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Crown Commercial Services

Supplier Terms & Conditions

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Standard Terms & Conditions for the Supply of Software, Hardware and/or Services Between:

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, Software and/or Hardware 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 an 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, Software and/or Hardware 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. If Customer is designated as a reseller on the Order Form then in respect of the applicable Services, Software and/or Hardware covered by that Order Form, Customer must sublicense use of such Software and/or Services (together with the re-sale of the associated Hardware) in accordance with the provisions of Schedule 1 and Customer will not use the Services, Software and/or Hardware itself other than for the purposes of providing the same to End User.

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). Unless a party serves notice of termination at least 90 days prior to expiry of the initial term specified in the Order Form (or any subsequent renewal term), the provision of the Hosted Service, Support & Maintenance Services and/or Managed Service (as applicable) will automatically renew for additional one year periods on the same terms subject to any adjustment in the charges made by Netcall pursuant to clause 1.1.5 (the renewal charges for Services initially undertaken for an initial period

of less than one year shall be pro-rated to an annualised charge accordingly).

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.		in the Hosted Service, Netcall will be entitled to take whatever action as Netcall deems fit, including deleting such content, without liability to Customer.		
1.2	Professional Services:	1.3.4	The Hosted Service is only for Customer's internal use.	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.
1.2.1	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 Software and/or Services.	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.	1.3.11	Customer will not circumvent or disable any security features or functionality associated with the Hosted Service.
1.3	Hosted Service:			1.3.12	Customer will not use the Hosted Service in any manner prohibited by law.
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.	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 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.	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 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	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 ").
		1.3.9	Customer controls what data is provided to the Hosted Service for the purposes of the provision	1.4.2	Customer agrees to: (a) use, operate and maintain the Software and/or 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; (c) ensure that only suitably trained and experienced individuals submit service requests; and, (d) provide a suitable electronic link to the equipment running the Software to allow Netcall reasonable access. 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.

- 1.4.3 Netcall may record telephone calls between representatives of Customer and representatives of Netcall for training and service improvement purposes.

1.5 Managed Service:

- 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.
- 1.5.2 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 SUPPLY OF SOFTWARE

2.1 Software Licence:

- 2.1.1 Netcall grants to Customer a non-exclusive, non-transferable limited licence to use the software (and associated documentation (if any)) identified in the Order Form ("**Software**") subject to: (a) the terms of this Agreement; and, (b) the licence restrictions and contractual provisions imposed on Netcall and/or Customer by Netcall's third party licensors which are available from Netcall,

the relevant third party licensor and/or available via the Hardware as may be applicable and as such may be updated by such licensors. The term of the licence to use the Software will be as specified in the Order Form. Software includes any new versions and/or releases of such Software and/or documentation relating to such Software made available to Customer by Netcall. The Software is licensed only for Customer's internal use. Any third party software is only for use as, and must remain, a component of the Software as a whole.

- 2.1.2 Subject always to the Software being solely for Customer's internal use, Customer may permit use of the Software by a third party consultant or contractor provided that Customer ensures that any such third party complies with the terms of this Agreement as if such third party were Customer and Customer will indemnify Netcall in respect of any breach thereof by such third party.
- 2.1.3 The Software is licensed for use 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 as specified in the Order Form.
- 2.1.4 Customer may only make such copies of the Software as are reasonably necessary for back-up purposes. Any such copies are subject to the terms of this Agreement. Customer will not remove and will comply with the requirements of any copyright notices, trademark notices or other proprietary legends of Netcall and/or any third party licensor contained in the Software.
- 2.1.5 Customer is prohibited from decompiling, reverse engineering, disassembling, or otherwise reducing the Software 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 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.

- 2.1.6 Except as expressly provided in this Agreement no right is granted to translate, adapt, arrange, alter and/or modify the Software 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.
- 2.1.7 Customer is responsible for backing up any data held within and/or utilised by the Software or provided to Netcall and accordingly, Netcall will have no liability for loss of, damage to or corruption of Customer Data, however it happens.
- 2.1.8 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 Software.
- 2.1.9 Customer will ensure that its use of the Software remains in compliance with all applicable laws. Customer will not, and will not permit any third party to, use, rent, loan, "frame", "mirror", distribute and/or otherwise deal in the Software 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.

2.2 Delivery:

- 2.2.1 Netcall will deliver the Software to the location specified in the Order Form and use reasonable endeavours to do so by the delivery date specified in the Order Form.
- 2.2.2 Delivery will have occurred on the date the Software is delivered to Customer (either by a physical delivery on media, or remotely by

electronic means), or the date when Netcall completes installation onto the relevant hardware, whichever is earlier. If Customer fails to accept delivery of the Software or Netcall is unable to deliver such on time because Customer has not provided appropriate access, instructions, documents, licences, authorisations and/or if Customer advises Netcall that it cannot or does not wish to take delivery of the Software on the date specified for delivery then the Software will be deemed to have been delivered on that delivery date.

- 2.2.3 Due to the dynamic nature of the Software, Netcall may amend it from time to time including substituting alternative items of software for any item of third party software comprising the Software provided that this will not have a substantial detrimental effect on the features and/or performance of the Software.

3 SUPPLY OF HARDWARE

- 3.1 The quantity, description, price and component parts of the hardware products will be as set out in the Order Form ("**Hardware**"). Customer will use the Hardware only in conjunction with the Software, for the purpose for which it was designed, in accordance with any associated user documentation and Customer will comply with any applicable third party terms in relation to the Hardware. Customer will not remove any logos, copyright notices, trade mark notices or other notices affixed to or incorporated within the Hardware.
- 3.2 Netcall will deliver the Hardware to the location specified in the Order Form and use reasonable endeavours to do so by the delivery date specified in the Order Form. If Customer fails to accept delivery of the Hardware or Netcall is unable to deliver such on time because Customer has not provided appropriate access, instructions, documents, licences, authorisations and/or if Customer advises

Netcall that it cannot or does not wish to take delivery of the Hardware on the date specified for delivery then the Hardware will be deemed to have been delivered on that delivery date.

- 3.3 Netcall may substitute an equivalent alternative item of hardware for any item of Hardware at any time as part of the relevant Support & Maintenance Services (where applicable) where Netcall reasonably deems it operationally appropriate to do so. Customer must promptly implement any new releases made available by any relevant hardware manufacturer where such have been mandated by such manufacturer (e.g. to resolve security issues).
- 3.4 Risk and title in the Hardware will pass at the point of delivery to Customer (whether actual or deemed) subject to Netcall's right to exchange the Hardware as contemplated by clause 3.3. Customer will ensure that use of the Hardware remains in compliance with all applicable laws.

4 PRICE & PAYMENT

- 4.1 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 Hardware, Software and/or 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.

- 4.2 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.
- 4.3 Netcall may without prejudice to its other rights and/or remedies suspend Customer's right to use the Software and/or 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.

5 WARRANTIES

- 5.1 Netcall warrants that the Software will during normal use provide in all material respects the facilities and functions described in Netcall's standard documentation for such Software. Such warranty will commence upon the initial delivery of or provision of access to the Software (whichever is the later) and continue for 60 days thereafter. Customer hereby agrees that its sole remedy in respect of any breach of the said warranty 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 that Software (where such portion will be calculated by Netcall acting reasonably and having regard to the circumstances of the breach in question). The aforesaid warranty will not apply: (a) if the Software is not running on the minimum equipment requirements identified in the relevant Software documentation and/or Order Form; (b) to Software modified by Customer and/or any third party other than in accordance with Netcall's written

- instructions; (c) where any environmental specification for the operation of the Software is not maintained; (d) to any loss, damage or destruction of or to the Software, save where the loss, damage or destruction is caused by Netcall; or (e) to any defect or malfunction caused by negligence, neglect or misuse (other than by Netcall's negligence, neglect or misuse).
- 5.2 The parties acknowledge that the Software will not be free of minor defects nor will the Software function without interruption.
- 5.3 Customer is responsible for ensuring that the facilities and functions in the Software and/or Services meet its requirements.
- 5.4 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).

- 5.5 No warranty whatsoever is given in respect of any third party or open source software.
- 5.6 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.
- 5.7 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, Software and/or Hardware are, to the fullest extent permitted by law, excluded.

6 LIMITATION OF LIABILITY

- 6.1 This clause 6 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.
- 6.2 Nothing in this Agreement will be construed as limiting or excluding the liability of Netcall for:
- 6.2.1 death or personal injury resulting from negligence; or
- 6.2.2 any damage or liability incurred by Customer as a result of fraud (including a fraudulent misrepresentation) by Netcall; or
- 6.2.3 any liability which cannot lawfully be limited or excluded.
- 6.3 Subject to clause 6.2, Netcall will not be liable to Customer for any of the following (where in each of clauses 6.3.1 to 6.3.8 inclusive whether of a direct or indirect nature):
- 6.3.1 loss of, damage to and/or corruption of data;

- 6.3.2 loss of profits;
- 6.3.3 loss of business;
- 6.3.4 depletion of goodwill;
- 6.3.5 loss of anticipated savings;
- 6.3.6 loss of contract;
- 6.3.7 loss of use;
- 6.3.8 wasted expenditure; and/or
- 6.3.9 special, indirect or consequential loss.
- 6.4 Subject to clause 6.2, 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:
- 6.4.1 in relation to the Software, 100% of the fee paid and payable by Customer for the relevant Software in respect of which such claim relates;
- 6.4.2 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;
- 6.4.3 in relation to the Hosted Service, 100% of the fee paid and payable by Customer for the relevant Hosted 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;
- 6.4.4 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;

- 6.4.5 in relation to the Support & Maintenance Services, 100% of the fee paid and payable by Customer for the relevant 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;
- 6.4.6 in relation to the Hardware, 100% of the fee paid and payable by Customer for the relevant Hardware in respect of which such claim relates; and
- 6.4.7 in the case of all other matters, £25,000.
- 6.5 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 Software and/or 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.
- 6.6 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.

7 INTELLECTUAL PROPERTY

- 7.1 All intellectual property rights in the Services, Software and/or Hardware (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 or the Software ("**Customer Data**"). Subject to Netcall's obligations pursuant to clause 8.2, 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.
- 7.2 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.
- 7.3 Subject always to the limitations and exclusions of liability set out in clause 6, 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 Netcall owned Software or Hosted Service infringes the copyright of a third party ("**Claim**") provided that Customer complies with clauses 7.4 to 7.6 (inclusive) and provided that the Claim does not arise as a result of:
 - 7.3.1 the use of the Software or Hosted Service (as applicable) in combination with any material not supplied by Netcall;
 - 7.3.2 a modification to the Software or Hosted Service (as applicable) that is not undertaken by Netcall;
 - 7.3.3 the use of the Software or Hosted Service (as applicable) in combination with any of Customer's content, applications, products, services, hardware, designs, business processes and/or Customer Data; and/or
 - 7.3.4 the use of the Software or Hosted Service (as applicable), or any documentation in a manner contrary to this Agreement or any instructions given to Customer by Netcall.
- 7.4 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 Hardware, Software and/or Services.
- 7.5 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.
- 7.6 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.
- 7.7 Netcall will have the right to replace and/or change all or part of the Services, Software and/or Hardware in order to avoid any infringement provided the same does not have a substantial detrimental effect on the relevant Hardware, Software and/or Services.
- 7.8 If Customer uses "Open Source" software (which will also include software known as "copyleft" and "freeware") in conjunction with any of the Services, Software and/or Hardware 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 Hardware, Software and/or 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 Hardware, Software and/or Services.

- 7.9 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.

8 CONFIDENTIALITY

- 8.1 **"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 Software, (iii) the Services, and (iv) the operations, processes, product information, know-how, designs, trade secrets and/or inventions of the disclosing party.
- 8.2 Subject to clause 8.3 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.

- 8.3 The obligations of confidentiality in clause 8.2 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.

- 8.4 This clause 8 will not apply to any Personal Data (as defined below) which is the subject of clause 9 below.

9 DATA PROTECTION

- 9.1 Definitions:
- 9.1.1 **"Data Protection Legislation"** means the UK GDPR and the Data Protection Act 2018.
- 9.1.2 **"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.
- 9.2 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.

- 9.3 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 9.3 and clause 9.4. Notwithstanding any other provision in this Agreement to the contrary, in relation to the Services Customer:

- 9.3.1 will comply with the Data Protection Legislation at all times;
- 9.3.2 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;
- 9.3.3 will ensure that it has all rights, consents and authority to permit Netcall to lawfully Process such Personal Data;
- 9.3.4 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;
- 9.3.5 agrees that Netcall is not providing any advice to Customer as to Customer's compliance with the Data Protection Legislation;
- 9.3.6 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;

9.3.7	agrees that Customer policies in relation to its compliance with the Data Protection Legislation must be reasonable;		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;		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.
9.3.8	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	9.4.4	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;	9.5	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.
9.3.9	grants a general authorisation to Netcall to appoint third party service providers as sub-processors to support the performance of the Services.	9.4.5	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 ");	10	TERMINATION
9.4	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:	9.4.6	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 11.3; and	10.1	If (a) the term of the Software licence and/or 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 Software, Hosted Service and/or Managed Service (as applicable) and all licences to use the same shall immediately terminate.
9.4.1	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;	9.4.7	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	10.2	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.
9.4.2	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;			10.3	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.
9.4.3	Taking into account the state of the art, the costs of implementation and the nature, scope, context				

11 CONSEQUENCES OF TERMINATION

- 11.1 On termination or expiry of this Agreement for any reason Customer will:
 - 11.1.1 immediately pay to Netcall all outstanding unpaid invoices together with any amounts due in respect of Services, Software and/or Hardware supplied but not yet invoiced;
 - 11.1.2 immediately deliver up to Netcall the Hardware (if that Hardware has not been fully paid for) and Software (or any part thereof) and any copies thereof and all related manuals and documentation; and
 - 11.1.3 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.
- 11.2 If Customer fails to perform its obligations under clause 11.1, then Netcall may enter Customer's premises and take possession of such Hardware, Software and/or Netcall Confidential Information.
- 11.3 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).

- 11.4 The accrued rights, remedies, obligations and/or liabilities of each party will, notwithstanding any specific provision herein, survive the termination of this Agreement.
- 11.5 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.
- 11.6 The provisions of clauses 4, 6, 7, 8, 9, 10, 11 and 12 will survive the termination of this Agreement.

12 GENERAL

- 12.1 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.

- 12.2 This Agreement may not be modified except by written document signed by authorised representatives of Netcall and Customer.
- 12.3 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.
- 12.4 Customer will not be entitled to novate, transfer or assign this Agreement without the prior written consent of Netcall.
- 12.5 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.
- 12.6 The parties will comply with their respective obligations under English law regarding anti-slavery, anti-bribery and anti-corruption.
- 12.7 No employment, partnership or agency relationship will be deemed to exist between Customer and Netcall.
- 12.8 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.
- 12.9 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.
- 12.10 Customer will permit reasonable access by Netcall to its premises during Working Days to audit compliance with the terms of this Agreement and to remove items of Software that are not licensed and/or being used in accordance with the terms of this Agreement.
- 12.11 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.
- 12.12 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 Agreement, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 12.13 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.
- 12.14 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.
- 12.15 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.
- 12.16 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 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)).

Schedule 1 - Reseller Conditions

If Customer is designated as a reseller on the Order Form then in respect of the applicable Services, Software and/or Hardware covered by that Order Form, Customer may sublicense use of such Software and/or Services (together with the resale of the associated Hardware) subject to the following:

- 1 Prior to exercising its right to sublicense the Services and/or Software (and sell the associated Hardware) Customer must have executed an appropriate written legal agreement ("**Sublicence Agreement**") with its sublicensee(s) ("**End User**") which will include provisions to the following effect:
 - 1.1 End User is prohibited from decompiling, reverse engineering, disassembling, or otherwise reducing the Services and/or Software (and/or the associated Hardware) to a human-perceivable form except as permitted by any applicable law. Where permitted by applicable law, End User will agree to first make a written request to Netcall for it to supply the relevant information required specifying 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;

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| <p>1.2 The retention of ownership of all intellectual property rights in the Services and/or Software (and/or the associated Hardware) by Customer and its suppliers;</p> <p>1.3 A disclaimer by Customer of all applicable statutory warranties that may be applicable to the Services and/or Software (and/or the associated Hardware), to the fullest extent allowed by law;</p> <p>1.4 An acknowledgement that no contract exists between Netcall and End User and that all warranty and other claims will be made directly against Customer and not against Customer's suppliers and/or licensors;</p> <p>1.5 End User will not be entitled to novate, transfer or assign its licence and/or any of its rights or obligations hereunder nor sub-license the use (in whole or in part) of the Services and/or Software (and/or the associated Hardware) without the prior consent of Customer and its licensors;</p> <p>1.6 End User will maintain the Services and/or Software (and/or the associated Hardware) as confidential and limit access to the same to those of its employees, agents and/or sub-contractors who either have a need to know or who are engaged in the use of the Services and/or Software (and/or the associated Hardware);</p> <p>1.7 Any third party software is only for use as, and must remain, a component of the Services and/or Software as a whole;</p> <p>1.8 End User may only make such copies of the Software as are reasonably necessary for back-up purposes. Any such copies are subject to the terms of the Sublicence Agreement.</p> | <p>1.9 No licence is granted to translate, adapt, arrange, alter and/or modify the Services and/or Software or any part of it and End User will not do or attempt any of such acts, whether for error correction or otherwise except in so far as End User may lawfully do so without the authorisation of Customer and its licensors.</p> <p>1.10 End User is responsible for backing up any data held within and/or utilised by the Services and/or Software or provided to Customer and accordingly, Customer will have no liability for loss of, damage to or corruption of End User data, however it happens.</p> <p>1.11 End User will give prompt notice to Customer as soon as it becomes aware that End User has exceeded any restrictions and/or usage limits in relation to the Services and/or Software.</p> <p>1.12 End User will not remove from the Services, Hardware and/or Software (and will comply with the requirements of) any copyright notices, trademark notices, logos and/or other proprietary legends of Customer and/or any licensor and/or supplier of Customer contained in or attached thereto. End User will reproduce on any copy of the Software any logos, copyright and trade mark notices of Customer and its licensors;</p> <p>1.13 A limitation of Customer's liability not to exceed (a) in the case of Software, the price of the Software, (b) in the case of Hardware, the price of the Hardware, (c) in the case of Hosted Service, the price of the Hosted Service for the 12 months preceding the date on which the cause of action giving rise to the first claim arose; (d) in the case of Managed Service, the price of the Managed Service for the 12 months preceding the date on which the cause of action giving rise to the first claim arose; (e) in the case of</p> | <p>Support & Maintenance Services, the price of the Support & Maintenance Services for the 12 months preceding the date on which the cause of action giving rise to the first claim arose; and (f) in the case of Professional Services, the price of the Professional Services;</p> <p>1.14 A disclaimer of indirect, special, incidental, punitive or consequential damages; and</p> <p>1.15 End User's right to use the Services and/or the Software (and/or the associated Hardware) is solely for its internal use. End User will not, and will not permit any third party to, use, rent, loan, "frame", "mirror", distribute and/or otherwise deal in any Software and/or Services (and/or the associated Hardware) and in particular will not process data for third parties or provide a bureau service or other outsourced service to third parties. End User will ensure that use of the Services and/or the Software will be in compliance with all applicable laws.</p> <p>2 Netcall will provide Customer with the Services and/or Software (and/or the associated Hardware) detailed in the Order Form. Customer will provide to End User appropriate support and maintenance services and/or professional services as may be agreed between them and Customer may pass the benefit of the Support & Maintenance Services and/or Professional Services supplied to it by Netcall on to End User and to no other entity. Netcall is not obliged to provide first line support services to Customer and Customer will use its reasonable endeavours to resolve any service requests or technical issues (including first line service requests or support issues) raised by End User. Where appropriate Customer will procure that Netcall is granted such access to End User's premises,</p> |
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- equipment, personnel, data, systems and/or infrastructure as is reasonably required to perform the Services (including to allow Services to be delivered remotely from Netcall's offices or other locations) and Customer will procure that End User will provide all reasonable co-operation to Netcall in its provision of the Services.
- 3 The rights granted to End User by Customer will be no more extensive than the rights granted to Customer by Netcall under this Agreement. Customer will only market and/or supply the Services and/or Software (and/or the associated Hardware) as an indivisible package.
- 4 Customer will ensure that the grant of any sublicence does not breach applicable law, including without limitation, export controls.
- 5 Customer will ensure that Netcall has the right to audit End User's use of the Services and/or Software (and/or the associated Hardware) where such right will be comparable to that right set out in clause 12.10.
- 6 Customer will not contract with End User so as to create a right of action by End User against Netcall.
- 7 Customer will not permit any End User to do anything that would otherwise be a breach of this Agreement if such had been undertaken by Customer. Customer agrees and undertakes, if so requested by Netcall, to take action against any End User to enforce compliance with the terms of this Agreement, the terms of any Sublicence Agreement and/or to protect Netcall's (or Netcall's licensors) intellectual property rights in the Services and/or Software (and/or the associated Hardware). Customer agrees to indemnify Netcall for all losses suffered by Netcall as a consequence of any breach by any End User of a Sublicence Agreement.
- 8 On termination or expiry of the Agreement for any reason the corresponding sublicence granted thereunder to End User pursuant to the Sublicence Agreement will immediately terminate.
- 9 Customer is permitted to sublicense the Software and/or Services (and/or resell the associated Hardware) to the End User as identified in the applicable Order Form only and not to any other entity.
- 10 Customer will comply with all the licence restrictions and contractual provisions imposed on Netcall and/or Customer by its third party suppliers and/or licensors in relation to its use, marketing, sublicensing, operation and/or supply of the Services and/or Software (and/or the associated Hardware). Customer will not remove any logos, copyright notices, trade mark notices or other notices affixed to the Hardware nor will Reseller remove prior to shipment to End User any licensing and/or user documentation accompanying the Hardware.