SOFTWARE TERMS

1. Introduction

These Software Terms shall be incorporated into each Contract under which Nasstar will supply any Software to the Customer.

2. Software

2.1 Nasstar reserves all right, title and interest in and to the Software, the technology used to provide the Software, any documentation provided with the Software, and all Intellectual Property Rights in the foregoing. The Customer does not acquire any ownership rights in or to the Software through these Software Terms.

2.2 Nasstar warrants that any Bespoke Software (excluding any other Nasstar Software, Third Party Software or firmware) will conform in all material respects to its specification in the Contract for a period of ninety (90) days from the Effective Date or such other period as stated in the Contract (the "**Warranty Period**"). The Customer's sole and exclusive remedy for any faults, defects or errors in Bespoke Software during the Warranty Period shall be to have the Bespoke Software repaired, corrected or replaced and the Customer shall provide all information that may be necessary to assist Nasstar in resolving the fault, defect or error, including providing a documented example of it or sufficient information to enable Nasstar to recreate the fault, defect or error. Nasstar will not have any liability to the Customer with respect to any faults, defects or errors in Bespoke Software that arise or are notified to Nasstar after the expiry of the Warranty Period, unless otherwise stated in the Contract.

2.3 Nasstar does not provide Third Party Software or firmware with a warranty of any kind, provided that, to the extent that Nasstar is permitted to do so under its contracts with third parties, it will pass on the benefit of any warranties to the Customer which it receives from third parties in relation to any Third Party Software or firmware supplied by Nasstar pursuant to a Contract.

2.4 Any Third Party Software or firmware supplied by Nasstar will be subject to any applicable Third-Party terms or conditions, including any limitations on use, set out or referred to in the Contract.

2.5 The Customer shall comply with all Third Party End User Licences and any other terms attached to any Third Party Software and shall reimburse the Supplier for all reasonable losses, costs or damages which the Supplier may incur or suffer as a result of the Customer failing to comply with the Third Party End User Licences or the terms attached to any Third Party Software.

2.6 Nasstar will supply Software in object code form only, unless otherwise stated in a Contract.

2.7 Depending upon the Software provided, the Customer may be issued with a unique licence key ("Licence Key") which will grant access to the Software in accordance with the type of licence granted under the Contract.

2.8 If a Licence Key is provided, Nasstar will employ a usage tracking tool which will report on the number of users consuming the Software under the licence. Activity will not routinely be blocked if the number of users exceeds the number of purchased licences, but instead Nasstar

will be entitled to collect additional licence fees calculated on a pro rata basis for such additional use.

2.9   Nasstar reserves the right to revoke the Licence Key if that Licence Key is used by more users than licences purchased under the Contract.

2.10   If the usage tracking tool determines that an invalid Licence Key has been used, or if the Software is revoked under clause 2.8, the Software will perform a silent fail. This will not produce a visual error, and there will be no loss of functionality to the existing Skype or Teams environment.

2.11   Nasstar reserves the right to audit usage of the Software to determine whether the number of users consuming the Software is in line with the terms of licence.

3.   Software Assurance

3.1   A maintenance service for certain Software ("Software Assurance") is available and if purchased, will be provided by Nasstar in accordance with the terms set forth in your Contract and for as long as the Software Assurance Fee is paid (or, if included as part of your licence, for the duration of the term of the licence). This clause 3 will only apply where Software Assurance is sold.

3.2   As part of the purchased Software Assurance, Nasstar will investigate issues raised by the Customer to determine if the problem is a Software bug or user support issue. If a Software bug is identified, Nasstar will use reasonable endeavours to investigate a workaround, patch or version update in order to correct the issue.

3.3   Software Assurance will not cover problems arising as a result of the Customer's incorrect use of the Software or failure to follow installation advice. If the issue raised by the Customer is a configuration or implementation issue requiring user support, this will not be covered by Software Assurance and must be handled via the purchase of separate Nasstar's consultancy time.

3.4   In the event that product improvement upgrades and/or updates (including but not limited to security hotfixes and rollup updates) of the Software are developed ("Upgrades and/or Updates"), Nasstar will only make such Upgrades and/or Updates available to the Customer as part of Software Assurance, provided all Licence Fee and Software Assurance Fee payments are up to date. If Software Assurance has been purchased the Customer commits to moving to the new version within twelve (12) months of release.

3.5   Security hotfixes will be covered as part of the Licence Fee, regardless of whether Software Assurance has been purchased.

3.6   Nasstar provides hotfix and rollup updates for a period of twelve (12) months following the release of a new version of the Software.

3.7   Nasstar may, at their discretion, provide advice to you about recommended hardware for on-premise deployment; however, support of such hardware is not deemed to be included in the Licence Fees unless additional support terms and costs specific to that hardware have been agreed in writing between Nasstar and the Customer.

4. Licence fees

4.1 The price for Software will depend on the licensing metrics under which it is supplied (such as the number of users). The Customer shall keep accurate and complete records relating to its use of the Software (including the number of users or usage metrics on which the Software is licensed) and shall provide such records to Nasstar at any time on request.

4.2 If the Customer has failed to pay for the correct level of usage, or if there is any other payment shortfall, the Customer shall within thirty (30) days of notification from Nasstar:

   (a) make good any payment shortfall;

   (b) purchase the necessary additional licences;

   (c) pay such sum(s) as Nasstar may be liable to pay to its licensors for such excess or incorrect usage (whether for the relevant number of users or otherwise), which will include in the case of any Microsoft Software product, one hundred and twenty five percent (125%) of the unit price for such product for the period and volume of use (or such other amount as Microsoft may from specify time to time as being payable in the case of excess or incorrect usage); and

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

4.3 Any additional Software licences must be purchased for the period from the Effective Date of the Contract under which the Software was originally supplied, unless the Customer can evidence a different duration of usage to the reasonable satisfaction of Nasstar (and its licensors where applicable). This shall not prevent the Customer from changing the number of Users using any Software supplied by Nasstar on a consumption basis.

5. Compliance and acceptable use

5.1 All Software and related documentation is licensed to the Customer subject to applicable Laws regarding the export of software programs and related documentation, including without limitation, those of the United States of America, the United Kingdom and the European Union. The Customer agrees to comply with all such applicable Laws.

5.2 The Customer shall not use Nasstar Services to engage in the manufacture, use, distribution or transfer of counterfeit, pirated or illegal software. If the Customer becomes aware that any of its users, employees or agents have used Services for any such activities (whether in the course of their duties or otherwise), the Customer shall inform Nasstar immediately to the extent that it may do so in accordance with applicable Law.

5.3 During the term of the Contract and for a period of three (3) years thereafter, the Customer shall allow Nasstar or its licensors (or their duly authorised representatives), at reasonable times and on reasonable notice, to access and take copies of all relevant documentation in the Customer's possession or control and to access all Customer Equipment as is reasonably required for the purpose of verifying that the use of the Software by the Customer and its users

is in accordance with the terms of the Contract and to verify the Customer's compliance with the Contract generally. Any such verification shall occur not more than once during each twelve (12) month period, save where Nasstar has reasonable grounds for supposing that there has been breach or malfeasance on the Customer's part or in the case of a Government Intervention.

5.4   The Customer shall not:

5.4.1   remove alter or obscure any watermark or proprietary notice (including any notice of copyright or trademark) of Nasstar or its affiliates and partners;

5.4.2   use the Software for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by Nasstar; or

5.4.3   distribute, resell or permit access to the Software by any third party.

6.   Delivery of software

6.1   If Nasstar provides the Software on physical media, Nasstar will deliver the Products to the location set out in the Order Form or to the Customer's billing address where no delivery address is specified in the Order Form.

6.2   If Nasstar provides the Software in digital form without physical media, it shall notify the Customer of the expected date from which the Software will be available for the Customer to access and download.

6.3   Nasstar will notify the expected delivery date where this is available. Any dates quoted for provision of the Software are approximate only, and the time of delivery is not of the essence. Should an order not arrive or not be made available within three (3) days of the expected delivery date, the Customer shall notify Nasstar by email or by telephone to salessupport@nasstar.com. If the Software or the physical media on which it is supplied are received incomplete, incorrect or damaged, the Customer must notify Nasstar within three (3) days of delivery. If no such notice is received by Nasstar within such time period, the Customer will be deemed to have accepted the Software.

6.4   Nasstar will not be liable for the Customer's failure to download the Software successfully, unless Nasstar has agreed to perform the download or installation for the Customer under a Contract.

7.   Termination

7.1   Any breach of these Software Terms shall constitute a material breach of the Contract under which the Software is supplied and shall permit Nasstar to terminate the Contract (to the extent it relates to such Software).

7.2   Following notice of termination of any Contract under which Software is provided, the Customer shall immediately cease to use the Software and promptly delete the Software from its systems or equipment and return to Nasstar or destroy all partial or complete copies of such Software in its possession (and provide satisfactory evidence to Nasstar in the case of destruction).

7.3 The Supplier may treat the Customer's breach of any Third Party End User Licence as a breach of the Contract and terminate the Contract with immediate effect.

8. Liability

8.1 Subject to clause 9.1 of the General Terms, Nasstar's total liability to the Customer in relation to any Software (whether arising under contract, tort including negligence, statute or otherwise) in any Contract Year shall be limited to the Charges paid by the Customer to Nasstar for that Software in that Contract Year.

8.2 A material breach of these Software Terms by the Customer may cause irreparable injury for which monetary damages would not be an adequate remedy and therefore that Nasstar will be entitled to seek equitable relief in addition to any other available remedies,

9. Definitions

9.1 In these Software Terms, unless the context otherwise requires, the below will be given the following meanings:

"Bespoke Software": Nasstar Software that has been developed by Nasstar for the Customer and supplied by Nasstar to the Customer under a Contract.

"Third Party End User Licence": The end user licence(s) for the Third Party Software provided to the Customer

9.2 All other terms used in these Software Terms shall be interpreted in accordance with the Contract, unless the context otherwise requires.