniversary thereof;

"Control": where a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Customer": the entity named as such in an Order Form or other Sales Document;

"Customer Input Material": all documents, information and materials provided by or required from the Customer for the performance of a Contract, including computer programs, data, reports, designs and specifications and any other in-put materials specified in a Contract or as may reasonably be requested by Nasstar;

"Customer Equipment": any Customer owned or leased equipment which is used to connect to any Nasstar Equipment or to receive a Service;

"Customer Obligations": any obligations of the Customer that are set out in a Contract and any terms that are applicable to the Customer's use or receipt of a Service and are incorporated into the Contract by reference or are otherwise notified to the Customer;

"Customer Site": the premises at which Nasstar agrees to provide Services (or any Software, Equipment or Deliverables) to the Customer as detailed in a Contract;

“Customer Site Rules”: the Customer's reasonable site regulations advised in writing to Nasstar prior to Nasstar being given access to the Customer Site;

“Customer Support Plan”: Nasstar's Customer or client support plan notified to the Customer or otherwise available from salesupport@nasstar.com;

“Deliverables”: any deliverables (other than any specific items of Equipment, Nasstar Software or Third Party Software) which Nasstar agrees to supply to a Customer under a Contract for Professional Services;

“Delivery Date”: the date by which Nasstar shall use its reasonable endeavours to commence provision of a Service as detailed on the Order Form or other Sales Document or agreed in writing between Nasstar and the Customer;

“Effective Date”: the date on which an Order Form or other Sales Document incorporating these General Terms signed by the Customer provided that it is subsequently been accepted by Nasstar or such other date as may be notified to the Customer by Nasstar in its acceptance of the Order Form or other Sales Document;

“End-of-life Date”: the date specified as the end-of-life date in Nasstar's End-of-life Notice;

“End-of-life Notice”: a notice issued by Nasstar describing end-of-life systems or Services, Software or Nasstar Equipment (or any end-of-life systems, services, software or equipment used by Nasstar to provide any systems or Services) informing the Customer of the associated End-of-life Date;

“End-of-life Obligations”: in relation to the End-of-life Supplies, the provision by Nasstar of any services in respect of these beyond the End-of-life Date as may be agreed with the Customer in accordance with the Change Control Procedure;

“End-of-life Supplies”: has the meaning given to that term in Clause 16.6(a);

“Equipment”: Nasstar Equipment, Customer Equipment or any hardware or equipment purchased by the Customer under a Contract (as appropriate);

“Expenses”: all expenses incurred by Nasstar in connection with its performance of a Contract, which may include packaging, logistics, insurance, travel, accommodation, subsistence and other reasonable out-of-pocket expenses;

“Force Majeure Event”: an act of God; or war, insurrection, riot, civil commotion, act or threat of terrorism; or lightning, earthquake, fire, flood, storm, or extreme weather condition; epidemic, pandemic or other natural disaster; or theft, malicious damage; or strike, lockout, industrial dispute (whether affecting the workforce of a party and/or any other person); or breakdown or failure of plant or machinery; or inability to obtain essential supplies or materials; impossibility of the use of public or private transport; change in Law; or any Government Intervention; or any failure or default of a supplier or sub-contractor of the relevant party; or any other event or circumstance to the extent it is beyond the reasonable control of the relevant party;

“General Conditions of Entitlement”: Ofcom's General Conditions of Entitlement as amended from time to time;

“General Terms”: clauses 1 to 29 (inclusive) of these terms and conditions;

“Government Authority”: any police, judicial, governmental or regulatory authority, any court or tribunal or any emergency services organisation acting within its authority and jurisdiction;

“Government Intervention”: (i) any decision, order, direction, instruction or requirement of a Government Authority for Nasstar to take or omit to take any action including any suspension, termination or change relating to a Contract; (ii) the removal or withdrawal or failure to obtain renewal of any authorisations or regulatory formalities required for a Contract for whatever reason; or (iii) any other requirement or restriction imposed under applicable Law;

“Initial Term”: the initial term or minimum period for a Service or Contract, as stated in the relevant Contract, commencing on the Service Commencement Date. Unless stated otherwise in a Contract, where: (i) a Service or a solution is to be delivered to or used at more than one Customer Site; or (ii) there is a phased roll-out of a Service or a solution; or (iii) there is a deployment of multiple Service Elements or multiple Services, the provision of the Services shall commence on the Service Commencement Date for the first Customer Site, first Service phase or first Service Element or Service but the Initial Term shall be calculated from the date on which the last Customer Site, last Service phase or last Service Element or Service is commenced or deployed (as the case may be);

“Insolvency Event”: (a) an order is made by a court of competent jurisdiction, or a resolution is passed for the administration of a party (other than for the purpose of a bona fide amalgamation, merger or reconstruction); or (b) the presentation of a petition for winding up of a party, which petition is not dismissed within twenty-eight (28) days; or the appointment of a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of a party’s assets or business;

“Intellectual Property Rights”: patents and applications for patents, trade marks, service marks and domain names and applications for the same, unregistered trade marks and rights in trade names and business names, copyright and moral rights (including copyright in computer software), Know How, database rights, rights in designs and rights in inventions, and any rights of the same or similar effect or nature as any of the foregoing;

“Law”: any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Minimum Purchase Commitment”: the minimum charges payable in respect of a Service in each billing period as stated in the Order Form or other Sales Document;

“Nasstar”: the supplier of the Services (or any Software, Equipment or Deliverables) identified in a Contract being either (i) GCI Network Solutions Limited whose registered office is at Melbourne House, Brandy Carr Road, Wakefield, West Yorkshire, WF2 0UG, a company registered in England and Wales under Company no. 04082862; or (ii) one of its Affiliates;

“Nasstar Change”: has the meaning given to it in clause 14.1;

“Nasstar Equipment”: equipment (including any Software on it) which is used by Nasstar to provide the Services (whether remotely or on the Site) the ownership of which vests with Nasstar, its Affiliates or its third party suppliers;

“Nasstar Network”: the communications infrastructure owned and managed by Nasstar and its Affiliates and excluding any equipment located at a Customer Site (whether or not provided by Nasstar), data/telephone circuits or networks between a Point of Presence (**PoP**) and a Customer Site, inactive PoPs, or any networks, network equipment or telephone circuits not owned and managed by Nasstar;

“Nasstar Software”: Software which is proprietary to Nasstar, including any source code or object code created for or on behalf of Nasstar, and which is supplied by Nasstar to the Customer under a Contract;

“Open Source Software”: any software code that is made available to the public generally in source code form without any confidentiality restrictions, including any code that is derived in any manner (in whole or in part) from such code;

“Order Form”: an order form or change order in the format provided by Nasstar and signed by an authorised representative of the Customer and in respect of which Nasstar has issued its written acceptance, and under which the Customer agrees to purchase and Nasstar agrees to provide Services, Software, Equipment or other Deliverables;

“party”: either Nasstar or the Customer and **“parties”** shall mean both of Nasstar and the Customer;

“Personnel”: in relation to a party, that party's employees, agents, contractors (or subcontractors);

“Policy Documents”: the Security Policy; the Privacy Policy; the Acceptable Use Policy; the Customer Support Plan; and such other policy documents as may be notified by Nasstar from time to time;

“Privacy Policy”: Nasstar's privacy notice which details Nasstar's practices on the collection, storage and use of personal data, the current version of which is available on the Website or upon request from Nasstar;

“Regulated Service”: a Service which is subject to the General Conditions of Entitlement including Voice or Number Based Interpersonal Communications Services (NBICS) and Broadband or Internet Access Services (IAS);

“Renewal Term”: a renewal term for a Contract, commencing on the day after the expiry of the Initial Term or the then-current Renewal Term;

“Retail Price Index”: the retail price index (All Items) of the United Kingdom or any replacement index published by the Office for National Statistics or any successor body;

“Sales Document”: the document outlining the provision of Services, Software, Equipment or other Deliverables, as agreed between the parties, and which forms part of the Contract between the parties. For the avoidance of doubt, a Sales Document may include a SoW, Scope of Engagement, Managed Services Schedule or Order Form supplied to the Customer by Nasstar;

“Security Policy”: Nasstar's security policy which details the security measures taken by Nasstar in the provision of the Services and its current practices regarding the maintenance of

the security of data, the current version of which is available on the Website or upon request from Nasstar;

"Service": a service as described in a Contract (including in the relevant Service Description and any SoW and / or any Service Design Document), including the provision of any Software or Equipment which is incidental to the provision of a Service, as may be amended from time to time in accordance with the Contract;

"Service Commencement Date": the date upon which Nasstar first makes a Service available for use by the Customer, unless otherwise stated in a Contract;

"Service Credit": the sums credited against future invoices in respect of the failure by Nasstar to meet one or more Service Levels, as may be detailed in a Contract;

"Service Element": any part of a Service which is capable of being supplied independently from the rest of the Service;

"Service Failure": any failure by Nasstar to provide a Service or perform its obligations in accordance with a Contract, including a failure to meet a Service Level and any other failure described in a Contract as a Service Failure, that is not excused under the Contract;

"Service Level": an agreed level of service applicable to a Service as stated in a Contract;

"Small Business Customer": a Customer acting in the course of a business which is carried on by that Customer, and for which not more than 10 individuals work (whether as employees or volunteers or otherwise), but who is not himself a Communications Provider and to whom Nasstar provides a Regulated Service;

"Software": Nasstar Software and Third Party Software;

"SoW": a statement of work or scope of work signed by an authorised representative of Nasstar and the Customer under which the Customer agrees to purchase and Nasstar agrees to provide Services, Software, Equipment or other Deliverables;

"Third Party Software": Software which is proprietary to a third party (including any Open Source Software) and which is supplied by Nasstar to the Customer under a Contract;

"Term": the duration of a Contract as described in clause 2;

"TUPE": the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

"User": any end user or administrator of a Service;

"Website": the Nasstar website located at www.nasstar.com or such other website as may be notified by Nasstar from time to time;

"Value Added Tax" or "VAT": value added tax as provided for in the Value Added Tax Act 1994 or any other similar tax that is imposed in any jurisdiction other than the United Kingdom including any goods and services tax; and

"Virus": viruses, logic bombs, worms, trojan horses and any other type of disruptive, destructive or nuisance programs or malicious code and any code that is operates to disable or interfere with any software or information technology systems.

29.2 In each Contract, unless the Contract otherwise requires:

- (a) words in the singular shall include the plural and words in the plural shall include the singular;
- (b) words denoting any gender include all genders;
- (c) the headings are for convenience only and shall not affect the construction of a Contract;
- (d) references to each party herein include references to its successors in title and permitted assigns;
- (e) references to "includes" or "including" shall be read as being immediately followed by the words "without limitation";
- (f) any capitalised terms (or terms beginning with a capital letter) that are used but are not defined in the Contract shall be given their generally accepted meaning in the information and communications technology industry or, where there is no such generally accepted meaning, their ordinary meaning within the context of the Contract; and
- (g) a "signature" may include a handwritten "wet ink" signature, a digital signature or any other electronic act indicating consent or acceptance including a typed-name, clicking a website button or incorporating a scanned manuscript signature into a document or email, and any reference to "sign" or "signed" shall be construed accordingly.