

# Terms And Conditions

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following words shall have the following meanings:

**"Affiliate"** means any business entity which directly or indirectly controls, is controlled by, or is under common control with a party. The term "control," as used in this definition, means having the power to direct, or cause the direction of, the management and policies of a party, whether through ownership of voting securities, by contract or otherwise;

**"Agreement"** means the agreement comprising an Order Form, these Terms and Conditions and any further terms incorporated by reference;

**"Agreement Start Date"** means the date described as such in the Order Form;

**"AUP"** or **"Acceptable Use Policy"** means the document set out in Schedule 2;

**"Business Hours"** means between 09:00 and 18:00 UK time on Working Days;

**"Charges"** means the charges payable by the Customer for the delivery of the Goods and/or Services, as set out in the Order Form;

**"Client Software"** means any programs provided by Netec or a third party service provider that enables the Customer to use a Hosted Service;

**"Confidential Information"** means any and all information and data disclosed to or otherwise obtained by one party by or from the other party or a third party acting on behalf of the Disclosing Party before, on or after the date of this Agreement in any medium and in whatever form (whether disclosed or obtained orally, in document or electronic form, by demonstration or otherwise) that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential;

**"Customer Materials"** means any interfaces, documentation, information or other materials to be provided or made available by the Customer so that Netec may deliver the Services;

**"Data Protection Legislation"** means the GDPR and the Data Protection Act 2018 or any replacement legislation applicable in England and Wales from time to time, and in each case, where applicable, any guidance and codes of practice issued by a supervisory authority;

**"Documentation"** means user manuals or instructions provided to the Customer by Netec;

**"Equipment"** means Customer equipment (including hardware, software, telecommunications links and supporting documentation);

**"Force Majeure"** means any event outside the reasonable control of a party affecting its ability to perform its obligations (other than payment), including act of God, fire, flood, lightning, war, revolutions, act of terrorism and riot or civil commotion but excluding strikes, lock-outs or other industrial action, whether of the affected party's own employees or others;

**"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016;

**"GDPR Policy"** means the document of that name, as updated or revised by Netec from time to time and located at <http://www.netecgc.com/terms>;

**"Goods"** means any goods set out in section 5 of the Order Form;

**"Hosted Services"** means the services requested by the Customer in section 3 of the Order Form;

**"Intellectual Property Rights"** or **"IPR"** means patents, utility models, trade marks, copyright, semiconductor topography rights, rights in databases, design rights, unregistered Community designs, registered designs and registered Community designs, goodwill and all rights or forms of protection of a similar nature or having equivalent or a similar effect to any of them which may subsist anywhere in the world and including rights of action accruing in respect of any of them;

**"Manufacturer's Specification"** means the manufacturer's manuals and specifications for Equipment;

**"One-off Services"** means the services requested by the Customer in section 1 of the Order Form and meeting the Customer requirements therein;

**"Ongoing Services"** means the services requested by the Customer in sections 2 and 3 of the Order Form;

**"Onsite"** means delivered from the Customer's or its Affiliate's place of business or from any other location designated by the Customer or its Affiliate;

**"Personal Data"** has the meaning set out in clause 13.1;

**"Portal"** means the website portal at which the Customer submits requests for support located at <http://netec.jitbit.com>;

**"Remote"** means not Onsite;

**"Service Desk"** means the Service Desk that may be contacted by telephone on +44 (0)20 3700 2919 or by email at [helpdesk@netecgc.com](mailto:helpdesk@netecgc.com) if Support Services have been ordered under section 2 of the Order Form;

**"Service Start Date"** means the date described as such in the Order Form;

**"Service Term"** means, with respect to a Service set out in section 2 or 3 of the Order Form, the time starting with the relevant Service Start Date and ending with the date that the provision of the relevant Service is brought to an end by one of the parties;

**"Services"** means the Services requested by the Customer as described in the Order Form;

**"Support Services"** means the Services requested by the Customer in section 2 of the Order Form and meeting the requirements of clause 4.1;

**"Supported System"** means any system for which Netec will provide support, as identified in Section 2 of the Order Form;

**"Third Party Terms"** means the document of that name, as updated or revised by Netec from time to time and located at <http://www.netecgc.com/terms/>;

**"Working Days"** means Monday to Friday (except UK public holidays and the period between Christmas and New Year); and

**"Year"** means each period of 12 months commencing with the Agreement Start Date.

- 1.2 Headings are for convenience only and shall not affect the construction of the conditions of this Agreement. References to clauses and schedules are to clauses and schedules of this Agreement.
- 1.3 References to statutory provisions shall include any legislation intended to amend or supercede those statutory provisions.
- 1.4 To the extent that any clause should conflict with any schedule, then the clause shall prevail. If one document incorporated into this Agreement conflicts with another then the order of precedence shall be as follows (higher in the list prevailing over lower in the list):
- Special Terms in the Order Form
  - Terms and Conditions
  - Order Form other than Special Terms
  - GDPR Policy
  - Third Party Terms

## **2 GENERALLY**

- 2.1 This Agreement shall be effective from the Agreement Start Date and Netec will provide each of the Services from the relevant Service Start Date.
- 2.2 A quotation for Goods or Services given by Netec shall not constitute an offer and Netec shall not be bound to supply them until an appropriate Order Form has been signed by both parties. A quotation shall only be valid for a period of 7 days from its date of issue.
- 2.3 The parties may agree to the provision of further Goods and Services for the payment of additional Charges by both signing an Order Form. Each Order Form subsequently signed by both parties shall not (unless expressly stated to the contrary) constitute a separate contract but shall instead accrete to and modify this Agreement to the extent necessary to incorporate the provision of the Goods and Services specified therein.
- 2.4 Netec may subcontract any or all of the works forming Services (including engaging subprocessors of Personal Data) and will procure Goods from third party manufacturers or distributors.
- 2.5 Netec shall provide Services during Business Hours unless otherwise agreed in the Order Form.
- 2.6 Netec and Customer shall hold a quarterly account management meeting either by phone or at Customer's office.
- 2.7 The Customer shall:
- a) co-operate with and act in good faith towards Netec, and provide all technical information, assistance and access (including sufficient internet connectivity for Remote access) to the Customer's sites and Equipment as may be reasonably required by Netec in order to provide the Services;
  - b) take all reasonable precautions to protect the health and safety of Netec personnel (whether Netec's employees, directors or contractors) whilst they are on the Customer's site; and

- c) designate a representative and inform Netec of the identity and details of such representative. Netec may rely upon any instructions issued by the representative. The Customer may change the identity of the representative on written notice to Netec.

### **3 ONE-OFF SERVICES**

The provisions of this clause 3 shall apply only if One-off Services have been selected in the Order Form.

- 3.1 Netec will provide the One-off Services to the Customer from the applicable Service Start Date.
- 3.2 The One-off Services will be Remote to the extent reasonably possible. To the extent it is not reasonably possible for One-off Services to be Remote, the One-off Services will be delivered only at the location(s) for Onsite Services set out in the Order Form.
- 3.3 Netec will use its reasonable endeavours to provide the Services in accordance with the estimated delivery dates in the Order Form.
- 3.4 The Customer will deliver the Customer Materials to Netec and use its reasonable endeavours to deliver them in accordance with the estimated delivery dates in the Order Form. The Customer will be solely responsible for the quality, integrity and legality of the Customer Materials.

### **4 SUPPORT SERVICES**

The provisions of this clause 4 shall apply only if Support Services have been selected from the Order Form.

- 4.1 During the Service Term for Support Services, Netec will:
  - a) perform routine maintenance for a Supported System in accordance with good IT industry practice;
  - b) make adjustments to a Supported System, including replacing components, as may be required for a Supported System to operate according to the Manufacturer's Specification;
  - c) investigate and seek to resolve any defects in or unavailability of any Hosted Service;
  - d) make available to Customer the Service Desk during Business Hours; and
  - e) grant Customer access to the Portal.
- 4.2 Netec will provide a Portal licence for a single named user at no charge; additional licences may be purchased from Netec at the then prevailing rate. The Customer will keep its login details to the Portal secure at all times.
- 4.3 All Customer requests for Support Services shall be made by the Customer via the Service Desk or the Portal, each such request a "Ticket". Netec shall review, respond to and manage each Ticket in accordance with the process set out in Schedule 1 to these Terms.
- 4.4 Unless otherwise expressly agreed by the parties in writing, Support Services shall be Remote.
- 4.5 The Customer shall:

- a) notify Netec as soon as reasonably practicable if there is: (i) a change in the systems to be supported; (ii) a change in the number of personnel at the location(s) of the Supported Systems or in the number of users of the Supported Systems (whichever is relevant for the Charges); or (iii) a change to the location of the Supported Systems; from what has been specified in the Order Form or notified to Netec subsequently. Netec will propose revised Charges for the Customer's approval (not to be unreasonably withheld or delayed) and Netec shall not be required to provide the Support Services unless and until revised Charges have been agreed. The parties agree that the revised Charges shall be not less than the minimum monthly Charges set out in the Order Form;
  - b) procure and maintain the third party licences and/or service agreements that are specified in the Order Form in respect of Supported Systems and shall provide or procure at no charge to Netec any other licences required in order for Netec to access and use Supported Systems;
  - c) ensure that the benefit of any unexpired manufacturer's or software publisher's warranty or support agreement for any part of a Supported System (if not supplied by Netec) is assigned to Netec or that the warranty or support agreement can be administered by Netec on the Customer's behalf; and
  - d) except where backup has been selected as an Ongoing Service in the Order Form, ensure that it takes regular and frequent backups of data processed by or stored on a Supported System.
- 4.6 The Customer accepts that any server forming part of a Supported System must benefit from a valid and subsisting manufacturer's warranty at all times during the Service Term for Support Services. If there is no such warranty or if a warranty will expire during the Service Term then Netec may procure such a warranty or warranty extension and invoice the Customer for the cost of the same.
- 4.7 The Support Services do not include the following which, if Netec agrees at its sole discretion to provide, shall be treated as ad hoc consultancy services and chargeable accordingly on a time and materials basis:
- a) resolving issues arising from any failure of the Customer or any of its employees to comply with the terms of this Agreement or any user manual or other documentation supplied by Netec or the relevant manufacturer;
  - b) visits to locations other than those specified in section 2 of the Order Form;
  - c) resolving issues arising from any use of a Supported System by the Customer in conjunction with any other equipment or any software not previously approved by Netec;
  - d) resolving issues arising from electrical work external to a Supported System itself;
  - e) maintenance of equipment not intrinsically part of a Supported System;
  - f) resolving issues arising from the attachment or removal of accessories, attachments or other devices by the Customer or a third party;

- g) repairs to a Support System where it is beyond economic repair, where spare parts are no longer readily available from the manufacturer or, where according to the manufacturer, it has reached End-of-Life;
- h) the supply or fitting of consumables such as ribbons, tapes or disks;
- i) reconditioning or replacement of a Supported System or parts thereof;
- j) putting a Supported System into proper working condition at the commencement of the Support Services for that Supported System (if it has not been supplied by Netec);
- k) relocation of a Supported System;
- l) the installation or reinstallation of an operating system or a major upgrade of a Supported System;
- m) resolving issues arising from wilful damage to or negligent use of a Supported System;
- n) resolving issues arising from damage which, in Netec's reasonable opinion, results from accident, transportation, neglect or misuse of a Supported System;
- o) resolving issues arising from modifications to a Supported System made without Netec's prior written consent;
- p) resolving issues arising from attempts by the Customer or a third party to repair a Supported System;
- q) resolving issues arising from failure or surge of electrical power, or failure of air conditioning or humidity control, or physical or electrical stress or abnormal usage, including, without limitation, damage caused by the use of storage media not approved by Netec;
- r) providing the Services outside the Business Hours;
- s) moves, changes and advice as described in Schedule 1; or
- t) providing any other services not expressly covered herein.

## **5 HOSTED SERVICES**

The provisions of this clause 5 shall apply only if Hosted Services have been ordered in the Order Form.

- 5.1 Netec shall provide the Hosted Services from the relevant Service Start Date.
- 5.2 The Customer will comply with the terms of the Acceptable Use Policy. The Customer accepts that Netec may change the terms of the Acceptable Use Policy from time to time by providing notice in writing to reflect changes to the equivalent policies of the relevant third party service providers.
- 5.3 The Customer accepts that the Hosted Services may, from time to time, become temporarily unavailable due to maintenance performed by the relevant third party service provider.
- 5.4 The Customer will ensure that it takes regular and frequent backups of data processed by or stored in a Hosted Service.

- 5.5 Netec is a reseller of the Hosted Services providing Exchange, Office 365, anti-virus and backup. If the Customer has ordered any of those Hosted Services in the Order Form then it shall also comply with the applicable Third Party Terms during the Service Terms of those Hosted Services. The Customer accepts that Microsoft Corporation, F-Secure Corporation and Mozy Corporation (as applicable) shall be entitled to enforce the terms of those Third Party Terms and amend them from time to time.
- 5.6 The Customer shall indemnify and hold harmless Netec against any claims brought or demands made by a third party (including the third party service providers of the Hosted Services) as a result of the Customer's use or misuse of any Hosted Service or breach of the Acceptable Use Policy or the Third Party Terms and against all losses or damages sustained by Netec as a result.

## **6 SUPPLY OF GOODS**

The provisions of this clause 6 shall apply only if Goods have been ordered in the Order Form.

- 6.1 Netec will supply the quantity and description of Goods set out in the Order Form.
- 6.2 Any advertising or descriptive matter for Goods produced by Netec or the manufacturers or distributors of the Goods and any descriptions or illustrations contained in any of their catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of this Agreement and should not be relied upon by the Customer.
- 6.3 Netec shall deliver the Goods to the location set out in section 5 of the Order Form at any time after Netec notifies the Customer that the Goods are ready. Any dates quoted for delivery are approximate only and the Customer accepts that the actual date for delivery is dependent on the activities of manufacturers and/or distributors over whom Netec has limited control.
- 6.4 Netec may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of this Agreement.
- 6.5 Delivery of the Goods shall be completed on the Goods' arrival at the delivery location set out in the Order Form.
- 6.6 The Customer shall comply with any legislation governing:
- a) the importation of the Goods into the country of destination; and
  - b) the export and re-export of the Goods,
- and shall be responsible for the payment of any duties on them.
- 6.7 Netec shall be responsible for any damage or loss in transit, provided that the Customer notifies it to Netec (or its carrier, if applicable) within one day of delivery of the Goods and that the Goods have been handled in accordance with Netec's and the manufacturer's instructions.
- 6.8 If Netec is unable to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

- 6.9 If the Customer fails to accept delivery of the Goods within one Business Day of Netec notifying the Customer that the Goods are ready, then Netec shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

*Title and risk*

- 6.10 The risk in the Goods shall pass to the Customer on completion of delivery. Title to the Goods shall pass to the Customer only when Netec receives payment in full for the Goods.
- 6.11 Until title to the Goods has passed to the Customer, the Customer shall:
- a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Netec's property;
  - b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - d) notify Netec immediately if it becomes subject to any of the events listed in clause 22.4(ii); and
  - e) give Netec such information relating to the Goods as Netec may require from time to time.
- 6.12 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 22.4(ii), then Netec may at any time, without limiting any other right or remedy Netec may have:
- a) require the Customer to deliver up all Goods to Netec or its representative; and
  - b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7 CHARGES AND TERMS OF PAYMENT**

- 7.1 The Charges for the Services are as specified in the Order Form or, for Support Services, as may be subsequently agreed under clause 4.5a). Netec shall invoice Customer:
- a) for one-off project-based Services (section 1 of the Order Form), in accordance with the payment schedule set out in that section of the Order Form;
  - b) for ongoing support and maintenance Services (section 2 of the Order Form), monthly in advance;
  - c) for ongoing hosted Services (section 3 of the Order Form) and ad hoc consultancy Services (section 4 of the Order Form), monthly in arrears; and
  - d) for Goods (section 5 of the Order Form), on the date that the Order Form is signed.
- 7.2 Payment shall be made by Customer within 30 days of receiving a Netec invoice.
- 7.3 If, in the Order Form, a Hosted Service is specified as having variable Charges then the Charges for that Service will be calculated by Netec based on a snapshot of usage taken on or around



the 25<sup>th</sup> day of each month of the Service Term. Notwithstanding the foregoing, the Customer shall pay at least the minimum monthly Charge specified in the Order Form for Hosted Services.

- 7.4 The Charges include all materials and labour costs incurred in the execution of the Services. For any Services delivered Onsite, Netec may invoice for and, if so, the Customer shall reimburse, Netec's reasonable expenses incurred for travel, accommodation and other subsistence.
- 7.5 Any work requested by the Customer which is outside the scope of the Services specified in sections 1, 2 and 3 of the Order Form will be deemed ad hoc consultancy Services and Netec will be entitled to charge for them accordingly.
- 7.6 In relation to ad hoc consultancy Services, Rate 1 specified in section 4 of the Order Form shall apply for Services delivered during Business Hours only. Netec shall invoice for any additional hours at Rate 2 specified in section 4 of the Order Form.
- 7.7 Netec may, by giving 60 days' notice to the Customer at any time, increase the Charges for the Hosted Services to reflect any increase in the charges for those services payable by Netec to the relevant third party service provider.
- 7.8 Netec may, by giving 30 days' notice to the Customer, increase the Charges for the Support Services and/or the ad hoc consultancy Services, such increase to become effective on the next anniversary of the Agreement Start Date. The increase shall not exceed 15% of the then-current Charges for Support Services or ad hoc consultancy Services respectively.
- 7.9 Netec may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods, their preparation or handling that is due to:
  - a) any factor beyond Netec's control (including increases applied by the relevant manufacturers or distributors, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or their specification; or
  - c) any delay caused by any instructions of the Customer or failure of the Customer to give Netec adequate or accurate information or instructions.
- 7.10 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.11 Netec will keep complete and accurate accounting records in accordance with general accounting practices to support and document all time and material charges with respect to ad hoc consultancy Services and shall retain such records for a period of at least one (1) year after the completion of the work.
- 7.12 The Customer will keep complete and accurate records of the users of Supported Systems or of the personnel at the locations of the Supported Systems (whichever is relevant to the Charges for the Support Services) and shall retain such records during the Service Term for Support Services and for a period of at least one (1) year thereafter. Netec, or an accounting firm retained by Netec, shall have access to such records, upon reasonable notice, to verify

the accuracy of the numbers reported by the Customer and Netec shall bear the cost of such audit.

7.13 Netec, without prejudice to any other remedy it may have, shall be entitled to:

- a) suspend performance and provision of any or all Services;
- b) suspend the supply of Goods; and
- c) a general lien on all Equipment and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to Netec;

if any undisputed Charges invoiced to the Customer remain unpaid fifteen (15) days after their due date, until the actual date of payment of such unpaid Charges. Charges will be deemed undisputed for the purpose of this clause 7.13 if the Customer has failed to notify Netec in writing of its reasons for disputing those Charges and provided reasonable evidence in support within five (5) Working Days of receipt of the relevant invoice.

7.14 Netec may require the Customer to pay the Charges by direct debit or standing order.

7.15 If: (i) any undisputed Charges invoiced to the Customer have not been paid by their due date on two or more occasions; or (ii) there arises any fact, matter, event, circumstance, condition or change which materially and adversely affects, or could reasonably be expected to materially and adversely affect, the business, operations, assets, liabilities, condition (whether financial, trading or otherwise), prospects or operating results of the Customer then Netec, without prejudice to any other remedy it may have and notwithstanding clauses 7.1 and 7.2, shall be entitled immediately on giving written notice to the Customer to be paid any Charges for Goods or Services arising thereafter in advance of providing the corresponding Goods or Services. In those circumstances variable Charges will be estimated and any over- or under-payment credited or invoiced in the following month as appropriate.

7.16 Neither party shall be entitled to set off, withhold or deduct sums owed to it by the other against sums it may owe under this Agreement or any other contract.

7.17 The Charges do not include any VAT, GST or similar sales tax which may be imposed from time to time in accordance with the relevant tax rules and which will be charged to and paid by the Customer at the prevailing rate.

## **8 INTELLECTUAL PROPERTY RIGHTS**

8.1 All Intellectual Property Rights:

- a) subsisting in the One-off Services or Support Services (including the methods, processes or know-how used by Netec to provide them) and in any associated materials shall remain vested in Netec;
- b) subsisting in the Hosted Services (including the methods, processes or know-how used by the relevant third party service provider to provide them) and in any associated Client Software or Documentation shall remain vested in the relevant third party service provider;
- c) subsisting in the Customer Materials shall remain vested in the Customer or its licensors as the case may be.

- 8.2 Subject to payment of the Charges for the relevant Hosted Services, Netec shall license, or procure a licence for, the Customer to use the Client Software and Documentation as may be necessary to use the associated Hosted Service. The Customer acknowledges that the third party licensors of the Client Software and Documentation have licensed (whether directly or indirectly via Netec) the Customer to install and use the Client Software and Documentation only in accordance with the Third Party Terms and only during the Service Terms of the associated Hosted Services and the Customer undertakes not to do otherwise.
- 8.3 Nothing shall operate to assign or otherwise transfer any of either party's Intellectual Property Rights to the other party.

## 9 **CONFIDENTIALITY**

- 9.1 Each party (the "**Recipient**") undertakes to keep and maintain all Confidential Information received from the other party (the "**Discloser**") in the strictest confidence and not to disclose such information to any third party without the prior written consent of the Discloser.
- 9.2 A Recipient shall ensure that its employees and contractors:
- a) shall only be given access to Confidential Information received from the Discloser on a "need to know" basis for the purposes of this Agreement;
  - b) shall have been made aware of the requirements of confidentiality set out in this Agreement;
  - c) shall not cause or permit the Confidential Information to be disclosed to any third party.
- 9.3 The provisions of this clause 9 shall not prevent a Recipient from disclosing any information where it can demonstrate and document that such information:
- a) was in its possession (with a right to disclose) prior to receiving it from the Discloser; or
  - b) was independently developed by the Recipient;
  - c) was received with no restriction on disclosure from a third party entitled to disclose the information;
  - d) must be disclosed by compulsion of law; or
  - e) is or subsequently becomes publicly available other than by breach of this Agreement.
- 9.4 The provisions of this clause 9 shall apply throughout the full term of this Agreement and for five years thereafter.

## 10 **WARRANTIES**

- 10.1 Netec warrants that:
- a) the Services will be provided with reasonable skill and care;
  - b) it will use suitably qualified and experienced personnel in the provision of the Services;
  - c) it will provide the Services in accordance with all applicable laws and regulations; and

- d) it has full power and authority to execute, deliver and perform its obligations under this Agreement.
- 10.2 Netec warrants that on delivery, and for a period of 12 months from the date of delivery (the "**warranty period**"), the Goods shall:
- a) conform in all material respects with their description and Manufacturer's Specification; and
  - b) be free from material defects.
- 10.3 Subject to clause 10.4, if:
- a) the Customer gives notice in writing to Netec during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 10.2;
  - b) Netec is given a reasonable opportunity of examining such Goods; and
  - c) the Customer (if asked to do so by Netec) returns such Goods to Netec's place of business at the Customer's cost;
- then Netec shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 10.4 Netec shall not be liable for Goods' failure to comply with the warranty set out in clause 10.2 in any of the following events:
- a) the Customer makes any further use of such Goods after giving notice in accordance with clause 10.3;
  - b) the defect arises because the Customer failed to follow Netec's or the relevant manufacturer's instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good practices regarding the same;
  - c) the defect arises as a result of Netec following any drawing, design or specification supplied by the Customer;
  - d) the Customer or a third party alters or repairs such Goods without the written consent of Netec;
  - e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 10.5 Any repaired or replacement Goods supplied by Netec shall benefit from the balance of the warranty period.
- 10.6 Except as provided in this clause 10, Netec shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 10.2.
- 10.7 Netec does not warrant that Goods will operate or Services will be performed without interruption or that they will be error-free at all times, or (unless expressly stated to the

contrary in the requirements identified in the Order Form) be compatible with any third party software or hardware.

- 10.8 Other than the warranties set out in this clause 10, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose and terms which may otherwise be implied by sections 13 to 15 of the Sale of Goods Act 1979. Netec makes no representation or warranty that any fault, defect, issue or similar will be fixed within a specified period of time.

## 11 IPR INDEMNITY

- 11.1 Netec shall indemnify and hold harmless the Customer from all losses sustained by the Customer as a result of any claim being brought by a third party that the use or possession of the Client Software or Documentation or the receipt of any Service (the "**Infringing Item**") in accordance with the terms of this Agreement infringes that third party's IPR (an "**IPR Claim**").
- 11.2 If any person makes an IPR Claim, or in either party's reasonable opinion, is likely to do so, Netec shall at its option, with minimal disruption to the Customer, promptly and at its own expense either: (i) procure for the Customer the right to continue using, possessing or receiving the Infringing Item; or (ii) modify or replace the Infringing Item with a substitute item that complies with Netec's obligations under the Agreement. If neither (i) nor (ii) are commercially achievable then the Customer will, at Netec's request, cease using the Infringing Item and Netec will refund any advance payments made by the Customer for the use of the Infringing Item in the period following cessation of use.
- 11.3 If any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against the Customer, the Customer shall:
- a) as soon as reasonably practicable, give written notice of the IPR Claim to Netec, specifying the nature of the IPR Claim in reasonable detail;
  - b) not make any admission of liability, offer of settlement or compromise in relation to the IPR Claim without the prior written consent of Netec;
  - c) give Netec and its professional advisors copies of any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Netec and its professional advisers to examine them for the purpose of assessing the IPR Claim; and
  - d) take such action as Netec may reasonably request to compromise or defend the IPR Claim (at Netec's expense).

## 12 TUPE

- 12.1 In this clause 12, the following definitions shall apply:
- a) "**Customer Employee**" means any person employed or engaged or formerly employed or engaged by Customer or an Affiliate or contractor of Customer prior to the Service Start Date in the provision of services which become or are equivalent to any Services;

- b) **"Employment Liabilities"** means without limitation: (i) all emoluments and outgoings of employment including but not limited to wages, bonuses, commissions, holiday entitlement, PAYE, National Insurance contributions and pensions contributions; and (ii) any costs, claims, demands, liability to taxation, fines or expenses (including reasonable legal and other professional expenses), losses, damages, compensation and other liabilities arising from the Transfer Regulations or the termination of employment;
- c) **"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended, re-enacted or consolidated from time to time; and
- d) **"Unexpected Transferring Employee"** or **"UTE"** means a Customer Employee whose contract of employment or engagement transfers or is alleged to transfer to Netec pursuant to the Transfer Regulations.

12.2 The parties do not anticipate that the Transfer Regulations will apply as a result of the provision of the Services and that, as such, no Customer Employee's employment or engagement is anticipated to transfer to Netec pursuant to the Transfer Regulations either at the Service Start Date or at any time throughout the term of this Agreement.

12.3 If either party becomes aware of any UTE:

- a) it shall notify the other as soon as is reasonably practicable of the identity of that person;
- b) Customer shall provide such information in relation to the terms of employment or engagement (as applicable) of that person as Netec may reasonably require; and
- c) Netec may terminate the employment or engagement of that person within 30 days of the date of the notification provided in a) above.

12.4 Customer shall be liable for and shall indemnify Netec on demand in full and without any set off, counterclaim or other deductions in respect of any Employment Liabilities that Netec may suffer or incur which arise out of or in connection with:

- a) the employment, engagement or termination of any Customer Employee; and
- b) the employment, engagement or termination of any UTE.

### 13 DATA PROTECTION

13.1 In this clause 13, **"personal data"**, **"data subject"**, **"controller"** and **"processor"** have the meanings set out in the Data Protection Legislation. All rights in or to personal data made available by the Customer to Netec pursuant to this Agreement shall, as between the parties, belong exclusively to the Customer. Both parties acknowledge and agree that the Customer is the controller and Netec is the processor in respect of all such personal data (the **"Personal Data"**).

13.2 The parties agree that the subject matter, nature and purpose of processing shall be for Netec to process the Personal Data as necessary to provide the Customer with the Services, for example, to enable Netec to host the Customer's email system or office productivity tools. The duration of processing shall be for the Service Terms of the relevant Services. The categories

of data subjects shall be as determined by the Customer from time to time, but may include the Customer's directors, employees, shareholders, contractors, customers (in each case past, present and prospective) and personal contacts. The type of personal data processed shall be as determined by the Customer from time to time but could include special categories of personal data.

13.3 Each party shall indemnify the other, and keep the other party indemnified, against all liabilities, costs, expenses, damages and losses (including any and all penalties and legal and other professional costs and expenses) arising from a claim brought by a data subject or a competent supervisory authority in connection with any breach by the party of its obligations under Data Protection Legislation and/or contained in this clause 13.

13.4 Netec agrees that it will:

- a) process the Personal Data in accordance with the GDPR Policy;
- b) process the Personal Data only as necessary to deliver the Services during the term of the Agreement;
- c) process the Personal Data only on documented instructions from the Customer, including with regard to transfers of the Personal Data to a third country or an international organisation, unless required to do so by law to which Netec is subject; in such a case, Netec shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- d) ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- e) 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, implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
- f) take steps to ensure that any natural person acting under Netec's authority who has access to the Personal Data does not process them except on instructions from the Customer, unless he or she is required to do so by law;
- g) not engage another processor without informing the Customer of any intended changes concerning the addition or replacement of other processors;
- h) where it engages another processor for carrying out specific processing activities on behalf of the Customer, impose on that processor by way of a contract the same or equivalent data protection obligations as set out in this clause 13;
- i) taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights, such assistance to be at the rates agreed to (both parties acting reasonably and in good faith) between the parties in writing in advance;

- j) taking into account the nature of processing and the information available to Netec, assist the Customer in ensuring its compliance with its obligations to implement appropriate technical and organizational measures, notify personal data breaches to the competent supervisory authority and to data subjects, carry out data protection impact assessments and consult the competent supervisory authority where an assessment indicates a high risk;
  - k) at the choice of the Customer, delete or return all the Personal Data to the Customer after the end of the provision of Services, and delete existing copies unless required by English or EU law to store the Personal Data;
  - l) make available to the Customer all information necessary to demonstrate compliance with this clause 13 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer;
  - m) with regard to clause 13.4l) above, immediately inform the Customer if, in its opinion, the Customer's instruction infringes English or EU data protection legislation.
- 13.5 Netec may transfer the Personal Data to third party service providers located outside the European Economic Area but will ensure that the transfer is made pursuant to (a) the EU-US Privacy Shield, (b) the European Commission-approved Standard Contractual Clauses for the transfer of personal data, or (c) another appropriate legal data transfer mechanism provided by the Data Protection Legislation. The Customer will be responsible for obtaining any consents necessary for the transfers from the affected data subjects.

## **14 LIABILITY**

- 14.1 Subject to clause 14.4, neither party shall be liable: (i) for any loss of data (except the reasonable costs of reinstating the data from any back-up held by the Customer or in a back-up service selected as an Ongoing Service in the Order Form), profits, goodwill, revenue, production, anticipated savings, use or contracts or for any wasted expenditure, ex gratia payments made to third parties or for bank charges or interest incurred; or (ii) for any form of special, indirect or consequential losses whatsoever.
- 14.2 Subject to clause 14.4, the aggregate liability of Netec:
- a) under or in connection with any of the Goods, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract shall in no circumstances exceed an amount equal to the Charges paid for the Goods in question; and
  - b) under or in connection with any Service, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract shall in no circumstances exceed, in each Year, an amount equal to the Charges paid for that Service in the relevant Year; and
  - c) if neither clause 14.2a) or 14.2b) applies, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed, in each Year, an amount equal to the total Charges paid under this Agreement in the relevant Year;
  - d) under or in connection with clause 11 shall be limited to £500,000.



- 14.3 Netec shall bear no greater liability to the Customer for the acts or omissions of any subcontractor than the damages paid by the subcontractor to Netec with respect to those acts or omissions.
- 14.4 Notwithstanding any other provision of this Agreement, neither party's liability under or in connection with this Agreement, whether arising in tort (including negligence), breach of statutory duty, contract or otherwise shall be excluded or limited to the extent that it arises in respect of the following matters:
- a) for death or personal injury resulting from a party's negligence;
  - b) for fraud or fraudulent misrepresentation;
  - c) for breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - d) for defective products under the Consumer Protection Act 1987;
  - e) for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
  - f) for payment of Charges due under this Agreement; or
  - g) to the extent such exclusion or limitation is not otherwise permitted by law.

## **15 EMPLOYEES**

- 15.1 Without the prior consent in writing of the other, neither party shall during the term of this Agreement or for twelve months thereafter solicit, procure, or attempt to procure the employment of any persons employed or engaged in the provision or management of the Services.
- 15.2 If either party breaches clause 15.1 then it shall pay to the other party a sum equal to six months' remuneration of the relevant employee or consultant including benefits in kind. This sum shall constitute liquidated damages and is agreed to be a genuine pre-estimate of the loss that would be suffered.
- 15.3 Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstances shall the relationship of employer and employee to be deemed to arise between either party and any employee of the other.

## **16 WHOLE AGREEMENT**

The Agreement represents the entire agreement and supersedes all prior agreements and representations between the Parties. Each party warrants that it has not relied upon, nor has it been induced to enter into this Agreement by, a representation not recorded in the Agreement. Nothing in this clause shall limit or exclude any liability of either party for fraud or fraudulent misrepresentation.

## **17 ASSIGNMENT**

- 17.1 Subject to clauses 2.4 and 17.2, neither party may assign, transfer, or subcontract any of its rights, obligations or other interests under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

- 17.2 Either party may, on providing written notice, transfer this Agreement to (i) an Affiliate that presents no greater credit risk and has equivalent or better financial strength, or (ii) any person or entity who acquires all or substantially all of the assets of its business.

## **18 WAIVER**

A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition beyond that instance nor any subsequent breach thereof nor shall any delay by either party to exercise any right under this Agreement operate as a waiver of any such right.

## **19 NOTICES**

- 19.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of delivery, (i) for the Customer, to the Customer contact at the address for formal notices given in the Order Form and (ii) for Netec, to the Managing Director, Netec, at 8 Breasy Place, Burroughs Gardens, London NW4 4AT. Either party may change their contact and address for formal notices by notifying the other party in accordance with this clause 19.1.
- 19.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt, or at 9.00 am on the second business day after posting, or at the delivery time recorded by any courier.

## **20 SEVERABILITY**

If any provision of this Agreement shall be held void, invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect.

## **21 VARIATIONS**

- 21.1 Except as specifically provided herein, this Agreement may not be amended or supplemented, nor any of the provisions hereof waived except by an agreement in writing signed by Netec and the Customer.
- 21.2 The Customer may request changes to this Agreement in writing (a "**Change Request**"). Within ten (10) business days after Netec's receipt of a Change Request, Netec will submit to the Customer for its written approval a statement specifying the changes, if any, in the Services, estimated timetable, or other changes, and any associated change in Charges necessitated by the Change Request ("**Change Order**"). Netec's proposal will describe in reasonable detail the basis for Netec's proposed change in Charges, if any, including the estimated number of hours of labour and the actual cost of any materials or products required to implement the Change Request. Nothing in this clause 21.2 shall prevent the parties from agreeing to the provision of further Goods and Services in accordance with clause 2.3.
- 21.3 If the Customer accepts Netec's proposed Change Order, the Customer will execute the Change Order and the parties will be obligated with respect to the Agreement as modified by the Change Order. Netec will not implement any Change Request and the Customer will not be liable for any work performed by Netec until the Customer has executed a Change Order specifying the agreed-to change in Charges, if any.

21.4 If the Customer does not accept Netec's proposed Change Order, the Customer may, at the Customer's sole option (i) withdraw its Change Request; (ii) modify its Change Request, in which case the procedures set forth in clauses 21.2 and 21.3 above will apply to the modified Change Request.

## **22 TERM AND TERMINATION**

22.1 Unless terminated earlier by a party in accordance with the terms of this Agreement or otherwise in accordance with law and equity, this Agreement shall terminate two months after the last Service Term has ended or twelve months from the last date of delivery of Goods, whichever is later.

22.2 Either party shall have an option to terminate for convenience the Support Services on one week's written notice at any time during the first 90 days after the Service Start Date for the Support Services. Save as aforesaid, Netec will provide and the Customer will pay for each Ongoing Service for a minimum period of 12 months. The provision of the Ongoing Service may be brought to an end at the end of the minimum period by either party giving 90 days' prior written notice to the other.

22.3 If sufficient written notice has not been given in respect of an Ongoing Service then Netec will provide and the Customer will pay for the Ongoing Service for a further period of 12 months ("**Renewal Period**"). The provision of the Ongoing Service may be brought to an end at the end of a Renewal Period by either party giving 90 days' prior written notice to the other. Provision of and payment for the Ongoing Service shall continue to extend for additional Renewal Periods until sufficient prior written notice is given.

22.4 If, at any time a party (i) commits a material breach of its obligations under this Agreement which is either incapable of remedy or which is capable of remedy but (upon receiving written notification from the other of such default or breach) fails to remedy the default or breach within 30 days; or (ii) becomes insolvent, makes (other than for the purpose of an amalgamation or reconstruction while solvent) a general assignment for the benefit of, or enters into any arrangement with, its creditors, files a voluntary petition (other than for the purpose of an amalgamation or reconstruction while solvent) under any bankruptcy, insolvency, or similar law, or has proceedings under any such laws or proceedings seeking appointment of a receiver, trustee or liquidator instituted against it that are not discharged or stayed within 21 days, then the other party shall immediately become entitled (without prejudice to its other rights) to terminate this Agreement forthwith by notice in writing.

22.5 Netec shall immediately become entitled to suspend the provision of any Services under this Agreement if the Customer commits a material breach of its obligations under this Agreement. Such suspension may last until the breach is remedied and the Customer has demonstrated to Netec that it has taken reasonable steps to ensure that the breach does not recur.

22.6 Upon termination of this Agreement for whatever reason the Customer shall, without prejudice to its other rights and remedies, pay to Netec:

- a) the outstanding balance of Charges due in respect of any Services carried out or provided under this Agreement prior to the date of termination; and
- b) the price of Goods, third party licences or services ordered by Netec for or on behalf of the Customer for which Netec has paid or is legally bound to pay.

22.7 Termination of this Agreement for whatever reason shall not affect the accrued rights and liabilities of the parties as at the date of termination nor bring to an end any provision hereof which expressly or by implication continues in force after the date of termination.

## **23 FORCE MAJEURE**

23.1 If either party is affected by Force Majeure, it shall immediately notify the other party of the matters constituting the Force Majeure and shall keep that party fully informed of the continuance of the Force Majeure and of any relevant change of circumstances whilst such Force Majeure continues.

23.2 The party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under this Agreement.

23.3 Neither party shall be in breach of this Agreement, or otherwise liable to the other party, by reason of any delay in performance, or non-performance of any of its obligations due to Force Majeure.

23.4 If the Force Majeure continues for longer than 90 days, either party may terminate this Agreement on 30 days' notice to the other party.

## **24 PUBLIC ANNOUNCEMENTS**

24.1 The Customer grants Netec the right to use the Customer's name and logo in marketing collateral and on a dedicated "Netec Customers" page on Netec's website. The Customer agrees to provide high resolution versions of all widely used logo variations to Netec.

24.2 Save as aforesaid, each Party agrees to inform and obtain the written approval of the other Party prior to making any public statement, through press releases or otherwise, concerning any activities under this Agreement.

## **25 THIRD PARTY RIGHTS**

Except for clause 5.5 and the Third Party Terms referenced therein, the parties do not intend that a person who is not a party to this Agreement shall be entitled to enforce any term of this Agreement.

## **26 ANTI-CORRUPTION**

Netec shall at all times comply, and shall ensure that its personnel comply, with respect to the performance of this Agreement, with all applicable laws and regulations concerning bribery and corruption.

## **27 LAW AND JURISDICTION**

27.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between them.

27.2 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and each party submits to the exclusive jurisdiction of the English courts in respect of all disputes (whether contractual or non-contractual) arising out of or in connection with this Agreement.

## SCHEDULE 1 – INCIDENT MANAGEMENT

1. During Business Hours, Netec will respond to incidents that can be reproduced by Netec and update the Customer on the status of the incident in accordance with Table 1. The severity level assigned to an incident will be jointly determined by Netec and Customer.

**TABLE 1 - INCIDENT SLAs**

<b>Severity Class</b>	<b>Logging Method</b>	<b>Response Time</b>	<b>Status Updates</b>
<b>1</b>	Telephone call to Service Desk	Up to 15 minutes	Every 2 Business Hours
<b>2</b>	Email to Service Desk or logging with Portal	Up to 4 Business Hours	Every 4 Business Hours
<b>3</b>	Email to Service Desk or logging with Portal	Up to 2 Working Days	Every 2 Working Days
<b>Moves, Changes &amp; Advice</b>	Email to Service Desk or logging with Portal	Within 5 Working Days	None

### 2. Detailed Severity Class Descriptions

2.1. **Severity 1:** Business critical incidents: "Business critical" occurs when multiple users are unable to carry out their 'Business As Usual' activities at all. Includes where, as a result of an issue with a Supported System or Hosted Service:

- any server or services running on a business critical server are not responding;
- communication links are down for an entire Customer site;
- the email system for the Customer's entire workforce is non-operational;
- a virus is propagating through the Customer's network;
- an unauthorised intrusion into the Customer's network has been detected; or
- a business critical Hosted Service is unavailable and this impacts multiple users.

2.2. **Severity 2:** User critical incidents: "User critical" occurs where, as a result of an issue with a Supported System or Hosted Service, a single user is unable to carry out their 'Business as Usual' activities at all. Includes where:

- an operating system or the office productivity software on any User's desktop Supported System has become corrupted and unusable;
- the email client software on any User's desktop Supported System is non-operational;
- a business critical Hosted Service is unavailable and this impacts a single user.

2.3. **Severity 3:** Minor incidents: "Minor incident" occurs where a user's 'Business as Usual' activities are not critically impacted. Includes where:

- a user of a Supported System is unable to print;

- a user of a Supported System experiences minor faults with their operating system or office productivity software; or
- errors are logged for a backup system that is a Supported System.

2.4. **Moves, changes and advice:** "Moves, changes and advice" arise where the Customer requests assistance with a non-fault issue. They are not included in the Charges for the Support Services and Netec shall be entitled to charge for them as ad hoc consultancy Services. Includes where:

- a user of a Supported System or Hosted Service has questions regarding the operation of that Supported System or Hosted Service;
- the Customer requests help setting up a new Supported System or new user or upgrading an existing Supported System;
- the Customer requests help configuring a Hosted Service;
- the Customer requests help moving a Supported System.

### 3. Escalation

Unresolved Support Service issues may be escalated by Customer as follows:

- 3.1. **Severity Escalation:** Customer may request severity escalation of a support issue by notifying Netec of extenuating circumstances that cause the support issue to have an adverse impact on Customer's ability to conduct business. Such escalation will result in Netec treating the support issue as a higher severity level than would otherwise apply per the severity level definitions set forth herein. The request to escalate the severity of a support issue may be initiated by Netec.
- 3.2. **Managerial Escalation:** Customer may request managerial escalation by contacting Netec. Issues may be escalated through the levels of management set out in Table 2 below, as required until the issue is resolved.

**TABLE 2 – ESCALATION CONTACTS**

Level	Contact
First Level	Helpdesk Team Leader
Second Level	Technical Operations Manager
Third Level	Managing Director

- 3.3. Netec shall not be liable for failure to address or resolve such issues in accordance with the escalated severity level if Netec reasonably determines that such request is not valid, for example if the issue is with a system that is not a Supported System or a Hosted Service.

## SCHEDULE 2 – ACCEPTABLE USE POLICY

### 1 DEFINITIONS

1.1 In this Acceptable Use Policy, the following terms shall bear the corresponding meanings:

**“Automated Testing”** means testing designed to cause system errors by deliberately testing outside of the bounds of normal user behaviour, to create high system load by deliberately simulating multiple concurrent events or whose core purpose is to identify flaws in the security mechanism of the system;

**“Content”** means information, data, text, software, music, sound, photographs, graphics, video, messages and other materials.

### 2 CAUSE NO HARM TO THE PUBLIC

2.1 The Customer shall neither use, nor attempt to use, any Hosted Service in a way that is:

2.1.1 abusive, threatening, defamatory, obscene or harassing;

2.1.2 assisting, encouraging, inciting or attempting any illegal activity;

2.1.3 sexually explicit;

2.1.4 encouraging or inciting violence;

2.1.5 discriminatory based on race, gender, colour, religious belief, political belief, sexual orientation, disability; or

2.1.6 otherwise illegal, in breach of any relevant code of practice, or intended or reasonably likely to cause harm to any person or property.

### 3 RESTRICTIONS ON AUTOMATION

3.1 Use of a Hosted Service is only permitted via manually conducted, discrete, individual activities by the Customer and Automated Testing is not permitted.

### 4 CAUSE NO HARM TO NETEC

4.1 The Customer undertakes that:

4.2.1 each user of a Hosted Service shall keep confidential the login details for their use of the Service and change their password no less frequently than required to meet the Customer’s own security requirements;

4.2.2 each user of a Hosted Service shall receive their own login details and that there shall be no sharing of login details between users;

4.2.3 it shall maintain a written, up to date list of current users of the Hosted Service and provide such list to Netec within 5 Business Days of Netec’s written request at any time or times.

4.3 The Customer shall not sell, rent or lease any Hosted Service to a third party or charge any third party for granting rights to use or access any Hosted Service in whole or in part, unless otherwise agreed between the parties.

4.4 The Customer shall not reverse engineer, decompile or disassemble any client software provided with or for the Hosted Service (except to the extent that such activity is expressly permitted

by applicable law) nor circumvent any technological protection measures in a Hosted Service nor attempt to do so.

4.5 The Customer's use of any Hosted Service shall be for its own internal business purposes only, unless expressly agreed otherwise between the parties.

4.6 The Customer shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in a Hosted Service.

## **5 RESPONSIBILITY FOR ASSOCIATED PARTIES**

5.1 The Customer shall procure that all users of the Hosted Service shall comply with this Acceptable Use Policy as if the obligations of the Customer herein were the obligations of those parties.

## **6 CONTENT**

6.1 If the Customer provides Netec with Content to be stored, processed or distributed by a Hosted Service then Customer will ensure that Customer is the legal and beneficial owner of the Intellectual Property Rights subsisting in the Content or else that Customer is entitled to license use of the Intellectual Property Rights to Netec and in any event use of the Content by Netec for the purpose of providing the Hosted Service will not infringe the Intellectual Property Rights of any third party.

## **7 CONDUCT**

7.1 The Customer must not:

7.1.1 obtain or attempt to obtain unauthorised access to Hosted Service;

7.1.2 use any Hosted Service in any unlawful manner or for any unlawful purpose or breach any regulation;

7.1.3 use any Hosted Service to store, process or distribute any Content that infringes any Intellectual Property Rights of any party;

7.1.4 use any Hosted Service to email or otherwise transmit Content that the Customer does not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary or confidential information);

7.1.5 use any Hosted Service to email or otherwise transmit any unsolicited or unauthorised advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;

7.1.6 use any Hosted Service to email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

7.1.7 interfere with or disrupt the Hosted Services or networks carrying traffic from the Hosted Services, or disobey any requirements, procedures, policies or regulations of networks carrying traffic from the Hosted Services; or

7.1.8 use any Hosted Service to conduct mass marketing campaigns.

7.2 The Customer will promptly notify Netec of any complaint concerning the Hosted Services of which the Customer becomes aware.



7.3 The Customer will comply with (and not try to circumvent) reasonable limits imposed by Netec or the relevant third party service provider on the use of the Hosted Services, including the maximum number of email messages that may be sent in a period and the maximum amount of traffic that may be handled by the Hosted Service.