1. DEFINITIONS AND INTERPRETATION

1.1 In this Deliverable Schedule the following definitions apply:

"**General Terms**"	means Switchshop's general terms of sale and supply, as updated from time to time;
"**Netcall Hardware**"	has the meaning given in paragraph 4.1;
"**Netcall Services**"	means the Netcall services specified in the Order Form;
"**Netcall Software**"	has the meaning given in paragraph 3.1;
"**Netcall**"	means Netcall Technology Limited and other companies within the Netcall group and includes their agents, subcontractors and representatives;
"**Order Form**"	means the order form in relation to Netcall hardware, software and/or services, signed or otherwise agreed on behalf of the Customer. The Order Form is an Acceptance (as defined int the General Terms);

1.2 Any capitalised words not defined above shall have the meaning given to them in the General Terms. The rules of interpretation as set out in clause 1.2 of the General Terms shall also apply to this Deliverable Schedule.

2. APPLICATION OF THIS DELIVERABLE SCHEDULE

2.1 This Deliverable Schedule along with the Quotation and the General Terms together constitute the Contract between Switchshop and the Customer for the provision of the Netcall Services. The Contract supersedes any previously issued terms and conditions of supply and purchase.

2.2 The Netcall Services are a "Service" for the purposes of the General Terms.

3. SUPPLY OF NETCALL SOFTWARE

Netcall Software Licence:

3.1 Switchshop grants to the Customer a non-exclusive, non-transferable limited licence to use the Netcall software (and associated documentation (if any)) identified in the Order Form ("**Netcall Software**") subject to: (a) the terms of this Contract; (b) any provisions set out in the Order Form; and, (c) the licence restrictions and contractual provisions imposed on Switchshop and/or the Customer by Switchshop's third party licensors which are available from Switchshop, the relevant third party licensor and/or available via the Netcall Hardware as may be applicable and as such may be updated by such licensors. Netcall Software includes any new versions and/or releases of such software and/or documentation made available to the Customer by Switchshop. The Netcall Software is licensed only for the Customer's internal use save as expressly provided otherwise in the Order Form. Any third party software is only for use as, and must remain, a component of the Netcall Software as a whole.

3.2 Solely for the Customer's internal business purposes the Customer may permit use of the Netcall Software by a third party consultant or sub-contractor provided that the Customer ensures that any such third party complies with the terms of this Contract and the Customer shall indemnify Switchshop in respect of any breach thereof by such third party. If the Customer is noted on the Order Form as a reseller then the Customer shall sublicence use of the Netcall Software (and the associated Netcall Hardware if any) subject to and consistent with the conditions in Schedule 1 and the Customer shall not use the Netcall Software (and the associated Netcall Hardware if any) itself other than for the purposes of providing support to its sublicensee.

3.3 The Netcall 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 which are available on request (as updated from time to time) or as may be specified in the Order Form.

3.4 The Customer may only make such copies as are reasonably necessary for back-up purposes. Any such copies are subject to the terms of this Contract. The Customer shall not remove and shall comply with the requirements of any copyright notices, trademark notices or other proprietary legends of Switchshop and/or any third party licensor contained in the Netcall Software.

3.5 The Customer is prohibited from decompiling, reverse engineering, disassembling, or otherwise reducing the Netcall Software to a human-perceivable form except as permitted by any applicable law. Where permitted by applicable law, the Customer shall agree to first make a written request to Switchshop for it to supply the relevant information required specifying in reasonable detail the extent and objectives of the proposed decompilation, disassembly or unbundling exercise. Switchshop shall be entitled to a reasonable fee for the provision of such information.

3.6 Except as expressly provided in this Contract no right is granted to translate, adapt, arrange, alter and/or modify the Netcall Software or any part of it and the Customer shall not do or attempt any of such acts,

whether for error correction or otherwise except in so far as the Customer may lawfully do so without the authorisation of Switchshop.

3.7 The Customer is responsible for backing up any data held within and/or utilised by the Netcall Software or provided to Switchshop and accordingly, Switchshop shall have no liability for loss of, damage to or corruption of the Customer data, however it happens.

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

3.9 The Customer shall ensure that use of the Netcall Software shall be in compliance with all applicable laws. The Customer shall not, and shall not permit any third party to, use, rent, loan, distribute or otherwise deal in the Netcall Software and in particular shall not use the same to process data for third parties or provide a bureau service to third parties save as expressly provided otherwise in the relevant Order Form.

Delivery:

3.10 Switchshop will procure the delivery of the Netcall 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.

3.11 Delivery will have occurred on the date the Netcall Software is delivered to the Customer (either by a physical delivery on media, or remotely by electronic means), or the date when Switchshop procures that installation onto the relevant hardware is completed, whichever is earlier. If the Customer fails to accept delivery of the Netcall Software or Switchshop is unable to deliver such on time because the Customer has not provided appropriate instructions, documents, licences or authorisations or if the Customer advises Switchshop that it cannot or does not wish to take delivery of the Netcall Software on the date specified for delivery then the Netcall Software shall be deemed to have been delivered on that delivery date.

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

4. **SUPPLY OF NETCALL HARDWARE**

4.1 The quantity, description, price and component parts of the hardware products shall be as set out in the Order Form ("**Netcall Hardware**"). The Customer shall use the Netcall Hardware only in conjunction with the Netcall Software, for the purpose for which it was designed, in accordance with any associated user documentation and the Customer shall comply with any applicable third party terms in relation to the Netcall Hardware. The Customer shall not remove any logos, copyright notices, trade mark notices or other notices affixed to or incorporated within the Netcall Hardware.

4.2 Switchshop will procure the delivery of the Netcall 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 the Customer fails to accept delivery of the Netcall Hardware or Switchshop is unable to deliver such on time because the Customer has not provided appropriate instructions, documents, licences or authorisations or if the Customer advises Switchshop that it cannot or does not wish to take delivery of the Netcall Hardware on the date specified for delivery then the Netcall Hardware shall be deemed to have been delivered on that delivery date.

4.3 Switchshop may substitute an equivalent alternative item for any item of Netcall Hardware at any time as part of routine support or where Switchshop deems it operationally reasonably appropriate to do so. The 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).

4.4 Risk and title in the Netcall Hardware shall pass at the point of delivery to the Customer subject to Switchshop's right to exchange the Netcall Hardware as contemplated by paragraph 4.3. The Customer shall ensure that use of the Netcall Hardware shall be in compliance with all applicable laws.

5. **PROVISION OF NETCALL SERVICES**

5.1 **Terms applying to all Services:**

5.1.1 Switchshop will provide the services set out in the Order Form being either implementation services, hosted services, managed services and/or support & maintenance services ("**Netcall Services**"). Notwithstanding any provision of any Order Form to the contrary all dates for the provision of the Netcall Services shall be estimates only.

5.1.2 The Customer shall provide or procure that Switchshop and its suppliers are granted such access to the Customer's premises, equipment, personnel, data, systems and/or infrastructure as is reasonably required to perform the Netcall Services (including to allow Netcall Services to be delivered remotely at Switchshop or other locations).

5.1.3 The Customer shall comply with the reasonable instructions of Switchshop and Netcall as may be relevant to the Netcall Services and the Customer shall provide all reasonable co-operation to Switchshop and Netcall in the provision of the Netcall Services.

5.1.4 Switchshop reserves the right to engage a sub-contractor to perform the Netcall Services provided that Switchshop shall remain liable to the Customer for any breach by Switchshop's subcontractor of

Switchshop's obligations under this Contract subject to the terms hereof.

5.1.5 Switchshop reserves the right to increase the price charged for Netcall Services: (i) by written notice to the Customer prior to any annual anniversary of the commencement of such Netcall Services by an amount equal to the previous month's 12 months' rate for the retail prices index ("**RPI**") plus 2%; and (ii) to reasonably reflect any increase in costs beyond Switchshop's reasonable control (e.g. third party communications costs). Pursuant to (ii) Switchshop may change its charges at any time for Services but it will provide the Customer with prior written notice of any changes and the Customer shall have the right to terminate the relevant Services which are subject to a price increase within 30 days of the date of the price change notice. Notwithstanding the foregoing, Switchshop shall not increase the price of support & maintenance services during the initial period thereof as set out in the Order Form.

5.1.6 If Switchshop has been unable to complete implementation services within 90 days of the estimated completion date due to any act or omission of the Customer or its third party suppliers then Switchshop shall be deemed to have completed such implementation services and shall be entitled to charge for them in full.

5.1.7 Netcall Services shall be calculated and charged as set out in the relevant Order Form. If the Customer purchases blocks of man days on an Order Form then the Customer must instruct the use and permit the delivery of such man days within 12 months of the date of the relevant Order Form. If the Customer does not do this, any unused man days purchased will be lost. Where a particular date is scheduled for Switchshop to carry out Netcall Services and the Customer cancels or reschedules such Services within 5 Working Days (where a "**Working Day**" shall mean 9am – 5.30pm Monday-Friday excluding UK public holidays) of the relevant date then the Customer shall pay for such Netcall Services as if they were taken on the originally scheduled date.

5.1.8 The Customer shall not, and shall not permit any third party to, use, rent, loan, distribute or otherwise deal in the Netcall Services and in particular shall not use the same to process data for third parties or provide a bureau service to third parties save as expressly provided otherwise in the relevant Order Form.

5.1.9 Save as is expressly provided otherwise in the Order Form the Customer is responsible for backing up any data held within and/or utilised by the Netcall Services or provided to Switchshop or Netcall and accordingly, Switchshop shall have no liability for loss of, damage to or corruption of the Customer data, however it happens. The Customer will give prompt notice to Switchshop as soon as it becomes aware that the Customer has exceeded any restrictions and/or usage limits specified in the Order Form in relation to the Netcall Services.

5.2 **Implementation Services:**

5.2.1 Switchshop will provide the implementation services (if any) set out in the Order Form.

5.2.2 The Customer shall be responsible for migration of data from any legacy system to the Netcall Software, Netcall Hardware and/or Netcall Services. The Customer shall be responsible for establishing interfaces between the Customer systems and the Netcall Software, Netcall Hardware and/or Netcall Services as applicable.

5.3 **Hosted Netcall Services**

5.3.1 Switchshop shall procure that the hosted services (if any) set out in the Order Form are provided to the Customer. The Order Form will specify the initial term of the provision of the hosted services. 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 hosted services shall automatically renew for one year periods on the same terms subject to any adjustment in the charges made by Switchshop pursuant to paragraph 5.1.5. Non-payment by the Customer of Switchshop invoices on time shall entitle Switchshop (without prejudice to any other rights and/or remedies) to suspend the provision of the hosted services. The hosted services shall be provided subject to Netcall's standard service levels which are set out in the relevant Order Form and which Switchshop or Switchshop may amend from time to time (provided it does not substantially decrease service levels without the prior written consent of the Customer).

5.3.2 The Customer shall ensure that its use of the hosted services shall be in compliance with all applicable laws. The Customer shall not use the hosted services to store or distribute illegal or infringing content and agrees that if Switchshop or Netcall receive notices from third parties alleging the presence of such content in the hosted services being hosted by Switchshop or Netcall, Switchshop or Netcall shall be entitlted to take whatever action as it deems fit, including deleting such content, without liability to the Customer.

5.4 **Managed Netcall Services:**

5.4.1 Switchshop shall procure that the managed services (if any) set out in the Order Form

are provided to the Customer. The Order Form will specify the initial term of the provision of the managed services. 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 managed services shall automatically renew for one year periods on the same terms subject to any adjustment in the charges made by Switchshop pursuant to paragraph 5.1.5. Non-payment of Switchshop invoices on time shall entitle Switchshop (without prejudice to any other rights and/or remedies) to suspend the provision of the managed services. The managed services shall be provided subject to Netcall's standard service levels which are set out in the relevant Order Form and which Switchshop or Netcall may amend from time to time (provided it does not substantially decrease service levels without the prior written consent of the Customer).

5.4.2 The Customer shall ensure that its use of the managed services shall be in compliance with all applicable laws. The Customer shall not use the managed services to store or distribute illegal or infringing content and agrees that if Switchshop or Netcall receive notices from third parties alleging the presence of such content in the managed services being hosted by Switchshop or Netcall, Switchshop or Netcall shall be entitlted to take whatever action as it deems fit, including deleting such content.

5.5 **Netcall Software Support and Maintenance Netcall Services:**

5.5.1 Switchshop will procure that the software support and maintenance services (if any) set out in the Order Form are provided to the Customer.

5.5.2 The Order Form will specify the service description, service levels, service hours and initial term of support and maintenance services. Unless a party serves notice of termination at least 90 days prior to expiry of the initial term (or any subsequent renewal term), the provision of support and maintenance services shall automatically renew for one year periods on the same terms as this Contract subject to any adjustment in the charges made by Switchshop pursuant to paragraph 5.1.5. Non-payment of Switchshop invoices on time shall entitle Switchshop (without prejudice to any other rights and/or remedies) to suspend support and maintenance services. For the avoidance of doubt, in the event that support and maintenance services are not renewed in accordance with this paragraph then the support and maintenance services will cease but such cessation shall not affect the

term of use of the Netcall Software as set out in pargraph 12.1 subject to any express term of licence to the contrary as set out in the Order Form.

5.5.3 The Customer agrees to: (a) use, operate and maintain the Netcall Software in accordance with any relevant operating manuals and Switchshop 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 Netcall Software to allow Switchshop and its suppliers and subcontract reasonable access. Switchshop shall have no liability or obligation to provide support and maintenance services in relation to faults or service delays caused by the Customer default, customisations, incorrect environments and/or the Customer staff not being suitably trained/skilled.

5.5.4 Switchshop and Netcall may record telephone calls between representatives of the Customer and representatives of Switchshop or Netcall for training and service improvement purposes.

6. **PRICE & PAYMENT**

6.1 All sums payable under this Contract are exclusive of any VAT. The Customer is responsible for all taxes, charges, levies, assessments and other fees of any kind imposed on the purchase of the Netcall Hardware, Netcall Software and/or Netcall Services. The Customer shall not be entitled to set off amounts due to it against any amounts due to Switchshop pursuant to, or in connection with this Contract or pursuant to or in connection with any other agreement made between the parties.

6.2 The Customer shall pay Switchshop and Netcall's reasonable out of pocket travel, accommodation and subsistence expenses incurred by Switchshop or Netcall in attending any location outside of Switchshop's offices as requested by the Customer.

6.3 Switchshop shall invoice the Customer for the charges due hereunder as set out in the Order Form. The Customer shall pay all amounts due without deduction or withholding in pounds sterling within 30 days of date of Switchshop's invoice. Switchshop may without prejudice to its other rights and/or remedies suspend the Customer's right to use the Netcall Software and/or suspend Switchshop's provision of the Netcall Services (or any part thereof) and/or the performance of its obligations under any Order Form if the Customer fails to pay any amount due to Switchshop on time. Interest on late payments shall be charged by Switchshop 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 judgement.

7. WARRANTIES

7.1 Switchshop warrants that the Netcall Software will during normal use provide in all material respects the facilities and functions described in Netcall's standard documentation for such Netcall Software. Such warranty will commence upon the initial delivery of or provision of access to the Netcall Software (whichever the later) and continue for 60 days thereafter. The Customer hereby agrees that its sole remedy in respect of any breach of the said warranty is that Switchshop will remedy such breach without charge to the Customer and if in Switchshop's reasonable opinion, Switchshop 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 Netcall Software (where such portion shall be calculated by Switchshop acting reasonably and having regard to the circumstances of the breach in question). The aforesaid warranty shall not apply: (a) if the Netcall Software is not running on the minimum equipment requirements identified in the relevant Netcall Software documentation and/or Order Form; (b) to Netcall Software modified by the Customer and/or any third party other than in accordance with Switchshop's written instructions; (c) where any environmental specification for the operation of the Netcall Software is not maintained; (d) to any loss, damage or destruction of or to the Netcall Software, save where the loss, damage or destruction is caused by Switchshop; or (e) to any defect or malfunction caused by negligence, neglect or misuse (other than by Switchshop's negligence, neglect or misuse).

7.2 The parties acknowledge that the Netcall Software will not be free of minor defects nor shall the Netcall Software function without interruption.

7.3 The Customer is responsible for ensuring that the facilities and functions in the Netcall Software meet its requirements.

7.4 Switchshop warrants that all Netcall Services will be carried out with reasonable care and skill. Switchshop warrants that it will use reasonable endeavours to provide the hosted and/or managed services in substantial conformance with Netcall's standard documentation for the hosted and/or managed services as applicable. The parties acknowledge that hosted and/or managed services will not be free of minor defects nor shall the hosted and/or managed services function without interruption. Switchshop shall 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 Switchshop performed the act or omission which caused the breach of warranty. The Customer hereby agrees that its sole remedy in respect of any breach of the said warranties is that Switchshop will remedy such breach without charge to the Customer and if in Switchshop's reasonable opinion, Switchshop 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 Netcall Services for 12 months prior to the date of the breach (where such portion shall be calculated by Switchshop acting reasonably and having regard to the circumstances of the breach in question).

7.5 Other than as expressly set out in these terms, no warranty whatsoever is given in respect of any third party or open source software.

7.6 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 such as CD-ROM's and diskettes.

7.7 Except as expressly set forth in this Contract all warranties, conditions, representations and other terms implied by statute or common law in respect of the Netcall Hardware, Netcall Software and/or Netcall Services are, to the fullest extent permitted by law, excluded.

8. LIMITATION OF LIABILITY

8.1 This paragraph 8 sets out the entire financial liability of Switchshop (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of all matters arising out of this Contract. All claims by the Customer must be made against Switchshop only and not against any of Switchshop's third party licensors or subcontractors.

8.2 Nothing in this Contract and/or the Order Form shall be construed as limiting or excluding the liability of Switchshop:

8.2.1 for death or personal injury resulting from negligence; or

8.2.2 for any damage or liability incurred by the Customer as a result of fraud (including a fraudulent misrepresentation) by Switchshop; or

8.2.3 for any liability which cannot lawfully be limited or excluded.

8.3 Subject to paragraph 8.2, Switchshop shall not be liable to the Customer for any of the following (where in each of paragraphs 8.3.1 to 8.3.8 inclusive whether of a direct or indirect nature):

8.3.1 loss of, damage to and/or corruption of data;

8.3.2 loss of profits;

8.3.3 loss of business;

8.3.4 depletion of goodwill;

8.3.5 loss of anticipated savings;

8.3.6 loss of contract;

8.3.7 loss of use; and/or

8.3.8 special, indirect or consequential loss.

8.4 Subject to paragraph 8.2, Switchshop'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

Contract and/or the Order Form (or any collateral contract) shall be limited to:

8.4.1 in the case of claims relating to the Netcall Software, 100% of the fee paid and payable in relation thereto by the Customer;

8.4.2 in the case of claims relating to implementation services, 100% of the fee paid and payable in relation thereto by the Customer;

8.4.3 in the case of claims relating to hosted services, 100% of the fee paid and payable in relation thereto by the Customer for the 12 months preceding the date on which the cause of action giving rise to the claim arose;

8.4.4 in the case of claims relating to managed services, 100% of the fee paid and payable in relation thereto by the Customer for the 12 months preceding the date on which the cause of action giving rise to the claim arose;

8.4.5 in the case of claims relating to support and maintenance services, 100% of the fee paid and payable in relation thereto by the Customer for the 12 months preceding the date on which the cause of action giving rise to the claim arose;

8.4.6 in the case of claims relating to Netcall Hardware, 100% of the fee paid and payable in relation thereto by the Customer; and

8.4.7 in the case of all other matters, £25,000.

8.5 Switchshop shall not be liable for any loss or damage suffered by the Customer where such loss or damage is suffered in consequence of any unavailability or failure or interruption of the Netcall Software and/or Netcall Services arising from any of the Customer's systems, equipment or any third party equipment or where caused by the Customer's acts or omissions or inadequately trained the Customer personnel.

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

8.7 The Customer shall indemnify Switchshop against and claim for loss suffered by Netcall as a result of the Customer's breach of the Contract.

9. INTELLECTUAL PROPERTY

9.1 All intellectual property rights in the Netcall Hardware, Netcall Software and/or Netcall Services (including any modifications, alterations or adaptations thereto whether made by Switchshop, the Customer or any third party) are and shall remain the sole property of Switchshop (or its licensors).

9.2 Subject always to the limitations and exclusions of liability set out in paragraph 8, Switchshop shall indemnify and hold the Customer harmless against its reasonable losses, liabilities and damages directly arising from any claim that the current and/or immediately preceding release of the Switchshop owned Netcall Software infringes the copyright of a third party ("**Claim**") provided that the Customer complies with paragraph 9.3 to 9.5 (inclusive) and provided that the Claim does not arise as a result of the use of that software in combination with any material not supplied by Switchshop nor arise as a result of a modification to that software that is not undertaken by Switchshop.

9.3 The Customer shall promptly give notice in writing to Switchshop if it becomes aware of any: (a) Claim; and/or (b) any infringement or suspected infringement by a third party of the intellectual property rights relating to Netcall Hardware, Netcall Software and/or Netcall Services.

9.4 Switchshop shall, in its absolute discretion, decide what action to take in respect of any Claim. Switchshop shall conduct and have sole control over any consequent action that it deems necessary and Switchshop shall be entitled to all damages and other sums that may be paid or awarded as a result of that action. The Customer shall not (whether through action or inaction) prejudice Switchshop's defence of such Claim.

9.5 In relation to any Claim, the Customer shall, at Switchshop's reasonable cost, provide such assistance and shall take such steps or actions as Switchshop may consider reasonable or appropriate to prevent or to terminate the infringement and/or to defend the Claim.

9.6 Switchshop shall have the right to replace and/or change all or part of the Netcall Hardware, Netcall Software and/or Netcall Services in order to avoid any infringement provided the same does not have a substantial detrimental effect on the relevant Netcall Hardware, Netcall Software and/or Netcall Services.

9.7 If the Customer uses "Open Source" software (which shall also include software known as "copyleft" and "freeware") in conjunction with any of the Netcall Hardware, Netcall Software and/or Netcall Services the Customer must ensure that the Customer's use does not: (a) create, or purport to create, obligations of Switchshop or its licensors with respect to the Netcall Hardware, Netcall Software and/or Netcall Services; or (b) grant, or purport to grant, to any third party any rights to, or immunities under, Switchshop's or its licensors' intellectual property or proprietary rights in the Netcall Hardware, Netcall Software and/or Netcall Services.

9.8 Switchshop shall be entitled to use the Customer's corporate name and logo on Switchshop promotional/communication materials simply to indicate that the Customer is a Customer of Switchshop.

10. CONFIDENTIALITY

10.1 Each Party shall keep in strict confidence the Netcall Software, all technical or commercial know-how, specifications, inventions, processes or initiatives

which are of a confidential nature and which have been disclosed by one Party (the "**Disclosing Party**") to the other (the "**Receiving Party**"), its employees, agents and/or sub-contractors and any other confidential information concerning the Disclosing Party's business, the Netcall Hardware, the Netcall Software, and/or the Netcall Services which the Receiving Party may obtain as a result of such disclosure ("**Confidential Information**"). Each Party shall restrict disclosure of such Confidential Information to such of the Receiving Party's employees, agents and/or sub-contractors as may need to know the same for the purposes of this Contract, and shall ensure that its employees, agents and/or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the parties to this Contract. The Receiving Party shall be liable for any breach of the obligations in this Contract by any of its employees, agents and/or sub-contractors. The Customer agrees that Switchshop may report to the relevant third party licensors the appropriate information relating to the Third Party Netcall Software licensed to the Customer hereunder.

10.2 The obligations of confidentiality in paragraph 10.1 shall not apply to any information which: (a) was lawfully in the possession of the Receiving Party 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 Contract); (c) comes into the Receiving Party's knowledge from a third party who lawfully possesses such information and such disclosure 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.

11. DATA PROTECTION

11.1 The Data Protection Act 2018 shall be defined herein as the "**DPA**". "**Data Controller**", "**Data Processor**", "**Personal Data**", "**Process**", shall have the meanings ascribed to them by the DPA.

11.2 The type of Personal Data Processed pursuant to this Contract 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.

11.3 In respect of the parties' rights and obligations under this Contract regarding the Personal Data, the parties hereby acknowledge and agree that the Customer is the Data Controller and Switchshop is the Data Processor and accordingly Switchshop agrees that it shall Process all Personal Data in accordance with its obligations pursuant to this paragraphs 11.3 and 11.4. Notwithstanding any other provision in this Contract to the contrary, in relation to the Netcall Services the Customer:

11.3.1 will comply with the DPA at all times;

11.3.2 will, as between the parties, have sole responsibility for the accuracy and quality of the Personal Data and the means by which the Customer acquired the Personal Data;

11.3.3 shall ensure that it has all rights, consents and authority to permit Switchshop to lawfully Process such Personal Data;

11.3.4 agrees that it is responsible for implementing its own policies and decisions in relation to its compliance with DPA and for ensuring that those policies are in compliance with DPA;

11.3.5 agrees that Switchshop is not providing any advice to the Customer as to the Customer's compliance with the DPA;

11.3.6 agrees that Switchshop will not in respect of each instance be in breach of this Contract nor will Switchshop be in any other way liable to the Customer for and/or be responsible to the Customer for any consequences arising from Processing Personal Data where Switchshop has done so in accordance with the Customer instructions relating thereto;

11.3.7 agrees that the Customer policies in relation to its compliance with the DPA must be reasonable; and

11.3.8 agrees to undertake a proper review of the Netcall Services and the associated the Customer policies and/or instructions reflected within the Netcall Services in relation to compliance with the DPA prior to putting the Netcall Services into operational use and the Customer agrees not to put the Netcall Services into operational use where such a review identifies any material risk of non-compliance with the DPA. The Customer agrees to keep the Netcall Services subject to such review on an ongoing basis and in particular will undertake such reviews prior to deploying any changes made to the Netcall Services by the Customer and/or Switchshop and the Customer agrees not to put any such changes into operational use where such a review identifies any material risk material in relation to data security measures and/or to applicable data protection laws; and

11.3.9 grants a general authorisation to Switchshop to appoint third party service providers as sub-processors to support the performance of the Netcall Services.

11.4 Notwithstanding any other provision in this Contract to the contrary the Customer agrees that in Processing Personal Data that Switchshop's obligations in this Contract are as follows:

11.4.1 Switchshop shall only Process the Personal Data in order to provide the Netcall Services and shall act only in accordance with this

Contract and the Customer's written instructions issued from time to time;

11.4.2 Switchshop shall as soon as reasonably practicable upon becoming aware, inform the Customer if, in Switchshop's opinion, any instructions provided by the Customer infringe the DPA;

11.4.3 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, Switchshop shall 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 Contract;

11.4.4 Switchshop shall 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 shall respect and maintain all due confidentiality;

11.4.5 Switchshop shall without undue delay after becoming aware, notify the 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 Contract ("Personal Data Breach");

11.4.6 Switchshop shall as soon as reasonably practicable following, and in any event within sixty (60) days of, termination or expiry of this Contract or completion of the Netcall Services, Switchshop will delete or return to the Customer (at the Customer's direction) all Personal Data (including copies thereof) Processed pursuant to this Contract;

11.4.7 Switchshop shall provide such assistance as the Customer reasonably requests (taking into account the nature of Processing and the information available to Switchshop) to the Customer in relation to the Customer's obligations under the DPA with respect to: (a) responding to requests from any data subject seeking to exercise its rights under the DPA; (b) data protection impact assessments (as such term is defined in the DPA); (c) notifications to the supervisory authority under the DPA and/or communications to data subjects by the Customer in response to any Personal Data Breach; and (d) the Customer's compliance with its obligations under the DPA with respect to the security of Processing; provided that in relation to the foregoing the Customer shall pay Switchshop's charges for providing such assistance at

Switchshop's then current standard professional services rates.

11.5 Switchshop shall not cause or permit any Personal Data to be transferred or Processed outside the United Kingdom and/or European Union without first seeking the instructions of the Customer.

12. **TERM AND TERMINATION**

12.1 In respect of the Netcall Software the term of use shall be for the period stated in the Order Form or, if no such period is stated, for a period of three years. If the term of use expires or if the Contract terminates earlier then the Customer shall immediately cease use. In respect of the support and maintenance services the minimum period shall be for the initial term stated in the Order Form or, if no such period is stated, for a period of three years and shall be subject to renewal in accordance with the provisions of paragraph 5.5.2.

12.2 In respect of implementation services the term of use shall be the same as the term of use of the corresponding Netcall Software under paragraph 12.1. In respect of the hosted and/or managed services the term of provision shall be for the period stated in the Order Form or, if no such period is stated, for a period of one year and shall be subject to renewal in accordance with the provisions of paragraphs 5.3.1 and 5.4.1 respectively. If the term of provision of the hosted and/or managed services expires or if the Contract terminates earlier then the Customer shall immediately cease use.

12.3 Either party may terminate this Contract immediately on giving written notice to the other party if: (a) the other party commits a material breach of any of the terms of this Contract 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, (b) the other party becomes insolvent or is otherwise unable to pay its debts as they fall due; (c) Netcall becomes insolvent or ceases the provision of any of the Netcall Services, the Netcall Software, the Netcall Hardware or any related support.

13. **CONSEQUENCES OF TERMINATION**

13.1 On termination or expiry of this Contract for any reason the Customer shall:

13.1.1 immediately pay to Switchshop all outstanding unpaid invoices together with any amounts due in respect of Netcall Hardware, Netcall Software and/or Netcall Services supplied but not yet invoiced;

13.1.2 immediately deliver up to Switchshop the Netcall Hardware (if that Netcall Hardware has not been fully paid for) and Netcall Software (or any part thereof) and any copies thereof or any related manuals and documentation; and

13.1.3 immediately deliver up and/or permanently destroy all copies of Switchshop's Confidential Information and copies of programs, manuals and documentation

used by Switchshop for the provision of Netcall Services.

13.2 If the Customer fails to perform its obligations under paragraph 13.1, then Switchshop may enter the Customer's premises and take possession of such Netcall Hardware, Netcall Software and/or Switchshop or Netcall Confidential Information.

13.3 The accrued rights, remedies, obligations and/or liabilities of each Party shall, notwithstanding any specific provision herein, survive the termination of this Contract.

13.4 For the avoidance of doubt for any implementation services performed on a fixed price basis Switchshop may charge the Customer on a quantum meruit basis for any such implementation services performed up to the date of termination of this Contract and for any other reasonable charges to which Switchshop is committed in respect of the anticipated performance of those services which may be immediately invoiced by Switchshop and shall be payable by the Customer notwithstanding such termination.

13.5 The provisions of paragraphs 6, 8, 9, 10, 11, 12, 13 and 14 will survive the termination of this Contract.

14. **GENERAL**

14.1 This Contract 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 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 Contract by, nor has it relied upon, any representations, promises, covenants or undertakings of the parties with respect to such subject matter other than those expressly set out in this Contract. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract. This Contract may not be modified except by written document signed by authorised representatives of Switchshop and the Customer.

14.2 Any notice under this Contract 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 expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by email (provided that the sender confirms the email by sending an original confirmation copy by certified or registered mail or expedited delivery service within 3 Working Days after transmission) to the recipient party at its registered office or such changed address as shall be notified by one party to the other for the purposes of this paragraph. Any notice shall be deemed to have been given at the time of personal delivery, or in the case of email upon transmission provided confirmation is sent as described above, or in the case of expedited delivery service or registered or certified mail 3 business days after the date and time of mailing.

14.3 The Customer shall not be entitled to novate, transfer or assign this Contract without the prior written consent of Switchshop.

14.4 Neither party is responsible for failure to fulfil its obligations in this Contract due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder and if a party shall become aware of any such causes it shall promptly inform the other party thereof.

14.5 The parties shall comply with their respective obligations under applicable law regarding anti-bribery and anti-corruption.

14.6 No employment, partnership or agency relationship will be deemed to exist between the Customer and any Switchshop personnel.

14.7 For the duration of this Contract and for six months following its expiry or termination, the Customer will not solicit the employment or services of any personnel of Switchshop who has been engaged in connection with this Contract.

14.8 Each right or remedy of a party under this Contract is without prejudice to any other right or remedy of that party whether under this Contract or not.

14.9 The Customer shall permit reasonable access by Switchshop and Netcall to its premises during Working Days to audit compliance with the terms of this Contract and to remove items of Netcall Software that are not licensed and/or being used in accordance with the terms of this Contract.

14.10 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall 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 shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this paragraph shall not affect the validity and enforceability of the rest of this Contract. If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall 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.

14.11 Failure or delay by a party in enforcing or partially enforcing any provision of this Contract shall not be construed as a waiver of any of its rights under this Contract.

14.12 Any waiver by a party of any breach of, or any default under, any provision of this Contract by the other party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Contract.

14.13 Except as expressly stated therein, the parties to this Contract do not intend that any term of this Contract shall be enforceable by virtue of the Contracts

(Rights of Third Parties) Act 1999 by any person that is not a party to it provided that Netcall may enforce rights expressed to be granted in its favour under the Contract.

14.14   The Contract 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 shall 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).

14.15   Unless agreed otherwise in writing, the Customer shall reimburse Switchshop 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 the Customer's employees or ex-employees or any trade union or staff association which represents the Customer's employees or ex-employees (or, in any case where the Customer has outsourced services which are the same as or similar to the Netcall 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 Netcall 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).

14.16   The Customer acknowledges that no contract exists between Netcall and the Customer and that all warranty and other claims shall be made directly against Switchshop.

15.   **UPDATES**

Switchshop may update this Deliverable Schedule from time to time on providing reasonable notice to the Customer. The Customer's continued use of the Netcall Hardware, Netcall Software or Netcall Services following receipt of such notice shall constitute deemed acceptance of this Deliverable Schedule as updated.