

PROFESSIONAL SERVICES TERMS

1. Introduction

These Professional Services Terms shall be incorporated into each Contract under which Nasstar will supply any Professional Services.

2. Professional Services

2.1 The Professional Services will conform in all material respects to the Statement of Work describing the Professional Services or, if no Statement of Work is agreed for Professional Services, in accordance with the description of the Professional Services as stated in the Contract.

2.2 Nasstar shall perform Professional Services:

- (a) Remotely;
- (b) during Standard Business Hours;
- (c) based on standard Nasstar documentation,

unless otherwise stated in the Contract.

3. Charges

3.1 Unless stated otherwise in a Contract, the Customer shall pay Nasstar Charges for Professional Services calculated at its standard rates as amended from time to time (including for all time reasonably spent).

3.2 Where a Contract provides a fixed Charge for Professional Services, the Charge will be based on a maximum time commitment per week for the duration of the Professional Services on the assumption that the Professional Services will be completed by the date set out in the Contract and on the assumption that Nasstar's standard hourly rates remain unchanged.

3.3 Unless stated otherwise in a Contract, the Customer shall reimburse Nasstar for all Expenses incurred by Nasstar in the provision of the Professional Services.

3.4 If the Customer requires Nasstar to spend additional time over and above the maximum time commitment on the basis of which any fixed Charge has been calculated or in the event of any delay in performance or completion of the Professional Services or the solution at the request of the Customer or due to any act or omission of the Customer (including any failure or delay by the Customer to meet any prerequisites as set out in the Contract, Nasstar shall notify the Customer as soon as reasonably practicable and shall be entitled to vary the Charges and/or charge the Customer for additional time and materials (including Expenses) incurred based on Nasstar's then current standard rates (subject to paragraph 3.7).

3.5 Without prejudice to paragraph 3.4, where there is any change in the scope of the Professional Services or the approach to their delivery (including due to any change to the solution as set out in the Scope of Engagement), then Nasstar will notify the Customer as soon as reasonably

practicable and (without prejudice to paragraph 6.4) Nasstar may charge the Customer for any additional time it spends (including any additional Expenses incurred) based on Nasstar's then current standard rates (subject to paragraph 3.7) unless otherwise agreed between the parties pursuant to any variation to the Contract. Nasstar shall have no obligation to provide any additional Professional Services beyond those originally envisaged or to proceed with any such change until the parties have agreed the necessary variations to the Contract (including the price) in accordance with the Change Control Procedure.

3.6 Either party may request variations or changes to the Contract or the Professional Services in accordance with Change Control Procedure.

3.7 Nasstar shall be entitled to charge for any additional time it spends on completing or performing the Professional Services as follows:

(a) fifty per cent (50%) uplift will be applied to the current standard rate for Professional Services performed by Nasstar outside the Standard Business Hours on a Business Day; and

(b) one hundred per cent (100%) uplift will be applied to the current standard rate for Professional Services performed by Nasstar on a non-Business Day.

4. Acceptance

The Customer accepts that Professional Services shall be provided "as is" and shall be deemed to be accepted at the time of their performance, except as stated otherwise in the Contract.

5. Liability

Subject to clause 9.1 of the General Terms, Nasstar's total liability to the Customer in relation to any Professional Services (whether arising under contract, tort including negligence, statute or otherwise) in a Contract Year shall be limited to the Charges paid by the Customer to Nasstar for those Professional Services in that Contract Year. This paragraph 5 shall be without prejudice to other rights or remedies that may be available to the Customer under paragraph 6.

6. Solution design and delivery

6.1 Where Professional Services are supplied pursuant to a Contract in which other Services, Equipment or Software are also provided or intended to be provided as part of a solution, the following provisions shall apply.

Scope of Engagement

6.2 Nasstar may agree to perform Professional Services in order to design or deliver a solution or to validate a solution. Such Professional Services may be described in a Scope of Engagement and may include work on a proof of concept, discovery or design services. Nasstar may agree assumptions in the Scope of Engagement, including pre-requisites that the Customer must meet in order for Nasstar to be able to deliver the solution or assumptions concerning the Customer's systems or infrastructure or anticipated consumption of Services.

Statements of Work and Project Initiation Documents

- 6.3 In its performance of Professional Services, Nasstar may prepare a detailed Statement of Work or Project Initiation Document in order to further define a solution for the Customer. In such circumstances, Nasstar's performance of the Contract shall be conditional on the assumptions in any Scope of Engagement being correct and accurate and on the preparation by Nasstar and approval by the Customer of the subsequent Statement of Work or Project Initiation Document.
- 6.4 Where any assumptions in a Scope of Engagement become or are later found to be incorrect or inaccurate or where any change to the solution is necessitated by changes to the information provided to Nasstar by the Customer or Nasstar otherwise determines that it is not commercially or technically feasible to supply the solution on the same terms and conditions as originally envisaged (including the price) as a result of work that it has performed to design or validate the solution then:
- (a) Nasstar will notify the Customer as soon as reasonably practicable;
 - (b) Nasstar shall provide details (where applicable) of variations to the terms and conditions (including the price) or variation to the solution (including the description or specifications) that would enable it to deliver the solution or a comparable solution (as described in the subsequent Statement of Work or Project Initiation Document, where one is prepared);
 - (c) such details will be binding on the Customer unless they materially vary the price and/or solution, in which case the Customer shall have the right to object to them. If the Customer does not object to a material variation proposed by Nasstar within five (5) days (or such shorter period as requested by Nasstar where required in the timescales for performance) of receiving the details, the Customer shall be deemed to have accepted them and the Contract shall be varied accordingly;
 - (d) if the Customer objects to a material variation proposed by Nasstar within the required time period, the parties will negotiate in good faith to agree a variation acceptable to both parties. If the parties cannot agree on the proposed variation within ten (10) days of the Customer receiving the initial details of the variation from Nasstar, either party may terminate the Contract and Nasstar shall have no liability to the Customer for such termination. The Customer shall remain liable to pay Nasstar all Charges and Expenses incurred up to the date of termination; and
 - (e) Nasstar shall be entitled to charge any additional Charges and Expenses incurred as a result of any delay in the Customer's acceptance of the variation that may cause Nasstar to demobilise and/or remobilise any resources or extend the timescales for the performance of the Contract, if such additional Charges and Expenses are not incorporated into a variation that is agreed by Nasstar and the Customer.
- 6.5 Paragraphs 6.3 and 6.4 shall also apply to any variations required to any Statement of Work or Project Initiation Document.

Customer Information

- 6.6 The Customer warrants that it has provided Nasstar all information relevant to the Contract and, in particular, all information necessary for Nasstar to determine the scope of Professional

Services required. The Customer acknowledges that Nasstar has entered into the Contract in reliance on the accuracy and adequacy of such information. The Customer shall notify Nasstar promptly in writing if it becomes aware that any information it has provided to Nasstar is incorrect, inaccurate or misleading in any way. Paragraphs 6.3 and 6.4 shall apply to any variations required as a result of any material inaccuracy or omission in any such information.

Acceptance

- 6.7 If Acceptance Criteria apply to a solution supplied by Nasstar in the course of providing any Professional Services, the following terms shall apply:
- (a) When Nasstar considers that the solution is complete, it will notify the Customer in writing ("**Completion Notice**").
 - (b) Following receipt of a Completion Notice, the Customer shall conduct any Acceptance Tests (if any) it is required to carry out under the Contract.
 - (c) If the Customer discovers any Defect during the performance of the Acceptance Tests, the Customer must notify Nasstar of such Defect as soon as reasonably practicable and in any event within seven (7) days of receiving a Completion Notice. On receipt of such notification, Nasstar will investigate the alleged Defect and, if it can identify or reproduce the Defect, Nasstar may (at its election) either re-perform the Professional Services or repair or correct the Defect and resubmit a Completion Notice when complete.
 - (d) The Customer shall issue an Acceptance Certificate if the Acceptance Criteria have been met and it has not identified a Defect.
 - (e) If the Customer fails to issue an Acceptance Certificate or notify a Defect to Nasstar within seven (7) days of receiving a Completion Notice, or if the Customer makes use of the Professional Services or any Deliverable other than for the purposes of conducting Acceptance Tests, the Customer shall be deemed to have accepted the Professional Services or Deliverable.
 - (f) The Customer shall not be permitted to withhold an Acceptance Certificate if the Acceptance Criteria have been met in all material respects.
 - (g) If the Customer has notified Nasstar of a Defect and Nasstar determines that it is impracticable to re-perform the Professional Services or to repair or correct the Defect, Nasstar may terminate the Contract and refund the applicable part of the Charges.
- 6.8 The details for the Acceptance Tests (if any) and Acceptance Criteria for a solution or any Services to be supplied by Nasstar shall be detailed in a Statement of Work or Project Initiation Document. If no Acceptance Tests or Acceptance Criteria are detailed in a Statement of Work or Project Initiation Document, the Acceptance Tests (if any) and Acceptance Criteria shall be as detailed in the Service Description for the relevant Services or, if no such details are set out in the Service Description, then:

- (a) the Acceptance Tests shall be those tests that are notified to the Customer by Nasstar; and
- (b) the Acceptance Criteria shall be that the solution or Service complies in all material respects with the requirements of the Scope of Engagement (if and to the extent that the assumptions underpinning those requirements remain accurate).

Remedies

- 6.9 The remedies set out in paragraph 6.8 shall be the Customer's sole and exclusive remedy for Nasstar's failure to supply Professional Services materially in accordance with a Contract but shall be without prejudice to other rights or remedies that may be available to the Customer under the Contract with respect to other Services, Equipment or Software provided under a Contract as part of a solution.

7. Definitions

- 7.1 In these Professional Services Terms, unless the context otherwise requires, these terms will be given the following meanings:

"Acceptance Criteria": the acceptance criteria (if any) which apply pursuant to paragraph 6.8 of these Professional Services Terms;

"Acceptance Tests": the tests which the parties agree to carry out to test a solution (which may include any Professional Services or other Services, Equipment or Software delivered under a Contract) against the Acceptance Criteria;

"Defect": a material non-compliance with the Acceptance Criteria;

"Professional Services": any project management, service management or other development, support, consultancy or other professional services to be provided by Nasstar as specified in a Statement of Work, Scope of Engagement or Order Form;

"Project Initiation Document": a document describing a detailed plan for the delivery of a solution or Service, which may include an estimated timetable for the delivery of the solution or Service, the parties' responsibilities for the delivery of the solution or Service and details of any constraints, pre-requisites and assumptions for delivery of the solution or Services, and which may be produced by Nasstar in the performance of Professional Services and updated from time to time in accordance with these Professional Services Terms;

"Scope of Engagement": a document providing a summary overview of a solution or Services to be provided by Nasstar (which may include a summary of any Professional Services to be provided by Nasstar in order to design or deliver a solution or to validate a solution), and which may be superseded by a detailed Statement of Work and/or a Project Initiation Document;

"Standard Business Hours": 09:00 – 17:30 Monday to Friday excluding bank and other public holidays in England and Wales; and

"Statement of Work" or "SoW": a statement of works, a statement of services, a time and materials contract and/or a services and software contract which detail Professional Services

to be undertaken by Nasstar or Bespoke Software or other Deliverables that Nasstar has agreed to supply under a Contract.

7.2 All other terms shall be interpreted in accordance with the Contract.