

Data processing agreement

1. Definitions and Interpretation

1.1 Definitions. In this Data Processing Agreement and the Data Processing Schedule:

"Communications Data" means any data processed for the purpose of the conveyance or billing of any electronic communication or communication on an electronic communications network, including SMS, MMS, email and internet connection records, and any Location Data. Communications Data may include records of connections to particular telephone numbers, devices and users and the dates, times and durations of such connections;

"Content Data" means the content (comprising any speech, music, sounds, visual images or data of any description) of any electronic communication by an end user or administrator of a Service, including the content of electronic messages, such as SMS, MMS and email, and web pages requested to the extent that it is not Communications Data;

"Contract" means an agreement or order between Nasstar and the Customer (whether in the form of a Statement of Work, Service Agreement, Order Form, or such other document as the parties may agree from time to time) in connection with which Nasstar shall process personal data;

"Contract Year" means, in respect of each Contract, each continuous 12-month period commencing on the effective date of the Contract and on each anniversary of such date;

"CRM Data" means any personal data of staff or representatives of a party which is processed by the other party for the purposes of managing a Service, marketing products or services to that party, or administering a Contract;

"Customer" means the customer named in an agreed Contract;

"Customer Data" means the personal data which Nasstar processes in connection with a Contract, as specified in the Data Protection Annex to that Contract;

"Data Processing Schedule" means Nasstar's record of its data processing activities available at <https://www.nasstar.com/data-processing-schedule> (or at such other location as Nasstar may notify to the Customer) as updated by Nasstar from time to time;

"Data Protection Annex" means an annex or addendum to each Contract which describes the types of personal data processed, the categories of data subjects, the nature and purpose of any processing performed on the personal data, and such other details as may be required by the Data Protection Laws;

"Data Protection Laws" means all laws applicable (in whole or in part) to a party's processing of personal data under or in connection with a Contract, including as applicable and as amended or superseded from time to time: (i) Regulation (EU) 2016/679 (the **"EU GDPR"**); (ii) the EU GDPR as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the **"UK GDPR"**); (iii) the Data Protection Act 2018 (the **"DPA 2018"**); and (iv) the Privacy and Electronic Communications (EC Directive) Regulations 2003 as they continue to have effect by virtue of section 2 of the European Union (Withdrawal) Act 2018 (**"PECR"**);



"Liability Cap" means a limitation on a party's maximum financial liability whether such limitation arises under this Data Processing Agreement or a Contract, and whether such limitation applies in respect of a particular time period, a particular category of liability, or particular claims or series of connected claims;

"Location Data" means any data processed in an electronic communications network indicating the geographic position of the terminal equipment of a user, geographic location derived from geographic identifiers associated with the access network or any other identifiers with known or presumed coordinates for the network elements to which an end user or administrator of a Service is connected;

"Order Form" means 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 (a) Service(s), software or hardware or other deliverables;

"Permitted Derogation" means a derogation under Article 49 of the UK GDPR or any equivalent provision under applicable Data Protection Laws pursuant to which a transfer may be made in the absence of an adequacy decision or of appropriate safeguards;

"Security Breach" means any breach of Nasstar's security leading to the destruction, loss, alteration, unauthorised disclosure of, or unauthorised access to, Customer Data;

"Service" means a service provided by Nasstar pursuant to a Contract;

"Service Agreement" means an agreement for the provision of managed or recurring services entered into by Nasstar and the Customer as agreed by them in writing;

"Statement of Work" means an agreement for the provision of project work or professional services entered into by Nasstar and the Customer as agreed by them in writing;

"Total Fees" means, in respect of a Contract, all fees paid by the Customer under that Contract plus any unpaid fees that are due and payable thereunder, but excluding any expenses or third party costs incurred by Nasstar in connection with the Contract that are passed through to the Customer for reimbursement;

"User Data" means any personal data regarding end users or administrators of a Service which is not Communications Data, Content Data or CRM Data. Such personal data may include user IDs, passwords, authenticators, addresses (including MAC addresses, IP addresses and email addresses) and telephone numbers; and

the terms **"controller"**, **"processor"**, **"data subject"**, **"personal data"** and **"processing"** (and **"process"**) shall have the meanings given in Data Protection Laws;

- 1.2 **Interpretation.** In this Data Processing Agreement, unless the context requires otherwise: (a) any reference to an enactment includes that enactment as amended, extended, consolidated, or re-enacted, and any subordinate legislation made under that enactment; (b) the singular includes the plural and vice versa; (c) any reference to a party includes its successors and permitted assigns; (d) any reference to something being "written" or "in writing" includes e-mail; (e) any reference to an English legal term includes, in any jurisdiction other than England, what most closely approximates that English legal term in that jurisdiction; (f) the words "includes", "including" and any similar words or expressions do not limit the generality or extent of any other words or expressions; (g) the headings in this Data Processing Agreement do not affect its interpretation; (g) an obligation for a party not to do something includes an obligation



for that party not to cause or permit that thing to be done; and (h) if any capitalised term (or term beginning with a capital letter) is used but not defined in this Data Processing Agreement, the term shall be given its generally accepted meaning in the information and communications technology industry or, if it does not have such a meaning, its ordinary meaning in its context.

2. Scope and duration

- 2.1 **Scope.** This Data Processing Agreement applies between Nasstar and the Customer (each a "**party**" and together the "**parties**") and governs each party's rights and obligations in relation to any processing of personal data in connection with all Contracts in effect between the parties.
- 2.2 **Entire agreement.** This Data Processing Agreement constitutes the entire agreement and understanding between the parties relating to the processing of personal data and supersedes any other agreement or understanding (written or oral) between the parties relating to the same.
- 2.3 **Term.** This Data Processing Agreement starts on the date on which Nasstar first processes any Customer Data in connection with a Contract and shall continue until terminated in accordance with its terms.
- 2.4 **Termination.** This Data Processing Agreement shall automatically terminate with immediate effect if:
- (a) there are no Contracts in effect between Nasstar and the Customer; and
 - (b) Nasstar is not processing any Customer Data.

3. Relationship of the parties

- 3.1 Unless otherwise provided in the relevant Contract or a Data Protection Annex:
- (a) the Data Processing Schedule specifies for different categories of services offered by Nasstar:
 - (i) the types of personal data that Nasstar may process in connection with that Service; and
 - (ii) Nasstar's role as controller or processor in respect of that processing;
 - (b) where Nasstar is a controller in relation to any processing of Customer Data, Nasstar shall process that Customer Data as an independent controller and not as a joint controller;
 - (c) where Nasstar is a processor in relation to any processing of Customer Data, the Customer shall be the controller in relation to that processing.
- 3.2 A Data Protection Annex may be used to describe data processing in circumstances where a Service is not described in the Data Processing Schedule or where the categories of data processed by the Customer or Nasstar differs from that set out in the Data Processing Schedule. In the event of a conflict or inconsistency between the information in an agreed Data Protection Annex and the Data Processing Schedule, the Data Protection Annex shall take precedence.



4. Controller obligations

4.1 Where a party is a controller in relation to any processing of Customer Data, that party warrants and undertakes to the other party that it shall:

- (a) only process the Customer Data in accordance with the Data Protection Laws;
- (b) provide reasonable and timely assistance to the other party as needed to help that party comply with any Data Protection Laws in respect of the Customer Data; and
- (c) not knowingly or recklessly perform its obligations under a Contract in such a way as to cause the other party to be in breach of any Data Protection Laws.

4.2 Without limiting clause 4.1, where the Customer is the controller in relation to any processing of Customer Data by Nasstar, the Customer warrants and undertakes to Nasstar that:

- (a) the Customer has obtained and shall continue to hold throughout the duration of the relevant Contract all consents, licences, permissions, and approvals; and
- (b) the Customer has provided and shall continue to provide throughout the duration of the relevant Contract all notices and information to the relevant data subjects,

in each case as required by the Data Protection Laws for the Customer to provide the Customer Data to Nasstar for processing, and for Nasstar to carry out such processing in accordance with this Data Processing Agreement and the relevant Contract.

4.3 The Customer indemnifies and shall keep indemnified Nasstar (and each member of its corporate group and its sub-processors) from and against all loss or damage (including regulatory fines) as may be suffered or incurred by any of those parties which arises as a result of any breach by the Customer of its obligations under clauses 4.1 or 4.2.

5. Processor obligations

5.1 **Application.** This clause 5 shall apply only to the extent that Nasstar is acting as processor (or sub-processor) in relation to any processing of Customer Data in connection with a Contract.

5.2 **Details of processing.** The subject matter, duration, nature, purpose of any processing of Customer Data by Nasstar in connection with a Contract, and the type of personal data and categories of data subjects to which such processing relates, shall be as set out in the Data Protection Annex to the Contract.

5.3 **Special category data.** Unless expressly provided otherwise in the relevant Data Protection Annex, the Customer must not provide any special category data within the meaning of Article 9(1) of the EU GDPR or any personal data relating to criminal convictions and offences to Nasstar for processing and Customer acknowledges that Nasstar shall not process any such data.

5.4 **Documented instructions.** Nasstar shall process Customer Data as a processor only for the purposes described in each Data Protection Annex and in accordance with the documented instructions of the Customer (the "**Permitted Purpose**"), except where otherwise required by applicable law, or where processing in accordance with the Customer's documented instructions would infringe Data Protection Laws, in which case Nasstar shall inform the Customer of such unless it is prohibited from doing so by applicable law.



5.5 **Confidentiality.** Nasstar shall ensure that all persons under its control that are authorised to process Customer Data shall be subject to a duty of confidentiality and shall only process the Customer Data for the Permitted Purpose.

5.6 **Security.** Nasstar shall:

- (a) implement appropriate technical and organisational measures to protect the Customer Data it processes from a Security Breach;
- (b) upon becoming aware of a Security Incident, inform the Customer of such without undue delay and shall provide all such information and cooperation as the Customer may reasonably require to comply with its data breach reporting obligations under Data Protection Law; and
- (c) take all such measures and actions as it considers reasonably necessary to remedy or mitigate the effects of the Security Incident.

Nasstar as an organisation is certified to **ISO/IEC 27001:2022** and **Cyber Essentials Plus** standards.

5.7 **Data subject requests.** Nasstar shall:

- (a) provide reasonable assistance to the Customer (at the Customer's cost) to enable the Customer to respond to any request from a data subject to exercise any of its rights under Data Protection Law; and
- (b) if a data subject request is made directly to Nasstar or any member of its corporate group, promptly inform the Customer providing full details of the same. The Customer is solely responsible for responding to any data subject requests notified to it under this clause in accordance with the Data Protection Laws, and indemnifies and will keep indemnified Nasstar, each member of its corporate group, and its sub-processors from all loss or damage (including regulatory fines) suffered or incurred by any of them arising as a result of the Customer's breach of this clause.

5.8 **Co-operation and assistance.** Nasstar shall provide the Customer (at the Customer's cost) with reasonable co-operation and assistance as required under the Data Protection Laws for the Customer to:

- (a) conduct a data protection impact assessment in relation to any processing of Customer Data carried out under a Contract; and/or
- (b) consult with the Customer's relevant data protection authority in relation to any processing of Customer Data carried out under a Contract.

5.9 **Deletion or return of Customer Data.** Upon termination or expiry of a Contract, Nasstar shall (at the Customer's election) destroy or return to the Customer all Customer Data processed by Nasstar in connection with that Contract which is in Nasstar's possession or control (other than where such Customer Data is processed in connection with another Contract that remains in effect, or to the extent that Nasstar is required by law to retain any Customer Data).

5.10 **Sub-processing.**



- (a) The Customer hereby authorises Nasstar to appoint any member of its corporate group to process Customer Data as sub-processor in accordance with the requirements of this Data Processing Agreement;
- (b) The Customer hereby authorises Nasstar to engage third party sub-processors (other than members of its corporate group) to process the Customer Data provided that:
 - (i) Nasstar provides at least fourteen (14) days' prior notice of the addition or removal of any sub-processor, including details of the processing it will perform (such notice may be given by e-mail or by posting details of such addition or removal on a website to be made available to the Customer); and
 - (ii) Nasstar imposes data protection terms on any sub-processor it appoints that protect the Customer Data to substantially the same standard provided for by this Data Processing Agreement.
- (c) Nasstar shall remain liable to the Customer for any breach of this Data Processing Agreement that is caused by an act, error or omission of any of its sub-processors.
- (d) If the Customer, on reasonable grounds relating to the protection of its Customer Data, notifies Nasstar in writing that it objects to the appointment of any new sub-processor under paragraph (b)(i) of this clause, then Nasstar may (at its election):
 - (i) not appoint the sub-processor, where it is commercially practicable for Nasstar to provide the relevant Service and perform its obligations to the Customer under each Contract without that sub-processor; or
 - (ii) suspend or terminate the relevant Contract to which the sub-processor would be involved in processing Customer Data.

5.11 **Audit.**

- (a) Subject to paragraph (b) of this clause, Nasstar shall permit the Customer (or its appointed third-party auditors) to audit Nasstar's compliance with this Data Processing Agreement and shall make available to the Customer (or its third-party auditors) such information as is reasonably necessary for the purposes of the audit.
- (b) The Customer shall:
 - (i) be liable for its own costs incurred in connection with an audit (including any fees charged by a third-party auditor);
 - (ii) provide Nasstar with reasonable advance notice (not less than 20 Business Days) of its intention to conduct an audit under this clause, and the purpose and scope of such audit;
 - (iii) conduct an audit no more than once in any continuous 24-month period, unless an audit is specifically instructed by the Customer's data protection authority;
 - (iv) conduct an audit only during normal business hours (9:00 to 17:00 GMT on Business Days);
 - (v) ensure any audit is conducted in a timely and expedient manner;



- (vi) take all reasonable measures to prevent unnecessary disruption to the business operations of Nasstar and its corporate group during the conduct of an audit; and
 - (vii) treat all information, documents, and data obtained during an audit as Nasstar's Confidential Information and ensure that such information is only used for the purposes of the audit and is returned to Nasstar or destroyed (at Nasstar's election) on completion of the audit.
- (c) If compliance with an audit under this clause will result in Nasstar incurring material additional costs or expenditure in excess of what it would typically incur in the ordinary conduct of its business, Nasstar shall notify the Customer of such, and the Customer shall reimburse Nasstar for such additional costs and expenditure reasonably incurred in compliance with an audit.

6. International transfers

- 6.1 The Customer acknowledges and agrees that Nasstar may transfer (or cause to be transferred) Customer Data outside of the UK or the EEA. Where Nasstar is acting as a controller of Customer Data, it shall be responsible for ensuring compliance with Data Protection Laws in relation to such transfers.
- 6.2 Where the Customer uses functionality provided by Nasstar to transfer Customer Data outside of the UK or the EEA, it shall be the Customer's responsibility to put in place mechanisms to ensure that the transfer complies with Data Protection Laws. In other circumstances, where Nasstar is acting as a processor on behalf of the Customer, Nasstar may transfer Customer Data outside the UK or the EEA where:
- (a) the Customer has given its prior written consent to the transfer (not to be unreasonably withheld or delayed);
 - (b) Nasstar has taken such necessary measures as are required to ensure the transfer of Customer Data out of the UK and/or the EEA (as applicable) complies with the Data Protection Laws;
 - (c) Nasstar is compelled by law to make such transfers (in which case, Nasstar shall inform the Customer of the relevant law, unless it is prohibited from doing so); or
 - (d) Nasstar is entitled to transfer the Customer Data pursuant to a Permitted Derogation.
- 6.3 Where necessary, the Customer shall assist Nasstar in complying with the requirements of the Data Protection Laws regarding any transfers of Customer Data referred to in clause 6.1, including by entering into (or assisting Nasstar to enter into) such agreements or documentation as may be required to ensure that the obligations of the Data Protection Laws regarding international transfers are met.
- 6.4 For the purposes of clause 6.1(b), such measures may include transferring the Customer Data to a recipient:
- (a) in a country that the European Commission (in the case of transfers out of the EEA) or the UK Secretary of State (in the case of transfers out of the UK) has decided provides adequate protection for personal data;



- (b) that has implemented binding corporate rules authorised in accordance with the applicable Data Protection Laws; or
- (c) that has executed with Nasstar (or any sub-processor or member of Nasstar's corporate group):
 - (i) for transfers out of the EEA, the standard contractual clauses annexed to the European Commission's Implementing Decision 2021/914 of 4 June 2021, as amended, superseded, or replaced from time to time (the "**EU SCCs**"); and/or
 - (ii) for transfers out of the UK, the EU SCCs subject to completion of the UK Addendum to the EU Standard Contractual Clauses issued by the UK Information Commissioner's Office under section 119A(1) of the Data Protection Act 2018, as amended, superseded, or replaced from time to time (the "**UK Addendum**").

6.5 For international transfers where the EU SCCs apply, they shall apply as follows:

- (a) the terms of Module Three shall apply;
- (b) the optional docking clause in clause 7 of the EU SCCs shall apply;
- (c) for purposes of clause 9 of the EU SCCs, Option 2 (General Written Authorisation) shall apply and the time period for prior notice of sub-processor changes shall be as set out in clause 5.10(b)(i) of;
- (d) the optional language of clause 11 (Redress) of the EU SCCs shall not apply;
- (e) for purposes of clause 16(d) (Termination) of the EU SCCs, such obligations shall be satisfied by compliance with the measures described in this Data Processing Agreement;
- (f) for purposes of clause 17 (Governing Law) of the EU SCCs, Option 1 shall apply and the parties agree that the EU SCCs shall be governed by Irish law;
- (g) for purposes of clause 18(b) (Choice of forum and jurisdiction) of the EU SCCs, the parties agree that the any dispute arising from the EU SCCs shall be resolved by the courts of Ireland;
- (h) Annex I of the EU SCCs shall be deemed completed with the information set out in each Data Protection Annex; and
- (i) Annex II of the EU SCCs shall be deemed completed with the information set out in the summary of Nasstar's security measures (available at <https://www.nasstar.com/security-policy>) and in each Data Protection Annex.

6.6 For international transfers where the EU SCCs apply subject to completion of the UK Addendum:

- (a) the EU SCCs shall be completed as set out above in clause 6.5 (other than Clauses 6.5(f) and 6.5(g)) subject to any amendments by the UK Addendum and paragraph (b) below; and



- (b) Tables 1 to 3 of the UK Addendum shall be deemed completed with relevant information from the EU SCCs, completed as set out in clause 6.5, and the options "neither party" shall be deemed checked in Table 4. The start date of the UK Addendum (as set out in Table 1) shall be the start date for the relevant Contract to which the transfer relates.

7. Liability

- 7.1 **Liabilities not excluded or limited.** Nothing in this Data Processing Agreement shall limit or exclude a party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any statutory or other liability which cannot be excluded or limited under applicable law or for which an exclusion or limitation would be void or unenforceable.
- 7.2 **Excluded liabilities.** Subject to clause 7.1, neither party shall be liable to the other for any: (i) indirect or consequential loss; (ii) loss of actual or anticipated revenue or profits, loss of business opportunity, or loss of contract; (iii) loss of anticipated savings, wasted expenditure, business interruption or loss or corruption of data, or (iv) loss or damage to goodwill or reputation, in each case howsoever arising and no matter how fundamental (including by reason of a party's negligence).
- 7.3 **Maximum liability.** Subject to clauses 7.1 and 7.2, and unless a Contract specifies a different liability regime:
 - (a) the maximum aggregate liability of each party under this Data Processing Agreement (howsoever arising including for negligence or under an indemnity) where such liability relates to a particular Contract shall not exceed the following limits in any Contract Year:
 - (i) in respect of a Security Breach, a total of two (2) times the Total Fees under the relevant Contract to which the Security Breach relates in that Contract Year;
 - (ii) for all other liability, a total of one (1) times the Total Fees under the relevant Contract in that Contract Year
 - (b) the maximum aggregate liability of each party under or in connection with this Data Processing Agreement (howsoever arising, including for negligence and under an indemnity) which does not relate to a particular Contract shall not exceed £50,000.
- 7.4 **Liability Caps not to be combined.** Each Liability Cap shall apply to the exclusion of all others in respect of a given claim for liability, so that neither party may combine more than one Liability Cap in respect of the same claim (or series of connect claims) for the purposes of calculating the other party's maximum liability. For the avoidance of doubt, the limitations under clauses 7.3(a)(i), 7.3(a)(ii), and 7.3(b) shall each constitute a separate Liability Cap.
- 7.5 **Liability Caps to reduce all others.** If a party pays an amount by way of a liability to the other party (howsoever such liability arises) and that amount is subject to a Liability Cap (the "**Applicable Liability Cap**"), the amount paid shall reduce the maximum amount that can be claimed against the paying party under all other Liability Caps, and in respect of all other liabilities, by an equivalent amount for the period during which the Applicable Liability Cap applies.



8. Order of priority

8.1 In the event of any conflict or inconsistency between the provisions of this Data Processing Agreement, the EU SCCs (including as modified by the UK Addendum), and a Contract, the following order of priority shall apply:

- (a) first, the EU SCCs (including as modified by the UK Addendum);
- (b) then, the provisions of this Data Processing Agreement; and
- (c) last, the provisions of the Contract.

