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GCloud 15 (RM1557.15)

Crown Commercial Services

Supplier Terms & Conditions

Bid.team@netcall.com



Note: **Highlighted sections** are subject to configuration of the solution.

Standard Terms & Conditions for the Supply of Services:

Between:

- (1) The Netcall entity whose name, registration number and registered office is as detailed on the relevant Order Form (“Netcall”); and
- (2) The entity whose name, registration number and registered office is as detailed on the relevant Order Form (“Customer”).

Customer agrees to purchase Services as specified in the relevant Netcall order form agreed by the parties (“**Order Form**”) and which will be subject to these terms and conditions (“**Terms**”). Together the Order Form and the Terms are the “**Agreement**”. This Agreement will only come into force when the Order Form has been issued to Customer by Netcall, Customer has returned it signed to Netcall and Netcall has returned to Customer a countersigned copy of that Order Form. No other terms will apply to the supply of the Services by Netcall to Customer other than the terms expressly set out in the Agreement. For the avoidance of doubt the terms of any Customer purchase order will not be legally binding and may not act as a form of offer, counter-offer, modification, addition to and/or variation of this Agreement. In the event of any conflict between the Terms and the Order Form, the order of precedence will be firstly, these Terms and then the Order Form, unless it is expressly stated in the Order Form that the provision is to prevail over these Terms.

1 PROVISION OF SERVICES

1.1 Terms applying to all Services:

- 1.1.1 Netcall will provide the services set out in the Order Form being Professional Services, Hosted Service, Managed Service and/or Support & Maintenance Services (together “Services”). Notwithstanding any provision of any Order Form to the contrary all dates for the provision of the Services will be estimates only.
- 1.1.2 Customer will comply with the reasonable instructions of Netcall as may be relevant to the Services and Customer will provide all reasonable co-operation to Netcall in its provision of the Services (including reasonable access to equipment, personnel, data, systems and/or infrastructure as is reasonably required to perform the Services (including to allow Services to be delivered remotely)).
- 1.1.3 Netcall reserves the right to engage sub-contractors to perform the Services provided that Netcall will remain liable to Customer for any

breach by Netcall’s sub-contractors of Netcall’s obligations under this Agreement subject to the terms hereof.

- 1.1.4 The Order Form will specify the initial term of the provision of the Hosted Service, Support & Maintenance Services and/or Managed Service (as applicable).
- 1.1.5 Services will be calculated and charged for as set out in the relevant Order Form. Netcall reserves the right to increase the price charged for Services: (i) with effect from the end of the initial term of such Services by written notice to Customer prior to the expiry of such initial term and thereafter prior to any annual anniversary thereof by an amount equal to the previous month’s 12 months’ rate for the retail prices index (“RPI”) plus 2%; and/or (ii) as may be expressly specified in the Order Form.
- 1.1.6 Customer will not (and will not permit any third party to) use, rent, loan, “frame”, “mirror”, distribute and/or otherwise deal in the Services (or any component thereof) and in particular will not use the same to process data for third parties or

provide a bureau service or other outsourced service to third parties.

- 1.1.7 Customer will give prompt notice to Netcall as soon as it becomes aware that Customer has exceeded any restrictions and/or usage limits specified in the Order Form in relation to the Services.

1.2 Professional Services:

- 1.2.1 Netcall will provide the professional services (if any) set out in the Order Form (“**Professional Services**”). In respect of Professional Services the term of use of the resulting deliverables will be the same as the term of use of the corresponding Services.

1.3 Hosted Service:

- 1.3.1 Netcall will provide the hosted service (if any) set out in the Order Form (“**Hosted Service**”). Netcall grants to Customer a non-exclusive, non-transferable, limited licence to use the Hosted Service subject to the terms of this Agreement. The Hosted Service includes any new versions and/or releases of such Hosted Service and/or

	documentation relating to such Hosted Service made available to Customer by Netcall. For the avoidance of doubt the Hosted Service, and any updates or maintenance releases thereof, will be made available only on a hosted basis and will not be delivered in object code or physical media to Customer.		in reasonable detail the extent and objectives of the proposed decompilation, disassembly or unbundling exercise. Netcall will be entitled to a reasonable fee for the provision of such information.		information to the Hosted Service for which Customer does not have appropriate rights.
1.3.2	The Hosted Service will be provided subject to Netcall's standard service levels which are set out in the relevant Order Form and which Netcall may amend from time to time (provided it does not substantially decrease such service levels) without the prior written consent of Customer.	1.3.7	Except as expressly provided in this Agreement no right is granted to translate, adapt, arrange, alter and/or modify the Hosted Service or any part of it and Customer will not do or attempt any of such acts, whether for error correction or otherwise except in so far as Customer may lawfully do so without the authorisation of Netcall.	1.4	Support & Maintenance Services:
1.3.3	Customer will ensure that its use of the Hosted Service remains in compliance with all applicable laws. Customer will not use the Hosted Service to store or distribute illegal or infringing content and agrees that if Netcall receives notice from any third party alleging the presence of such content in the Hosted Service, Netcall will be entitled to take whatever action as Netcall deems fit, including deleting such content, without liability to Customer.	1.3.8	Customer is responsible for taking appropriate security measures itself and accordingly will implement its own security policies in line with good industry practice.	1.4.1	Netcall will provide the support and maintenance services (if any) set out in the Order Form (" Support & Maintenance Services ").
1.3.4	The Hosted Service is only for Customer's internal use.	1.3.9	Customer controls what data is provided to the Hosted Service for the purposes of the provision of the Hosted Service and how such data is transferred to and from the Hosted Service.	1.4.2	Customer agrees to: (a) use, operate and maintain the Services in accordance with any relevant operating manuals and Netcall's instructions and/or recommendations; (b) nominate and suitably train at least one dedicated support contact; and (c) ensure that only suitably trained and experienced individuals submit service requests. Netcall will have no liability or obligation to provide Support & Maintenance Services in relation to faults or service delays caused by Customer default, customisations, incorrect environments and/or Customer staff not being suitably trained/skilled.
1.3.5	The Hosted Service is provided only for the limited purpose for which it was designed and is for use only in connection with equipment that complies with Netcall's minimum equipment and site requirements which are available on request (as updated from time to time) or as may be specified in the Order Form.	1.3.10	Customer will not use the Hosted Service in a manner that interferes with, degrades or disrupts the integrity or performance of any Netcall (or Netcall's sub-contractors') technologies, services, systems or other offerings, including data transmission, storage and/or backup.	1.4.3	Netcall may record telephone calls between representatives of Customer and representatives of Netcall for training and service improvement purposes.
1.3.6	Customer is prohibited from decompiling, reverse engineering, disassembling, or otherwise reducing the Hosted Service to a human-perceivable form except as permitted by any applicable law. Where permitted by applicable law, Customer will agree to first make a written request to Netcall for it to supply the relevant information required specifying	1.3.11	Customer will not circumvent or disable any security features or functionality associated with the Hosted Service.	1.5	Managed Service:
		1.3.12	Customer will not use the Hosted Service in any manner prohibited by law.	1.5.1	Netcall will provide the managed services (if any) set out in the Order Form (" Managed Service "). The Managed Service will be provided subject to Netcall's standard service levels which are set out in the relevant Order Form and which Netcall may amend from time to time (provided it does not substantially decrease such service levels) without the prior written consent of Customer.
		1.3.13	With respect to the Hosted Service Customer will adhere to all applicable laws, treaties and regulations in all jurisdictions in respect of which Customer uses the Hosted Service, including all end-user, end-use and destination restrictions issued by applicable government entities. Customer will not upload any data or	1.5.2	Customer will ensure that its use of the Managed Service remains in compliance with all applicable laws. Customer will not use the Managed Service to store or distribute illegal or infringing content and agrees that if Netcall receives notice from any third party alleging the presence of such content in the

Managed Service being provided by Netcall, Netcall will be entitled to take whatever action as Netcall deems fit, including deleting such content, without liability to Customer.

2 PRICE & PAYMENT

- 2.1 Netcall will invoice Customer for the charges due hereunder as set out in the Order Form. Customer will pay all amounts due without deduction or withholding in pounds sterling within 30 days of date of Netcall's invoice. All sums payable under this Agreement are exclusive of any VAT. Customer is responsible for all taxes, charges, levies, assessments and other fees of any kind imposed on the purchase of the Services. Customer will not be entitled to set off amounts due to it against any amounts due to Netcall pursuant to, or in connection with this Agreement or pursuant to or in connection with any other agreement made between the parties. For the purposes of ensuring payment on time, Customer shall promptly provide Netcall with appropriate purchase orders for all amounts due under this Agreement.
- 2.2 Customer will pay Netcall's reasonable out of pocket travel, accommodation and subsistence expenses incurred by Netcall in attending any location outside of Netcall's offices as requested by Customer.
- 2.3 Netcall may without prejudice to its other rights and/or remedies suspend Customer's right to use the Services and/or suspend Netcall's provision of the Services (or any part thereof) and/or the performance of its obligations under any Agreement if Customer fails to pay any amount due to Netcall on time. Interest on late payments will be charged by Netcall at the rate of 2% per annum above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

3 WARRANTIES

- 3.1 Customer is responsible for ensuring that the facilities and functions in the Services meet its requirements.
- 3.2 Netcall warrants that all Services will be carried out with reasonable care and skill. Netcall warrants that it will use reasonable endeavours to provide the Hosted Service and/or Managed Service in substantial conformance with Netcall's standard documentation for the Hosted Service and/or Managed Service as applicable. The parties acknowledge that the Hosted Service and/or Managed Service will not be free of minor defects nor will the Hosted Service and/or Managed Service function without interruption. Netcall will have no liability or obligations under the aforesaid warranties unless it has received written notice of the breach of warranty in question no later than 60 days after the date on which Netcall performed the act or omission which caused the breach of warranty. Customer hereby agrees that its sole remedy in respect of any breach of the said warranties is that Netcall will remedy such breach without charge to Customer and if in Netcall's reasonable opinion, Netcall is unable to remedy any such breach then its liability for that failure is limited to refunding a reasonable portion of the fees paid for the relevant Services for 12 months prior to the date of the breach (where such portion will be calculated by Netcall acting reasonably and having regard to the circumstances of the breach in question).
- 3.3 No warranty whatsoever is given in respect of any third party or open source software.
- 3.4 Both parties will take all reasonable steps to ensure that their own computer systems are virus checked and that they do not transmit viruses to the other party during electronic interconnection or the exchange of media.

- 3.5 Except as expressly set forth in this Agreement all warranties, conditions, representations and other terms implied by statute or common law in respect of the Services are, to the fullest extent permitted by law, excluded.

4 LIMITATION OF LIABILITY

- 4.1 This clause 4 sets out the entire financial liability of Netcall (including any liability for the acts or omissions of its employees, agents and/or sub-contractors) to Customer in respect of all matters arising out of or in connection with this Agreement. All claims by Customer must be made against Netcall only and not against any of Netcall's third party licensors.
- 4.2 Nothing in this Agreement will be construed as limiting or excluding the liability of Netcall for:
 - 4.2.1 death or personal injury resulting from negligence; or
 - 4.2.2 any damage or liability incurred by Customer as a result of fraud (including a fraudulent misrepresentation) by Netcall; or
 - 4.2.3 any liability which cannot lawfully be limited or excluded.
- 4.3 Subject to clause 4.2, Netcall will not be liable to Customer for any of the following (where in each of clauses 4.3.1 to 4.3.8 inclusive whether of a direct or indirect nature):
 - 4.3.1 loss of, damage to and/or corruption of data;
 - 4.3.2 loss of profits;
 - 4.3.3 loss of business;
 - 4.3.4 depletion of goodwill;
 - 4.3.5 loss of anticipated savings;
 - 4.3.6 loss of contract;

- 4.3.7 loss of use;
- 4.3.8 wasted expenditure; and/or
- 4.3.9 special, indirect or consequential loss.
- 4.4 Subject to clause 4.2, Netcall's total liability for any and all claims in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether negligent or innocent), restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement (or any collateral contract) will be limited to:
 - 4.4.1 in relation to Professional Services, 100% of the fee paid and payable by Customer for the relevant Professional Services in respect of which such claim relates;
 - 4.4.2 in relation to the Hosted Service and/or Support & Maintenance Services, 100% of the fee paid and payable by Customer for the relevant Hosted Service and/or Support & Maintenance Services in respect of which such claim relates for the 12 months preceding the date on which the cause of action giving rise to the first claim arose;
 - 4.4.3 in relation to the Managed Service, 100% of the fee paid and payable by Customer for the relevant Managed Service in respect of which such claim relates for the 12 months preceding the date on which the cause of action giving rise to the first claim arose;
 - 4.4.4 in the case of all other matters, £25,000.
- 4.5 Netcall will not be liable for any loss or damage suffered by Customer where such loss or damage is suffered in consequence of any unavailability or failure or interruption of the Services arising from any of Customer's systems, equipment or any third party equipment or where caused by Customer's acts or omissions or inadequately trained Customer personnel. Customer acknowledges and agrees that the Hosted Service may be subject to interruption,

limitations, delays, and other problems inherent in the use of Internet applications and electronic communications. Netcall is not responsible for any such delays, delivery failures, or any other damage resulting from events beyond Netcall's reasonable control, without regard to whether such events are reasonably foreseeable by Netcall.

- 4.6 If Netcall's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer, its agents, sub-contractors and/or employees, Netcall will not be liable for any costs, charges and/or loss sustained or incurred by Customer arising directly or indirectly from such prevention or delay.

5 INTELLECTUAL PROPERTY

- 5.1 All intellectual property rights in the Services (including any modifications, alterations or adaptations thereto whether made by Netcall, Customer or any third party) are and will remain the sole property of Netcall (or its licensors). Netcall will not acquire any intellectual property rights in any data that Customer inputs to the Hosted Service ("**Customer Data**"). Subject to Netcall's obligations pursuant to clause 6.2, Netcall will not be prevented or restricted by this Agreement from developing and using any techniques, ideas, concepts, information and/or know-how relating to methods and/or processes of general application including those in the field of information technology and business processes that have been learnt in the course of performing Netcall's obligations under this Agreement.
- 5.2 With respect to all Customer Data, content, designs, processes or other intellectual property and/or confidential information Customer will ensure that it has all rights, consents and authority therein to provide the same to Netcall and/or for Netcall to process the same via the Hosted Service.

- 5.3 Subject always to the limitations and exclusions of liability set out in clause 4, Netcall will indemnify and hold Customer harmless against its reasonable losses, liabilities and damages directly arising from any claim that the current and/or immediately preceding release of the Hosted Service infringes the copyright of a third party ("Claim") provided that Customer complies with clauses 5.4 to 5.6 (inclusive) and provided that the Claim does not arise as a result of:
 - 5.3.1 the use of the Hosted Service in combination with any material not supplied by Netcall;
 - 5.3.2 a modification to the Hosted Service that is not undertaken by Netcall;
 - 5.3.3 the use of the Hosted Service in combination with any of Customer's content, applications, products, services, hardware, designs, business processes and/or Customer Data; and/or
 - 5.3.4 the use of the Hosted Service, or any documentation in a manner contrary to this Agreement or any instructions given to Customer by Netcall.
- 5.4 Customer will promptly give notice in writing to Netcall if it becomes aware of any: (a) Claim; and/or (b) infringement or suspected infringement by a third party of the intellectual property rights relating to Services.
- 5.5 Netcall will, in its absolute discretion, decide what action to take in respect of any Claim. Netcall will conduct and have sole control over any consequent action that it deems necessary and Netcall will be entitled to all damages and other sums that may be paid or awarded as a result of that action. Customer will not (whether through action or inaction) prejudice Netcall's defence of such Claim.
- 5.6 In relation to any Claim, Customer will, at Netcall's reasonable cost, provide such assistance and will take such steps or actions as Netcall may consider

reasonable or appropriate to prevent or to terminate the infringement and/or to defend the Claim.

- 5.7 Netcall will have the right to replace and/or change all or part of the Services in order to avoid any infringement provided the same does not have a substantial detrimental effect on the relevant Services.
- 5.8 If Customer uses “Open Source” software (which will also include software known as “copyleft” and “freeware”) in conjunction with any of the Services Customer must ensure that Customer's use does not: (a) create, or purport to create, obligations of Netcall or its licensors with respect to the Services; or (b) grant, or purport to grant, to any third party any rights to, or immunities under, Netcall's or its licensors' intellectual property or proprietary rights in the Services.
- 5.9 Netcall will be entitled to use Customer's corporate name and logo on Netcall promotional/communication materials simply to indicate that Customer is a customer of Netcall.

6 CONFIDENTIALITY

- 6.1 “**Confidential Information**” means (a) terms of this Agreement; (b) any information that would be regarded as confidential by a reasonable business person relating to (i) the business, assets, affairs, customers, clients, suppliers or plans of the disclosing party; (ii) the Services, and (iii) the operations, processes, product information, know-how, designs, trade secrets and/or inventions of the disclosing party.
- 6.2 Subject to clause 6.3 each party will keep in strict confidence the disclosing party's Confidential Information. Each party will restrict disclosure of such Confidential Information to such of its employees, agents and/or sub-contractors as may need to know the same for the purposes of this Agreement, and will ensure that its employees,

agents and/or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the parties to this Agreement. The receiving party will be liable for any breach of the obligations in this Agreement by any of its employees, agents and/or sub-contractors. Customer agrees that Netcall may report to the relevant third party licensors the appropriate information relating to the third party software licensed to Customer hereunder.

- 6.3 The obligations of confidentiality in clause 6.2 will not apply to any information which: (a) was lawfully in the possession of the receiving party without any obligation of confidentiality prior to its disclosure by the disclosing party; (b) is already public knowledge or becomes so at a future date (other than as a result of a breach by the receiving party of this Agreement); (c) comes into the receiving party's knowledge from a third party who lawfully possesses such information and disclosure by receiving party is not in breach of a duty of confidence; (d) is required to be disclosed pursuant to any statute, regulation, applicable stock exchange rule, ordinance or order of a court of competent jurisdiction (subject to the receiving party, where reasonably practicable, giving the disclosing party not less than two Working Days written notice thereof); or (e) independently developed by the receiving party without access to or knowledge or use of the Confidential Information.
- 6.4 This clause 6 will not apply to any Personal Data (as defined below) which is the subject of clause 7 below.

7 DATA PROTECTION

- 7.1 Definitions:
 - 7.1.1 “**Data Protection Legislation**” means the UK GDPR and the Data Protection Act 2018.
 - 7.2 “**Data Controller**”, “**Data Processor**”, “**Data Protection Impact Assessment**”, “**Data Subject**”,

“**Personal Data**” and “**Process**” will have the meanings ascribed to them by the Data Protection Legislation.

- 7.3 Where Personal Data is Processed pursuant to this Agreement, the type of Personal Data and the subject matter, duration, nature and purpose of the Processing, and the categories of Data Subjects, are as described in the relevant Order Form.
- 7.4 In respect of the parties' rights and obligations under this Agreement regarding the Personal Data, the parties hereby acknowledge and agree that Netcall may Process Personal Data on behalf of Customer as part of its provision of the Services. Where this occurs, Customer is the Data Controller and Netcall is the Data Processor and accordingly Netcall agrees that it will Process all Personal Data in accordance with its obligations pursuant to this clause 7.3 and clause 7.4. Notwithstanding any other provision in this Agreement to the contrary, in relation to the Services Customer:
 - 7.5 will comply with the Data Protection Legislation at all times;
 - 7.6 will, as between the parties, have sole responsibility for the accuracy and quality of the Personal Data and the means by which Customer acquired the Personal Data;
 - 7.7 will ensure that it has all rights, consents and authority to permit Netcall to lawfully Process such Personal Data;
 - 7.8 agrees that it is responsible for implementing its own policies and decisions in relation to its compliance with the Data Protection Legislation and for ensuring that those policies are in compliance with the Data Protection Legislation;
 - 7.8.1 agrees that Netcall is not providing any advice to Customer as to Customer's compliance with the Data Protection Legislation;

- 7.8.2 agrees that Netcall will not in respect of each instance be in breach of this Agreement nor will Netcall be in any other way liable to Customer for and/or be responsible to Customer for any consequences arising from Processing Personal Data where Netcall has done so in accordance with Customer instructions relating thereto;
- 7.8.3 agrees that Customer policies in relation to its compliance with the Data Protection Legislation must be reasonable;
- 7.8.4 agrees to undertake a proper review of the Services and the associated Customer policies and/or instructions reflected within the Services in relation to compliance with the Data Protection Legislation prior to putting the Services into operational use and Customer agrees not to put the Services into operational use where such a review identifies any material risk of non-compliance with the Data Protection Legislation. Customer agrees to keep the Services subject to such review on an ongoing basis and in particular will undertake such reviews prior to deploying any changes made to the Services by Customer and/or Netcall and Customer agrees not to put any such changes into operational use where such a review identifies any material risk in relation to data security measures and/or to applicable data protection laws; and
- 7.8.5 grants a general authorisation to Netcall to appoint third party service providers as sub-processors to support the performance of the Services.
- 7.9 Notwithstanding any other provision in this Agreement to the contrary Customer agrees that in Processing Personal Data Netcall's obligations in this Agreement are as follows:
- 7.9.1 Netcall will only Process the Personal Data in order to provide the Services and will act only in accordance with this Agreement and Customer's written instructions issued from time to time;
- 7.9.2 Netcall will as soon as reasonably practicable upon becoming aware, inform Customer if, in Netcall's opinion, any instructions provided by Customer infringe the Data Protection Legislation;
- 7.9.3 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Netcall will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk in particular protection against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed pursuant to this Agreement;
- 7.9.4 Netcall will take reasonable steps to ensure the reliability of any of its staff who will have access to the Personal Data and ensure that anyone who accesses it will respect and maintain all due confidentiality;
- 7.9.5 Netcall will without undue delay after becoming aware, notify Customer of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed under this Agreement ("**Personal Data Breach**");
- 7.9.6 Netcall will as soon as reasonably practicable following, and in any event within sixty (60) days of, termination or expiry of this Agreement or completion of the Services, delete or return to Customer (at Customer's direction) all Personal Data (including copies thereof) Processed pursuant to this Agreement in accordance with clause 9.3; and
- 7.9.7 Netcall will provide such assistance to Customer as Customer reasonably requests (taking into account the nature of Processing and the information available to Netcall) in relation to Customer's obligations under the Data Protection Legislation with respect to: (a) responding to requests from any Data Subject seeking to exercise its rights under the Data Protection Legislation; (b) Data Protection Impact Assessments; (c) notifications to the supervisory authority under the Data Protection Legislation and/or communications to Data Subjects by Customer in response to any Personal Data Breach; and (d) Customer's compliance with its obligations under the Data Protection Legislation with respect to the security of Processing; provided that in relation to the foregoing Customer will pay Netcall's charges for providing such assistance at Netcall's then current standard professional services rates.
- 7.10 Netcall will not cause or permit any Personal Data to be transferred or Processed outside the United Kingdom and/or European Union without first seeking the consent of Customer.

8 TERMINATION

- 8.1 If (a) the term of provision of the Hosted Service and/or Managed Service expires, or (b) the Agreement terminates earlier, then Customer will immediately cease use of the Hosted Service and/or Managed Service (as applicable) and all licences to use the same shall immediately terminate.
- 8.2 Netcall may terminate this Agreement immediately on giving written notice to Customer if Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.
- 8.3 Either party may terminate this Agreement immediately on giving written notice to the other party if (i) the other party commits a material breach of any other term of this Agreement and (if such a breach is remediable) fails to remedy that breach

within 30 days of that party being notified in writing of the breach; or, (ii) the other party becomes insolvent or is otherwise unable to pay its debts as they fall due.

9 CONSEQUENCES OF TERMINATION

- 9.1 On termination or expiry of this Agreement for any reason Customer will:
 - 9.1.1 immediately pay to Netcall all outstanding unpaid invoices together with any amounts due in respect of Services supplied but not yet invoiced; and
 - 9.1.2 immediately deliver up and/or permanently destroy all copies of Netcall's Confidential Information and copies of programs, manuals and documentation used by Netcall for the provision of Services.
- 9.2 If Customer fails to perform its obligations under clause 9.1, then Netcall may enter Customer's premises and take possession of such Netcall Confidential Information.
- 9.3 If requested by Customer within thirty (30) days of the expiration or termination of this Agreement, Netcall will make available to Customer all Customer Data stored within the Hosted Service at the time of expiration or termination. Sixty (60) days after termination, Netcall will have no further obligation to Customer and may, at its option, permanently delete or destroy the Hosted Service and all information and materials contained therein, including Customer Data. Netcall will make transition services available to Customer at Netcall's then current standard professional services rates for such services in order to reasonably assist Customer in transitioning Customer Data into other proprietary formats, however Netcall does not warrant that the data format used by Netcall will be the same as or directly interoperable with other systems used by Customer. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy will be for

Netcall to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Netcall. Netcall will not be responsible for any loss, destruction, alteration and/or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Netcall to perform services related to Customer Data maintenance and back-up).

- 9.4 The accrued rights, remedies, obligations and/or liabilities of each party will, notwithstanding any specific provision herein, survive the termination of this Agreement.
- 9.5 For the avoidance of doubt Netcall may charge Customer on a quantum meruit basis for any Professional Services performed on a fixed price basis up to the date of termination of this Agreement and for any other reasonable charges to which Netcall is committed in respect of the anticipated performance of those services which may be immediately invoiced by Netcall and will be payable by Customer notwithstanding such termination.
- 9.6 The provisions of clauses 2, 4, 5, 6, 7, 8, 9 and 10 will survive the termination of this Agreement.

10 GENERAL

- 10.1 This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises, warranties, representations and/or conditions, whether oral or written, express or implied between the parties relating to its subject matter. Each party acknowledges to the other that it has not been induced to enter into this Agreement by, nor has it relied upon, any representations, promises, covenants and/or undertakings of the other party with respect to such subject matter other than those expressly set out in this Agreement. Each party agrees that it will have no remedies in respect

of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

- 10.2 This Agreement may not be modified except by written document signed by authorised representatives of Netcall and Customer.
- 10.3 Any notice under this Agreement must be in writing and must be addressed to a director of the other party (or equivalent position) and be personally delivered, or sent by either (a) courier, (b) registered mail, (c) first-class postage prepaid, or (d) sent by email (provided that the sender confirms the email by sending an original confirmation copy by courier, registered mail or first class pre-paid postage within 3 Working Days after transmission) to the recipient party at its registered office or such changed address as will be notified by one party to the other in writing for the purposes of this clause. Any notice will be deemed to have been given: (i) in the case of personal delivery, at the time of personal delivery, (ii) in the case of email, upon transmission provided confirmation is sent as described above, or (iii) in the case of courier service, first class postage or registered mail, 3 Working Days after the date and time of mailing. This clause does not apply to the service of any proceedings or other documents in any legal action.
- 10.4 Customer will not be entitled to novate, transfer or assign this Agreement without the prior written consent of Netcall.
- 10.5 Neither party is responsible for failure to fulfil its obligations in this Agreement (excluding any obligations relating to payment of any charges pursuant to this Agreement) due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder and if a

	party will become aware of any such causes it will promptly inform the other party thereof.	Agreement, nor shall it prevent or restrict the further exercise of that or any other right or remedy.	the purposes of TUPE (where TUPE means any applicable laws (including regulations) giving effect to Directive 95/46/EC of the European Parliament from time to time including without limitation the UK's including, without limitation, the Transfer of Undertakings (Protection of Employment Regulations 2006)).
10.6	The parties will comply with their respective obligations under English law regarding anti-slavery, anti-bribery and anti-corruption.	10.13 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.	
10.7	No employment, partnership or agency relationship will be deemed to exist between Customer and Netcall.	10.14 Except as expressly stated therein, the parties to this Agreement do not intend that any term of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.	
10.8	For the duration of this Agreement and for six months following its expiry or termination, Customer will not solicit the employment or services of any personnel of Netcall who have been engaged in connection with this Agreement.	10.15 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) save that nothing will prevent either party from enforcing its rights under this Agreement in the courts of any jurisdiction having competence to issue an injunction directly enforceable against the other party.	
10.9	Each right or remedy of a party under this Agreement is without prejudice to any other right or remedy of that party whether under this Agreement or not.		
10.10	Customer will permit reasonable access by Netcall to its premises during Working Days to audit compliance with the terms of this Agreement.		
10.11	If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause will not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties will negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.	10.16 Unless agreed otherwise in writing, Customer will reimburse Netcall on demand on a full indemnity basis for all costs, compensation payments, tribunal awards, expenses and charges arising from any claim, demand or action made by any of Customer's employees or ex-employees or any trade union or staff association which represents Customer's employees or ex-employees (or, in any case where Customer has outsourced services which are the same as or similar to the Services, the employees or ex-employees of such third party service provider or any trade union or staff association representing those employees) on the grounds that the provision and/or cessation of the Services constitutes a relevant transfer or the transfer of an undertaking for	
10.12	Failure or delay by a party in enforcing or partially enforcing any provision of this Agreement will not be construed as a waiver of any of its rights under this		

Jadu Schedule

1 Definitions and Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Schedule and the annexes to it.

Actively Supported Version: as applicable (a) the current live version of any Jadu SaaS, save that (b) for Jadu Single Tenant SaaS it is the most recently issued Release of the highest two Major Versions of a Jadu Single Tenant SaaS, (c) for Hosted Software subject to the Managed Service the versions specified in the Order Form.

Agent-Ex Products: those AI based components of the Jadu SaaS as set out in the Order Form.

Core System Themes: The themes included in the core software package of the Jadu Single Tenant SaaS Jadu Central (if applicable), which as designated by Jadu from time to time and described in the Documentation, including (without limitation) CmsProject, XfpProject, PaybridgeProject, Alpha, Dopetrope, Editorial, Phantom, Spectral, GOV.UK-Frontend and Origin.

Critical Fault: a reproducible fault which meets the definition of a P1 as set out in Annex 1.

Customer Data: all data, works and materials uploaded to, processed by, generated by and/or stored by the Jadu SaaS and/or Managed Service (but excluding analytics data relating to the use of the Platform and server log files).

Documentation: the documents provided by Jadu for the Service/Software or Release in either printed text or digital or machine-readable form, including any

technical documentation, program specification and operations manual.

Environment: a single installation of the Service/Software (whether in a cloud based server, single server, virtual server or clustered server infrastructure) and where specifically referred to in the Order Form as LIVE Environment (which is intended to provide content and software functionality to End Users) or Sandbox Environment (which is for the creation, development or testing of software, programs or services for evaluation in isolation from and prior to promotion to the LIVE Environment or in the case of Jadu Single Tenant SaaS, UAT Environment (which is for the purpose of conducting user acceptance testing by Customer before changes are made to a LIVE Environment)).

Fault: a reproducible fault in the Supported Software as further described in Annex 1.

Managed Service: the services relating to the hosting of the Hosted Software as set out in the Order Form.

Hosted Software: the software (as separately licensed to Customer by Jadu) to be hosted by Jadu in respect of which Jadu will provide the Managed Service as set out in the Order Form (including any new Releases of that software provided by Jadu pursuant to this Schedule).

Hotfix: a temporary solution rather than a Release. Developed to correct a bug or fault in the Service/Software as a short term remedy for the underlying issue.

Inappropriate Content: any material which is unlawful, offensive, threatening, libellous,

defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property.

Jadu: means Jadu Creative Limited.

Jadu SaaS (also referred to as Hosted Service): the software to be provided by Jadu on a software-as-a-service basis (including any new Releases of that software provided by Jadu pursuant to this Schedule) as set out in the Order Form.

Jadu Single Tenant SaaS: Jadu SaaS that is provided on a single tenant basis.

LLM Tokens: the metered units or usage credits consumed by interactions with large language models through Agent-Ex Products and the number of units utilised will vary depending on various factors relating to the request and the particular AI feature being used.

Major Version: A distinct upgrade of Jadu SaaS or Hosted Software (as applicable) and is identified by the first number in the series of a version number (e.g. version 1.2.3 has the Major Version of 1).

Maximum Licensed Usage: the usage limits for the Jadu SaaS and/or Managed Service as set out in the Order Form.

Non-Critical Fault: any Fault other than a Critical Fault.

Order Form: the order document agreed by the parties under the GCloud Call-Off Contract which, together with the Call-Off Contract schedules and the relevant Jadu service descriptions, specifies the Jadu software and/or services ordered, applicable

volumes, charges and the key delivery and term details for that order.

Platform: the platform managed by Jadu and used by Jadu to provide the Service/Software, including the application and database software for the Service/Software, the system and server software used to provide the Service/Software, and the computer hardware on which that application, database, system and server software is installed and all networking, storage, and related technology required to run the Service/Software.

Professional Services: Jadu's professional services as set out in the Order Form.

Release: an update of the Service/Software incorporating 'patches' where applicable which corrects faults, adds functionality (and may include new tools and resources) or otherwise amends or updates the Service/Software.

Service/Software: the Jadu SaaS and/or Managed Service as set out in the Order Form (as applicable). For clarity the Service/Software does not include any templates, themes, forms, case types, portals or other presentation layer, excluding the Core System Themes, or content items designed to operate in conjunction with or to interface with the Service/Software and are not part of the Service/Software in this regard.

Support Portal: the on-line support and incident-reporting help desk system provided by Jadu as part of the Standard Support Service.

Standard Support Service: the technical support service (as further described in this Schedule) to be provided by Jadu to Customer in respect of the Supported Software only.

Standard Support Hours: 8am to 6pm (UK local time) Monday to Friday excluding UK public holidays.

Support & Maintenance Services: the technical and updating services comprising the Standard Support Service and the Updating Service.

Supported Software: is the Active Supported Version of the Jadu SaaS and/or the Hosted Software.

Third Party Libraries: any components and libraries used by Jadu in connection with the delivery of the Service/Software which are developed and licensed by third parties, whether such components and libraries are used within the Supported Software or otherwise and whether they are selected by Customer or by Jadu.

Third Party Services: those third party provided services to which the Jadu SaaS and/or Hosted Software is to integrate with as set out in the Order Form.

Updating Service: the service to be supplied by Jadu to Customer under clause 4.

2 Grant and Scope of Licence

- 2.1 Customer may use the Service/Software (including any Documentation) for Customer's internal business purposes only.
- 2.2 Jadu shall be entitled to monitor Customer's usage of the Service/Software and, if Jadu request Customer to do so, Customer shall provide Jadu with the access necessary to determine such usage. If Customer exceeds the Maximum Licensed Usage, Jadu shall be entitled to charge Customer for such excess use based on its then currently prevailing standard charges.

3 Support & Maintenance Services: Supported Software

- 3.1 The Standard Support Service is only provided in relation to the Active Supported Version. The

Standard Support Services does not provide support for:

- a. a Platform solution stack other than as indicated and defined in the Order Form;
- b. any environment other than the Environments specified in the Order Form.
- c. any service or software not supplied to Customer by Jadu; and
- d. any bespoke software or service developed by Jadu for Customer (unless specifically described in the Order Form).

3.2 In relation to Releases:

- a. as part of the Updating Service, Jadu shall (in the case of Jadu SaaS) apply Releases from time to time at Jadu's discretion and save for immediately deployed emergency Releases required to urgently address security or performance / availability issues, Jadu endeavours to provide Customer with no less than 24 hours' notice of such Release;
- b. as part of the Updating Service, Jadu shall (in the case of Jadu Single Tenant SaaS) make available to Customer and either supply Customer with a Release for Customer to apply, or (if Customer has purchased a Managed Service) Jadu shall apply Releases from time to time at Jadu's discretion and save for immediately deployed emergency Releases required to urgently address security or performance / availability issues, Jadu endeavours to provide Customer with no less than 24 hours' notice of such Release; and
- c. in relation to Jadu Single Tenant SaaS and/or the Managed Service Customer shall be responsible for the costs of rebuilding any forms, templates, themes and other presentation layer items, excluding the Core Software Themes, following the installation of any such Release. Any assistance Jadu provide with installation or building of presentation layer items

shall be undertaken as chargeable Professional Services.

4 Support & Maintenance Services: Standard Support Service and Updating Service

4.1 Standard Support Service:

- a. The Standard Support Service shall be provided during the Standard Support Hours;
- b. The Standard Support Service shall provide support to the number of named users at Customer's organisation as set out in Maximum Licensed Usage;
- c. The Standard Support Service shall comprise online support via the Support Portal and telephone support in respect of Faults;
- d. Jadu shall use reasonable endeavours to diagnose and resolve Faults;
- e. Where a Non-Critical Fault is to be corrected in a forthcoming Release, then for a reasonable period (to be determined by Jadu exercising its discretion reasonably) before the issue of such Release, Jadu may defer the provision of assistance pending the availability of that Release;
- f. Jadu support staff shall be entitled to close any ticket which does not relate to Faults or where they are able to direct Customer to the solution on Support Portal or in any Documentation or where appropriate in terms of Service/Software knowledge issues, recommend and offer to Customer Professional Services training;
- g. Customer shall ensure that no Personal Data is entered into the Support Portal; and
- h. Jadu shall use Jadu's reasonable endeavours to ensure that the Standard Support Service meets the service levels set out in Annex 1.

4.2 Updating Service:

- a. Jadu shall issue Releases from time to time;
- b. All dates supplied by Jadu for the issue of Releases or the provision of any other service shall be treated as estimates only;
- c. In the case of Jadu Single Tenant SaaS, application of a Release is by arrangement with Customer, pursuant to the Updating Service. To mitigate the risk of introducing either faults generally as a result of the particular set up of Customer's LIVE Environment or specifically as Faults to Customer's LIVE Environment, Jadu recommends that Customer adopt a UAT Environment to mirror the architecture and content of Customer's LIVE Environment to allow both parties to test changes to the Jadu Single Tenant SaaS before applying them to the LIVE Environment. In addition:
 - i. where Customer has adopted a UAT Environment, Jadu shall apply any changes pursuant to the Updating Service to the Jadu Single Tenant SaaS on Customer's UAT Environment, inform Customer in writing and require Customer to perform a user acceptance test of the changes applied to Customer's UAT Environment within an agreed reasonable time. Jadu shall not apply any changes to Customer's LIVE Environment and this aspect of the Jadu Single Tenant SaaS until Jadu have received written confirmation from Customer that this aspect of the Jadu Single Tenant SaaS operates as required on the UAT Environment. Jadu shall not be liable for Faults in this aspect of the Jadu Single Tenant SaaS identified on Customer's LIVE Environment that cannot be replicated on Customer's UAT Environment;
 - ii. where Customer has not adopted a UAT Environment and Jadu have been unable to test such changes as referred to above, Customer acknowledge and agree that the Standard

Support Service shall not be available for any aspect of this Jadu Single Tenant SaaS and Jadu shall not be liable for any loss or damage arising from faults that Jadu introduce where Jadu have been unable to test such changes as set out in clause 4.2(d)(i).

4.3 Jadu may, on prior notice to Customer, make changes to the Service/Software, provided such changes do not have a material adverse effect on Customer's business operations.

4.4 In the case of Jadu Single Tenant SaaS, Jadu shall be entitled for support purposes to maintain its own copy of any or all of Customer's Environments, which shall be accessible only by Jadu.

4.5 Jadu shall have no obligation to provide the Standard Support Service in respect of any Faults in the Supported Software arising from:

- a. misuse, incorrect use of or damage to the Supported Software from whatever cause (other than any act or omission by Jadu), including failure or fluctuation of electrical power;
- b. any changes to the Supported Software database(s) that have not been made by Jadu;
- c. use of the Supported Software with unsupported browsers/devices. For the avoidance of doubt a list of currently supported browsers/devices is available via the Documentation and is updated from time to time;
- d. use of the Supported Software in combination with any equipment or software not provided by Jadu or not designated by Jadu for use with any Release forming part of the Supported Software, or any fault in any such equipment or software;
- e. any breach of Customer's obligations under the Agreement howsoever arising or having the Supported Software maintained by a third party;

- f. In the case of Jadu Single Tenant SaaS, any Faults in the Jadu Single Tenant SaaS identified on Customer's LIVE Environment that cannot be replicated on Customer's UAT Environment; or
 - g. user error.
- 4.6 For the avoidance of doubt, the Service/Software does not include any Professional Services (such as the development of bespoke software or the building or alteration of forms or templates).
- 4.7 If Customer reports issues in a Release older than an Actively Supported Version, Jadu shall only provide Customer with technical advice and assistance in upgrading to the latest Actively Supported Version. If the relevant issue is not resolved following such an upgrade Jadu shall treat the issue as a Fault and provide the Standard Support Service.
- 4.8 Managed Service:**
- a. The Managed Service shall provide the hosting by Jadu of the Hosted Software together with the provision of such server maintenance services, infrastructure, hardware and bandwidth as are necessary to provide such hosting.
 - b. Data storage for the Managed Service is fully managed, with 24 hour 7 days a week monitoring. Jadu may where necessary choose to restore any severely affected system from the latest backup, however Customer acknowledge that unless the Managed Service includes a Disaster Recovery (DR) Environment Jadu can utilise, this process will overwrite the Customer Data stored on the Platform prior to the restoration point and Jadu will bring the Customer Data back into the Managed Service as soon as reasonably practicable at no additional cost to Customer save where any loss or damage to data is caused by matters or circumstances beyond Jadu's reasonable control (including but not limited to viruses, denial-of-service attacks or any other form of cyber-attack) in which case, any work in this regard shall involve procuring Professional Services.

- c. The Managed Service shall include virus-checking of the Hosted Software and firewall protection.
- d. Jadu shall provide such server monitoring, log file rotation, application of server operating system updates and patches and user account management services as Jadu reasonably considers necessary for the provision of the Managed Service.
- e. Jadu may suspend for the purpose of repair, maintenance or improvement, part or all of the Managed Service upon at least 24 hours' notice to Customer (save for cases of emergency as referred to in clause 3.2(a)) and shall use Jadu's reasonable endeavours to restore the Managed Service as soon as is reasonably practicable following any such suspension.
- f. Customer shall observe all reasonable security and operational procedures Jadu may from time to time prescribe and Customer shall not use the Managed Service in any way which could be detrimental to Jadu's other clients and customers.
- g. Jadu shall be entitled to update the technical specification of the Managed Service for operational reasons. In order to allow Jadu to continually upgrade its hosting facilities, Jadu may from time to time relocate Customer's servers within Third Party Services data centers, make changes to the provision of the Managed Service, URLs and Internet Protocol (IP) addresses and establish new procedures for the use of the Managed Service. Jadu will give Customer advance notice of any such change and endeavour to minimise the effect of any such changes on Customer's use of the Managed Service.

5 Obligations, Restrictions and Requirements

5.1 It is agreed that:

- a. Customer must not remove the "Powered by Jadu" or "Designed and Powered by Jadu" text and

hyperlink that may be included in any products or solutions developed and supplied to Customer by Jadu;

- b. Customer's use of the Jadu SaaS, Managed Service and/or Hosted Software shall be limited as set out in the Maximum Licensed Usage in the Order Form;
- c. Customer must not upload, publish, post, link to or transmit any Inappropriate Content using the Jadu SaaS and/or Managed Service;
- d. Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Jadu SaaS and/or Managed Service without Jadu's prior written consent (such consent not to be unreasonably withheld or delayed);
- e. Customer is responsible for taking appropriate security measures itself and accordingly will implement its own security policies in line with good industry practice;
- f. Customer controls what data is provided to the Service/Software for the purposes of the provision of the Service/Software and how such data is transferred to and from the Service/Software;
- g. Customer will not use the Service/Software in a manner that interferes with, degrades or disrupts the integrity or performance of any Jadu (or Jadu's sub-contractors') technologies, services, systems or other offerings, including data transmission, storage and/or backup;
- h. Customer will not circumvent or disable any security features or functionality associated with the Service/Software;
- i. Customer will not use the Service/Software in any manner prohibited by law;
- j. With respect to the Service/Software Customer will adhere to all applicable laws, treaties and regulations in all jurisdictions in respect of which Customer uses the Service/Software, including all

end-user, end-use and destination restrictions issued by applicable government entities. Customer will not upload any data or information to the Service/Software for which Customer does not have appropriate rights.

- 5.2 Customer accept that Jadu is not responsible for the content posted or otherwise appearing on the Service/Software and that end users are exposed to the content of the Service/Software at their own risk.
- 5.3 Jadu may, but has no obligation to, remove content that Jadu determines is Inappropriate Content.
- 5.4 Customer shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by Customer's organisation's staff, employees and authorised representatives and accordance with good industry practice.
- 5.5 Customer may only use Agent-Ex Products (where licensed) as a component of the Jadu SaaS and may not expose the Agent-Ex user interface directly to end users. Given the nature of Artificial Intelligence ("AI") and Machine Learning ("ML") systems Customer specifically acknowledges and accepts that the AI/ML based components of the Service/Software will not always be accurate or error free and that Customer must itself implement proper measures to evaluate and verify the appropriateness and accuracy of the output of those components in order to prevent errors or other undesirable outcomes in its operations as a result.
- 5.6 Customer acknowledges and agrees that the source code incorporated within the Service/Software is Jadu's confidential information. Customer must:
 - a. not examine the source code incorporated within the Service/Software, nor shall Customer permit any person to examine such source code;
 - b. not copy, modify and/or adapt such source code;
 - c. include Jadu's copyright notice on all entire and partial copies of the Service/Software in any form

and not to remove any such notices (including any copyright notices in any source code files);

- d. not provide, or otherwise make available such source code to any person in any way whatsoever.

6 Integrations with Third Party Services

- 6.1 The Service/Software integrates with those Third Party Services expressly identified in the Order Form. Jadu may make available for integration with the Service/Software additional or replacement Third Party Services at any time through a later Release and as indicated in the Documentation.
- 6.2 Jadu may remove, suspend or limit any Third Party Services integration at any time at its sole discretion if Customer has breached the terms set out in clauses 5 and/or 6.
- 6.3 The Service/Software may contain features designed to interoperate with Third Party Services. To use such features, Customer may be required to obtain access to such Third Party Services from the Third Party Services providers. If the provider of any Third Party Services ceases to make the Third Party Services reasonably available for interoperation with the corresponding Service/Software features, Jadu may cease providing such Service/Software features without entitling Customer to any refund, credit, or other compensation.
- 6.4 The supply of Third Party Services shall be under a separate contract or arrangement between Customer and the relevant third party and Jadu do not contract to supply such Third Party Services and Jadu are not a party to any contract for, or otherwise responsible for any such Third Party Services. Fees may be payable by Customer to the relevant third party in respect of the use of such Third Party Services or any connectors required to use such Third Party Services or applications. Jadu shall not

be liable to Customer for any loss (including in relation to any security breaches) arising in connection with any defects or malicious code present in any Third Party Services and/or Third Party Libraries.

- 6.5 Customer acknowledges and agrees that:
 - a. the integration of Third Party Services may entail the transfer of Customer Data from the Service/ Software to the relevant Third Party Services; and
 - b. Jadu has no control over, or responsibility in respect of, any disclosure, modification, deletion or other use of Customer Data by and/or resulting from any integration with any Third Party Services.
- 6.6 Without prejudice to Customer's other obligations under this clause 6, Customer must ensure that Customer has in place the necessary contractual safeguards to ensure that both:
 - a. the transfer of relevant Customer Personal Data to a provider of Third Party Services application is lawful; and
 - b. the use of relevant Customer Personal Data by a provider of Third Party Services is lawful.
- 6.7 Enabling an integration through the Jadu Integrations Hub (or other integration capability or mechanism provided in Service/Software) shall constitute Customer's consent to transfers of Customer Data to any Third Party Services application operator and this shall be for any such category of data that may reasonably be regarded by Jadu as required for the effective purpose of such integration or as otherwise stipulated in the Order Form.
- 6.8 The use of some features of the Service/Software may depend upon Customer enabling and agreeing to integrations between the Service/Software and Third Party Services.

- 6.9 Unless provided as a Release, additional charges may be payable by Customer to Jadu in respect of a Third Party Services integration.
- 6.10 Any use of Jadu or Third Party Services APIs (application programming interface) in relation to the End User's use of the Service/Software is subject to the following terms:
- a. If Jadu reasonably determines that there is abuse or excessive usage by way of frequent requests to the Service/Software via Jadu's APIs, this may result in an automatic challenge or temporary block. In some instances Jadu may, upon giving prior written notice to Customer, suspend Customer's access to such APIs indefinitely;
 - b. Jadu reserve the right at any time to modify or discontinue, temporarily or permanently, Customer's access to the APIs (or any part thereof) with or without notice where Customer's use of the API is found to be in breach of this Schedule, or is determined by Jadu to be having a detrimental effect upon Jadu's ability to deliver the Service/Software.

7 Service Availability of Jadu SaaS and/or Managed Service:

- 7.1 Jadu endeavours to make the Service/Software under normal operation to be generally available for use by Customer every day on a 24 hours a day basis except during any Scheduled Outage. Customer acknowledges that during a Scheduled Outage the Service/Software may not be available fully or at all.
- 7.2 Jadu will use its reasonable endeavours to ensure that the Service/Software meets or exceeds the following service level: Availability of 99.9%.
- 7.3 Definitions:
- o **Availability** is the percentage calculated by adding Actual Uptime and Excusable Downtime, dividing the

sum by the Scheduled Hours, and multiplying the result by 100.

- o **Actual Uptime** is the aggregate number of hours during Scheduled Hours in a calendar month where the Service/Software is available for use by users. The calculation for Actual Uptime will be determined at the sole discretion of Jadu based on Jadu internal records.
- o **Excusable Downtime** is the aggregate number of hours during Scheduled Hours in a calendar month where the Service/Software is unavailable for use by users due to: (1) Exceptions; (2) a Scheduled Outage; or (3) any other situation that is not attributable to Jadu's failure to exercise due care in performing its responsibilities.
- o **Exceptions** are: (1) any time Customer is in default under the Agreement; (2) Customer-initiated changes, whether implemented by Customer or Jadu on behalf of Customer; (3) circumstances that constitute an Emergency Situation or a force majeure event; (4) any event or condition not wholly within the control of Jadu; (5) violations of Jadu's acceptable use policy; (6) the negligence or wilful misconduct of Customer or others authorised by Customer to use the Service/Software; (7) any failure of any component for which Jadu is not responsible, including but not limited to all Customer-provided or Customer-managed electrical power sources, networking equipment, computer hardware, computer software or website content; (8) any scheduled or emergency maintenance, up to an accumulated total of 24 hours per calendar month; and/or (9) the Service/Software being intentionally suspended by Jadu, where it is entitled to do so under this Agreement.
- o **Scheduled Hours** means 24 hours a day, every day.
- o **Scheduled Outage** is the aggregate number of hours in any calendar month during which the Service/Software is scheduled to be unavailable for

use by users due to planned activities such as preventive maintenance or upgrades. Maintenance windows will be announced in advance by Jadu. Such announcements will generally be supplied with 2 working days' notice or other time periods subject to agreement between Jadu and Customer. For the avoidance of doubt, a Scheduled Outage is not considered a problem with the Service/Software.

- o **Emergency Situation** is an instance when Customer is experiencing severe, adverse operational impact related to the Service/Software and for which Customer, on an exception basis, requests that Jadu respond and work to resolve outside the normal service level criteria.

8 Professional Services

- 8.1 Where a particular date is scheduled for Jadu to carry out Professional Services and Customer cancels or reschedules such Professional Services within 5 Working Days of the relevant date then Jadu may charge Customer for the rescheduled/cancelled effort that it is unable to reasonably reallocate to other chargeable work, such charge to be based on Jadu's then standard consultancy rate and invoiced monthly in arrears.
- 8.2 Customer must act reasonably in relation to and will not attempt to frustrate, impede and/or interfere with (including but not limited to failing to devote appropriate resources to the relevant project, deciding not to deploy the relevant system, materially delaying the deployment of the relevant system) Jadu's opportunity to deliver all of the Professional Services (and in any event any Professional Services that Jadu has been unable to so deliver after a period 12 months from the date of execution of the Agreement will be deemed delivered). In the event of such Jadu will be entitled to immediately treat all Professional Services as delivered.



- 8.3 All delivery dates for Professional Services are estimates which Jadu is obliged to use reasonable endeavours to achieve.

Annex 1 – Support & Maintenance Services

A.

For Jadu Single Tenant SaaS product accounts the Support & Maintenance Services do not provide any of the following and Customer acknowledges that it is responsible for dealing with the following issues:

1. Creating users and resetting passwords;
2. Activating Customer's own (customers') online accounts;
3. Resetting Customer's own (customers') passwords;
4. Creating / updating notifications by email, letter, SMS;
5. Setting service level escalations based on date rules;
6. Creating / amending workflows, case statuses, case transitions; and
7. Creating / maintaining roles for users and user groups.

B. Standard Support Service for Supported Software:

Priority of Fault	First Response (i) within	Feedback frequency	Target for Platform or Release update, temporary fix or workaround and where applicable, available for Customer to test (ii)
Priority 1 (Critical Fault) Complete system unavailability of for a period of 5 minutes or more	30 minutes (iii)	Hourly (iii)	1 hour (iii) to switch to DR site (iv) once that decision has been taken (subject to terms and conditions of DR service) OR 8 hours (iii) where DR site is not used
Priority 2 System fault with loss of substantial system functionality or performance, but workaround available.	1 hour (iii)	Daily (iii)	Within 1 day for integration issues in scope of Standard Support Service (v). For all other issues, within 3 days (iii) of the root cause of the issue being identified and solution agreed
Priority 3 System fault that inhibits, but does not prevent, operation of any element of the system.	3 hours (iii)	Following progress / change in status	Within 12 weeks (iii) of the root cause of the issue being identified and solution agreed
Priority 4 System faults that are minor functional issues, that do not prevent processing of tasks, content related problems and queries, or customer service comment /complaint	3 hours (iii)	Following progress / change in status	Within 16 weeks (iii) of the root cause of the issue being identified and solution agreed

- (i) Jadu will use reasonable endeavours to respond to all tickets within the response times indicated in the Standard Support Service for Supported Software table above during the Standard Support Hours. For the purposes of this Schedule, the date and time at which a Fault is raised is considered to be the date and time at which it is entered into the Support Portal. Any Fault raised by Customer's staff or agents via telephone call will be logged on their behalf within the Support Portal. Where Faults are raised by telephone call then the First Response target will be deemed to have been met by the interaction within said call. For the purposes of the audit trail and any subsequent reports the times will be taken from the date and time the Fault was logged in the Support Portal.
- (ii) Due to the varying types of support tickets and the dependency on both Customer's and Jadu's subcontractor's interaction, Jadu do not offer a resolution target. Response and resolution times depend on the nature and severity of the Fault reported; these response and resolution times are estimates and Jadu aims to address these significantly within these times for most Faults. A workaround for Non-Critical Fault may involve a patch or fix which addresses the problem; in such cases a resolution may involve a Release.
- (iii) a 'day' being any week day other than a UK public holiday, or an 'hour(s)' or 'minutes' within the 'day'.
- (iv) Jadu DR Service as set out below:
Where such services are specifically included within the Order Form, the **Jadu Disaster Recovery Environment ('DR Environment')** provision operates as follows:
The DR Environment for Customer's Jadu Single Tenant SaaS is available during a LIVE Environment disaster event subject to DNS changes initiated and managed by Customer unless the necessary arrangements have previously been made to enable Jadu to initiate DNS changes.

The declaration of the disaster and the initiating of a switch to the DR Environment is subject to agreement between Customer and Jadu and will take place at an agreed time.

Any third-party integrations (including those in relation to Third Party Services) requiring special connectivity arrangements (VPN, IP whitelisting, etc.) will not work unless previously configured on both sides by the initiator (DR Environment) and the receiver (third party integration end-point) following prior cooperation between the parties for such arrangements and any such services shall be delivered by Jadu at Jadu's Professional Services rates.

During usage of the DR Environment, content changes can be made to the DR Environment by the Customer but those changes will not be replicated back to the LIVE Environment when it is restored unless such a service has been agreed between the parties as additional Professional Services.

Annual testing of failover to the DR Environment can be included as additional Professional Services. Customer is required to assist in such tests which will be scheduled by mutual agreement.

(v) **Integrations issues**

Failures or degraded performance of integrations with third party products / services do not represent a complete unavailability of the Service/Software (Priority 1) but may impair the usability of areas within / managed by the Service/Software.

Jadu is not responsible for the following and accordingly the Support & Maintenance Services do not cover:

- Connectivity failure between the Service/Software and the Third Party Services.
- Changes which have been made to the capabilities and/or configuration of the Third Party Services by the Third Party Services provider without appropriate prior consultation with Jadu, resulting in

this having not been reflected in the Service/Software.

- Changes which have been made to the configuration of the Third Party Services by the Customer that have not been reflected in the Service/Software configuration.
- Authentication configuration (e.g. certificates, passwords etc.) held within the Service/Software or the Managed Service and used to connect to the Third Party Service have changed, expired, been deleted or disabled but not reflected within the Jadu configuration. In cases where the relevant configuration can be managed via a Control Center interface (i.e. Integrations Hub) it is the responsibility of the Customer to acquire and configure any updated credentials. In all other cases, the configuration updates will be completed as part of the Standard Support Service once new credentials have been supplied by the Customer or third party.

Annex 2 – Personal Data Processing

- The following will apply to Jadu's processing of the Personal Data as part of the Service/Software:

Subject matter of the processing:	[Insert short description of what the Processing is about i.e. its subject matter]
Duration of the processing:	Duration of Agreement and thereafter to the extent required to fulfil Jadu's express contractual obligations.
Nature and purposes of the Processing:	[Description of all intended purpose]
Type of Personal Data:	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject:	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, members of the public, users of a particular website etc]

Service provider	Nature of processing	Location of processing
[TBC]	[TBC]	[TBC]

- Notwithstanding anything to the contrary herein: (a) Customer has approved the use by Jadu of the sub-contractors and sub-processors of Personal Data listed in the table below and (b) Customer acknowledges and accepts that Jadu has contracted with these third parties on their standard terms and subject to their standard service offerings.